

LAWYER'S MANUAL ON HUMAN TRAFFICKING

P U R S U I N G J U S T I C E F O R V I C T I M S

EDITED BY JILL LAURIE GOODMAN AND DORCHEN A. LEIDHOLDT



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PURSuing JUSTICE FOR VICTIMS

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“Unquestionably, this Manual makes an invaluable contribution to our understanding of human trafficking and will be an important guide not only for lawyers who represent victims but also for the entire community of judges, prosecutors, government agencies, service providers, community groups, and others concerned about this terrible human rights abuse.”

Hon. Jonathan Lippman
Chief Judge of the State of New York

“This volume’s authors are among the leading state, national, and international anti-trafficking experts. For many of them, their efforts on behalf of the anti-trafficking campaign date back to the time before trafficking commanded the public attention that it does today. This book represents their personal and collective wisdom. It is an impressive contribution to the global efforts to end the iniquity that is human trafficking.”

Hon. Betty Weinberg Ellerin
Chair, New York State Judicial Committee
on Women in the Courts

Supreme Court of the State of New York, Appellate Division, First Department
New York State Judicial Committee on Women in the Courts

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www.nycourts.gov/ip/womeninthecourts/publications.shtml

Lawyer's Manual on Human Trafficking

Pursuing Justice for Victims

Edited by Jill Laurie Goodman and Dorchon A. Leidholdt

Supreme Court of the State of New York, Appellate Division, First Department
New York State Judicial Committee on Women in the Courts

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of the New York State Unified Court System or any New York State Judge.**

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Jill Laurie Goodman
Dorchen A. Leidholdt
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Foreword

**by Hon. Jonathan Lippman,
Chief Judge of the State of New York**

Over the past ten years, we have seen increasing attention paid to the age-old global problem of human trafficking. The renewed focus on this contemporary version of slavery was sparked by the United Nations international anti-trafficking standards established in 2000. The federal enactment that year of the Victims of Trafficking and Violence Protection Act also brought more national awareness of the problem. More recently, New York enacted its own anti-trafficking provisions, including statutes that define new crimes of sex trafficking and labor trafficking and provide mechanisms for helping trafficking victims, including child victims arrested for prostitution.

Trafficking cases present difficult challenges for the criminal justice system. For example, victims may be dealing with serious trauma related to domestic violence and sexual assault and reluctant to participate in prosecutions. Further, many adult or child victims of human trafficking are arrested and brought to court as defendants on prostitution-related charges. In the court system, we have established ongoing programs to educate our judges and court personnel about the complex dynamics involved in these situations. As Chief Judge, I also recognize that the courts may be uniquely positioned to intervene with trafficking victims, and our long experience with programs for domestic violence victims has taught us a great deal that could be helpful in that regard. We have already begun to explore approaches and collaborations focused on victims of trafficking.

Unquestionably, the *Lawyer's Manual on Human Trafficking* makes an invaluable contribution to our understanding of human trafficking and will be an important guide not only for lawyers who represent victims but also for the entire community of judges, prosecutors, government agencies, service providers, community groups, and others concerned about this terrible human rights abuse.

Introduction

by Hon. Betty Weinberg Ellerin

The last decade has witnessed a new interest in the ancient scourge of human trafficking. The problem is huge, the circumstances of trafficking victims horrific, and the damage enormous. People are kidnapped and sold by family members or, far more frequently, lured by promises of good jobs abroad only to find themselves confined in brothels or barracks, at the mercy of traffickers who see them as nothing more than sources of profits. Young people are seduced into prostitution by pimps who promise them romance, love, or a glamorous life, and, once control is established, subject their victims to relentless exploitation and abuse. Across the globe traffickers force people to beg on the streets, work in mines, harvest crops, or perform sex with countless men a day. Victims live and work in dangerous circumstances. They are rarely paid, and they are often raped or beaten. They may be transported across borders into foreign countries where they do not know the language and fear immigration authorities and the police. Or they may be picked up in bus stations or on street corners by young men from local communities, who offer them protection and help only to brutally betray their trust. Almost always, domestic and international victims alike are forcibly isolated from friends, family, community, and any possible source of help.

Fortunately, citizens and policy makers are increasingly likely to understand that human trafficking is an urgent matter of social justice. They are also increasingly likely to be knowledgeable about its victims, perpetrators, and harms. News accounts of dramatic cases along with television and film stories, both fiction and non-fiction, have raised awareness of the plight of people caught in what is commonly called modern-day slavery. Reports and studies have begun to amass valuable information on the highly secretive activities that constitute human trafficking.

On the legal front, too, change is evident. In 2000 the United States government enacted the federal Trafficking Victims Protection Act, known as the TVPA, and in 2003, 2005, and 2008, the TVPA was reauthorized and amended. The TVPA defines the crimes of forced labor and sex trafficking, provides support for victims, and establishes a system for monitoring worldwide anti-trafficking efforts and for punishing countries that fail to address trafficking within their borders. The United States Department of State's annual Trafficking in Persons Reports document with clarity and precision the kinds and extent of trafficking, country by country, around the globe, and national efforts to control it. The United States also is a party to the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, more commonly, the Trafficking Protocol. A transnational agreement with 124 parties, the Trafficking Protocol provides the clearest, most comprehensive international definition of trafficking to date and creates obligations on the part of signatory states to prosecute traffickers, protect victims, curtail the demand for trafficking, and raise public awareness.

New York State has responded to the heightened interest in trafficking by passing two ground-breaking statutes. The first, New York's Human Trafficking Law, was signed into law on June 6, 2007. One of the strongest state trafficking laws in the country, it creates the crimes of sex trafficking and labor trafficking, defines them in ways that encompass a full range of traffickers' tactics, including subtle but powerful manipulations, and imposes substantial penalties on wrongdoers. The law addresses the demand for sex trafficking victims by targeting buyers with increased penalties for patronizing a prostitute and by outlawing businesses that organize travel for sex tourists, who often prey on the most vulnerable women and children in the world's poorest countries. The law also establishes mechanisms for helping victims, for training public employees, including law enforcement, and for coordinating the state's anti-trafficking activities. A year later, in 2008, New York enacted the Safe Harbor Act in response to the injustice of charging children, who are too young to consent to sex under statutory rape laws, with prostitution. Now, instead of facing juvenile delinquency hearings and prolonged incarceration in facilities for youthful offenders, children arrested on prostitution charges are treated as victims and their cases are handled under the Persons In Need of Supervision (PINS) sections of the Family Court Act.

Laws alone, however, will not defeat traffickers. A cadre of knowledgeable, dedicated law enforcement officers, state officials, and civil and criminal lawyers working together is necessary to make sure that laws are used to

prosecute traffickers and protect victims. Education, collaboration, and commitment are also essential to the work of prevention, whether it is arming vulnerable populations with information and alternatives or finding ways to attack the demand that fuels sex trafficking.

The Lawyer's Manual on Human Trafficking is part of the effort to create that cadre of informed activists. Its chapters describe the nature of sex and labor trafficking. It addresses the legal remedies at the disposal of prosecutors, lawyers defending victims on criminal charges, and family law practitioners, government benefits experts, and immigration advocates helping victims to rebuild their lives. It explores the relation of trafficking laws to other social justice concerns, such as labor exploitation and domestic violence, and it spotlights particular groups of victims, such as male sex trafficking victims and children exploited in the commercial sex industry.

The volume's authors are among the leading state, national, and international anti-trafficking experts. For many of them, their efforts on behalf of the anti-trafficking campaign date back to the time before trafficking commanded the public attention that it does today. They have worked assisting individual trafficking victims, formulating policy, urging public officials to enforce existing statutes, and advocating for the enactment of new laws. This book contains their personal and collective wisdom. It is an impressive contribution to the global efforts to end the iniquity that is human trafficking.

Introducing Human Trafficking



What We Know About Human Trafficking: Research and Resources

by Jill Laurie Goodman

Creating a comprehensive portrait of human trafficking is a difficult undertaking.

Identifying traffickers, trafficking operations, and victims is an initial and major obstacle. Trafficking is an underground activity, intentionally hidden from outside eyes. Victims rarely break free, and, when they do, they are often too wary of authorities or too traumatized by their experiences to be able or willing to describe publicly or even privately what happened to them. Researchers have relatively small data bases from which to work, and the cases on which they depend inevitably reflect the biases of their sources, including those of laws and law enforcement. The many guises of human trafficking and the numerous cultures within which it flourishes complicate the work of researchers further. Trafficking can be found in virtually every inhabited corner of the globe. It can take place within the borders of a single nation, state, or city, or it may involve transit through, and exploitation within, multiple countries or regions. Researchers also must contend with conflicting definitions of trafficking, which vary in fundamental ways from jurisdiction to jurisdiction and nation to nation. As a result, different studies of trafficking invariably examine different populations, making comparisons among findings difficult.

Nonetheless, a fair number of reports, books, and articles on human trafficking have been published in recent years, and a body of knowledge is developing.¹ Some scholars extrapolate from known cases to develop estimates about the extent of trafficking, while others summarize information about a limited number of uncovered instances of trafficking. From these kinds of work, a portrait emerges of a phenomenon, both local and global, that ultimately bears responsibility for massive violations of human rights and immense amounts of human suffering.

The Extent of Global Trafficking

Understanding the Reach of Human Trafficking

The United States Department of State issues yearly reports that document in rich detail the kinds of trafficking within, into, from, and through over 170 countries.² The individual country descriptions provide data points demonstrating that human trafficking is common and that it takes many forms throughout the world. For example, addressing trafficking in some fairly remote places, the State Department's Trafficking in Persons Report for 2009 finds that women and girls in Sierra Leone are trafficked internally for forced labor in fishing, diamond mining, and agriculture as well as begging and low-level street crime.³ Men and boys in Mali are part of a tradition of debt bondage in salt mines.⁴ Women and girls from Nepal and Bangladesh are trafficked to India into the commercial sex industry, and low-status and poor Indian women and children are trafficked internally for forced marriages as well as other kinds of sexual exploitation.⁵ Cambodian children are transported to Thailand and Vietnam where they are made to beg, sell flowers, or shine shoes, while the sale of virgins to sex tourists visiting Cambodia thrives on fees of \$800 to \$4,000 per purchase.⁶ Brazil's children are trafficked internally for sexual exploitation in resorts, along highways, and in Amazonian mining brothels.⁷

Developed countries too are part of the trafficking underworld described in the State Department reports. Australian men marry foreign women and then force them into prostitution or domestic servitude.⁸ Moroccan men are lured to Italy where they are forced to sell drugs.⁹ St. Petersburg and Moscow are destinations for Russian, Ukrainian, and Moldavian children used for sexual exploitation and begging.¹⁰ Men are trafficked into Belgium for exploitation in restaurants, bars, sweatshops, fruit farms, and construction.¹¹ Mongolian victims are found in Germany, Switzerland, the United Arab Emirates, and Israel, while South Korean and Japanese men visit Mongolia as sex tourists.¹²

Closer to home, Canadian aboriginal women and girls are trafficked internally into the sex industry where they join foreign women from Asia and Eastern Europe; Canada is also a transit state for South Koreans on their way to the United States, and it is both a source country and destination for sex tourists.¹³ Mexico is a transit stop for victims from Central America, the Caribbean, Eastern Europe, and Asia destined for the United States; a source country for women and children trafficked to the United States for sexual exploitation, as well as men

and women trafficked for labor in agriculture and sweatshops; and a destination for sex tourists from the United States, Canada, and Western Europe.¹⁴

Quantifying Human Trafficking

While the Trafficking in Persons reports provide an immense amount of detailed information, gathering the various phenomena of human trafficking into a statistical portrait has proved difficult. In fact, the United Nations Office of Drugs and Crimes (UNODC), the UN body responsible for human trafficking research and programs, said in its most recent report that it is premature to make estimates of the number of global victims.¹⁵

Most attempts to quantify human trafficking begin by trying to count its victims using complicated sampling methodologies.¹⁶ The most authoritative but admittedly problematic figures on the number of global victims are the 2005 estimates of the International Labour Office (ILO), an arm of the United Nations. According to these figures, which the ILO characterized as minimums, the total number of victims of “forced labour” was 12.3 million, and the number of victims of “trafficking” was 2.45 million.¹⁷ The ILO researchers themselves viewed these estimates as more useful for stimulating discussion than for settling questions, and four years later the ILO was still struggling to find ways to provide reliable data.¹⁸ Among the problems are the ILO’s concepts of “forced labor” and “trafficking;” the ILO defines “trafficking” too narrowly to include the universe of victims covered by international, federal, or New York State definitions while the ILO’s figure for “forced labour” is too broad. Also, the ILO only counts trafficking that involves movement of victims and so discounts a substantial portion of domestic trafficking.

Nor has the United States government been able to produce satisfying numbers. The estimate of between 600,000 and 800,000 annual victims cited by the Department of State’s Trafficking in Persons Reports in 2005 and 2006 and still often cited came under harsh criticism from the United States Government Accountability Office.¹⁹ The 2009 Trafficking in Persons Report simply refers to the ILO numbers without endorsing them, and the 2010 Report relies on them as well.²⁰

Demographics of Trafficking Victims

While total figures on human trafficking remain under debate, major studies converge in their assessments of the character of known trafficking instances and victims. Estimates from the four major international sources of data on victim profiles, the U.S. government, the ILO, UNODC, and the International

Organization for Migration, agree that trafficking for sexual exploitation accounts for the greatest number of known victims.²¹ According to the ILO, which defines “trafficking” to require the transport of victims, 43% of human trafficking is for commercial sexual exploitation, 32% for labor exploitation, and 25% for mixed labor and sex trafficking.²² UNODC in its 2009 Report, using a broader and more generally accepted definition of trafficking, found that 79% of reported victims are exploited in commercial sex and 18% in forced labor.²³ United States Department of Justice figures are similar. Of United States trafficking incidents reported in 2007-08, the latest reporting period, 83% were incidents of sex trafficking and 12% were labor trafficking, with 5% designated as unknown.²⁴

While figures on the basic character of known trafficking victims and incidents are in agreement, UNODC has suggested that the available numbers on sex versus labor trafficking may mask regional differences and may miss the extent of labor trafficking.²⁵ Estimates necessarily rely, in one way or the other, on the small subset of trafficking incidents that is uncovered, which may represent an atypical sample of trafficking cases. One limited study, which examined trafficking from eight Central and South American countries into the United States across the southwestern border, found that trafficking victims for labor outnumbered sex trafficking victims.²⁶

Sources agree that an overwhelming number of reported victims are female and that women and girls are the majority of labor trafficking as well as sex trafficking victims. Female trafficking victims are not only exploited in the sex industry, but they are also used in domestic servitude and forced to work in sweatshops, restaurants, and agriculture. The ILO reported that women and girls were 98% of the victims trafficked for sexual exploitation, but also 56% of victims of labor trafficking.²⁷ UNODC’s 2009 Report documents a similar disparity: between 84% and 80% of total reported victims in the years from 2003 to 2006 were women or girls.²⁸ The disproportionate number of female victims was sufficiently noteworthy for the U.S. Department of State to devote a special section in its 2009 Trafficking in Persons Report to the gender imbalance in human trafficking.²⁹ The report ascribes the vulnerability of women to their lack of basic economic, political, and civil rights.³⁰

Children, too, are victims of trafficking in large numbers. International and federal law define trafficking as profiting from the participation of anyone under the age of 18 in commercial sex. The estimate commonly used is the UNICEF figure of more than 2,000,000 children exploited yearly in the global sex industry,³¹ but children are trafficked for more than commercial sex. They are forced to beg or commit petty crimes, used in industries such as fishing, gold mining, and brick

making, or turned into child-soldiers by rebel armies. The ILO estimates that 40% to 50% of those in its category of “forced labour” are children.³²

Trafficking Prosecutions

The United States government annually counts both worldwide and domestic trafficking prosecutions and convictions, and the numbers are woefully low. The 2010 U.S. Trafficking in Persons Report gives a worldwide figure of 5,606 prosecutions and 4,166 convictions; the number of prosecutions was lower than in 2003, the first year in which the United States reported data on global law enforcement efforts, while the number of convictions was somewhat higher.³³ For 2009, the U.S. Department of Justice’s Civil Division reported charges brought against 114 individuals and 47 convictions in 43 cases (22 sex trafficking cases and 21 labor cases).³⁴ In addition, the Justice Department reports separate law enforcement figures for cases of child sexual exploitation; in 2009, there were 151 convictions and 306 children were identified through the joint federal and state law enforcement efforts.³⁵ The experiences under New York State’s Human Trafficking Law are consistent with the low figures for international and national efforts. In the first two years since New York’s law went into effect on November 1, 2007, New York had almost no prosecutions or convictions.³⁶

Trafficking Operations

A number of recent studies that focus on a particular location or kind of trafficking go beyond the numbers to bring trafficking to life. Researchers have examined in some detail women trafficked into the United Kingdom;³⁷ women trafficked in the European Union;³⁸ sex trafficking of women in the Ukraine;³⁹ child sex trafficking in Asia;⁴⁰ sex trafficking in Minnesota⁴¹ and, in a separate study, the sexual exploitation of American Indians in Minnesota;⁴² domestic sex trafficking in the Midwest;⁴³ domestic sex trafficking in Chicago;⁴⁴ commercial sexual exploitation of girls in Atlanta;⁴⁵ trafficking in the Ohio cities of Toledo and Akron;⁴⁶ sexual exploitation of children in the United States, Canada, and Mexico;⁴⁷ and trafficking of foreign nationals into the United States.⁴⁸ Often these researchers start with a set of cases identified from law enforcement sources, social service agencies, or newspaper accounts. Their data is based on examinations of public documents and case files as well as interviews with survivors, social workers, health providers, police, public officials, and others whose work touches on trafficking or who encounter its victims. Together these

studies present a plausible explanation of why trafficking happens, how it works, and the harm it visits on its victims.

Structure of Trafficking Operations

Trafficking operations vary radically in size, organization, sophistication, and global reach. On the smallest scale, traffickers may be lone pimps, exploiting one or several young girls picked up locally and seduced with promises of love, support, and security.⁴⁹ Other small exploiters are married couples, often wealthy and respected members of their communities, who find household workers abroad, arrange for their transportation, take them into their homes, and keep them in domestic servitude, often subjecting them to brutal conditions.⁵⁰

At the other extreme are complex operations, employing large cadres of people, working in different countries, involved at various different levels and stages in an integrated business.⁵¹ Human trafficking is a natural enterprise for organized crime. As one researcher explained, “[H]igh profits, low risk of detection, and minor penalties involved have made the human trade attractive to crime groups that previously trafficked in other commodities.”⁵² Classical organized crime syndicates, characterized by hierarchical structures and high levels of public corruption, are responsible for some large trafficking networks.⁵³ China and the Balkans are the most common home bases for these kinds of operations.⁵⁴ A single organization may employ specialists who find victims; transportation experts who move victims across borders, through safe houses, to ultimate destinations; business managers who organize exploitation in the profit-making enterprises; and money managers who take charge of funneling proceeds back to countries of origin, through wire transfers, couriers, and underground banking systems.⁵⁵

In between are any number of possible models with varying degrees of structure and collaboration among traffickers. Some trafficking is done through a series of independent contractors rather than as an integrated business. Recruiters may limit themselves to procuring victims and selling them to intermediaries for quick profits, a business model often found in the former Soviet Union nations.⁵⁶ Researchers documenting the operation of trafficking in the former Soviet bloc describe highly structured criminal gangs of five to thirty members who delegate recruitment, transportation, and document acquisition.⁵⁷ In Asia, brothel owners may recruit children themselves, they may delegate recruitment, or they may work through agents.⁵⁸ In some places traffickers specialize in transporting victims and take responsibility for only one leg of a multi-national journey.⁵⁹ Women in transit destined for sexual exploitation may be sold multiple times,

sometimes in markets that resemble slave auctions.⁶⁰ Loose citywide, national, or regional networks in the United States seem to support domestic traffickers and link them to broader crime rings.⁶¹ Cooperation may be limited to joining forces to discipline victims or may include transporting victims for use in prostitution for sports events or conventions.⁶² A series of entrepreneurs, who identify possible recruits, do actual recruiting, groom girls for prostitution, act as business managers in charge of victims, or keep track of victims to make sure they return after servicing johns, may work together, or a single individual may combine some or many of these functions.⁶³

Vulnerability to Traffickers

Vulnerability to Transnational Trafficking

Gender and age put people at risk for transnational trafficking, partly because of the demand for young girls and women for use in the sex industry,⁶⁴ but traffickers find that women are easy targets for labor as well as sex trafficking. A UNODC report explained that “Women are vulnerable to trafficking because they are often excluded from employment, higher education and legal as well as political parity” and they are subjected to “forms of gender-based violations, such as rape, domestic violence, and harmful traditional practices. . . .that contribute to vulnerability.”⁶⁵ Age itself is a risk factor. Children, who are dependent on the adult world and subject to the authority of families, are highly vulnerable.⁶⁶ Age and gender combine to make girls particularly susceptible to trafficking. While in general trafficking victims are young, female victims are on average younger than male victims.⁶⁷

Poverty is another risk factor and among the biggest contributors to international trafficking. In general, the flow of victims in transnational trafficking is from less developed countries, usually in the global south and east, to more developed countries, usually in the north and west. Countries of origin are most likely to be the former Soviet Union nations, Southern and Eastern Europe, South America, Western Africa, and Southeast Asia, while the most likely destinations are Western Europe, North America, and Western Asia.⁶⁸ Moderate as opposed to extreme poverty seems to make populations vulnerable. While destination countries are the world’s richest, countries of origin tend to rank in the middle rather than lowest in measures of human development.⁶⁹ Nor are individuals trafficked across national borders necessarily the poorest of the poor. They are likely to be poor but not desperately poor and to have some education.⁷⁰ Often they are responsible for families and dependent children.⁷¹

Experiences that alienate people from their families or communities create fertile ground for trafficking. Childhoods marked by physical or sexual abuse, neglect, or parental substance abuse are common among international trafficking victims, and many victims were subjected to sexual abuse or raped by someone they knew before they met their recruiters.⁷² Indigenous people and ethnic minorities are vulnerable across the globe.⁷³ Migration is yet another risk factor for trafficking. As one UN official said, “Traffickers fish in the stream of migration.”⁷⁴ War, civil strife, political upheaval, and natural or environmental disasters that destroy social structures or remove people from their communities all contribute to trafficking.⁷⁵

Vulnerability to Domestic Trafficking

Gender and age also predispose victims within the United States to trafficking for commercial sex, the form of most documented domestic trafficking. Like girls and women abroad, United States victims are trafficked to meet the demand generated by customers willing to buy women and children for commercial sex, and girls in prostitution are far more likely than boys to be under the control of pimps.⁷⁶ Youth also makes individuals vulnerable. The majority of people in prostitution entered before they turned 18 years old, many well before, and any sexual exploitation of children under 18 is trafficking under federal and international law.⁷⁷

In the United States as well as abroad poverty itself is a major risk factor, and so is the kind of family dysfunction that correlates to poverty. Common among domestic sex trafficking victims are children who have run away from, or been cast out of, homes with high levels of physical abuse, sexual abuse, or neglect; often these are homes where substance abuse or domestic violence is prevalent.⁷⁸ Immigration puts people at risk within the United States as well as in other parts of the world. One researcher studying foreign national trafficking victims in the United States estimated that a third of these victims were recruited once they had entered the country rather than abroad.⁷⁹

Recruiters and Recruitment

Recruitment into trafficking is a complex process with many pathways. Violence is one method of acquiring human beings for exploitation in labor or sex markets, and some victims are abducted or kidnapped.⁸⁰ More often the process is subtle. In transnational trafficking, false promises of opportunities abroad are commonly used. Women may respond to internet or newspaper advertisements offering opportunities for marriage abroad or positions as nannies, maids, waitresses, dancers, or models, only to discover too late that the agencies

that placed the ads are fronts for sex traffickers.⁸¹ Men or women may be promised good jobs in agriculture, construction, or domestic service and find on arrival in a foreign country that the conditions of work are close to those of slavery and escape is virtually impossible.⁸²

While some recruiters are strangers, victims often know the people who serve as their initial entry into trafficking. Recruiters may be friends, relatives, or neighbors, and they may be trusted people within their communities; to victims and their families they may appear powerful and successful.⁸³ Family members themselves may be witting or unwitting recruiters. They may sell children outright, or they may be deceived by recruiters who tell parents that they will help with employment, education, or even adoption.⁸⁴ Women targeted for the sex trade may be wooed by charismatic recruiters posing as boyfriends, promising marriage, and providing extravagant gifts.⁸⁵

Families are found also among traffickers in domestic trafficking for commercial sex. Parents may themselves introduce children into prostitution,⁸⁶ and when they do the children are likely to be younger than those who enter the sex trade through other means.⁸⁷ Peers who are already in prostitution, living what look like glamorous lives, recruit schoolmates, friends, or even sisters.⁸⁸ Pimps looking for prospects often mask their intentions by feigning interest in the welfare of their targets. Typically, they find girls who have run away from home, often after they have been sexually abused, or whose dysfunctional families have physically or emotionally abandoned them.⁸⁹ Traffickers seek out victims at schools, shopping malls, bus stations, shelters, drop in centers, or even correctional facilities; they find victims in chat rooms online or they advertise their services as talent scouts.⁹⁰ Initially, recruiters may profess love, give their victims a place to live, and shower them with gifts of clothes or jewelry as a means of easing the transition into prostitution and creating a durable bond with victims, who are made to feel complicit in their own victimization.⁹¹ As one pimp recently told a newspaper reporter, “With young girls, you promise them heaven, they’ll follow you to hell.”⁹² A participant in a study of domestic sex trafficking related the other side of the story: “He promised me everything and better . . . Clothes, cars, house, himself. I was just looking for someone to love and love me.”⁹³

Girls and women often are important links in the recruitment process, both abroad and in the United States.⁹⁴ Women constitute a fairly large percentage of defendants in global prosecutions for trafficking.⁹⁵ In the sex trade, female recruiters and handlers are useful because they lend legitimacy to the operation. They are less threatening than male traffickers and better able to gain the trust

of victims, and they make the fact of prostitution seem less horrifying to new victims. Frequently these women and girls are themselves victims of sex trafficking who gain special privileges from those holding power over them or find an escape from prostitution by moving from exploited to exploiter.⁹⁶

Coercion and Control of Victims

The kinds of abuse traffickers use to control victims and keep them profitable have been documented by various studies of both domestic and transnational trafficking. These studies describe a fairly consistent and devastating set of tactics. Violence is at the root of traffickers' power over victims.⁹⁷ It is typically physical, brutal, and instructional. In transit and indoctrination stages, violence may be used to convince victims that their survival depends on submission to their traffickers' demands while later physical violence serves as punishment, reminds victims that they live in captivity, and acts as a means of keeping victims on edge so that they are more easily controlled.⁹⁸ Many kinds of violence are employed. One study of victims trafficked transnationally for sex and domestic servitude reported that victims were "hit, kicked, punched, struck with objects, burned, cut with knives."⁹⁹ A law enforcement officer interviewed in Ohio said that he and his fellow officers "had seen everything from pistol whipping to broken bones."¹⁰⁰ In the most extreme cases, victims are murdered.¹⁰¹ Rape is common.¹⁰² Once traffickers establish their capacity for violence, they can exercise control through threats, implicit or explicit.¹⁰³ Traffickers threaten not only victims but also their friends and families.¹⁰⁴ These threats are plausible. Traffickers often know victims' families, and victims often report having seen, or knowing about, traffickers' violence, including murder, perpetrated against other victims.¹⁰⁵

The abuse used to control victims is psychological as well as physical, and non-physical violence can be as damaging to the health, well-being, and ability of victims to function as physical violence. One scholar characterized psychological abuse in trafficking as "generally persistent, commonly extreme, and frequently perpetuated in such a way as to destroy a woman's mental and physical defences."¹⁰⁶ The forms of psychological abuse, like physical abuse, are many, varied, and designed to keep victims off balance, frightened, and in constant, debilitating states of stress. Traffickers almost always cut victims off from their family, friends, communities, and cultures.¹⁰⁷ Movement of any kind is a useful means of isolating victims psychologically as well as physically, and transporting them across the globe is particularly effective.¹⁰⁸ Victims who have been taken across multiple borders are often completely lost to family members who might try to locate them.¹⁰⁹ Once commercial exploitation begins, traffickers often keep

victims on the move, and the changes of locale can be so frequent that victims have no idea where they are.¹¹⁰ Victims are often confined by their traffickers, and their movements are restricted; they may be constantly watched and allowed outside only if closely guarded.¹¹¹ They are often prevented from calling or communicating with people they know, even when family and friends are near.¹¹² Victims exploited in prostitution are often given new identities.¹¹³ Abuse also takes the form of depriving victims of life's most basic necessities, including food, sleep, and secure shelter.¹¹⁴ Not only may victims be kept hungry and exhausted, they may be forced to live in places that are dirty, overcrowded, unsafe, or harsh.¹¹⁵ They may reside where they work, sleep in beds they use to service customers in brothels, or spend their nights on floors.¹¹⁶ Debt bondage is common, and victims who rarely see money are left without means to buy basic personal items, such as soap or tampons.¹¹⁷

Drugs and alcohol play major roles in the subjugation of trafficking victims, and in sex trafficking they are a nearly universal presence. Traffickers sometimes prey on women and children with addictions, but recruiters, particularly in the transnational trade, may prefer healthier, more attractive victims and instead introduce drugs later, as they tighten their grip on victims.¹¹⁸ Both giving drugs and withholding drugs are effective and commonly used means of maintaining control over victims.¹¹⁹ Drugs and alcohol also act as an anesthesia, dulling physical and psychic pain, making victims capable of enduring the conditions of their servitude and thus continuing to produce profits.¹²⁰

Harm

Horrific as these various kinds of abuse may each be, the sum is more damaging than the parts. Abuse that may seem random, arbitrary, or sadistic is part of a process that keeps victims compliant. Physical abuse, harsh conditions of captivity, calculated unpredictability, and intentionally inflicted trauma in the context of enforced dependency create extremely high levels of stress, and the stress itself is responsible for physiological as well as psychological damage.¹²¹ One writer, describing the effects of traffickers' psychological abuse, said of trafficking victims: "Their frame of reference for understanding the world is deeply altered . . . [and] they are left physically, emotionally, and spiritually shattered."¹²²

Systematic psychological and physical abuses by traffickers are major causes of harm to victims but not the only ones. Agricultural workers may suffer

disabilities from overwork, accidents from machinery, or poisoning from pesticides.¹²³ Victims exploited in the sex industry are at high risk for sexually transmitted diseases, including HIV and AIDS, gynecological disorders, and customer-perpetrated violence.¹²⁴ Prostitution, the fate of virtually all sex trafficking victims, is extremely dangerous in itself. One study of women in prostitution in the United States found extraordinarily high mortality rates, with a huge risk of murder in particular, often at the hands of clients and serial killers.¹²⁵ Police are among the perpetrators of violence, particularly sexual assault, against sex trafficking victims.¹²⁶

Living under conditions that one commentator likened to what is experienced by hostages, prisoners of war, or concentration camp inmates¹²⁷ creates whole constellations of symptoms. Prolonged exposures to stress induced by living in constant states of fear and deprivation produce physiological and neurological damage that affect the ability to think, remember, and respond to threats.¹²⁸ The immune system is compromised, leaving victims open to infection.¹²⁹ Exhaustion, malnutrition, and unhealthy living conditions compound the effects of other abuse and contribute to a downward spiral evident in the compromised mental and physical health of victims.¹³⁰

The long list of symptoms found among victims who have escaped confirms the potentially devastating impact of being trafficked. Authors of an important study on the health effects of trafficking concluded that their findings “are startling in the breadth and depth of the harm. . .sustained.”¹³¹ According to this study, in the first weeks post-trafficking, 57% of the victims interviewed had at least twelve physical health symptoms causing them pain or discomfort.¹³² Prominent among these were fatigue and weight loss.¹³³ Four-fifths of victims had central nervous system problems including headaches, memory difficulty, and dizzy spells, and three-fifths had gastrointestinal problems that proved persistent.¹³⁴ Over 70% of the victims reported mental health symptoms indicative of depression, anxiety, and hostility.¹³⁵ According to these researchers, “[W]omen’s psychological reactions were multiple and severe, and compare to, or exceed, symptoms experienced by torture victims.”¹³⁶ Symptoms of post-traumatic stress were common, and 56% of the victims met the clinical definition of post-traumatic stress disorder.¹³⁷

Stories

Most studies and reports on human trafficking devote space to the voices of victims and recount victims' experiences in gripping first person or third person narratives. The U.S. State Department's annual Trafficking in Persons Reports¹³⁸ and UNODC's Human Trafficking: An Overview¹³⁹ are leading examples of this approach, but studies small and large quote victims at length. Trafficking seems to strike researchers and writers as so extreme that numbers, summaries, and generalizations fall short of conveying essential truths, and the stories placed within more scholarly material may be as important for understanding human trafficking as anything else written or published.

Conclusion

The relatively new field of research in human trafficking already has produced valuable data, useful to practitioners and policy-makers alike. For example, knowing how often trafficking victims released from their captors experience memory loss, difficulty concentrating, and post-traumatic stress can inform law enforcement expectations of victims in the first days, weeks, or months after a raid or rescue. More work is needed and, no doubt, will be forthcoming, and with more information campaigns against human trafficking will be more focused and effective.

Yet a lack of complete knowledge is no excuse for inaction. We know that trafficking reaches nearly every corner of the globe, that large numbers of people find themselves under the control of traffickers, and that victims experience extreme brutality and deprivation. This is more than enough to place human trafficking high among policy priorities and establish it as a great wrong demanding immediate and sustained attention.

Notes

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2. See, e.g., United States Department of State, *The 2009 Trafficking in Persons Report* (2009) (*hereinafter* TIP Report 2009) and United States Department of State, *The 2010 Trafficking in Persons Report* (2010) (*hereinafter* TIP Report 2010).
3. TIP Report 2009, *supra* note 2, at 255.
4. *Id.* at 201.
5. *Id.* at 155.
6. *Id.* at 95.
7. *Id.* at 85.
8. *Id.* at 67.
9. *Id.* at 212.
10. *Id.* at 247.
11. *Id.* at 78.
12. *Id.* at 210.
13. *Id.* at 98-99.
14. *Id.* at 206.
15. United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, at 12 (Feb. 2009) (*hereinafter* UNODC Report 2009).
16. For technical descriptions of sampling techniques used, see Guri Tyldum *et al.*, *Taking Stock: A Review of the Existing Research on Trafficking for Sexual Exploitation*, Fafo (2005).
17. Patrick Belser *et al.*, *ILO Minimum Estimate of Forced Labour in the World*, International Labour Office, Geneva, at 1, 4 (April 2005) (*hereinafter* ILO Estimate).

18. *Id.* at iv; International Labour Office, *Global Report on Forced Labour, The Cost of Coercion*, at 11-15 (2009).
19. United States Government Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad*, Report to the Chairman, Committee on the Judiciary, and the Chairman, Committee on International Relations, House of Representatives, at 10-17 (July 2006) (*hereinafter* GOA Report 2006).
20. TIP Report 2009, *supra* note 2, at 8; TIP Report 2010, *supra* note 2, at 7 (without attribution).
21. ILO Estimate, *supra* note 17, at 4.
22. *Id.* at 5.
23. UNODC Report 2009, *supra* note 16, at 6.
24. Tracy Kyckelhahn *et al.*, *Characteristics of Suspected Human Trafficking Incidents, 2007-2008*, U.S. Department of Justice, Bureau of Statistics Special Report, at 1 (2009).
25. UNODC Report 2009, *supra* note 16, at 6, 51.
26. Heather Clawson *et al.*, *Estimating Human Trafficking Into the United States: Development of a Methodology*, A Report Submitted to the National Institute of Justice, U.S. Department of Justice (2006) (*hereinafter* Clawson, *Estimating Human Trafficking Into the United States*).
27. ILO Estimate, *supra* note 17, at 5-6.
28. UNODC Report 2009, *supra* note 16, at 48-49.
29. TIP Report 2009, *supra* note 2, at 36.
30. *Id.*
31. *See, e.g.*, TIP Report 2009, *supra* note 2, at 22; and TIP Report 2010, *supra* note 2, at 12.
32. ILO Estimate, *supra* note 17, at 15.
33. TIP Report 2010, *supra* note 2, at 45. UNODC also keeps count of national figures for prosecutions and convictions. *See, e.g.*, UNODC Report 2009, *supra* note 16, at 78-292. For U.S. figures, *see* UNODC Report 2009, *supra* note 16, at 136.
34. TIP Report 2010, *supra* note 2, at 339.
35. *Id.*

36. Joseph Berger, "Despite Law, Few Trafficking Arrests," *The New York Times*, Jan. 18, 2010. The first conviction under the new law did not come until February, 2010.
37. Sarah Stephen-Smith and Sarah Edwards, *Routes In, Routes Out: Quantifying the Gendered Experiences of Trafficking to the UK*, The Poppy Project (2008) (*hereinafter* Stephen-Smith, *Routes In, Routes Out*).
38. Cathy Zimmerman *et al.*, *Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*, London School of Hygiene & Tropical Medicine (2006) (*hereinafter* Zimmerman, *Stolen Smiles, A Summary Report*); and Cathy Zimmerman *et al.*, *The Health Risks and Consequences of Trafficking in Women and Adolescents: Findings from a European Study*, London School of Hygiene & Tropical Medicine (2003) (*hereinafter* Zimmerman, *Health Consequences of Trafficking*).
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43. Celia Williamson and Michael Prior, *Domestic Minor Sex Trafficking: A Network of Underground Players in the Midwest*, 2 Journal of Child & Adolescent Trauma 1 (2008) (*hereinafter* Williamson, *Domestic Minor Sex Trafficking*).

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46. Jeremy M. Wilson and Erin Dalton, *Human Trafficking in Ohio: Markets, Responses, and Considerations*, the Rand Infrastructure, Safety and Environment Program and the Ohio Association of Chiefs of Police (2007) (*hereinafter* Wilson, *Human Trafficking in Ohio*).
47. Richard J. Estes and Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, U.S. Department of Justice and the University of Pennsylvania School of Social Work (2002) (*hereinafter* Estes, *Commercial Sexual Exploitation of Children in U.S.*).
48. Kevin Bales and Steven Lize, *Trafficking in Persons in the United States: A Report to the National Institute of Justice* (2005) (*hereinafter* Bales, *Trafficking in the United States*).
49. For a good description of these kinds of cases, see Jessica Lustig, *The 13-Year Old Prostitute: Working Girl or Sex Slave?*, New York Magazine (April 1, 2007) (*hereinafter* Lustig, *Working Girl or Sex Slave?*).
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52. Shelley, *Trafficking: The Business Model Approach*, *supra* note 51, at 121.
53. *Id.* at 123-27.
54. *Id.*
55. *Id.*
56. *Id.* at 122-23; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 40; Hughes, *The Criminal Nexus of Trafficking in Ukraine*, *supra* note 39, at 6-7.
57. Hughes, *The Criminal Nexus of Trafficking in Ukraine*, *supra* note 39, at 6. For a description of criminal organizations that take control of women once they reach Moscow, see Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 31.
58. Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 17.
59. Bales, *Trafficking in the United States*, *supra* note 48, at 3-4; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 40; Shelley, *Trafficking: The Business Model Approach*, *supra* note 51, at 125.
60. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 40; Hughes, *The 'Natasha' Trade*, *supra* note 39, at 12.
61. Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 24-26; Williamson, *Domestic Minor Sex Trafficking*, *supra* note 43, at 8; Estes, *Commercial Sexual Exploitation of Children in U.S.*, *supra* note 47, at 58.
62. Lustig, *Working Girl or Sex Slave?*, *supra* note 49; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 25; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 24-25.
63. Williamson, *Domestic Minor Sex Trafficking*, *supra* note 43, at 8-11. See also Estes, *Commercial Sexual Exploitation of Children in U.S.*, *supra* note 47, at 118-24.
64. See, e.g., TIP Report 2009, *supra* note 2, at 36; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 13-14.
65. UNODC Overview, *supra* note 51, at 18. See also TIP Report 2009, *supra* note 2, at 36;
66. UNODC Overview, *supra* note 51, at 18.

67. Clawson, *Estimating Human Trafficking Into the United States*, *supra* note 26, at 18.
68. UNODC Overview, *supra* note 51, at 11.
69. *Id.* at 18.
70. UNODC Overview, *supra* note 51, at 17; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 9; Bales, *Trafficking in the United States*, *supra* note 48, at 20.
71. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 30; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 7.
72. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 31-32; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 8-9; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 10-11.
73. Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 10. For information on the risks to indigenous peoples in Canada and the United States, see Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 22-23; Minnesota American Indian Resource Center, *Shattered Hearts*, *supra* note 42, at 2, 48-50; Sarah Deer, "Relocation Revisited: Sex Trafficking of Native Women in the United States," 621 *William Mitchell L. Rev.* 675-683 (2010).
74. Radhika Coomaraswamy, Former U.N. Special Rapporteur on Violence Against Women, United States Department of State, *The 2008 Trafficking in Persons Report* (2008) at 26 (*hereinafter* TIP Report 2008). On the role of migration, see also UNODC Overview, *supra* note 51, at 19; TIP Report 2010, *supra* note 2, at 35; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 28-29.
75. TIP Report 2009, *supra* note 2, at 31; Clawson, *Estimating Human Trafficking Into the United States*, *supra* note 26, at 17; Shelley, *Trafficking: The Business Model Approach*, *supra* note 51, at 119-23; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 14.
76. Estes, *Commercial Sexual Exploitation of Children in U.S.*, *supra* note 47, at 58, 99-108; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 21.
77. The U.S. Federal Bureau of Investigation, looking just at children in prostitution, found that the average age at which children enter prostitution is 12 years. U.S. Department of Justice, *The Federal Bureau of Investigation's Efforts to Combat Crimes Against Children, Audit Report*

(2009), at 68. Another study found that girls in prostitution in Atlanta had started at an average age of 14. Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 14. When women in prostitution, not just children, are canvassed, the age of entry is higher. One study that looked not at children but at women in prostitution found 83% had started at 17 or under and 33% started below the age of 15. Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 5. Another study found that 63% had entered before 18, and a third of those had been prostituted before they reached the age of 13. Minnesota American Indian Resource Center, *Shattered Hearts*, *supra* note 42, at 36-37.

78. Bales, *Trafficking in the United States*, *supra* note 48, at 21; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 22; Minnesota American Indian Resource Center, *Shattered Hearts*, *supra* note 42, at 61-63; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 14-17; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 10-16; Raphael, *Sisters Speak Out*, *supra* note 44, at 7-9; Williamson, *Domestic Minor Sex Trafficking*, *supra* note 43, at 6-8; Ian Urbina, "For Runaways, Sex Buys Survival," *The New York Times*, Oct. 27, 2009 (*hereinafter* Urbina, Runaways); TIP Report 2010, *supra* note 2, at 338.
79. Bales, *Trafficking in the United States*, *supra* note 48, at 24, 29. *See also* Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 24; TIP Report 2010, *supra* note 2, at 338.
80. Bales, *Trafficking in the United States*, *supra* note 48, at 27; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 18; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 16; Williamson, *Domestic Minor Sex Trafficking*, *supra* note 43, at 6.
81. UNODC Overview, *supra* note 51, at 11-12; TIP Report 2009, *supra* note 2, at 8-9; Bales, *Trafficking in the United States*, *supra* note 48, at 24-25; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 14-15; Hughes, *The 'Natasha' Trade*, *supra* note 39, at 11-13; Hughes, *The Criminal Nexus of Trafficking in Ukraine*, *supra* note 39, at 8-9; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 14-15; Abigail Stepnitz, *Male-ordered Bride Industry and Trafficking in Women for Sexual and Labour Exploitation*, The Poppy Project (2009), at 22.
82. Bales, *Trafficking in the United States*, *supra* note 48, at 30; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 37-38.
83. UNODC Overview, *supra* note 51, at 11-12; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 32; Zimmerman, *Stolen*

- Smiles, A Summary Report*, *supra* note 38, at 8; Bales, *Trafficking in the United States*, *supra* note 48, at 25-29; Hughes, *The 'Natasha' Trade*, *supra* note 39, at 11; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 15; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 16.
84. TIP Report 2009, *supra* note 2, at 7; Bales, *Trafficking in the United States*, *supra* note 48, at 26; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 8; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 16-17.
 85. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 32.
 86. Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 24; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 6; Minnesota American Indian Resource Center, *Shattered Hearts*, *supra* note 42, at 52-53; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 18.
 87. Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 9.
 88. Estes, *Commercial Sexual Exploitation of Children in U.S.*, *supra* note 47, at 58; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 6; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 18; Minnesota American Indian Resource Center, *Shattered Hearts*, *supra* note 42, at 51.
 89. Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 7; Minnesota American Indian Resource Center, *Shattered Hearts*, *supra* note 42, at 54-55, 61; Williamson, *Domestic Minor Sex Trafficking*, *supra* note 43, at 6-8; Urbina, *Runaways*, *supra* note 78; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 17; Estes, *Commercial Sexual Exploitation of Children in U.S.*, *supra* note 47, at 57-58.
 90. Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 24; Urbina, *Runaways*, *supra* note 78.
 91. Urbina, *Runaways*, *supra* note 78; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 24; Estes, *Commercial Sexual Exploitation of Children in U.S.*, *supra* note 47, at 58; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 10-11; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 18; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 19.
 92. Urbina, *Runaways*, *supra* note 78.

93. Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 10.
94. UNODC Overview, *supra* note 51, at 12; UNODC Report 2009, *supra* note 16, at 45-47; TIP Report 2008, *supra* note 74, at 11; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 24; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 22-23; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 18; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 15-16.
95. UNODC Report 2009, *supra* note 16, at 45-47.
96. TIP Report 2008, *supra* note 74, at 11; Hughes, *The 'Natasha' Trade*, *supra* note 39, at 11; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 15; Tumlin, *Trafficking in Children in Asia*, *supra* note 40, at 15; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 18.
97. Bales, *Trafficking in the United States*, *supra* note 48, at 49 ("Above all pure violence is the most powerful means traffickers used to control trafficked workers."); Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 20-22; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 41, 45-46; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 55-56; Ian Urbina, "A Grim Tour," *The New York Times*, Feb. 21, 2007; Hooper, *Invisible Chains*, *supra* note 50, at 198.
98. See, e.g., Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 37, 41, 46; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, 17-19, 29-31; Bales, *Trafficking in the United States*, *supra* note 48, at 49-50.
99. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 46.
100. Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 12.
101. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 46. For a number of international instances, see Hughes, *The "Natasha" Trade*, *supra* note 39, at 12.
102. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 37, 41, 47; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 10; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 20-21; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 22; Hooper, *Invisible Chains*, *supra* note 50, at 195-96; TIP Report 2010, *supra* note 2, at 5.
103. For descriptions of how traffickers establish and exploit a capacity for violence, see Bales, *Trafficking in the United States*, *supra* note 48, at

- 51-52; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 10; Hooper, *Invisible Chains*, *supra* note 50, at 198.
104. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 52; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 11; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 22-23; Hooper, *Invisible Chains*, *supra* note 50, at 199; Shelley, *Trafficking: The Business Model Approach*, *supra* note 51, at 126.
 105. Hughes, *The “Natasha” Trade*, *supra* note 39, at 12; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 23; Hooper, *Invisible Chains*, *supra* note 50, at 200; Urbina, *A Grim Tour*, *supra* note 97.
 106. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 51.
 107. Hooper, *Invisible Chains*, *supra* note 50, at 195; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 57-58; Bales, *Trafficking in the United States*, *supra* note 48, at 30; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 19.
 108. Bales, *Trafficking in the United States*, *supra* note 48, at 47-48; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 37; Hooper, *Invisible Chains*, *supra* note 50, at 195.
 109. Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 37.
 110. Bales, *Trafficking in the United States*, *supra* note 48, at 47-48.
 111. Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 20; Bales, *Trafficking in the United States*, *supra* note 48, at 46-49; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 56-57; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 11; Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 23; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 55; Hughes, *The ‘Natasha’ Trade*, *supra* note 39, at 11. One study of domestic sex trafficking in Chicago found that 43% of victims said outright that they could not leave the premises on their own without fear of physical harm, and another 20% said they did not even know if they could. Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 27-28.
 112. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 57; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 27-28.
 113. Hooper, *Invisible Chains*, *supra* note 50, at 199; Lustig, *Working Girl or Sex Slave?*, *supra* note 49; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 21.

114. Stephen-Smith, *Routes In, Routes Out*, *supra* note 37, at 23; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 39-40, 46-47; Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 12; Hooper, *Invisible Chains*, *supra* note 50, at 191-92.
115. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 63; Bales, *Trafficking in the United States*, *supra* note 48, at 42-43.
116. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 59-60; Bales, *Trafficking in the United States*, *supra* note 48, at 43-44.
117. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 59-60; Hughes, *Trafficking in Women from the Ukraine*, *supra* note 39, at 55; Bales, *Trafficking in the United States*, *supra* note 48, at 38-39, 49-50; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 26-27.
118. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 55-56; Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 10, 27; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 67-68; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 19; *see also* Melissa Farley *et al.*, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 *Journal of Trauma Practice* 33, 62-63 (2003) (*hereinafter* Farley, *Posttraumatic Stress*).
119. Raphael, *Domestic Sex Trafficking in Chicago*, *supra* note 44, at 27. In a study of pimp-controlled prostitution in Chicago, 29% of the participants reported that drugs were provided to encourage addiction and 23% said that drugs were withheld as a means of coercion. *Id.*
120. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 55-56; Bales, *Trafficking in the United States*, *supra* note 48, at 44-45.
121. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 53; Hooper, *Invisible Chains*, *supra* note 50, at 200-06.
122. Hooper, *Invisible Chains*, *supra* note 50, at 200-207.
123. Bales, *Trafficking in the United States*, *supra* note 48, at 44.
124. Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 15-16; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 47-51; Advocates for Human Rights, *Sex Trafficking in Minnesota*, *supra* note 41, at 64.
125. John J. Potterat *et al.*, *Mortality in a Long-Term Open Cohort of Prostitute Women*, 159 *Am. J. Epidemiology* 778 (2004), at 782, 784. This study

found a crude mortality rate of 229 per 100,000 person years, more than ten times the rate for taxicab drivers, the most dangerous occupation in the United States. *Id.* at 783. This study also found that women in prostitution were eighteen times more likely to be murdered than other women of similar ages and races. *Id.* at 782. The results of this study confirm work done on murder rates and prostitution in Canada and the United Kingdom. *Id.* at 783-84. *See also* Farley, *Posttraumatic Stress*, *supra* note 118, at 33, 55-56, which found people recently or currently in prostitution reporting extremely high incidents of physical violence.

126. Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 46; Raphael, *Sisters Speak Out*, *supra* note 44, at 19-20.
127. Hooper, *Invisible Chains*, *supra* note 50, at 191-92.
128. Hooper, *Invisible Chains*, *supra* note 50, at 202-07.
129. *Id.* at 204; Zimmerman, *Health Consequences of Trafficking*, *supra* note 38, at 45-46.
130. Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 12-14; Raphael, *Sisters Speak Out*, *supra* note 44, at 27; Priebe, *Commercial Sexual Exploitation of Girls in Atlanta*, *supra* note 45, at 28-30; Wilson, *Human Trafficking in Ohio*, *supra* note 46, at 45-46.
131. Zimmerman, *Stolen Smiles, A Summary Report*, *supra* note 38, at 2.
132. *Id.* at 14.
133. *Id.* at 12.
134. *Id.*
135. *Id.* at 16-19.
136. *Id.* at 12.
137. *Id.* at 19-20. Melissa Farley and a team of researchers studied prostitution in nine countries spanning the globe and found that 68% of the sample of more than 850 interviewees currently or recently in prostitution met the clinical definition of PTSD. Farley, *Posttraumatic Stress*, *supra* note 118, at 33-34. Sex trafficking victims are likely to experience the most extreme forms of prostitution so their levels of PTSD are likely to be even higher.
138. *See, e.g.*, TIP Report 2009, *supra* note 2; TIP Report 2010, *supra* note 2.
139. UNODC Overview, *supra* note 51.

Defining and Identifying Human Trafficking

by **Dorchen A. Leidholdt and
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Defining Human Trafficking

Although activists and policy makers have worked to combat human trafficking for centuries, and no less than nine international United Nations conventions drafted and enacted between 1904 and 1990 squarely address and prohibit practices of trafficking, until 2000 there was no universally agreed upon definition of trafficking in persons.¹ Elaborated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”), this definition was hammered out during eleven sessions in Vienna, Austria over a two-year period by representatives of over 120 countries and many nongovernmental organizations working to combat human trafficking.² In 2005 the United States, which rarely ratifies international conventions, became the 90th country to ratify the Trafficking Protocol and its groundbreaking definition.³

The product of the collaboration of representatives of countries around the world and decades of efforts to understand and combat trafficking, the Trafficking Protocol offers the best available definition of “trafficking in persons.” It benefits from the international diversity of its drafters, who brought a range of perspectives reflecting the full variety of forms of human trafficking and who came from countries in both the global North and South. Addressing both sex and labor trafficking, remaining gender neutral while acknowledging the prevalence of trafficking in women and children, and covering trafficking in adults and children alike, the Trafficking Protocol’s definition is remarkably nuanced, comprehensive, and sophisticated. It provides invaluable guidance to countries developing national legislation, as well as to state and local legal and social service professionals assisting victims.

The Trafficking Protocol defines “trafficking in persons” as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat

or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”⁴ It specifies that “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁵

Consistent with New York State and federal anti-trafficking statutes, this definition does not require movement of the victim — “recruiting” or “harbouring” a victim for the purpose of exploitation is sufficient to constitute trafficking.⁶ This acknowledges that the dynamics of trafficking remain consistent whether the victim is moved across state lines, moved within a nation’s borders, or not moved at all.⁷ Traffickers tend to use similar tactics of control and to exploit similar vulnerabilities. Equally important, and distinguishing it from federal and state criminal law, is the definition’s recognition that trafficking can take place even when traffickers do not resort to force or overt coercion but instead subject a victim to exploitation by “the abuse of power or of a position of vulnerability.” In this way the definition acknowledges that human traffickers often exploit political, social, and economic conditions of dire inequality — especially poverty; gender, racial, and ethnic discrimination; gender, racial, and ethnic violence; civil unrest and armed conflict; and natural disasters — to recruit and maintain power and control over trafficking victims.⁸ By identifying the exploitation of vulnerabilities in order to extract labor or sex as the true essence of human trafficking, the Trafficking Protocol moves beyond outmoded conceptions that fixate on movement across state lines and the use of explicit force.

The Trafficking Protocol’s definition of sex trafficking is more comprehensive than those of New York State and federal law. It is not limited to trafficking for purposes of prostitution, as is New York State law, or to “commercial sex acts,” the terminology used by federal anti-trafficking law.⁹ Instead, the Trafficking Protocol uses a broader formulation: “the exploitation of the prostitution of others or other forms of sexual exploitation.”¹⁰ The Trafficking Protocol thus covers and prohibits sexual exploitation in the context of intimate partner relationships, including marriage, as long as the other elements of the definition of trafficking in persons are met. Internet brides and other victims of marriage trafficking, arguably left unprotected by federal and state anti-trafficking law, are far more likely to be recognized as trafficking victims under the Trafficking Protocol.¹¹

The Protocol’s definition of “trafficking in persons” includes a provision that specifies that “the consent of a victim of trafficking in persons . . . [is]

irrelevant where any of these means are used.”¹² The Trafficking Protocol thus acknowledges that it is logically impossible for a person to give meaningful consent to be exploited in situations of abuse.

Recognizing that children subjected to exploitation by an adult are inherently in a situation of “abuse of power or of a position of vulnerability,” the Trafficking Protocol explicitly states that, regardless of the means employed by the traffickers, “[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons.’”¹³ A child is defined as anyone under the age of eighteen. Unlike the federal anti-trafficking law, which does not protect child victims of labor trafficking unless that exploitation was carried out through force, fraud, or coercion, this formulation extends protection equally to child victims of sex and labor trafficking.¹⁴

While the penal provisions of the federal Victims of Trafficking and Violence Protection Act of 2000 (“Trafficking Victims Protection Act”) require force, fraud, or coercion for actionable trafficking, the Trafficking Protocol does not provide a “bright line,” forced-based test. It takes into consideration not only violent criminal acts but also the power dynamic employed by the perpetrator. Its definition of trafficking in persons is not unlike the definition of domestic violence developed by victim advocates who eschewed an understanding of domestic violence based on discrete violent acts for one that identifies perpetrators’ on-going tactics of power and control, many nonphysical and not overtly violent.¹⁵ Like the “Power and Control Wheel,”¹⁶ a tool used to analyze the forms of domestic violence, and Amnesty International’s criteria for psychological torture,¹⁷ the Trafficking Protocol reflects the understanding that subtle, largely psychological tactics that emerge from and intensify inequality can be just as, if not more, effective in securing an abuser’s domination and a victim’s submission than overt acts of force.¹⁸ Indeed, many traffickers around the world have embraced this lesson and some — like the pimps of Tenancingo, Mexico — recruit and maintain control over their victims not through traditional tactics of threats of force and violence but through seduction, romance, and promises of marriage and building a family and home together.¹⁹

Many nongovernmental organizations and policy makers have adopted definitions of human trafficking based on sections of the federal or state penal codes and have attempted to use them in identifying and screening trafficking victims. This is a mistake for several reasons. Penal law definitions are usually narrowly tailored to describe activity that is indisputably criminal in nature, especially when that conduct rises to the level of a felony, as it does in federal and state anti-trafficking statutes.²⁰ Only a small minority of trafficking victims

participate in the criminal prosecution of their abusers, usually because prosecutions are time barred, because victims are often afraid to cooperate with the prosecution of their abusers, and/or because the prosecutors cannot provide evidence adequate to meet their heavy burden of establishing proof beyond a reasonable doubt.²¹

Furthermore, the primary purpose of criminal statutes is the prosecution of perpetrators, not the provision of assistance to victims. Like victims of domestic violence, victims of human trafficking have a wide array of legal and social service needs that extend far beyond the criminal prosecution of their abusers, including assistance in pursuing immigration remedies, civil protective orders, custody of their children, and public benefits.²² It makes little sense for legal and social service providers addressing these urgent noncriminal needs to be bound by a restrictive definition embedded in state or federal criminal law. Using narrowly crafted penal laws that do not benefit most trafficking victims as a litmus test necessarily excludes many victims of trafficking who would be recognized under a more expansive definition and are in urgent need of protection and assistance.

Who is not considered a trafficking victim under the Trafficking Protocol? “Exploitation,” by definition, requires a third party exploiter. Any person who is not being exploited by another is not included. This means that the self-employed worker or a person in prostitution independently is not considered a trafficking victim under the Trafficking Protocol. In addition, the exploitation must have been carried out by an individual or group that at a minimum abused its power over the victim or took advantage of the victim’s position of vulnerability. Anyone who is not in a position of vulnerability or subjected to an abuse of power by a third party would not be included as a victim under the Trafficking Protocol’s definition.

Squarely included within the Trafficking Protocol’s definition, however, are individuals who, after having been trafficked into prostitution, remain in conditions of exploitation after they have purchased their freedom or their traffickers have moved on to other victims. Such victims may seem to be voluntary prostitutes or “sex workers” but are, in reality, trapped in dehumanizing conditions because they are deeply traumatized and see no way to exit a system of sexual exploitation. Trafficked people who remain in the sex industry may appear to embrace prostitution as an identity and vocation because they see no alternative and lack the support they need to break free. Under the Trafficking Protocol’s definition, such individuals are trafficking victims and those who abuse their situations of vulnerability are traffickers.

The Trafficking Protocol's definition provides legal service practitioners, *pro bono* lawyers, criminal justice personnel, courts, and service providers and other advocates with a valuable tool to screen for and identify human trafficking. It is sufficiently narrow to exclude those who have freely engaged in work or sexual activities that may simply be unwelcome or unpleasant. At the same time, this definition avoids a far greater danger: that trafficking victims will be denied assistance because those they turn to for help employ a rigid, force-based definition of human trafficking that fails to consider the dynamics with which traffickers secure power and control over their victims.

Flagging Trafficking and Identifying Victims

Three Cases²³

Case 1:

After a brutal beating, Maria, a Mexican immigrant victim of sex trafficking, fled her abusive boyfriend, a trafficker also from Mexico, into a neighborhood grocery store. There a compassionate customer persuaded Maria to report the crime to the police and accompanied her to the local precinct, where a police officer interviewed her and identified her as a victim of domestic violence. He did not ask Maria any questions about sex trafficking. Several months later, Maria was interviewed by an attorney at the New York Family Justice Center, a program that provides comprehensive services to domestic violence victims. Within fifteen minutes, the attorney identified Maria as a victim of both domestic violence and sex trafficking. Despite repeated calls from Maria's lawyer, the District Attorney's office never interviewed Maria about her history as a trafficking victim. As a result, Maria's batterer/pimp was charged with misdemeanor domestic violence crimes but was never charged with felony sex trafficking.²⁴

Case 2:

Chantal, an African-American woman in her mid-twenties, was arrested more than a dozen times for prostitution. Although each time she was fingerprinted, booked, and arraigned and each time she attended classes as part of her sentence, none of the criminal justice personnel, defense lawyers, judges, or service providers with whom she came in contact inquired about her circumstances. Her former boyfriend, a brutal man who controlled a stable of prostitutes that included Chantal and who went by the name "Obsession," was the father of her little boy and her pimp. Because Chantal was native born and had multiple convictions for prostitution, no one identified her as a victim of sex trafficking.²⁵

Case 3:

Olga, the Ukrainian mother of two small children, was recruited to work in the United States by an older woman from her village. The woman provided Olga with forged travel documents and tickets to New York City. Once in New York, Olga was forced to work long hours in a grocery store and turn over all of her earnings to the woman's associates. When she resisted, she was told that if she did not continue to give them her earnings her children would be killed and she would be forced to work as a prostitute. Olga tried to commit suicide by swallowing a bottle of aspirin. She was admitted to the psychiatric ward of a local hospital, where an alert social worker became suspicious. She noticed that Olga seemed terrified of the group of "family members" who waited for her to be released. With the help of a Russian-speaking nurse, she interviewed Olga, who told her that the people waiting for her had threatened to harm her and her children. The social worker immediately contacted Sanctuary for Families, a New York City provider of legal and social services to victims of domestic violence and sex trafficking. An attorney from the organization interviewed Olga with the assistance of Sanctuary's Russian-speaking Comptroller. After the attorney informed Olga about protections afforded trafficking victims and promised that everything she said would be kept confidential, Olga described the labor trafficking scheme to which she had been subjected. Olga later decided to cooperate with the federal authorities, who initiated an investigation of her case and identified additional victims. The U.S.-based members of the ring that had trafficked Olga were indicted and convicted under the federal anti-trafficking law. Olga was awarded a T Visa and now has permanent resident status. The legal services program assisting her is in the process of bringing into the United States her two children as derivative beneficiaries of her T Visa.²⁶

Recognizing Warning Signs

Trafficking victims often come into contact with individuals who, if they were alert to the telltale signs of trafficking like the social worker in Olga's case, could either investigate the situation themselves and provide assistance or make referrals to organizations with the requisite expertise. These individuals include community members, members of community-based organizations, health care providers, educators, police officers, court officers and other criminal justice personnel, judges, prosecutors, defense counsel, and civil legal service providers. Unfortunately, far more often than not, people in these groups, like the law enforcement officials in Maria's and Chantal's cases, fail to spot the hallmarks of trafficking or make false assumptions, and victims are left without protection and assistance.²⁷

What are the indicia of human trafficking? How can we identify victims? While each case is different, there are certain patterns and signs that can assist those who want to foil traffickers and help lead their victims to safety. Some of these hallmarks emerge from common features of victim vulnerability, especially a history of gender-based violence, commercial sexual exploitation, poverty, homelessness, youth, substance abuse, mental or physical disability, and lack of legal immigration status. Other telltale signs emerge from traffickers' tactics of isolation and control and efforts to evade scrutiny. Some signs are indicative of either sex or labor trafficking alone while others are warning signs of human trafficking in general.

Prostitution and Pimps

Victim identification starts with the awareness that human trafficking is often a form of gender-based violence. Although men and boys are also subjected to sex and labor trafficking, most victims of human trafficking are female, and of these the majority are trafficked into prostitution or a related form of commercial sexual exploitation.²⁸ Due to its ubiquity, commercial sexual exploitation should be recognized as a hallmark of trafficking.

The majority of people in prostitution are children or were originally prostituted as children. Experts estimate that the average age of entry into prostitution for females is twelve to fourteen.²⁹ Anyone prostituted as a child is by definition a trafficking victim under both the Trafficking Protocol and the federal anti-trafficking law.³⁰ Since most adults in prostitution were initially prostituted as children (age seventeen or younger) and since prostituted children are necessarily victims of trafficking, one could reasonably conclude that the majority of prostituted adults have been subjected to sex trafficking at some point in their lives.³¹

Furthermore, studies have found that the majority of women in prostitution at some point are under the control of a pimp.³² If the prostituted person is or has been under the control of a pimp or someone functioning as a pimp,³³ she or he is a trafficking victim under the definition in the Trafficking Protocol and is highly likely to have been subjected to the force, fraud, or coercion required by New York State and federal law. Pimps are usually simultaneously sex traffickers and intimate partner batterers and almost invariably enter into sexual relationships with their victims through acts of sexual and physical abuse, promises of protection, devotion, and love, and often through a combination of violence and romance.³⁴ After they establish their dominance, they "turn out" their victims into prostitution, exploiting them in order to reap large sums of money that support the pimp's often opulent lifestyle.³⁵

Pimps “season” their victims into submission by altering their identities, changing their names, isolating them from family and friends, persuading them that they now exist outside of mainstream society, and subjecting them to a brutal and rigid regimen of power and control.³⁶ Victims are routinely called gender-based slurs like “bitch” and “whore,” are required to behave in a servile and deferential manner, often by referring to their pimps by terms like “Daddy,” and are brutally punished for the slightest infraction of their pimp’s rules.³⁷ Reducing the women and girls they prostitute to the condition of chattel slaves, some pimps literally mark them as their property by branding them with tattoos that display the pimp’s name, pornographic imagery, the victim’s pimp-assigned moniker, or demeaning slogans like “Daddy’s lil bitch.”³⁸

Although little is known about the prostitution of boys and young men, experts increasingly are finding high levels of gender-based violence and exploitation in their histories, which should raise a similar presumption that they are likely to be victims of sex trafficking.³⁹

Since the majority of trafficking victims are trafficked into prostitution and/or are sexually exploited, the majority of people in prostitution were originally prostituted as children, and the majority of people in prostitution are subject to the domination and control of pimps or people functioning as pimps, learning that a woman has been in prostitution should create a presumption that she is a trafficking victim. This means that police officers, corrections personnel, judges, health care providers, and all those who come into contact with prostituted women should be on high alert that there is a substantial likelihood that they are dealing with victims of sex trafficking.

Sexual Abuse

Since trafficking victims are disproportionately likely to have been sexually assaulted before being trafficked and suffer an increased incidence of sexual assault after having been trafficked — with traffickers, employers, pimps, and customers as frequent perpetrators — criminal justice personnel and sexual assault providers should be alert to the possibility that a person disclosing a sexual assault or displaying signs of sexual trauma may be a trafficking victim.⁴⁰

Trafficking victims often experience sexual abuse both before and during trafficking. Like those in prostitution, people with histories of sexual and other abuse are especially vulnerable to being trafficked.⁴¹ Once trafficked, victims become even more vulnerable to sexual assault. Due to the sexual nature of the exploitation, victims of sex trafficking are subjected to ongoing sexual abuse. However, it is not only sex trafficking victims who are at increased risk of

sexual abuse. Labor trafficking victims, especially those who are female, are at heightened risk of sexual assault and the threat of sexual assault by their traffickers.⁴² In the introductory example, Olga's traffickers first beat her and then threatened to force her into prostitution in order to punish her for leaving her job at a grocery store; while she was being trafficked a member of the trafficking ring attempted to sexually assault her.

Domestic Violence

Domestic violence victims are another group of victims of gender-based violence at high risk of human trafficking. Many traffickers establish intimate partner relationships with their victims to recruit them. To cement their control, they employ all of the classic techniques of domestic violence perpetrators illustrated in the Power and Control Wheel. Their victims may first present as typical victims of domestic violence, as Maria in the introductory example did. Law enforcement officials and domestic violence service providers should be aware of the domestic violence-sex trafficking connection and be sure to ask questions that will elicit information about this dual practice of victimization. For example, Sandra, an immigrant from Latin America, received legal, counseling, and residential services from a domestic violence service provider for years. All this time the lawyers and counselors working with her believed that she was simply the victim of an abusive partner. It was not until her batterer abducted her daughters on a court-ordered visit that she tearfully disclosed that he was part of a Central American organized crime ring that trafficked in drugs and human beings. Had her legal and social service providers fully understood Sandra's history, they could have taken even greater precautions to protect the safety of this client's little girls.⁴³

Domestic violence also can be a risk factor for labor trafficking. Victims of domestic violence are usually desperate to escape their abusers and may seek out or respond to what appears to be legitimate employment, unaware that they are being recruited into forced labor.⁴⁴ Olga in the introductory example had been abused first by her mother and then by her husband in a marriage arranged by her mother. The offer of work in the United States made to her by an older woman in her village seemed like a way to escape a life of poverty and domestic violence. When Olga notified her husband that she had fled her traffickers, he urged her to return to them, and Olga realized that he was part of the labor trafficking scheme.

Undocumented Status

Lack of legal immigration status leaves immigrants vulnerable to exploitation in both sex and labor trafficking and thus constitutes a major risk factor for trafficking.⁴⁵ Both Maria and Sandra, two earlier examples, were undocumented when they entered the United States. Maria was brought into the country by her boyfriend and his uncle, both of whom belonged to a family-based sex trafficking ring. Sandra was pressed into prostitution by the organized crime group that smuggled her into the United States and then demanded that she pay off the inflated debt that it claimed she owed it. Olga entered the United States on forged documents prepared for her by her traffickers; the visa that she had obtained expired while she was under their control. Both sex and labor traffickers confiscate their victims' passports and other identification and travel documents, often holding them as security for mounting debt, threaten to expose victims to the authorities, and warn victims about the harsh penalties that they will be subjected to if their lack of immigration status is revealed.⁴⁶

Undocumented immigrants' lack of work authorization intensifies their poverty and makes it more likely that they will fall prey to sex and labor traffickers and other criminal enterprises in the underground economy. Law enforcement officials and legal and social service providers working with immigrants, especially those without legal status, should be vigilant about the possibility of human trafficking.

Trafficking Disguised

Because prostitution is illegal in New York State, sex industry entrepreneurs rarely advertise their enterprises as such. Instead these businesses are disguised, at least in part, by names such as "massage parlor," "escort services," "modeling agency," "adult vacations," "adult services," and "erotic services." This nomenclature suggests prostitution to the initiated but does not overtly advertise it. To meet the demand by customers for youth, novelty, and exoticism, these businesses recruit a steady stream of girls and women, preferably teenagers, who are quickly replaced by others once the customers' desires have been satiated. The quickest and cheapest way to meet this demand is through girls and women recruited and supplied by sex traffickers.⁴⁷

Pimps and sex tour operators have learned that one of the most effective ways to market, recruit, and control their human merchandise is through the use of internet technology that maintains the partial disguise. They sell their victims

on online classified sites, like Craigslist's "Adult Services" section, and advertise internet brides through websites with names like "Hot Russian Brides" and "Thai Girls for Marriage."⁴⁸ They trawl for new victims on social networking sites, like Myspace. One sixteen-year-old client of Sanctuary for Families happily added "Runway Modelz" to her social networking website as a new "friend," unaware that it was a ring of pimps hoping to recruit unsuspecting inner city teenage girls into prostitution. Traffickers often communicate with prostitution buyers and monitor the whereabouts and activities of their victims through e-mail and text message. A young person who anxiously answers a constantly ringing or buzzing cell phone may be a sex trafficking victim under the control of a pimp.

While sex trafficking businesses' disguises are only partial since their true identity must be readily discernible to the customers they need to attract, more often than not those engaged in labor trafficking hold themselves out as owners of, or senior employees in, wholly legitimate enterprises — such as employment agencies, food production and distribution enterprises, construction companies, and factories. Within these organizations trafficked individuals may work side by side with regular workers and the conditions of their trafficking may or may not be known by their co-workers.

Recruitment Agencies and Debt

Many international trafficking victims enter the migration process willingly and rely on apparently legitimate recruitment agencies to organize their travel and place them with foreign employment. Unscrupulous agencies lie about the nature of the work, working conditions, and salary. Sometimes the promised jobs turn out not to be work at all but instead are commercial sexual exploitation in strip clubs and brothels. Katerina, a sex trafficking victim from Russia, responded to a help wanted ad in a legitimate Moscow newspaper for babysitters and housekeepers in New York City. Once she arrived there, she realized that the advertised work did not exist and she was offered a "choice" between "work" in a strip club or brothel.⁴⁹

These agencies know that, once overseas their victims will be unable to insist on the original contract terms or assert even minimal human rights due to an overwhelming combination of forces including economic need, major resources invested in obtaining the overseas jobs, and immigration visas that are limited to the one host employer. Migrant workers find themselves stranded far from home, trapped into contracts for jobs with exploitative conditions for very little pay.⁵⁰

By intentionally misrepresenting the nature of the overseas jobs and placing workers into exploitative conditions that they know the workers cannot escape,

these recruitment agencies abuse the workers' position of vulnerability and thus are guilty of trafficking. When encountering a migrant who relied on a recruitment agency, legal practitioners and social service providers should inquire into the activities of the recruitment agency and the terms of the contract to determine if the agency's practices are legitimate or exploitative.

Additionally, international migrant workers often take out exorbitant loans to pay for the migration. Workers frequently mortgage their homes or leverage everything their families own in order to finance the recruitment fees and airplane ticket.⁵¹ Once they discover the true conditions of the overseas employment, they cannot afford to assert their rights or leave the exploitative employer. Often the trafficker compounds the debt by charging the victim inflated prices for lodging, food, transportation, and "employment fees." Employers who take advantage of this growing mountain of debt to extract labor, enforce compliance with intolerable working conditions, or drive victims into prostitution are effectively holding the victim in debt bondage. The presence of large amounts of debt can be an important indicator of trafficking.

A Family Business

While the common image of a trafficker is as a member of an organized crime ring, increasingly both sex and labor trafficking are carried out by family-run crime groups. Maria and Olga, whose cases were described in the introductory examples, were both trafficked by networks of family members who preyed on vulnerable women and men in their own communities. Family sex traffickers often woo and sometimes marry their victims. This was the modus operandi of the traffickers in the infamous "Carreto brothers" case in which a mother and her sons ran a brutal sex trafficking ring from their home base in Tenancingo, Mexico.⁵² When apprehended, the Carreto brothers insisted that they could not be sex traffickers because they were married to the women they were accused of prostituting. Similarly, Olga was recruited into labor trafficking by a well-regarded middle-aged woman, who was a distant relative who lived in her own village; the recruiter's status as family and community member made it especially easy to win the trust of Olga and her victims. There have been a number of cases of sex trafficking carried out by husband and wife teams; not infrequently the wife is herself a former sex trafficking victim. In these "Mom and Pop" trafficking operations, the wife is often responsible for keeping the victims in line while the husband focuses on securing and expanding the business.

One of the most frequent and traditional forms of family-based trafficking is the labor trafficking of domestic servants.⁵³ In these cases the victims are not

always youthful, although they are often immigrants whose undocumented status is used by their traffickers to keep them in fear and isolated from potential sources of help. A widely-publicized case of domestic labor trafficking took place in Muttontown, New York, where a wealthy couple enslaved two female Indonesian domestic servants, ages 51 and 47, for more than five years. The couple forced the victims to work long hours, deprived them of food, and beat them, burned them with cigarettes, and forced them to ingest hot chili peppers. The trafficking was exposed when one of the victims sought help by entering a local Dunkin' Donuts, making gestures of being slapped while uttering the word "master." The jury rejected the couple's defense that the victims had inflicted the wounds on themselves as part of a traditional Indonesian folk cure and fabricated their allegations to obtain immigration relief as trafficking victims.⁵⁴ A number of diplomats and their family members have been exposed for their labor trafficking of domestic servants but in most instances diplomatic immunity has shielded them from prosecution.⁵⁵

Conclusion

The United Nations Trafficking Protocol contains a definition of human trafficking that provides advocates as well as governments with much needed guidance for determining who is and is not a victim of sex or labor trafficking. More inclusive and flexible than New York State and federal criminal standards, the Trafficking Protocol's definition takes into consideration the tactics employed by traffickers that are insidious and prevalent but do not fall neatly into the criminal law categories of force, fraud, or coercion.

While not an exhaustive list, the presence of prostitution, pimps, sexual abuse, domestic violence, undocumented status, unscrupulous recruitment agencies, and large amounts of debt are telltale signs of trafficking for which legal and social service providers should remain vigilant. Some victims of trafficking will not exhibit or admit to any of the traditional indicators of trafficking; the apparent lack of such indicators should not cause providers to rule out trafficking as a possibility. Similarly, a victim's denial should not cause a provider to conclude that trafficking was not involved. In many cases a victim will persistently deny the presence of trafficking before admitting or disclosing her situation as a victim of trafficking. However, the presence of any or a combination of any of these indicators should alert a provider to the possibility that the individual with whom they are interacting may be a victim

of sex or labor trafficking. Likewise, providers should remember that not all traffickers fit the stereotype of organized crime. Human traffickers are just as, if not more, likely to be an intimate partner, family member, or community member of the victim.

Notes

1. International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83, *entered into force* July 18, 1905; International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 211 Consol. T.S. 45, 1912 Gr. Brit. T.S. No. 20, *as amended by* Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 U.S.T. 1999, 30 U.N.T.S. 23, *entered into force* June 21, 1951; International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921 (1921) P.I.T.S.E. 2, *entered into force* June 15, 1922; Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, Sept. 25, 1926, 60 L.N.T.S. 253, *entered into force* March 9, 1927; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S., *entered into force* Aug. 24, 1934; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271, *entered into force* July 25, 1951; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 226 U.N.T.S. 3, *entered into force* Apr. 30, 1957; Convention on the Elimination of All Forms of Discrimination against Women, Dec. 19, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981; Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.
2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Sept. 9, 2003.
3. U.N. Treaty Collection, 12.a Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, <http://treaties.un.org> (follow “Databases” hyperlink; then follow “Status of Treaties” hyperlink; then follow “CHAPTER XVIII” hyperlink; then follow “12.a. Protocol to Prevent, Suppress, and Punish Trafficking in Persons” hyperlink) (*last visited* Sept. 10, 2010).

4. Trafficking Protocol, *supra* note 2, art. 3(a).
5. *Id.*
6. See N.Y. Penal Law § 230.34 (McKinney 2008); Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8) (2000) (“Trafficking Victims Protection Act”); Trafficking Protocol, *supra* note 2, art. 3(a).
7. “The key question under the [Trafficking Protocol] is not whether someone has been moved.” Dept. of State, Trafficking In Persons Report 35 (2010) (*hereinafter* “2010 TIP Report”).
8. See, e.g., International Organization for Migration (IOM), *Data and Research on Human Trafficking: A Global Survey* (2005); U.N. ESCOR, Hum. Rts. Comm., *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Feb. 29, 2000, U.N. Doc. E/CN.4/2000/68 (discussing trafficking in women, women’s migration, and violence against women), available at [http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf). (*hereinafter* “Special Rapporteur Report”).
9. N.Y. Penal Law § 230.34 (McKinney 2008); Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8) (2000).
10. Trafficking Protocol, *supra* note 2, art. 3(a).
11. Dorchen Leidholdt, *From Sex Trafficking to FGM: Emerging Issues*, Lawyer’s Manual on Domestic Violence 369, 373-75 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 5th ed. 2006). See also Brides4U, an online matchmaking site that delivers mail order brides, that warns that some bride seekers “seek to exploit the system and see potential brides as nothing other than commodities to be bought and subjugated . . . this kind of abuse ranges from the pressure for a bride to serve as wife, maid and nurse rolled into one, to more extreme cases of mental and/or physical abuse.” Brides4U identifies power imbalances, men’s perception of foreign brides as weak and passive, and men’s exploitation of fear of deportation as the three main causes of the abuse. Brides4U, Info For Brides, http://www.brides-4u.com/brides_info/fraudsters.
12. Trafficking Protocol, *supra* note 2, art. 3(b).
13. *Id.*, at art. 3(c).

14. The protection offered to minors under § 7102(8)(a) only applies to victims of sex trafficking. No analogous provision is extended to victims of labor trafficking under § 7012(8)(b). Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8), (9) (2000).
15. *See, e.g.,* Mary Ann Dutton, *Empowering and Healing the Battered Woman* 16-3 (1992) (*hereinafter* “Dutton”).
16. Ellen Pence & Michael Paymar, Duluth Domestic Violence Intervention Project, Power and Control Wheel, <http://www.theduluthmodel.org/wheelgallery.php> (*last visited* Sept. 10, 2010).
17. Amnesty International’s definition of psychological torture is divided into eight categories: (1) isolation of the victim; (2) induced debility, producing exhaustion, weakness, or fatigue, (*e.g.,* sleep or food deprivation); (3) monopolization of perception, including obsessiveness and possessiveness; (4) threats of harm to the victim or her family and friends and other forms of threat; (5) degradation, including humiliation, name calling and insults, and denial of privacy or personal hygiene; (6) forced drug or alcohol use; (7) altered states of consciousness produced through hypnotic states; and (8) occasional random and variable reinforcers or indulgences, partial reinforcers that keep alive the hope that the torture will cease. Dutton, *supra* note 15, at 26.
18. Research indicates that traffickers are using more subtle forms of exploitation and greater psychological abuse. 2010 TIP Report, *supra* note 7, at 36.
19. Oscar Montiel Torres, *Trata de Personas: Padrotes, Iniciación y Modus Operandi* 150-55 (2009).
20. The federal Trafficking Victims Protection Act reflects the fact that penal definitions for trafficking, aimed at identifying the criminal trafficker, ought to be more narrow than definitions of trafficking aimed identifying the victim or the phenomenon. The statute contains two definitions for trafficking. The first definition is more inclusive and is useful for policy and funding decisions for victims’ social service programs. It defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” and does not require the use of force, fraud, or coercion. The second definition for “severe sex trafficking” identifies the crime and creates a trafficking-specific immigration status. It is more narrow and requires the use of force, fraud, or coercion (unless the victim is under eighteen and is induced to perform a

commercial sex act, in which case no force, fraud, or coercion is required). Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8), (9) (2000).

21. See, e.g., April Rieger, *Missing The Mark: Why The Trafficking Victims Protection Act Fails To Protect Sex Trafficking Victims In The United States*, 30 Harv. J.L. & Gender 231 (2007).
22. Heather Clawson, *et al.*, *Needs Assessment for Service Providers and Trafficking Victims: Final report to the National Institute of Justice* (2003), available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=202469>.
23. The names of trafficking victims described in this chapter have been changed to protect their privacy.
24. Information provided by Lori Cohen, Senior Staff Attorney, Immigration Intervention Project, Sanctuary for Families Center for Battered Women's Legal Services. See also Joseph Berger, "Despite Law, Few Trafficking Arrests," *The New York Times*, Dec. 3, 2009.
25. Information provided by Sister Mary Nerney, Executive Director, STEPS To End Family Violence.
26. Information provided by Lori Cohen, Senior Staff Attorney, Immigration Intervention Project, Sanctuary for Families Center for Battered Women's Legal Services and Tatyana Kopit, Director of Finance, Sanctuary for Families.
27. Many fail to recognize trafficking due to lack of training and reliance on assumptions that trafficking is not present. Researchers have found that only approximately 18% of local, county, and state law enforcement agencies in a random sample have had some type of human trafficking training, 9% have a protocol or policy on human trafficking and only 4% have designated specialized units or personnel to investigate these cases. Roughly 75% of local, county, and state law enforcement believe human trafficking is rare or non-existent in their local communities. Institute of Race and Justice, Northeastern University, *Understanding and Improving Law Enforcement Responses to Human Trafficking: Executive Summary*, 3-4 (2008). Another research report found that less than half of law enforcement officers in responding units had been trained to recognize potential victims of human trafficking, and only about 10% would be likely to recognize potential victims of human trafficking if they encountered

them while working on the street or investigating another case. National Opinion Research Center (NORC), University of Chicago, *Finding Victims of Human Trafficking* 44 (2008).

28. The 2009 United Nations Office on Drugs and Crime report states that women and girls made up approximately 79% of reported victims of human trafficking and, additionally, that 79% of identified cases of human trafficking involved sexual exploitation. U.N. Office on Drugs and Crime, *Global Report on Human Trafficking in Persons* 11 (Feb. 2009).
29. Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution <http://www.justice.gov/criminal/ceos/prostitution.html> (last visited Sept. 20, 2010).
30. Trafficking Protocol, *supra* note 2, art. 3(c). Under the federal law, the recruitment, harboring, transportation, provision, or obtainment of anyone under eighteen years old for commercial sex acts constitutes severe sex trafficking without any need to show force, fraud or coercion. Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7102(8), (9) (2000).
31. In addition to, or in conjunction with, sex trafficking, people in prostitution are subjected to a wide range of gender-based violence. As a group, they are raped, assaulted, and murdered at much higher rates than any other category of people. Melissa Farley, *et al.*, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 (3/4), *Journal of Trauma Practice* 33, 35 (2003) (surveying rates of rape of prostitutes in different cities and finding that 94% of women in street prostitution experienced sexual assault and 75% were raped by one or more johns); Urban Justice Center, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, 44 (2003) (finding that 80% of prostitutes in a study had experienced violence or been threatened with violence); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Post-Traumatic Stress Disorder*, 27 (3) *Women & Health* 37, 40-41 (1998) (finding that 82% of adults in prostitution had been physically assaulted and 83% had been threatened with a weapon); D. Brewer *et al.*, *Extent, Trends, and Perpetrators of Prostitution-related Homicide in the United States*, 51 *Journal of Forensic Sciences*, 51, 1101 (2006) *available at* <http://www.interscientific.net/JFS2006.html> (prostituted women have the highest homicide victimization rate of any set of women ever studied); John J. Potterat, *et al.*, *Mortality in a Long-term Cohort of Prostitute Women*, 159(8) *American Journal of Epidemiology* 778, 781 (Apr. 15, 2004) (the average age of death of prostitutes is 34).

32. Studies estimate anywhere from 75% to 95% of prostitution is pimp controlled. Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution <http://www.justice.gov/criminal/ceos/prostitution.html> (*last visited* Sept. 20, 2010) (finding 75% of girls engaged in formal prostitution work for a pimp); Council for Prostitution Alternatives Annual Report, July 1990-June 1991, Portland, Oregon, *quoted in* Kathleen Barry, *The Prostitution of Sexuality* 198 (1995) (estimating that up to 80% to 95% of all prostitution is pimp-controlled); Florida Supreme Court, Executive Summary, *Report of the Florida Supreme Court Gender Bias Study Commission* 26 (1990) (finding that 90% of street prostitution is controlled by pimps) (*hereinafter* “Florida Supreme Court Gender Bias Study”).
33. In the case of boys and young men especially this may be an older and more powerful customer.
34. The Florida Supreme Court’s commissioned report found that pimps use a variety of coercive methods in addition to rape to control their prostitutes. Florida Supreme Court Gender Bias Study, *supra* note 34, at 26. *See also* Very Young Girls (Showtime 2007) (*hereinafter* “Very Young Girls”) (documentary film following adolescent girls trying to escape from prostitution and including part of a home video shot by Anthony and Chris Griffith, two pimps, explaining how they ensnare young girls and keep them trapped in prostitution); Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution: Still an Integral Part of Street Life*, Vol. 8 No. 9 Violence Against Women 1074, 1082 (2002) (*hereinafter* “Williamson”) (“Most [prostitutes] reported they were infatuated with their pimp . . . consider[ed] themselves in love and defined the involvement with their pimp as a relationship . . . [or felt] infatuation, admiration, and loyalty.”).
35. “The third and final ingredient for successful pimping is that a pimp must have a woman or women that want to see him on top. He is looking for dedication. He is looking for someone who wants to see her man in fine clothes and driving fine cars. His success or lack of success is a reflection on her. If her man is not looking his best, then she is not a very successful ho, and this will make for an embarrassing impression. As a prostituted woman, she must work very hard to earn his respect and his love and to keep him achieving the best in material possessions. He in return invites her into his underground social network with the sense of belonging it brings and the promise of material possessions it provides.” Williamson, *supra* note 36, at 1079, 1080.

36. See, e.g., *Very Young Girls*, *supra* note 36 (documentary film in which Anthony and Chris Griffith, two pimps, and several former prostitutes explain the process of isolation and in which Carolina, a former prostitute, does not know what to call herself — whether by her street name, Vanessa, or her given name, Carolina).
37. Williamson, *supra* note 34, at 1086. See also Donna Hughes, *Citizens Against Trafficking, Tattoos of Girls Under Pimp Control & Pimp Rules for the Control of Victims* (Aug. 10, 2009) (*hereinafter* “Hughes, Citizens Against Trafficking”)(showing a handwritten set of rules Carlton “Privilege” Simon, a convicted pimp, required the girls under his control to obey).
38. Hughes, *Citizens Against Trafficking*, *supra* note 39, at 1-4 (Aug. 10, 2009). See also Nicholas D. Kristof, “The Pimps’ Slaves,” *The New York Times*, Mar. 16, 2008; Claudia Rowe, “No Way Out: Teen Girls Sell Bodies in Seattle,” *Seattle Post-Intelligencer*, June 27, 2008.
39. Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*, at 10-14 (2001);Taya Moxley-Goldsmith, *Boys in the Basement: Male Victims of Commercial Sexual Exploitation*, Child Sexual Exploitation Update, American Prosecutors Research Institute (2005) (*hereinafter* “Moxley-Goldsmith”).
40. Dorchon Leidholdt, Esq., Director, Sanctuary for Families Center for Battered Women’s Legal Services, Testimony before the Committee on the Judiciary House of Representatives: Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs (Nov. 1, 2007).
41. Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution <http://www.justice.gov/criminal/ceos/prostitution.html> (*last visited* Sept. 20, 2010) (“The majority of American victims of commercial sexual exploitation tend to come from homes where they have been abused, or from families that have abandoned them.”); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Post-Traumatic Stress Disorder*, 27 (3) *Women & Health* 37, 38 (1998) (“Most people working as prostitutes have a history of childhood physical and sexual abuse”); Special Rapporteur Report, *supra* note 8, at 19 (identifying physical and psychological violence against women as one of the primary root causes of trafficking), *available at* [http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/\\$FILE/G0011334.pdf](http://www.unhchr.ch/Huridocda/huridoca.nsf/0/e29d45a105cd8143802568be0051fcfb/$FILE/G0011334.pdf).
42. “Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually exploited as well.” 2010 TIP Report, *supra* note 7, at 8.

43. Steve Ritea, "Twins Returned," *Newsday*, Apr. 8, 2008. Additional information provided by Linda Lopez, Deputy Director, Sanctuary for Families Center for Battered Women's Legal Services.
44. The desire to escape an abusive relationship or subordinate gender roles and patriarchal structures at home may push women to seek out international employment and are risk factors for trafficking. Special Rapporteur Report, *supra* note 8, at 19-21
45. *Id.* at 22-23.
46. Donna M. Hughes, *Hiding in Plain Sight: A Practical Guide to Identifying Victims of Trafficking in the U.S.* 6 (2003). *See also* Julia Preston, "Indictment Accuses Firm of Exploiting Thai Workers," *The New York Times*, Sept. 3, 2010 ("hereinafter "Thai Workers").
47. In Germany, for example, trafficking increased as brothel owners turned to trafficking to meet the supply for prostitutes where prostitution was legal. Conversely, in Sweden, trafficking decreased as demand for prostitution fell following a change in the law criminalizing the purchasing of sex. PressTV, *Human Trafficking Climbs in Germany*, May 24, 2010, available at <http://edition.presstv.ir/detail/127565.html>; Tom Sullivan, *Sweden Revisits Prostitution Law*, *Christian Science Monitor*, June 30, 2009.
48. In 2009, Cook County Sheriff Tom Dart filed a lawsuit in U.S. District Court against the website Craigslist, alleging it was one of the largest sources for prostitution in the country and included ads trafficking abused women and children for sex. Brief of Complainant, Thomas Dart, *Sheriff of Cook County v. Craigslist, Inc.*, 665 F. Supp. 2d 961 (N.D. Ill. Oct. 20, 2009) (No. 09 Civ. 1385). *See also* Jacqui Chen, *Ex-Child Prostitute Sues Village Voice Over Sex Ads*, *Wired*, <http://www.wired.com/epicenter/2010/09/village-voice-sex-ads/> (Sept. 18, 2010). On September 3, 2010, Craigslist discontinued its adult services section. The company has not explained the removal but has indicated that the move will be permanent. Claire Cain Miller, "Craigslist Blocks Access to 'Adult Services' Pages," *The New York Times*, Sept. 4, 2010. Claire Cain Miller, "Craigslist Says It Has Shut Its Section for Sex Ads," *The New York Times*, Sept. 15, 2010.
49. Information provided by Carolien Hardenbol, Co-Director, Immigration Intervention Project, Sanctuary for Families Center for Battered Women's Legal Services.

50. Nisha Varia, Human Rights Watch, *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery*, Oct. 17, 2007, <http://www.hrw.org/en/news/2007/10/17/international-trafficking-persons-taking-action-eliminate-modern-day-slavery> (last visited Sept. 11, 2010); Thai Workers, *supra* note 48.
51. Nisha Varia, Human Rights Watch, *International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery*, Oct. 17, 2007, <http://www.hrw.org/en/news/2007/10/17/international-trafficking-persons-taking-action-eliminate-modern-day-slavery> (last visited Sept. 11, 2010); Human Rights Watch, *Swept Under the Rug: Abuses against Domestic Workers Around the World*, 78-80 (2006); Thai Workers, *supra* note 48.
52. Kirk Semple, "Woman in Family-Run Prostitution Ring Pleads Guilty," *The New York Times*, July 23, 2008.
53. Katherine Scully, *Blocking Exit, Stopping Voice: How Exclusion from Labor Law Protection Puts Domestic Workers at Risk in Saudi Arabia and Around the World*, 41 Colum. Hum. Rts. L. Rev. 825, 832-33 (2010).
54. Corey Kilgannon, "N.Y. Couple Convicted in Slave Case," *The New York Times*, Dec. 17, 2007.
55. American Civil Liberties Union, *Trafficking and Exploitation of Migrant Domestic Workers by Diplomats and Staff of International Organizations in the United States*, Jan. 17, 2007, available at <http://www.aclu.org/womens-rights/trafficking-and-exploitation-migrant-domestic-workers-diplomats-and-staff-international>.

New York State's Human Trafficking Law

by Andra Ackerman and Christa Stewart

On June 6, 2007, New York State enacted its first law specifically targeting human trafficking¹ and so joined the steadily growing number of states with anti-trafficking legislation. Lauded by advocates as one of the most comprehensive human trafficking laws in the nation, this historic legislation gave New York State new and important powers. It criminalized sex trafficking and labor trafficking as well as modifying existing laws to strengthen criminal justice responses to traffickers. It also created mechanisms for providing services and assistance for human trafficking victims, making New York one of only a handful of states to address the urgent needs of victims, and it established an interagency task force to coordinate New York State's anti-trafficking efforts.

New York State Before the Human Trafficking Law

Prior to the enactment of New York's Human Trafficking Law, despite having a human trafficking problem that is one of the worst in the nation,² New York's laws were inadequate. With its long international border, major ports of entry, and diverse population, New York is a fertile ground for traffickers. Only California, Florida, and Texas outrank New York in the number of federal human trafficking cases opened between 2001 and 2005.³ Yet, before 2007, New York crimes were defined too narrowly to reach the methods of inducement and control used by traffickers. New York State had limited ability to assist human trafficking victims without immigration status during the often lengthy period preceding approval or federal government assistance, when victims are particularly vulnerable to re-victimization. Many state and local law enforcement officials, prosecutors, state government agencies, and service providers never received training on recognizing human trafficking. Both sex trafficking and labor trafficking victims were often treated as criminals, and victims without immigration status were subject to

deportation without any inquiry into the circumstances of their “employment.” Many human trafficking victims were never identified even when they came in contact with social service agencies and law enforcement officials. Taking action was essential. To its credit, New York did.⁴

The 2007 Reforms: An Overview

The New York State’s landmark anti-trafficking legislation takes a multifaceted and multidisciplinary approach to trafficking. Underlying the legislation is the recognition that people trafficked for prostitution and labor are *victims* of crimes, not perpetrators, and that they deserve help, not arrest or deportation. The legislation employs three strategies:

- 1. Prosecution:** The law establishes new crimes that specify the methods of inducement and control used by traffickers to exploit their victims.
- 2. Protection:** The law provides services for undocumented immigrant human trafficking victims whose immigration status forecloses many forms of government assistance.
- 3. Prevention:** The law creates an interagency task force to coordinate the implementation of the new law and the State’s efforts to combat human trafficking.

State Crimes

The Human Trafficking Law created the crimes of sex trafficking and labor trafficking, and it modified existing Penal Law provisions to strengthen New York State’s overall response to human trafficking.

The Crime of Sex Trafficking

The crime of sex trafficking is defined as advancing or profiting from prostitution by one of a number of means that capture the most common tactics traffickers use to entrap victims in prostitution and to keep them in their thrall.⁵ These enumerated tactics are:

- Providing drugs for the purpose of impairing a victim’s judgment.⁶

- Making false or misleading statements to induce a victim to become involved in prostitution or to remain in prostitution.⁷
- Taking or keeping a victim's passport or identity papers.⁸
- Keeping a victim in debt bondage.⁹
- Using force or threats against either a victim or someone else if the purpose is to make a victim engage in prostitution. Included in this provision are various forms of coercion, such as physical violence, damage to property, and the exposure of secrets that might subject a victim to humiliation or contempt.¹⁰

The crime of sex trafficking is a class B non-violent felony carrying a maximum sentence of 25 years imprisonment.¹¹

In essence, these provisions make sex trafficking the most severe form of promoting prostitution. The statute recognizes the relationship between promoting prostitution and sex trafficking by locating the crime of sex trafficking in the same article of the Penal Law that defines promoting prostitution crimes. It also borrows meanings for the words “advances” and “profits” from the Penal Code definition of promoting prostitution.

Addressing the Demand for the Services of Sex Trafficking Victims

New York State's Human Trafficking Law recognizes that the demand for prostitution drives the sex trafficking industry, and it addresses demand in two ways. First, the law increases the lowest level crime of patronizing a prostitute from a class B to a class A misdemeanor, subjecting the patron to a maximum sentence of one year in jail instead of 90 days.¹² This change codifies the judgment of the legislature that patronizing a prostitute is a crime that can be deterred by stiffer penalties.

Second, the Human Trafficking Law makes clear that advancing or profiting from prostitution by operating a sex tour business is a form of promoting prostitution.¹³ Sex tour businesses typically arrange trips for patrons from the United States to countries such as the Philippines, Thailand, or the Dominican Republic to engage in prostitution, often with very young victims. This provision recognizes that sex tour businesses operating in New York State increase global sex trafficking and that New York State must act as a responsible global citizen in the fight against sex trafficking. The law penalizes sex tour operators even when they arrange trips to places where prostitution is legal.

The Crime of Labor Trafficking

The definition of the crime of labor trafficking is structured in the same way as the crime of sex trafficking. Labor trafficking is defined as inducing or compelling a victim to engage in labor, or enticing, harboring, or transporting a victim, by enumerated means that are similar to the means found in the provisions on sex trafficking. They include:

- Providing controlled substances for the purpose of impairing judgment.¹⁴
- Keeping a victim in debt bondage.¹⁵
- Taking or keeping a victim's passport or identity papers.¹⁶
- Using force or threats against either a victim or someone else if the purpose is to make a victim engage in labor activity. Included in this provision are various forms of physical violence, damage to property, and the exposure of secrets that might subject a victim to humiliation or contempt.¹⁷

Under the Human Trafficking Law, labor trafficking is a class D non-violent felony carrying a maximum sentence of seven years imprisonment.¹⁸

Other Criminal Provisions for Combating Human Trafficking

In addition to creating new crimes, the Human Trafficking Law amends the Penal Law in other ways that assist the prosecution of traffickers. New sections of the Penal Law prevent charging victims as accomplices to trafficking crimes.¹⁹ Other sections make sex trafficking and labor trafficking predicate crimes for enterprise corruption charges²⁰ and include sex trafficking and labor trafficking as crimes for which eavesdropping and electronic surveillance warrants can be obtained.²¹ Additionally, amendments to the Correction Law designate sex trafficking and attempted sex trafficking as offenses for which a conviction requires registration.²²

New Services and Assistance for Victims

Need for Additional and Assistance Services

The Human Trafficking Law fills a major gap in the provision of services to trafficking victims that hindered the provision of much needed help to victims as well as making prosecutions more difficult. Human trafficking victims are

often reluctant to come forward for a wide variety of reasons, including fear of arrest, fear of deportation, and dependence on the trafficker for the very necessities of life. Victims who have escaped traffickers may need access to safety planning, shelter, medical services, legal assistance, and a host of other services before they feel able to assist law enforcement efforts.

Local departments of social services (LDSS) throughout New York State provide services to human trafficking victims who are U.S. citizens, lawful permanent residents and minors regardless of immigration status. To clarify the responsibilities of these local districts, the Office of Temporary and Disability Assistance (OTDA) and the Office of Children and Family Services (OCFS) issued a joint directive that gives policy and procedural guidance to the LDSS regarding human trafficking.²³ In addition, each local district is required to identify a human trafficking liaison, who ensures that all appropriate services are offered to trafficking victims.

However, despite New York State's commitment to serving trafficking victims, prior to the passage of the Human Trafficking Law undocumented immigrants and those that served them often found themselves in a bind. The federal government can certify trafficking victims or grant them continued presence, thus making them eligible for assistance, but the certification process often takes many months. In the meantime victims were often left stranded without urgently needed help. To fill this gap, the Human Trafficking Law authorizes services to foreign-born human trafficking victims who are unable to obtain assistance elsewhere because of their lack of immigration status. Help includes access to case management services; emergency temporary housing assistance; health care; mental health counseling; legal services; drug addiction screening and treatment; language interpretation and translation services; English language instruction; and job training and job placement assistance. OTDA, through contracts with regional providers, as part of its Response to Human Trafficking Program, makes these services available to adult human trafficking victims and family members.

The New York State Confirmation Process

To make use of the services provided to undocumented immigrant victims under the Human Trafficking Law, a person must be "confirmed" as a victim of human trafficking. The confirmation process begins with a referral from a law enforcement agency to the Division of Criminal Justice Services (DCJS) and OTDA. DCJS, in consultation with OTDA and the referring agency, determines whether the individual meets the criteria for certification as a "victim of a severe

form of trafficking in persons” as defined by the Federal Trafficking Victims Protection Act or otherwise appears to be eligible for federal, state, or local benefits. Once a victim is confirmed, OTDA is responsible for helping victims obtain services,²⁴ either through the Response to Human Trafficking Program or through the LDSS’s.

By the end of May, 2010, DCJS and OTDA had received referrals on 110 cases of human trafficking within New York State. Of those cases, 105 were confirmed as victims of human trafficking and referred for services. The majority of cases involved sex trafficking (69 cases) while the rest (41 cases) involved labor trafficking, although in many cases both of these elements were present. In 88 cases, the victims did not have immigration status. Referrals have been received from each region of the New York State, lending credence to the belief that human trafficking can occur anywhere.

Interagency Task Force on Human Trafficking

Recognizing that the battle against human trafficking is a multi-agency and multidisciplinary effort, the new law created an interagency task force.²⁵ The task force is co-chaired by the commissioners of DCJS and OTDA, and includes eight other state agencies. These eight are: the Crime Victims Board (now the Office of Victim Services); the Department of Health; the Department of Labor; the Division of State Police; the Office of Alcoholism and Substance Abuse Services; the Office of Children and Family Services; the Office of Mental Health; and the Office for the Prevention of Domestic Violence. The duties of the task force include collecting and organizing data on the nature and extent of human trafficking in New York State; identifying Federal, state, and local service programs for human trafficking victims; developing recommendations for preventing human trafficking, protecting and assisting victims, and prosecuting traffickers; establishing interagency protocols, and collaboration among government agencies, law enforcement agencies, and nongovernmental agencies; and evaluating and recommending strategies to increase public awareness of human trafficking and training programs. The task force enables cross-agency protocol development and has encouraged the initiation of a state-wide response to this problem. Task force agency members have been instrumental in providing training, especially to agencies, such as the Office of Victim Services, the Department of Labor, and the Office for the Prevention of Domestic Violence, that can provide services or enforce rights of trafficking victims.

Challenges of Implementing the New Law

General Challenges

Implementing the new law requires a coordinated effort by various agencies to ensure that the services promised under the legislation are available, that law enforcement and service providers are adequately trained, and that victims and their advocates know about the protections and benefits provided through this historic legislation. These agencies have had to coordinate the efficient delivery of services throughout the large geographic region of New York State, which includes one of the most densely-populated cities in the world as well as a number of sparsely-populated rural areas. They also have had to establish readiness for large-scale cases. Indeed, ensuring capacity for cases uncovered with multiple victims has been a priority for both DCJS and OTDA.

Services for Children and the Safe Harbor Act

A focus on children, the most vulnerable population of trafficked persons, also has been of great concern. OTDA and OCFS have worked jointly to make sure that all minors who have been trafficked are confirmed under the Human Trafficking Law and that they obtain appropriate services. In New York State, OCFS establishes rules and provides oversight for the provision of child welfare services, while the LDSS's provide for the actual delivery of services. When OTDA receives a referral that a minor has been trafficked, OTDA notifies the LDSS immediately and the LDSS must provide services, regardless of whether or not the victim is ultimately confirmed. Once notified, the LDSS must assess eligibility as soon as possible and provide services or make referrals for services. An assessment to determine whether foster care placement is needed also occurs. The role of the LDSS caseworker is similar to the role of a caseworker for adult victims of trafficking. It includes: advocacy; safety planning; case management; supportive counseling; coordination of services; referral to legal services; and, if needed, referral to programs that serve immigration populations. Through the end of May, 2010, OTDA and DCJS had received referrals of fourteen minor victims.

With implementation of the Safe Harbor for Exploited Children Act, which went into effect on April 1, 2010, New York State has an additional mechanism to address the challenge of trafficked youth. This new law, intended to protect sex trafficking victims under the age of eighteen, creates a presumption that a person who is charged as a juvenile delinquent (JD) for a prostitution offense is a severely trafficked person. It requires the court, in most cases, to proceed with

a Person in Need of Supervision (PINS) petition, rather than a JD petition. The law re-casts the way young people arrested for prostitution offenses are viewed and treats them as vulnerable children rather than offenders.

Responsibility for implementing the Safe Harbor for Exploited Children Act lies with OCFS. A LDSS must provide a short-term safe house with 24 hour crisis intervention, medical care, and other supportive services. In addition, OCFS is required to make at least one long-term safe house available.

Education and Changing Attitudes

Another challenge is education. It takes much more than a day of training to change the minds and attitudes of the many professionals, particularly law enforcement officials, who come into contact with victims. It takes a commitment from everyone to look anew at the way they and their communities view human trafficking.

At large trainings conducted by DCJS and OTDA, there are always a few professionals who state anonymously in evaluation forms that they do not see labor trafficking as something they should spend their time investigating since, in their view, people who enter the United States illegally to work are responsible for what happens to them. Continuing public and professional education is needed to help people understand that victims frequently are enticed under false pretenses into entering the United States; that once here they may be forced to work long hours with little or no pay while living in squalor and under a regime of terror; that many victims have been brutally abused physically, sexually, and emotionally; and that victims are often held as slaves in a world they do not comprehend.

Education is also needed to alert the public to the plight of vulnerable New York State youth who fall prey to traffickers. Public attention focused on the young women and children brought into this country from abroad obscures home-grown domestic sex trafficking. Also, domestic sex trafficking victims often seem unsympathetic to the communities in which they find themselves. They may be addicted to drugs, have mental health issues, or appear to embrace the subculture in which their traffickers have consigned them. Traffickers understand the reluctance of communities to confront domestic trafficking, which helps to make trafficking a low risk and lucrative crime.

Conclusion

Although the battle against human trafficking has advanced considerably since the new law was created, there is still much work to be done in the effort to prevent human trafficking, protect and assist victims, and prosecute and punish traffickers. We are learning that training means more than asking nationally renowned experts to help educate state agency officials on human trafficking. It takes time and commitment to change the minds and attitudes of everyone, from direct service providers, law enforcement, and medical staff to people in the communities where we live.

Notes

1. The New York Anti-Human Trafficking Act of 2006, L. 2007, Chap. 74. This legislation went into effect on November 1, 2007.
2. USDOJ, Office of Justice Programs, Bureau of Justice Statistics Data Brief: *Federal Prosecution of Human Trafficking, 2001-2005* (Oct. 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf> (last viewed June 1, 2008).
3. *Id.*
4. See the New York State Interagency Task Force on Human Trafficking; *A Report by the Interagency Task Force on Implementation of the 2007 Law*. Available at: <http://www.otda.state.ny.us/main/bria/documents/Human-Trafficking-Report.pdf> (hereinafter “Interagency Task Force Report”).
5. N.Y. Penal Law § 230.34.
6. N.Y. Penal Law § 230.34(1).
7. N.Y. Penal Law § 230.34(2).
8. N.Y. Penal Law § 230.34(3).
9. N.Y. Penal Law § 230.34(4).
10. N.Y. Penal Law § 230.34(5).
11. N.Y. Penal Law § 230.34.
12. The new law repeals N.Y. Penal Law § 230.03, “Patronizing a Prostitute in the 4th Degree,” and amends N.Y. Penal Law § 230.04 to make the lowest level of “Patronizing a Prostitute” a Class A misdemeanor.
13. N.Y. Criminal Procedure Law § 230.30.
14. N.Y. Penal Law § 135.35(1).
15. N.Y. Penal Law § 135.35(2).
16. N.Y. Penal Law § 230.35(3).
17. N.Y. Penal Law § 230.35(4).
18. N.Y. Penal Law § 230.35.
19. N.Y. Criminal Procedure Law § 230.36
20. N.Y. Criminal Procedure Law § 460.10(1).

21. N.Y. Criminal Procedure Law § 700.05(8).
22. N.Y. Correction Law § 168-a(2)(a)(i).
23. The full policy Administrative Directive is available on the OTDA website.
See <http://www.otda.state.ny.us/main/policy/directives/2009/ADM/09-ADM-01.pdf>.
24. *See* Interagency Task Force Report, *supra* note 4.
25. *Id.* at 14.

International Law and Human Trafficking

by Taina Bien-Aimé and Leah Rutman

“What is really the cause of the trade in women?

Exploitation, of course . . . ”

—Emma Goldman

The Universal Declaration of Human Rights lays the theoretical groundwork for international law on human trafficking. It states that all human beings are born free and with inherent and inalienable rights¹ without distinction of sex² and that “[e]veryone has the right to life, liberty, and security of person.”³ Specifically addressing trafficking, it says that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁴ While the Declaration of Human Rights has great moral weight, in itself it is not binding on governments. However, a number of international legal instruments require signatory states to combat human trafficking both within their countries and across international borders.

This chapter gives an overview of the ways that international law found in these treaties can be a critical tool in the fight against human trafficking.

Overview of International Law on Trafficking

The roots of the modern day anti-trafficking campaign reach back over a hundred years to two separate but related movements: the effort to eliminate slavery, often understood in terms of race-based or ethnically-based slavery, and a parallel effort to combat sex trafficking and prostitution. The first international instruments addressing slavery came out of the 1815 Congress of Vienna, which produced the Declaration Relative to the Universal Abolition of the Slave Trade, addressing the transatlantic slave trade and the institution of slavery in the United States and European colonies.⁵ Several twentieth century conventions address slavery and the broader issue of forced labor including: the 1926 Slavery Convention, adopted at a time when forced labor was seen as a function of colonialism; the 1930 Forced Labour Convention, which obligated signatory

states to neither use forced labor nor tolerate it within their borders; and the 1957 Abolition of Forced Labour Convention, adopted after considerable study, concerned principally with the political uses of compulsory labor.⁶ All three of these conventions and their definitions of slavery and forced labor remain relevant to international law today.⁷

In the late nineteenth and early twentieth centuries, abolitionists who had successfully fought the transatlantic slave trade in Africans turned their attention to practices based on gender, often called “white slavery” to distinguish it from race-based slavery. The first international legal instrument that explicitly addressed what is now known as sex trafficking was the International Agreement for the Suppression of the White Slave Traffic of 1904, modified in 1910.⁸ This convention states that its purpose is the “effective protection against the criminal traffic known as the White Slave Traffic,”⁹ and explicitly links “white slavery” to the institution of prostitution. All of the signatories were European nations. Also limited to trafficking for sexual exploitation, the 1933 International Convention for the Suppression of the Traffic in Women of Full Age called for punishing anyone who “has procured, enticed or led away even with her consent, a woman or girl of full age for immoral purposes to be carried out in another country in order to gratify the passions of another person.”¹⁰

These various agreements and others¹¹ culminated in the groundbreaking 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. The 1949 Convention set the standard for instruments addressing sex trafficking by condemning trafficking and prostitution as “incompatible with the dignity and worth of the human person, endanger[ing] the welfare of the individual, the family, and the community.”¹² It advocates punishment for those who engage in “exploitation of the prostitution of persons,”¹³ and it calls for signatory nations to take “measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims.”¹⁴

Yet another major international legal milestone in the campaign against trafficking was the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), a powerful contemporary tool for addressing human rights violations.¹⁵ Adopted by the United Nations in 1979 and ratified by 186 countries (but not to date the United States),¹⁶ the Convention seeks to eradicate gender-based discrimination by establishing basic international standards for the treatment of women. CEDAW addresses both sex and labor trafficking. It identifies trafficking in women and exploitation of the prostitution of women as practices of gender inequality and directs States Parties to “take all

appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁷ Reinforced by the Beijing Platform for Action, adopted at the 1995 global U.N. Women’s Conference, CEDAW requires States to take appropriate measures to address the root causes of trafficking in women and girls for prostitution and other forms of commercial sex, forced marriages, and forced labor, including taking actions to strengthen legislation to protect the rights of women and girls and to punish perpetrators.¹⁸

The most recent milestone in the international legal effort against human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also known as the Trafficking or the Palermo Protocol. Unlike many of these earlier treaties, the Trafficking Protocol is not a human rights instrument but part of a larger treaty on organized crime.¹⁹ The Trafficking Protocol’s reach is extensive. By covering compulsory or forced labor and sex trafficking and by protecting men, women, and children, it tackles the issues addressed in earlier disparate conventions. It advances international legal work against trafficking by establishing a uniform and comprehensive definition of trafficking; creating an obligation on signatory States to prevent, protect, and prosecute trafficking; and promoting international partnerships to combat trafficking. Its inclusive definition of trafficking and the specificity of its obligations make it the most significant international agreement addressing trafficking. The Protocol has 133 State parties, including the United States.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

A Powerful International Definition

The result of several years of intense study, negotiation, and, ultimately, international consensus by both governments and non-governmental organizations, the Trafficking Protocol defines human trafficking in expansive terms. It says: “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation,

forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.”²⁰

Irrelevance of Movement to Trafficking.

Although transport of some kind is often mistakenly believed to be essential to trafficking, movement is not an element of trafficking under the Trafficking Protocol. The Protocol makes clear that “recruitment, transportation, transfer, harbouring, or receipt”²¹ is enough as long as one of the enumerated means is used to bring victims within the control of traffickers. Under this definition, a pimp who “harbors” a prostituted person is a trafficker, and a woman who is sold to a brothel is a victim of trafficking whether or not she was moved across international borders or even within her own country. Victims subjected to traditional or hereditary forms of slavery within their own communities also fall within the definition.

Means of Trafficking.

One of the most powerful contributions of the Trafficking Protocol is the nuanced understanding of the ways traffickers gain power over victims and continue to exert control. The Trafficking Protocol recognizes that overt forms of force and coercion are not the only means by which traffickers bring victims into, and maintain them in, conditions of exploitation and servitude. Recognizing that subtle tactics as well as brute force can be used to break victims and cement the control of traffickers, the Trafficking Protocol specifically identifies as prohibited means of trafficking not only the “threat or use of force or other forms of coercion, of abduction [or] fraud,” but also “deception [and] the abuse of power or of a position of vulnerability.”²²

A definition that includes subtle as well as overt means of establishing control is important for victims of sex trafficking. In the sex trade, many victims are trafficked without apparent physical violence or obvious confinement. Although not threatened with weapons, beaten with fists, or locked in cells, these victims may be subjected to severe abuse, both physical and psychological, that erodes their emotional, physical, mental, and spiritual well-being and robs them of their sense of agency. Often victims have experienced abuse, exploitation, and poverty that render them especially attractive to traffickers and vulnerable to their exploiters’ wiles.

The history of Kika Cerpa, a prominent anti-trafficking advocate, exemplifies this pattern. Kika Cerpa was born in Venezuela, raped by her stepfather’s brother when she was eight years old, and, at the age of fourteen, seduced by a young man who beat and impregnated her. Still a teenager and raising a little

girl as a single mother, Kika met Daniel, the first man in her life who treated her kindly. When Daniel moved to New York, he begged Kika to join him. Daniel claimed that he had a good job and promised to care for her. Once in the United States, Kika discovered that Daniel was unemployed and living in the basement apartment of his cousin, Sandra. Daniel and Sandra discouraged Kika from leaving their apartment, warning her that New York City was such a dangerous place that they needed to be at her side to “protect” her at all times. Daniel told her he was in debt to Sandra for Kika’s and his plane tickets to the U.S. The debt mounted as Sandra continued to provide Kika and Daniel with room and board. As surety for the debt, Sandra confiscated Kika’s passport and her life savings, approximately \$2,000. With Daniel pleading and Sandra growing increasingly irate, they told Kika that she now had to pay off Daniel’s debt and took her to the brothel that Sandra managed. Later Kika would learn that Daniel and Sandra were part of a longstanding, highly-organized family enterprise that trafficked young women from Venezuela into brothels in the United States.

During her first night in the brothel, Kika was forced to have intercourse with nineteen men. She describes her experience being prostituted as serial rape. She was repeatedly beaten by clients and witnessed the fatal shooting of her best friend, a teenager who had been trafficked by her own family from the Dominican Republic, by a rejected drunken client. After three years Kika was able to escape by marrying a client, who became her battering husband.

The Trafficking Protocol recognizes as trafficking the kind of “abuse of a position of vulnerability” that lead to Kika’s entrapment. Kika was a lone woman in a foreign country, where she did not understand the language or the country’s legal system. The abuse suffered by Kika in the past, as well as her then almost complete isolation once she had traveled to the United States, made her acutely vulnerable. Daniel and Sandra preyed on Kika’s vulnerability by luring her to New York under false pretenses, isolating her, confiscating her passport and money, and convincing her that she must pay off Daniel’s debts.

Eliminating Consent as a Defense.

The vulnerability of victims of trafficking is also addressed in a provision of the Trafficking Protocol that makes the consent of a victim “irrelevant” when traffickers’ use any of the definition’s enumerated means, including force, coercion, deception, or abuse of power.²³ The Protocol acknowledges that, while adults have the ability to make informed, autonomous decisions, “a victim’s exercise of free will is often limited by means of force, deception, or the abuse of power.”²⁴ This subsection effectively excludes traffickers’ use of the defense of a victim’s consent.

Protecting Children.

The Trafficking Protocol addresses the unique position of children as members of society who lack the decision-making capacity and freedom of movement available to their adult counterparts by defining any child under the age of eighteen exploited in the sex industry, forced labor, servitude, or slavery as a *per se* victim. No additional showing of means of establishing control is necessary.²⁵ The use of coercion, deception, force, or abuse of power or of a position of vulnerability is assumed.

The short video, “The Making of a Girl,”²⁶ illustrates the inherent vulnerability of young people and confirms the appropriateness and importance of the Trafficking Protocol’s treatment of children. The video documents teenage girls who have faced domestic abuse or broken homes, girls who are neglected and powerless. Lured by older men who initially fulfill their material and emotional needs, who buy them presents and often ply them with alcohol and drugs, these girls are eventually sold into prostitution by the men they had come to trust. Beatings and rape become common place for these girls; many attempt suicide. The Trafficking Protocol acknowledges that, while showing that one of the enumerated means of trafficking was used may be difficult, these girls are nonetheless victims of trafficking and require protection and treatment in accordance with this status.

Protection

The Trafficking Protocol confers on States an obligation to protect victims. States are required to provide victims with privacy and legal assistance,²⁷ and they are encouraged to give victims aid that helps them with their physical, psychological, and social recovery, including medical assistance, counseling, employment, and educational and training opportunities.²⁸ The Trafficking Protocol requires States to provide for repatriation of victims and encourages them to adopt legislation that allows victims of trafficking to remain in a country when humanitarian and compassionate factors dictate that this is in the victim’s best interest.²⁹

Prevention

Prevention of trafficking is another of the Protocol’s priorities. States have an obligation to research trafficking in persons and employ media campaigns to prevent and combat it.³⁰ States must adopt efforts to “alleviate factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity.”³¹

The Trafficking Protocol reinforces the 1949 Convention's efforts to combat the demand for sex trafficking and expands these efforts to include all forms of exploitation of persons.³² It provides that States "shall adopt or strengthen legislative or other measures, such as educational, social, or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking."³³ This provision acknowledges that demand is central to the existence and growth of human trafficking and that governments' efforts to combat demand are among the essential strategies to preventing trafficking.

The Trafficking Protocol calls for bilateral and multilateral cooperation as well as for the training of law enforcement. It recognizes that cooperative efforts among governments, including in the development of best practice models and training law enforcement officials, improve responses to transnational human trafficking.

The United States Efforts: Incomplete Compliance with International Standards

The steps the United States has taken to combat human trafficking have been substantial, but fall short of compliance with international standards set by various conventions, including the Trafficking Protocol. The federal Victims of Trafficking and Violence Protection Act of 2000 (TVPA) and its reauthorizations in 2003, 2005, and 2008,³⁴ which are the United States government's principal anti-trafficking legislation, incorporate many key elements of the Trafficking Protocol. However, the TVPA has deficiencies that undermine its ability to combat human trafficking effectively and that raise questions about the United States' compliance with its international obligations.

Prosecution Under the TVPA

The TVPA establishes the crimes of sex and labor trafficking by outlawing "severe forms of trafficking in persons,"³⁵ but the TVPA's definitions of trafficking have three important flaws. First, the "means of trafficking" recognized by the TVPA are confined to "force, fraud, and coercion." This limits the protection of the law to a narrow subset of victims of trafficking. Excluded by the United States law, but included in the Trafficking Protocol's definition, are victims "of deception, of the abuse of power, or of a position of vulnerability."³⁶ Thus, those who are recruited through deception are not considered victims, and traffickers who abuse positions of power or their

victims' vulnerability are not criminals. Victims who are enticed into trafficking by a combination of power imbalances, traffickers' sophisticated tactics of power and control, and victims' positions of vulnerability remain unprotected under the TVPA. Second, under the TVPA, while children are exempt from the requirement of "force, fraud, and coercion" in cases of sex trafficking,³⁷ children are not exempt from this narrow definition in cases of labor trafficking. Unlike the Trafficking Protocol, the TVPA treats children subjected to labor trafficking as if they have the same freedom of movement and decision-making power as their adult counterparts. Third, the TVPA allows traffickers to use the consent of the victim as a defense.

Despite its flaws, the TVPA has been used to prosecute successfully both sex and labor traffickers in the United States. Among them was the leader of a New York State sex trafficking ring that allegedly involved over twenty women; in 2008, he pled guilty to compelling a girl to perform sexual acts.³⁸ In 2002, the federal government indicted six individuals who participated in the trafficking of Mexican migrant workers forced to work in migrant labor camps near Buffalo, New York.³⁹ From 1991 through 2004, Consuelo Carreto Valencia and her sons ran their family's sex trafficking operation, recruiting young, uneducated women and girls from impoverished areas of Mexico, employing deception, fraud, rape, forced abortion, threats, and physical violence to compel them to prostitute themselves at brothels throughout the New York City metropolitan area; all three and an accomplice pled guilty and the sons are serving sentences of up to 50 years.⁴⁰ In June 2006, Jose Paoletti-Moreda and his son Renato Paoletti-Lemus pled guilty to extortion for promising deaf and hearing-impaired Mexicans good jobs in the United States only to enslave them in the streets and subways of New York to peddle trinkets.⁴¹

Prevention and Rehabilitation Under the TVPA

The TVPA and its corresponding reauthorizations surpass the minimum prevention and rehabilitation Trafficking Protocol standards. To prevent trafficking, the TVPA contains specific provisions on demand, and it calls for and funds public awareness and information programs in the U.S. and in foreign countries.⁴² To protect and assist foreign and U.S. victims of trafficking, the TVPA calls for improved identification of victims and provides certain victims of trafficking with benefits including shelter, educational opportunities, health care, job training, and other social services.⁴³

However, huge barriers block access to benefits. First, only a victim of a "severe form of trafficking" may receive benefits.⁴⁴ Second, adult victims must

cooperate with law enforcement efforts, since benefits are only available to victims who are “willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons.” Third, all applicants for benefits must receive certification from law enforcement officials attesting to the required level of cooperation.⁴⁵ Excluded are the many victims who are unwilling to cooperate with police investigations or legal proceedings out of fear for their safety or the safety of their family members. Others, who may suffer from crippling depression, anxiety, or post-traumatic stress, are psychologically ill-equipped to help law enforcement build cases. Denying assistance to victims who find cooperation with law enforcement difficult or impossible directly contravenes the requirements of the Trafficking Protocol.

The Swedish Experience with Sex Trafficking: An Effective Approach to the Prevention and Protection Required by International Law

Sweden’s success in combating sex trafficking demonstrates highly effective means of preventing trafficking and protecting victims, two obligations created by various international agreements, including the Trafficking Protocol. Sweden has used three approaches: (1) decriminalizing women exploited in the sex trade, especially in prostitution; (2) criminalizing “demand” (*i.e.*, the criminalization of the patrons of prostitution, or “johns”); and (3) vigorously prosecuting traffickers. This multi-pronged, coordinated approach is not only consistent with international law standards but also highly effective.

Dismantling the Soviet Union between 1986 and 1991 led to a spike in job loss for Eastern European women, a surge in employment discrimination against them, and the intensified operation of organized crime throughout Eastern Europe.⁴⁶ Together these factors increased the opportunities for sex traffickers. Large numbers of Eastern European women and girls under the control of traffickers were directed into the sex industry of Western European countries, including Sweden. A longstanding proponent of gender equality, the Swedish government decided to approach the problem by focusing on male buyers of prostitution, who were providing the economic incentive to sex traffickers. To stop men who were creating the demand for prostitution while enabling prostituted and sex trafficked individuals to turn to law enforcement for protection and assistance, in 1999, the Swedish government enacted legislation

making it a crime to purchase (but not to sell) sex, thus criminalizing the demand for prostitution.⁴⁷

Importantly, Sweden recognized that buying and selling women and girls in the sex industry was a practice of gender-based discrimination and violence. Margareta Winberg, Sweden's Minister of Gender Equality at the time the law was passed, powerfully articulated this understanding: "[Sweden] made the commitment to counteract trafficking with the recognition that full gender equality . . . cannot be brought about as long as some women and children in our countries are victims of prostitution and trafficking. . . . [A]ny society that claims to defend principles of legal, political, economic, and social equality for women must reject the idea that women and children, mainly girls, are commodities that can be bought and sold. To do otherwise is to allow that a separate class of females, especially women who are economically and racially marginalized, is excluded from the universal protection of human dignity enshrined in the body of international human rights instruments developed during the last fifty years."⁴⁸

Since the passage of these laws, Sweden has seen a dramatic decrease in the incidence of sex trafficking and prostitution. Victims report that traffickers view Sweden as an undesirable location to conduct trafficking because of the danger of being arrested and prosecuted under the Swedish law.⁴⁹ Wire-tapped conversations between traffickers show that they are deterred from trafficking women into Sweden because prostitution buyers now fear arrest.⁵⁰ In the five-year period after the passage and implementation of the law, the number of prostituted women in Sweden decreased by a staggering 40%.⁵¹ Today, while each year approximately 17,000 women are trafficked into Finland, fewer than 400 are trafficked into Sweden.⁵² A number of other countries have adopted Sweden's approach, including Norway and Iceland.⁵³

Critics have suggested that Sweden's approach of criminalizing demand leads to an underground prostitution industry, making prostituted people more vulnerable to violence and giving them less recourse to law enforcement protection. In fact, the underground sex industry flourishes in countries in which the sale and purchase of sex is legal. For example, in the ten years between 1994, when Victoria, Australia first legalized the operation of brothels, and 2004, the number of licensed "sexual services providers" increased from 40 to 184; significantly, these figures do not include the growth in illegal prostitution, estimated to be four to five times the size of the regulated sector.⁵⁴ Australian police sources estimated that as of 2003 there were a minimum of 400 illegal brothels throughout Victoria.⁵⁵

The experience of Sweden in decriminalizing the sale of sex and the contrasting experience of nations that have decriminalized the purchase as well as the sale create a road map for the kind of protection and prevention required by international law.

The Role of Grassroots Organizations

National and community-based non-governmental grassroots organizations that work with trafficking victims and promote legislative and policy changes are key players in assessing the realities and complexities of human trafficking and in developing strategies to end it. They often have a sophisticated understanding of the needs of victims and of trafficking patterns within their countries or regions. Their knowledge and resources are invaluable to law enforcement and government policy makers. In addition, these organizations are generally prepared to undertake campaigns to raise public awareness and to urge governments and international bodies to address human trafficking.

Although grassroots organizations can be valuable partners in helping countries meet their obligations under international law, they are often isolated from the rest of the anti-trafficking movement, and the lack adequate funding and resources is a perennial problem. They require sustained support from the international advocacy community to participate to the fullest extent possible in the global efforts to end human trafficking.⁵⁶

Conclusion

Buying and selling human beings should be a crime of the past, yet all reports indicate that human trafficking will grow exponentially before nations have adequate systems in place to address this human rights violation. International law is a valuable tool in the effort to end human trafficking, useful not only to international diplomats and law enforcement but also to policy makers and criminal and social justice advocates working at federal, state, and local levels. By establishing universal standards of international application and force, international law can guide and shape the development and implementation of national, state, and local legislative and public policy efforts. During the campaign that led to the enactment of New York State's pioneering anti-trafficking law, for example, the Trafficking Protocol was cited

in the successful effort to increase penalties for prostitution buyers and protections for victims.

Eleanor Roosevelt, the architect of the Universal Declaration of Human Rights, said that it is better to light a candle than curse the darkness. Using international law to combat human trafficking in national, state, and local legal frameworks is just one of those candles we must now set on fire to protect millions of human beings trapped in unimaginable suffering.

Notes

1. Universal Declaration of Human Rights, art. 1, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948), <http://www.un.org/en/documents/udhr/>.
2. *Id.* at art. 2.
3. *Id.* at art. 3.
4. *Id.* at art. 4.
5. International Labour Office, *Eradication of Forced Labour* (2007), at 4 (http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_089199.pdf, *last viewed* Sept. 1, 2010) (*hereinafter* ILO Report 2007); David Weissbrodt and Anti-Slavery International, Office of the United Nations High Commissioner for Human Rights, “Abolishing Slavery and its Contemporary Forms,” (2002), at 3 (<http://www.ohchr.org/Documents/Publications/slaveryen.pdf>, *last viewed* Sept. 1, 2010) (*hereinafter* “Abolishing Slavery”).
6. ILO Report 2007, *supra* note 5, at 5-6.
7. *Abolishing Slavery*, *supra* note 5, at 4-7.
8. International Agreement for the Suppression of the “White Slave Traffic,” *adopted* May 18, 1904, 3 Stat 1979, 1 LNTS 83 (*hereinafter* 1904 White Slave Traffic Agreement); International Convention for the Suppression of the “White Slave Traffic,” May 4, 1910, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20.
9. 1904 White Slave Traffic Agreement, *supra* note 8, at introductory paragraph. The federal Mann Act (18 U.S.C.A. § 2421 *et seq.*) is also known as the White Slave Traffic Act. It is a federal criminal statute that criminalizes pimping and child pornography.
10. International Convention for the Suppression of the Traffic in Women of Full Age, *adopted* Oct. 11, 1933, 150 LNTS at art. 1.
11. *See, e.g.*, The International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on Oct. 20, 1947.
12. 1949 Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others, preamble, *adopted* Dec. 2, 1949, G.A. Res. 317(IV), U.N. Doc. A/RES/317 (1949) (*hereinafter* 1949 Convention).

13. *Id.* at art. 1 (2). The 1949 Convention calls for the punishment of “any person who, to gratify the passions of another: (1) procures, entices, or leads away, for purpose of prostitution, another person, even with the consent of that person; (2) exploits the prostitution of another person, even with the consent of that person.”
14. *Id.* at art. 16.
15. Convention on the Elimination of All Forms of Discrimination against Women, art. 6, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46 (1979) (<http://www2.ohchr.org/english/law/cedaw.htm>, *last viewed* Aug. 27, 2010) (*hereinafter* CEDAW).
16. While the United States signed CEDAW on July 17, 1980, it has yet to ratify it. Six countries besides the United States have not ratified CEDAW. They are Iran, Somalia, Sudan, and the three South Pacific nations of Nauru, Palau, and Tonga. *See* <http://www.cedaw2010.org/index.php/about-cedaw/cedaw-by-the-numbers>, *last viewed* Aug. 27, 2010.
17. CEDAW, *supra* note 15, at art. 6.
18. Beijing Declaration and Platform for Action, Fourth World Conference on Women, Sept. 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995). Art. 130(b), (d), and (e) of the Declaration focus on rehabilitation, suggesting the implementation of comprehensive programs to help trafficking victims rebuild their lives, including providing health care programs and educational training.
19. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *adopted* Nov. 15, 2000, G.A. Res. 55/25, U.N. GAOR 55th Sess. UN Doc A/RES/ 55/383 (2000) (*entered into force* Dec. 25, 2003) (*hereinafter* Trafficking Protocol). The Trafficking Protocol has 117 signatories and 133 States are party to the protocol. *See* <http://www2.ohchr.org/english/law/protocoltraff.htm>.
20. Trafficking Protocol, *supra* note 19, at art. 3(a).
21. *Id.*
22. *Id.*
23. *Id.* at art. 3(b).
24. United Nations Office on Drugs and Crime (UNODC), *Toolkit to Combat Trafficking in Persons 2006, XV* (2006), <http://www.unodc.org/documents/human-trafficking/HT-toolkit-en.pdf>.

25. Trafficking Protocol, *supra* note 19, at art. 3(c) and (d).
26. “The Making of a Girl” is the product of Gems Educational and Mentoring Services (GEMS). See <http://www.gems-girls.org/why>. GEMS is the largest organization in the United States that serves girls and young women who have experienced sexual exploitation and domestic trafficking, empowering them to exit the commercial sex industry.
27. Trafficking Protocol, *supra* note 19, at art. 6(1) and (2).
28. *Id.* at art. 6(3).
29. *Id.* at art. 7 and 8.
30. *Id.* at art. 9(2).
31. *Id.* at art. 9(4).
32. *Id.* at art. 9(5).
33. *Id.*
34. The Victims of Trafficking and Violence Protection Act of 2000 (106 P.L. 386) (*hereinafter* TVPA), the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311).
35. TVPA, *supra* note 34, at § 103(8), 106 P.L. 386.
36. Trafficking Protocol, *supra* note 19, at art. 3(a).
37. TVPA, as amended, *supra* note 34, §§ 112, 1590,
38. U.S. Dept. of Justice (DOJ), “Leader of New York-Connecticut Sex-Trafficking Ring Pleads Guilty” (March 14, 2008), http://www.usdoj.gov/opa/pr/2008/March/08_crt_208.html.
39. U.S. DOJ, “Six Indicted in Conspiracy for Trafficking and Holding Migrant Workers in Conditions of Forced Labor in Western New York” (June 19, 2002), http://www.usdoj.gov/opa/pr/2002/June/02_crt_360.htm.
40. U.S. Immigration and Customs Enforcement, “Mexican Woman Pleads Guilty to Sex Trafficking; Admits Role in Family Organization that Forced Young Women into Sexual Slavery in New York” (July 22, 2008), <http://www.ice.gov/pi/nr/0807/080722brooklyn.htm>.
41. U.S. DOJ, Civil Rights Division, Anti-Trafficking News Bulletin (August 2006), http://www.usdoj.gov/crt/crim/trafficking_newsletter/aug_06.php.

42. *E.g.*, The Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), § 201(a); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311), § 106(2)(D); and TVPA, *supra* note 34, at § 106(b).
43. TVPA, *supra* note 34, at § 107.
44. *Id.* at §§ 107(b)(1)(A) and 107(f)(1).
45. *Id.* at § 107(b)(1)(E)(i)(I).
46. For a general discussion of sex trafficking of women from countries of the former Soviet Union to Western Europe *see* Donna M. Hughes, “The ‘Natasha’ Trade: The Transnational Shadow Market of Trafficking in Women,” *Journal of International Affairs*, vol. 53, no. 2 (Spring 2000), http://www.prostitutionresearch.com/pdfs/natasha_trade.pdf.
47. Government Offices of Sweden, “Legislation on the purchase of sexual services,” <http://www.sweden.gov.se/sb/d/4096/a/119861>, *last viewed* Nov. 16, 2010.
48. Address by Margareta Winberg, Swedish Deputy Prime Minister, Third Joint Seminar of the Nordic and Baltic Countries against Trafficking in Women, “Action for the Future,” Riga, Latvia (Nov. 28, 2002), <http://www.sweden.gov.se/sb/d/1105/a/6848>.
49. Statement by Kajsa Wahlberg, Swedish National Rapporteur on Trafficking in Human Beings, Conference on “Preventing and Combating Trafficking in Human Beings and Reducing Prostitution and Sexual Exploitation,” Plzen, The Czech Republic (June 3, 2009).
50. *Id.*
51. *Id.*
52. Julie Bindel and Liz Kelly, “A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden,” London Metropolitan University (2003), at 25, <http://www.glasgow.gov.uk/NR/rdonlyres/C19E010B-1A4F-4918-97BD-F96AF7D7F150/0/mainreport.pdf>.
53. Norwegian General Civil Penal Code § 202a; Iceland Penal Code, Chapter XXII, § 206.

54. Mary Sullivan, "What Happens When Prostitution Becomes Work? An Update on Legalization of Prostitution in Australia," Coalition Against Trafficking in Women, 4 (2005), http://action.web.ca/home/catw/attach/Sullivan_proof_01.pdf.
55. *Id.* at 13, citing M. Rose, "Illegal Brothels Rife in Residential Areas," *Herald Sun*, Melbourne, Australia (Aug. 18, 2003).
56. In 2007, Equality Now established the Fund for Grassroots Activism to End Sex Trafficking, which offers grassroots organizations an international forum for coordination, cooperation, and advocacy. *See* http://www.equalitynow.org/english/campaigns/sextourism-trafficking/traffickingfund_en.html.

Understanding Sex and Labor Trafficking



The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation

by Amy Barasch and Barbara C. Krysko¹

Human trafficking, like domestic violence, is not a new form of abuse. In fact, five international conventions addressing trafficking for the purpose of sexual exploitation were signed in the first half of the twentieth century alone.² In recent years human trafficking has been increasingly recognized and addressed as a form of gender-based violence, particularly by advocates assisting victims of similar forms of abuse such as domestic violence.

Victims of domestic violence and victims trafficked for commercial sexual exploitation both experience physical and sexual violence as well as psychological harm and trauma, and they need similar services to escape and build new lives.³ Indeed, there is an overlap in the population of domestic violence and sex trafficking victims in cases in which the batterer and the trafficker are one and the same person. Given the common elements of domestic violence and trafficking for purposes of sexual exploitation, domestic violence service providers are well-situated to help identify and assist victims of human trafficking. Moreover, professionals and advocates from both fields would benefit from strengthening their collaborations, so that they can provide the most responsive and holistic approach to serving these victims and eradicating both domestic violence and human trafficking.

Victims of Sex Trafficking and Domestic Violence Suffer Similar Abuse and Harm

Like victims of domestic violence, victims of trafficking for commercial sexual exploitation suffer tremendous physical and emotional harm. Research on prostitution, the most common form of commercial sexual exploitation experienced by both international and domestic trafficking victims, reveals extensive violence

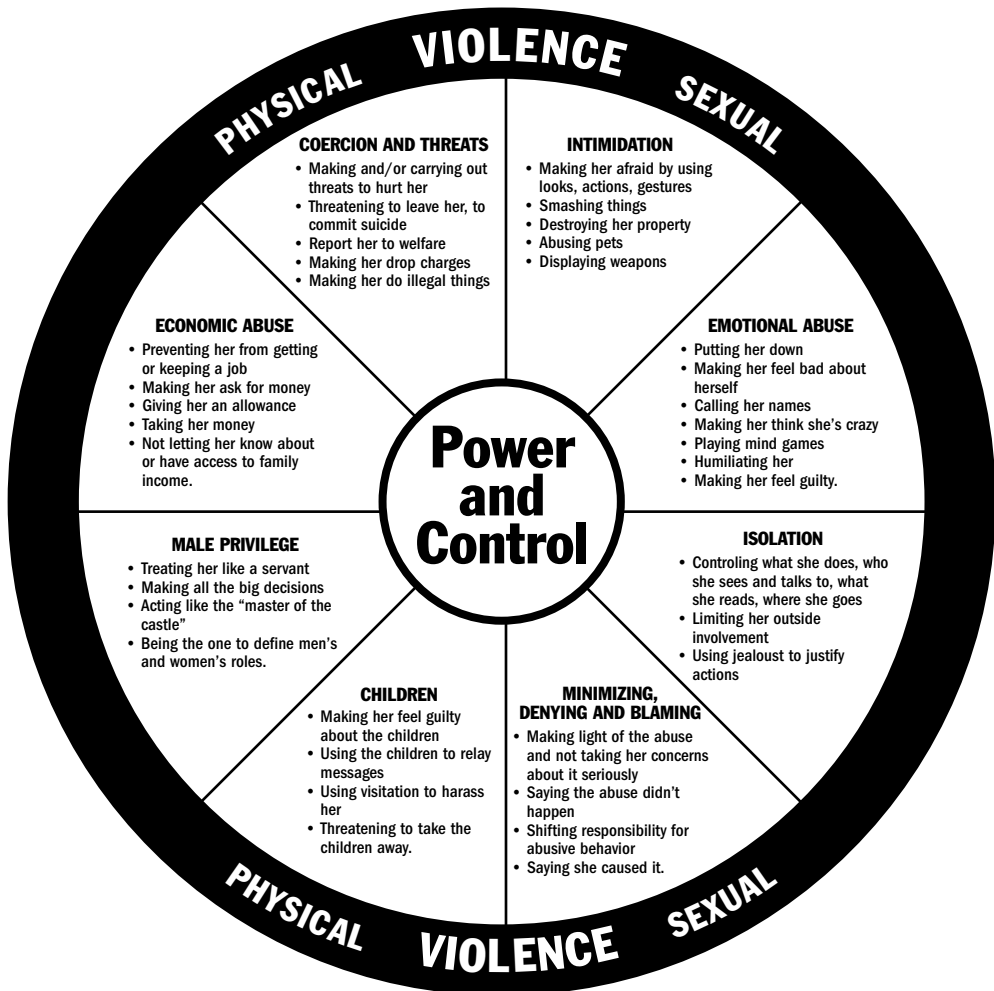
that results in both physical and psychological harm. A nine-country assessment of prostitution concluded that 73% of persons engaged in prostitution were physically assaulted, 89% wanted to escape, 63% were raped, and 68% met the criteria for post-traumatic stress disorder.⁴ In a study of domestic sex trafficking victims in Chicago, women and girls reported increasing violence by their pimps over time.⁵ For instance, 71% experienced slapping, and almost half were subjected to punching or forced sex.⁶ A study of women trafficked for prostitution into Europe found that 95% of victims had been violently assaulted or coerced into a sexual act, and over 60% of victims reported gastrointestinal problems, back pain, and gynecological infections.⁷ A United States study revealed that 85% of international trafficking victims and 86% of domestic trafficking victims suffered from depression.⁸ Additional psychological consequences found to be common among prostituted women include dissociative and personality disorders and anxiety.⁹ Not infrequently, trafficking victims experience traumatic bonding with their exploiters, a reaction also experienced by hostage victims, that leads victims to view their exploiters as protectors when the perpetrator instills fear of death in the victim but also feels gratitude for being allowed to live. In short, studies reveal that the “Pretty Woman” image of an independent and healthy woman in prostitution is a rarity.¹⁰

Professionals in the field of domestic violence will find these descriptions of the harm suffered by sex trafficking victims all too familiar. Domestic violence victims suffer from a similar litany of harms. Domestic violence, in addition to causing physical injuries, also results in emotional damage, including destruction of victims’ ability to trust others, high levels of post-traumatic stress, increased depression, and suicidal ideations.¹¹

Traffickers and Perpetrators of Domestic Violence Use Similar Tactics of Power and Control Over Their Victims

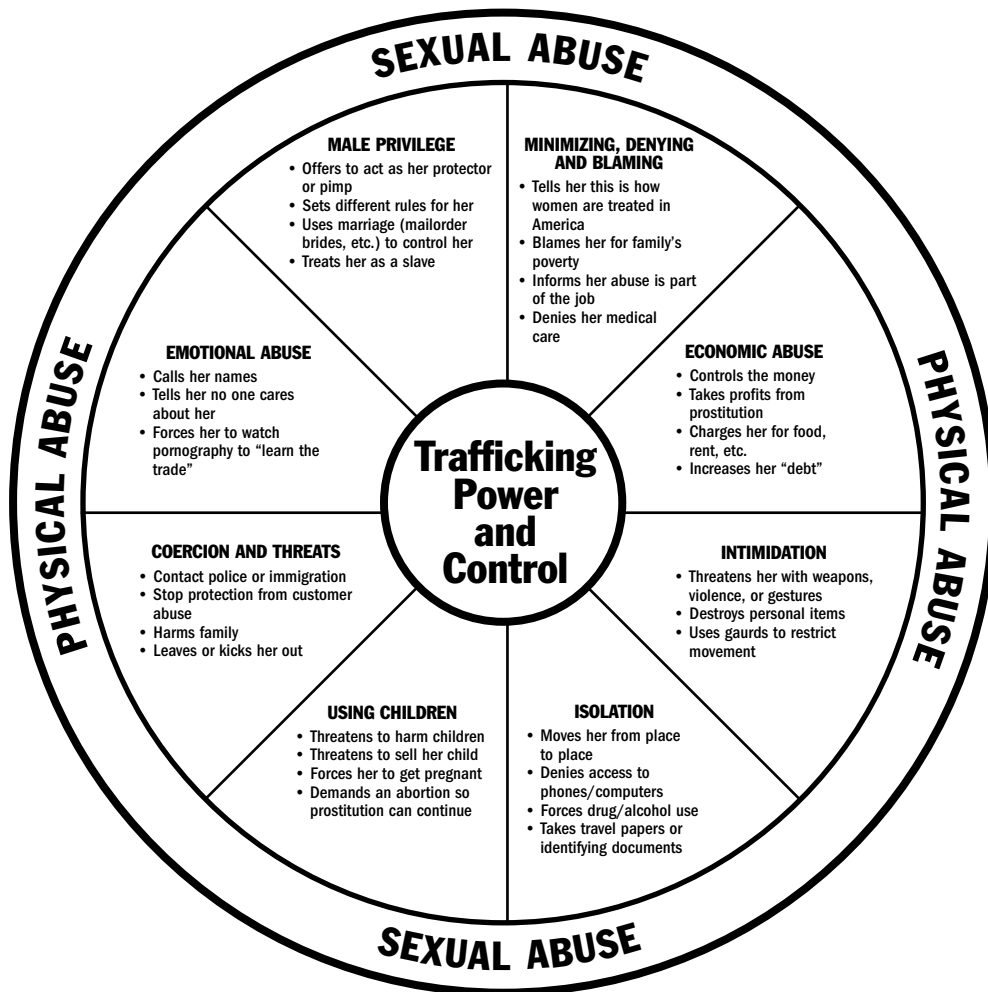
While abusive relationships, whether part of domestic abuse or trafficking, are often punctuated by physical and sexual violence, effective tactics of domination go beyond overt abuse to a variety of other subtle but devastating methods. Abusive relationships are characterized by the perpetrators exercising patterns of extensive and comprehensive power and control over victims.

In the field of domestic violence, the Power and Control Wheel has been used by advocates worldwide to describe the most frequently used tactics of batterers.¹² The original Power and Control Wheel identifies eight areas used by



batterers to maintain control over their partners: male privilege; coercion and threats; intimidation; emotional abuse; isolation; minimizing, denying, and blaming; using children; and economic abuse. The Power and Control Wheel has been adapted to describe the tactics used by traffickers,¹³ and all eight categories are included in the Trafficking Power and Control Wheel as well.

While the tactics of batterers and traffickers are similar, the power and control used over trafficking victims are often more extreme. Traffickers aim to break victims' identities so that they will not only submit to all their demands



but also to the demands of the countless men who will buy the victims for sex and turn this continuous abuse into a lucrative profit.¹⁴ While batterers may isolate victims by limiting or prohibiting victims from contact with friends or family, traffickers often go further by moving victims from one location to another, ensuring that their surroundings are unfamiliar and that they have no connections in a community where they might seek help. Since prostituted women are routinely viewed and treated as criminals, traffickers can capitalize on victims' fears of arrest or deportation to keep them from finding any assistance. Cultural

hostility toward prostituted and trafficked women reinforces their marginalization in society, rendering them even more vulnerable to exploitation, a fact traffickers know and use to their advantage.

Victims of Sex Trafficking Often Are Also Victims of Domestic Violence

In many cases, perpetrators of trafficking are also boyfriends or husbands of their victims, exacerbating the power dynamics and making disclosure of the trafficking and escape from the trafficker that much more difficult. In these cases, women are simultaneously victims of domestic violence and trafficking. One study found that 44% of victims of domestic sex trafficking indicated that their pimp was their boyfriend, while another 20% said the pimp was “my man.”¹⁵ Pimps, one common type of trafficker, prey on vulnerable girls, often from dysfunctional families, offering them — or so it seems at first — a safe place to stay and romance. Pimps waste no time making their victims reliant on them for shelter and economic support as well as for emotional connection, which enables them to turn their victims out into prostitution.

International sex trafficking cases frequently feature traffickers who are also boyfriends or husbands from the victim’s home country. Again, perpetrators often initially establish the victim’s trust and then either pressure or coerce them into prostitution or deliver them to their next exploiter, who will turn them out into prostitution.

Victims of Sex Trafficking and Domestic Violence Are Victims of Similar Crimes

To control their partners, domestic violence perpetrators and traffickers alike may commit assault,¹⁶ menacing,¹⁷ kidnapping,¹⁸ coercion,¹⁹ stalking,²⁰ rape and sexual abuse,²¹ and harassment.²² Both batterers and traffickers have been known to facilitate their victims’ dependence on alcohol and drugs as a tactic of control.

Survivors of Sex Trafficking, like Domestic Violence Survivors, Need Comprehensive Social and Legal Services

The need for services, both social and legal, are similar for survivors of domestic violence and sex trafficking. Much like victims of domestic violence, trafficking victims often face misinformation about their status as crime victims. Often they blame themselves for not escaping the abuse sooner, and they too have urgent safety concerns. Thus, the skills offered by domestic violence advocates are particularly appropriate in addressing the needs of trafficking victims. Rape crisis centers also often have much to offer both sets of victims.

Trafficking victims, however, may need more intensive services than victims of intimate partner violence alone. Sex trafficking victims have been abused not only by their traffickers but also by buyers of prostitution. Trafficking victims frequently experience the acts of prostitution they were compelled to perform as violations or rapes.²³ The mental health needs of trafficking victims are frequently akin to those necessary for victims of torture. Further, trafficking victims frequently have been extremely isolated, far more so even than most victims of domestic violence. Sex trafficking victims are stigmatized by participation in the sex industry and in criminal activities, severely limiting their contact within their community. While victims of intimate partner violence frequently suffer from feelings of humiliation and shame, these emotions can be even more intense for victims subjected to prostitution and stigmatized as “whores.” International sex trafficking victims not only face the language and cultural barriers foreign-born domestic violence victims encounter, but they are unlikely to have any family or community support in the United States.

Often trafficking victims, like domestic violence victims, have urgent needs that must be addressed, and confidentiality must be ensured in all service provision. The list of needs is familiar to those who have provided services for domestic violence survivors. Safe housing is essential, from safe emergency housing to transitional housing with supportive services to permanent affordable housing. Medical care, including HIV testing, as well as appropriate mental health services are also of critical importance. Some victims may also need programs to address dependence on alcohol or drugs. Safety planning is another necessity and may be particularly complex if the victim’s trafficker is part of an organized crime network or otherwise well-connected in the community, or if the victim is traumatically bonded with her abuser. Safety planning may also be complex because the victim’s family members — including those abroad — may face danger from the trafficker.

Trafficking victims, like domestic violence victims, may need help navigating the legal system. When traffickers are prosecuted, victims may require assistance interacting with the criminal justice system, which could include local or state police officers, FBI agents, representatives from immigration services, or local, state, or federal prosecutors. Some victims may be defendants themselves, and coordination and advocacy with their criminal defense attorney are essential. Sex trafficking victims who are undocumented in the United States will need referrals to immigration lawyers with experience in the specific remedies available to victims of trafficking and gender-based violence. Also, if the victim's trafficker was a family member, spouse, or intimate partner, consideration of a civil order of protection designed to protect victims of domestic violence may be appropriate; in these cases, the victim should be referred to an experienced and sensitive family law attorney.

Indeed, trafficking victims are seeking and receiving services in New York's domestic violence programs every day, whether providers know it or not. A sex trafficking victim may enter a domestic violence shelter and relate her story of physical violence at the hands of her boyfriend and only later tell counselors or lawyers that her boyfriend was her pimp or that she met her husband in a strip club or a brothel, where he was a buyer. Some victims of sex trafficking turn to domestic violence shelters because they are the only emergency shelters available or because they can provide the best services.

Domestic Violence Professionals Can Help Reach and Advocate for Sex Trafficking Victims

Domestic violence advocates have a head start in helping victims of sex trafficking. For over four decades, they have worked to create an environment in which abusive behavior by an intimate partner is not accepted or tolerated. Although anti-domestic violence proponents have been active since the late 1880s, it was not until the early 1970s that the movement gathered speed. Beginning with the first domestic violence shelter in Pasadena, California,²⁴ advocates have spent the last forty years developing methods for reaching victims of domestic violence, providing them with social and residential services, advocating for them in court, and gaining access to community resources. The movement has also changed the way society views domestic violence — and victims of domestic violence — by tackling head-on the related stereotypes and stigma. Due to the fortitude of survivors and advocates in the field, in the years

since the first shelter was founded, states have passed strong anti-domestic violence laws and the federal government has enacted comprehensive legislation prohibiting interstate travel to commit certain acts of domestic violence, establishing full faith and credit for the enforcement of protective orders,²⁵ and providing federal funding for domestic violence programs and services.²⁶

Domestic violence providers and allies in other criminal justice and social service agencies are uniquely positioned to extend their missions to include assisting trafficking victims. Providers who currently screen for domestic violence in the course of their practice can update their intake protocols to identify for trafficking as well. They can apply the same sensitivity to interviewing, developing trust relationships, and selecting appropriate language to their work with possible trafficking victims. Much of the trauma, experience, and service needs observed in this population will be familiar to domestic violence and sexual assault providers.

Further, domestic violence advocates have experience in educating communities about the importance of holding perpetrators accountable. The number of investigations, arrests, and prosecutions is small, and effort should be expended on criminal cases against traffickers. It is vital that the role of the demand be understood by all of the significant players involved and that buyers of sex also be held accountable.

Conclusion

Advocates in the domestic violence field are in a prime position to assist victims of sex trafficking, in large part, due to trafficking's close relationship with domestic violence and the parallels in both the harm suffered by its victims and the tactics used by its perpetrators. Domestic violence victim advocates and all of the professionals who assist domestic violence victims in the legal, health care, public assistance, and related fields are trained to identify victims who are hesitant to name their abusers and discuss their abuse, who fear deportation, and who face a wide array of obstacles to leaving abusive relationships. Thus, it is critical that domestic violence victim service providers be educated about the dynamics of trafficking, the resources available to trafficking victims, and the critical role domestic violence victim advocates can play in providing safety and assistance to this closely related group of victims of gender-based violence.

Notes

1. The authors would like to thank Rose Garrity, Executive Director of New Hope Center, Renan Salgado, outreach paralegal at Farmworker Legal Services, and Amy Fleishchauer at the International Institute in Buffalo, N.Y. for their insights and their anecdotes about N.Y.S trafficking cases. The authors would also like to thank Samantha Howell, Albany Law School student of the Class of 2010, for her assistance.
2. International Agreement for the Suppression of the “White Slave Traffic” (1904), International Convention for the Suppression of the White Slave Traffic (1910), International Convention for the Suppression of the Traffic in Women and Children (1921), International Convention for the Suppression of the Traffic in Women of Full Age (1933), and Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950).
3. Although this article does not explicitly address labor trafficking, it should be noted that it is extremely common as well. Victims of labor trafficking experience many of the same challenges of overcoming fear and trauma, and they too require access to comprehensive services. Moreover, given the numerous victims of labor trafficking have been sexually abused by their traffickers, screening for such abuse is essential to address all of a victim’s needs.
4. Melissa Farley, *et al.*, “Prostitution and Trafficking in Nine Countries,” *Journal of Trauma Practice*, Vol. 2, No. 4, at 33-74 (Jan. 2004).
5. Jody Raphael and Jessica Ashley, *Domestic Sex Trafficking of Chicago Women and Girls*, DePaul University School of Law and Illinois Criminal Justice Information Authority, at 34 (May 2008), <http://www.depaul.edu/newsroom/sextraffickingstudy0508.pdf>, last viewed Dec. 1, 2009 (*hereinafter* Raphael, *Domestic Sex Trafficking of Chicago Women and Girls*).
6. *Id.*
7. Cathy Zimmerman, *et al.*, *Stolen Smiles: A Summary Report on the Physical and Psychological Consequences of Women and Adolescents Trafficked in Europe*, London School of Hygiene and Tropical Medicine (2006).

8. Janice G. Raymond and Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends*, Coalition Against Trafficking in Women, at 83 (Mar. 2001), http://action.web.ca/home/catw/attach/sex_traff_us.pdf, last viewed Dec. 11, 2009.
9. Janice G. Raymond, "Health Effects of Prostitution," in *Making the Harm Visible* (Feb. 2009), <http://www.uri.edu/artsci/wms/hughes/mhvhealt.htm>, last viewed July 10, 2009.
10. Rochelle L. Dalla, "Exposing the 'Pretty Woman' Myth: A Qualitative Examination of the Lives of Female Streetwalking Prostitutes," *Journal of Sex Research* (Nov. 2000).
11. *Understanding Intimate Partner Violence*, Centers for Disease Control, <http://www.cdc.gov/ViolencePrevention/pdf/IPV-FactSheet.pdf>, last viewed July 10, 2009.
12. The Power and Control Wheel was created over 25 years ago by the Domestic Abuse Intervention Project in Duluth, Minnesota after an analysis of the most common tactics employed by batterers. Domestic Abuse Intervention Programs, "Wheel Gallery," <http://www.theduluthmodel.org/wheelgallery.php>, last viewed Dec. 1, 2009.
13. This wheel has been adapted from the Trafficking Power and Control Wheel produced by the Wisconsin Coalition Against Domestic Violence.
14. While this article focuses on the violence perpetrated by traffickers, it is important to note that violence by prostitution-buyers, the so-called customers or johns, is also very common. One study of prostituted women in Chicago, for instance, found that "Customers/tricks were the most frequently identified perpetrators of violence across all types of prostitution (including street-level and exotic dancing)." Jody Raphael and Deborah L. Shapiro, *Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago*, Center for Impact Research, at 19 (Aug. 2002). For further insight on buyers and their views on prostituted women, see Rachel Durchslag and Samir Goswami, *Deconstructing The Demand for Prostitution: Preliminary Insights From Interviews With Chicago Men Who Purchase Sex*, Chicago Alliance Against Sexual Exploitation (May 2008), available at <http://www.caase.org/pdf/resources-research/1.pdf>.
15. Raphael, *Domestic Sex Trafficking of Chicago Women and Girls*, *supra* note 5, at 25.

16. N.Y. Penal Law, §§ 120.00-120.12 refer to types of assault. However, only a few sections are commonly associated with domestic violence: §§ 120.00, 120.02, 120.03, 120.04, 120.05, and 120.10.
17. N.Y. Penal Law §§ 120.13-120.15.
18. N.Y. Penal Law §§ 135.00, 135.05, and 135.10 refer to unlawful imprisonment and §§ 135.20 and 135.25 refer to kidnapping.
19. N.Y. Penal Law §§ 135.60 and 135.65.
20. N.Y. Penal Law §§ 120.45, 120.50, 120.55, and 120.60.
21. N.Y. Penal Law Article 130.
22. N.Y. Penal Law §§ 240.25, 240.26, 240.30, and 240.31.
23. Melissa Farley *et al*, “Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder,” in *Prostitution, Trafficking and Traumatic Stress*, Melissa Farley, Ed. (2003).
24. Evan Stark, *Coercive Control*, at 25 (2007). The first recognized domestic violence shelter was founded in 1968 by an Alcoholics Anonymous chapter, and was used for the abused wives of recovering alcoholics. *Id*.
25. Violence Against Women Act, 18 U.S.C. §§ 2261-66.
26. Violence Against Women Act, enacted in 1994 as Title IV of the Violent Crime Control and Law Enforcement Act (P.L. 103-322), included grant programs and has been reauthorized in subsequent legislation.

Sex Trafficking and Labor Trafficking: Overlap and Convergence

by Lori L. Cohen¹

Both the New York State law² and the federal statute³ that criminalize trafficking and provide benefits to victims categorize the offenses as either “sex trafficking” or “labor trafficking.” These classifications reflect international norms developed over a period of years. The Palermo Protocol (or, more formally, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children), which formulated the standard, refers to trafficking as both labor and sexual exploitation.⁴ Benchmarks on trafficking levels typically provide separate sex and labor trafficking statistics.

For practitioners representing immigrant female⁵ trafficking victims, however, these neatly delineated distinctions can obscure rather than illuminate the nature of the abuse. Regardless of the classification, women and girls, who comprise the vast majority of victims,⁶ are overwhelmingly subject to sexual harassment and abuse, ranging from threats to tell the victim’s family that she is a prostitute to gang rape. For many who are labeled victims of labor trafficking, the sexual assault suffered at the hands of their traffickers far outweighs other abuses. And yet, under the current federal and state statutory schemes, sexual exploitation of the trafficking victims is insufficient to qualify them as victims of sex trafficking. Both federal⁷ and state law⁸ require that the sex be commercial in nature. These distinctions between labor and sex trafficking carry over into immigration law, creating obstacles for trafficking victims seeking to regularize their status and establish eligibility for badly-needed services.

The following two scenarios, based upon the experiences of clients represented by the author in their immigration applications, illustrate the challenges created under the current classifications.⁹ The clients were candidates for T nonimmigrant status (popularly called “T visas”), an immigration remedy created specifically for trafficking victims. For their applications to succeed, the women would have to show that they were either victims of sex trafficking, with its requirement of commercial sexual activity, or victims of labor trafficking.

Olga: The Internet Bride

Olga, a 20 year-old Ukrainian woman, had studied English in the hopes of working in international business or tourism. With the collapse of Ukraine's economy, however, Olga's dreams dissolved, and her family fell into crushing debt. Olga heard that wealthy American men were seeking young Ukrainian women as brides and that a matchmaking service in Kiev would help her to find a groom who would provide a stable, secure future for her and her parents. Olga signed on with the service and, because of her ability to speak some English, quickly found an eligible American suitor. After a courtship of six weeks, the "boyfriend," who was fifty years old, visited Olga in her village and promised to make a home, have children, and raise a family with her. He also asked Olga's parents for permission to marry her, describing the educational and economic opportunities he would make possible for her as his bride. Thrilled that an American man would provide for their daughter, and swayed by his additional promises to pay off their debts as a dowry, the parents consented, and Olga traveled on a fiancée visa (known as a "K visa")¹⁰ to New York, where her husband-to-be resided.

Once ensconced in her fiancé's suburban Westchester home, however, Olga found that his plans were vastly different from those described to her parents. Rather than prepare for their wedding, Olga's "groom-to-be" confiscated her cell phone and passport and refused to allow her to leave the home unless he accompanied her. Propelled by a steady diet of Viagra and pornography, he raped her daily and beat her when she resisted him. Realizing that her "fiancé" had no intention of marrying her, Olga ran away and found refuge in a homeless shelter for women. Ashamed that she had been abused and afraid that she would no longer qualify for the fiancé visa because she had left her husband-to-be, Olga never reported the rapes to the police or to the shelter caseworkers. After exhausting the time limits for the homeless shelter, Olga visited a domestic violence center, where she was questioned about, and tearfully revealed, the abuse.

Marta and the Smuggling/Trafficking Crossover

Marta suffered years of violence at the hands of her common-law husband in Medellín, Colombia. Having grown up witnessing the abuse of her mother, Marta felt powerless to escape, particularly after the births of her own three

children. Although Marta tried to seek protection from the Colombian police, they ignored her pleas for help, instead counseling her to try harder to please her husband. Returning home drunk one evening, Marta's husband beat her so ferociously that he broke her jaw. While he slept, she fled with her children to a cousin's home. When her jaw healed, her cousin helped Marta find a coyote to transport her to the United States, where Marta hoped to earn enough money to support her children, who remained behind.

Based upon what was known in their community, Marta's relatives believed that the coyote would provide for safe transit, and they paid the agreed upon \$6,000 smuggling fee in advance. In reality, however, the coyote belonged to a ring that brutally abused its victims in transit. The smugglers transported Marta and two other women to Guatemala and then to Mexico, where they were joined by a larger group of fifteen other men and women from South and Central America. Crossing the border into the United States one frigid evening, the group was herded into minivans near Douglas, Arizona, where they were spirited away to a drop house on the outskirts of Flagstaff.

Marta had known that the journey north would be difficult, but she was prepared to endure the perilous travel in the hopes of securing a safe future for herself and her family. To her shock, however, the coyotes refused to release her upon her arrival to the United States. Despite receiving payment in full, the coyotes now insisted that the price was \$9,000 and that Marta owed a balance of \$3,000. Marta explained that she had no savings of her own, as her husband had controlled their finances, and that her cousins had pooled all their savings to send her north in the hopes that she would earn enough to repay them. Her explanation fell on deaf ears, however, and the smugglers insisted that until she repaid her "debt" she would remain in the drop house. This held true for all 20 victims smuggled north.

While held captive, Marta and the other female hostages were gang-raped repeatedly by the traffickers, who carried machetes and guns and who threatened to kill them if they resisted or tried to escape. If a victim's family managed to pay the remaining ransom, that victim was freed. Once, the traffickers brought back the bloodied shirt of a victim whom they claimed they had decapitated after he had tried to flee without paying. Marta was convinced that, unable to repay her "debt," she would suffer a similar fate. After being held hostage for five weeks, however, Marta was unexpectedly rescued by the Flagstaff police following a complaint from a neighbor about unusually heavy traffic to and from the drop house. Marta was turned over to the federal immigration authorities, who placed her into removal proceedings and released her without bond. Rather than return

for her hearing, however, Marta fled to New York when she learned that the coyotes had been misidentified as victims and released. Marta contacted an immigrants' rights center for assistance after watching a story on Spanish language television about the widespread rape of women smuggled into the United States.

Remedies for Sexually Abused Immigrant Victims

Both of the women in these cases suffered severe sexual trauma, both fell victim to the abuse through the use of "force, fraud, or coercion" that underpin the statutory schemes, and both badly need the social service and immigration benefits available to trafficking victims that are available to immigrant victims of trafficking. A superficial analysis, however, might lead to the conclusion that neither victim is eligible for relief under the current statutory framework. Both the TVPA and the New York human trafficking law specify that to qualify as sex trafficking the abuse must be for commercial or financial gain.¹¹ Without a commercial element, exploitation for one's own personal benefit or to inflict terror is insufficient to support an application as a victim of sex trafficking.

How then, to assist immigrant victims, who are suffering from the very real trauma of sexual abuse? While neither of these two cases sits squarely in the boxes of "labor trafficking" or "sex trafficking," both categories might be used to assist these victims.

Developing a Claim for Labor Trafficking

Paradoxically, when women have been sexually exploited and no commercial gain is evident, a more pragmatic approach would be to seek benefits as a victim of "labor trafficking." Unlike the sex trafficking provisions, labor trafficking does not require the services performed be for commercial benefit.¹² A lawyer pursuing this kind of claim should analyze any services rendered by the victim to her traffickers. This seemingly straightforward analysis requires sensitivity to the victim, however. Having gained the trust of an individual who has been traumatized by sexual abuse, the practitioner must avoid appearing to downplay the significance of the sexual nature of her case. A victim who has been gang-raped will be perplexed by questions that focus on whether she was required to do housekeeping, not on the sexual abuse. It is important to explain to the client that, while the sexual abuse may be the most

egregious torture inflicted by the traffickers, one kind of visa for which she might be eligible requires forced “work.”

The strategies used to assist Olga and Marta may offer guidance about crafting a labor trafficking argument when the form of abuse is sexual.

Olga: The Internet Bride and Sexual Servitude

Olga’s victimization as an “internet bride” is far from an unusual phenomenon. While, theoretically, successful marriages may result from mail order or internet arrangements, the practice of matching young, frequently unsophisticated women with older, wealthier American men in search of a “traditional” bride is ripe for exploitation.¹³ Recognizing that this power differential created a recipe for sexual servitude, Congress implemented a series of measures, such as requiring that the couple meet in advance and limiting the number of times that a petitioning U.S. citizen (generally the groom) may file a fiancée application for a prospective bride.¹⁴ These protections, while admittedly curtailing some opportunities for a would-be trafficker of brides, still allow for abuses, particularly when the immigrant fiancée has limited education or financial means.

In meeting with her counsel, Olga understandably expressed anger and shame about the mistreatment she received. She felt betrayed and wanted to focus on the betrayal. Nonetheless, it is important to speak with someone in Olga’s position about any “work” that she performed for her fiancé. Did Olga cook meals while in captivity? Did she do laundry, iron shirts, clean the house? Was she required to perform these services during set working hours, and did she receive days off or breaks during the course of the workday? Under what circumstances was she permitted to leave the home, and, if so, was she required to engage in tasks such as grocery shopping? Was Olga compensated for her work, or was money “given” to her by the fiancé used to pay for food, household goods, or other items for the benefit of the fiancé?

As mundane as these chores may seem, Olga’s status is truly more analogous to an exploited servant rather than a jilted fiancée. Although a broken engagement can impose its own hardships, a U.S. citizen may choose to leave the lover who fails to marry her. In contrast, an immigrant who arrives in this country not knowing anyone other than her fiancé (and that acquaintance is perilously superficial), unable to communicate in English, unfamiliar with even the most basic details as to her whereabouts,¹⁵ penniless, and without travel documents or a return ticket home, is entirely dependent on the American citizen for survival. Moreover, the structure of the K visa ensures that the immigrant fiancé’s very right to remain legally in the United States depends entirely on the good will of her betrothed. When the American-born fiancé manipulates this power differential, tasks

that might otherwise be perceived as the ordinary responsibilities of household members should more properly be evaluated in a master-servant paradigm.

For Olga, the source of her trauma is rape, not housekeeping. Nevertheless, the client's trauma alone is insufficient to support a labor trafficking application, and any sex demanded (or rather, forcibly obtained) by the fiancé/employer should not be confused with "labor" provided by the victim. Unlike routine domestic work, where wages and working conditions can be negotiated and regulated to protect worker safety, there are no conditions under which "work" that involves the performance of a sex act would be legally permissible.¹⁶

How, then, to address the issue of sexual abuse in the context of an immigrant fiancé petition with an engagement gone horribly awry? The argument could be made that Olga was forced, defrauded, and coerced into a labor trafficking relationship and required to perform domestic work without compensation and that the rape, like the wage and hour violations, was an illegal condition within an employer-employee relationship. While this argument risks trivializing the nature of the offense, rape, in of itself, does not support a finding of trafficking. To assert a claim for relief under the federal and state trafficking provisions, a lawyer could characterize sexual assault as an abusive condition of employment that occurs in the course of other (nonsexual) labor and the violent means by which the trafficker controls his victim.

Marta and the Continuum from Smuggling to Trafficking

Like so many immigrants seeking a better future but lacking a visa, Marta paid smugglers a substantial fee to travel to the United States. Federal law makes clear that smuggling is not trafficking, and victims of "mere smuggling" are ineligible for immigration relief.¹⁷ At the same time, the opportunity for smugglers to exploit those who pay them to be brought across the border has led the government to recognize that, under certain circumstances, smuggling can devolve into trafficking. When, as here, the agreed price for entry has unexpectedly escalated, when "interest" is charged for outstanding monies due, when "repayment" of the debt takes the form of forced labor without any diminution in the balance owed, then smuggling has become trafficking.

Although Marta is seeking counseling and medical treatment for the gang rapes, unless the smugglers have been investigated, prosecuted, or convicted of rape or a related crime (thereby making Marta eligible for a U visa, a separate remedy outside the scope of this article), the repeated sexual abuse cannot alone form the basis for immigration relief. Instead, lawyers must look to the indicia of forced labor within the drop house. Commonly, immigrant women are forced to cook for the traffickers and the other victims, often preparing feasts for their

abusers while themselves subsisting on a single, daily meal of rice and beans. They may be required, at gunpoint, to clean a house occupied by twenty to thirty people, including the bathroom and kitchen, with little or no cleaning supplies. Should a fellow hostage fall ill, the women may be compelled to serve as nurses. In this context, the abuse inflicted by the traffickers, including the rapes, beatings, imprisonment, and threats to murder the victim's family in the event the "debt" is not repaid, transform the initial act of smuggling, for which trafficking benefits are unavailable, into the more serious crime of labor trafficking, for which immigration and other relief exists.

Developing a Claim for Sex Trafficking

While practitioners should carefully document labor abuses when commercial sexual exploitation is not immediately apparent, a deeper evaluation may support a sex trafficking claim. Commercial sex is commonly understood to mean prostitution, in which money changes hands between a john and either a middleman, such as a pimp or limo driver, or the victim herself. However, as new opportunities for sexual exploitation proliferate through internet technology, the understanding of the phrase "commercial sex" under the federal and state law should be re-examined. A review of Olga's and Marta's cases can elucidate some of the nuances in interpreting what constitutes "commercial sex."

Olga

When evaluating whether Olga's abuse could qualify as sex trafficking, a lawyer should not end the line of inquiry with her fiancé. The real trafficker may be the international marriage broker (known as "IMB"). While some IMBs may be legitimate enterprises, many are thinly disguised fronts for commercial sexual exploitation.¹⁸ A lawyer interviewing Olga should obtain as many details as possible about the nature of the organization where she had registered as a prospective bride. How was payment made to the agency? What promises, if any, did the broker make to her, or if she knows, to her fiancé? In some cases, if the client is able to provide the name of the agency, a quick search of the internet may reveal what representations it makes to American male clientele. If enough circumstantial evidence can be accumulated to show that an agency promised to introduce "sexy, beautiful, and eager" women to the fiancé in exchange for the payment of a fee and that the agency took no precautions to ensure that a legitimate marriage would occur, an argument could be made that the agency functioned as little more than a sex tourism entity, which places it squarely in the realm of commercial sex.

The presence of pornography may also substantiate the commercial element necessary for sex trafficking. An attorney should question the client about whether her fiancé or marriage broker photographed her. Having photographs taken, even nude photographs, may seem like an insignificant trespass compared to being repeatedly raped. However, pornography has moved to the internet, and sexual abusers have increasingly posted photographs of trafficking victims to john websites, either to advertise the availability of the victim or of other women. Fortunately, law enforcement has recognized online pornography and “adult services” advertisements as invaluable documentary evidence in the prosecution of trafficking cases in New York under both state and federal law.¹⁹

Marta

With increased immigration enforcement along the southern border, the price charged by coyotes has escalated.²⁰ The smuggling of immigrants has consequently evolved into an increasingly lucrative enterprise for organized crime rings, many with ties to other illegal enterprises, including sex trafficking.²¹ When an immigrant woman has been repeatedly gang raped by smugglers, law enforcement’s instinctive response might be, “that is unfortunate, but gang rape without paying clients is not sex trafficking.” However, within the dynamics of sex trafficking, gang rape can fall squarely within the realm of commercial sexual exploitation. A frequent technique used by traffickers is known as “seasoning.” Because a victim will most likely resist entering prostitution, traffickers commonly break down her resistance by repeated rapes. Through this process of systematic degradation, a victim is rendered more “compliant” and more likely to submit to the sexual abuse of multiple strangers in the course of a single evening. A closer questioning of Marta revealed that her traffickers had threatened to send her to a brothel should the debt not be repaid within the week, and Marta had an exact date upon which she was to be put into prostitution. That law enforcement rescued her before she “earned” a single dime in prostitution does not diminish the argument that the “seasoning” process Marta endured amounts to commercial sexual exploitation.

Conclusion

Although both the TVPA and the New York legislation offer the promise of help, including access to services and immigration relief, for victims of trafficking that promise may be elusive when the inflicted sexual abuse does not fall squarely

within conventional notions of pimping or prostitution. Addressing this challenge, practitioners have successfully asserted that sexual violations, taken in conjunction with domestic labor that might, under other circumstances, be considered ordinary chores for a household member, constitute abusive work conditions indicative of labor trafficking. While this approach reflects the current practice among attorneys experienced in representing victims such as internet brides or smuggling victims forced to pay additional ransom upon their arrival to the United States, it nevertheless has significant shortcomings. First, focusing on whether the victim was made to engage in tasks such as cooking, cleaning, or care-giving deflects attention from the substantially more serious human rights violation of rape and the ensuing physical and psychological harm suffered by the victim. Second, the tactic of emphasizing labor abuses at the expense of the sexual abuse only underscores the artificial distinction between sex and labor trafficking. For most female victims of trafficking, the labor and sexual violations are inseparable, and a more equitable approach would be adoption of a simpler standard for “human trafficking” without requiring the designation of subcategories.

As a practical matter, the modification of either state or federal law to reflect the realities suffered by female victims of trafficking is improbable for the immediate future. Although the federal law was passed one decade ago, its enforcement has proceeded at a glacial pace, with less than two hundred cases prosecuted nationwide. The state legislation, still in its infancy, has resulted in only a handful of prosecutions.²² Despite the volume of victims annually trafficked into the United States — currently estimated by the federal government to hover between 14,500 to 17,500 people — between 2000 and 2008, fewer than 1,400 victims have obtained T nonimmigrant status relief.²³ While the low number of cases prosecuted and relief obtained speaks volumes about the laws’ shortcomings, the conclusion that the laws should be substantially changed is likely to be dismissed as premature.

How then to develop an approach under the current legislative and regulatory scheme that acknowledges more fully the extent of abuse suffered? The practitioner should not simply stop after hearing initial allegations of abuse, but should dig deeper to determine whether an argument can be asserted that the sexual abuse suffered is commercial in nature. The attorney should refrain from applying a facile definition of “commercial sex,” involving the payment of money from a john to a prostituted person or middleman, but engage in a more expansive search for commercial elements that precipitated the sexual exploitation.

Of course, attorneys representing trafficking victims should certainly posit both labor and sex trafficking arguments as alternative claims for relief. It is the

author's hope, however, that asserting a claim for commercial sexual exploitation under circumstances that the government previously has been too quick to reject outright will not only garner immediate relief for the client, but will ultimately foment a reevaluation of the current federal and state law.

Notes

1. The author gratefully acknowledges the assistance of Daniela Krinshpun in the research of this article.
2. S.B. 5902, 230th Ann. Legis. Sess. (NY 2007).
3. Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. No. 106-386, Div. A (codified as amended at 22 USC § 7101 *et seq.* (2010)).
4. The “Palermo Protocol” was adopted by the United Nations at a meeting in Palermo, Italy in 2000. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, annex II, U.N. Doc. A/RES/55/25 (Nov. 15, 2000) (*hereinafter* Palermo Protocol). The United States ratified the Palermo Protocol, with some exceptions, in 2005. Status of Treaties: Ch. XVIII, 12.a. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, United Nations Treaty Collection (Nov. 15, 2000), *see* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en#EndDec.
5. The author does not wish to suggest that male victims escape sexual abuse. There has been increased awareness of the sexual exploitation of male victims but more research and attention to this subject is needed. The legal strategies described in this article may apply equally to female and male victims.
6. The U.S. government has estimated that approximately 80% of all transnational victims are women and girls. *See U.S. Department of State, Trafficking in Persons Report* (June 4, 2008), <http://www.state.gov/g/tip/rls/tiprpt/2008/105376.htm>. According to the State Department, at least 56% of forced labor victims are women and girls. *Id. U.S. Department of State, Trafficking in Persons Report 2010* (2010), <http://www.state.gov/g/tip/rls/tiprpt/2010/142750.htm>. The 2010 State Department Report specifically highlights the “feminization” of migration and the increased risks faced by women. *See* letter from Ambassador Luis C. deBaca, in *U.S. Department of State, Trafficking in Persons Report 2010* (2010), <http://www.state.gov/g/tip/rls/tiprpt/2010/142745.htm>.
7. 22 USC §§ 7102 (3), (8)(A) (2010) (“commercial sex act”).

8. NY Penal Law § 230.34 (Consol. 2010) (“advances or profits from prostitution”). New York law defines prostitution as when a “person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.” NY Penal Law § 230.00 (Consol. 2010).
9. The author represented these clients in her capacity as Senior Staff Attorney for Sanctuary for Families, Center for Battered Women’s Legal Services, Immigration Intervention Project. To protect client confidentiality, the names and some identifying facts have been altered.
10. 8 USC § 1101(a)(15)(K) (2010). The abuses committed against women who have entered the United States on K-1 (fiancé) or K-3 (spouse of USC) visa holders have been written about extensively elsewhere. In 1999, the U.S. Immigration and Naturalization Service, the predecessor agency to the current U.S. Citizen and Immigration Services, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection, issued a seminal report noting that mail-order brides may become victims of international trafficking in women and girls. *See* U.S. Immigration and Naturalization Service, *International Matchmaking Organizations: A Report to Congress* (1999), http://www.uscis.gov/files/article/Mobrept_full.pdf; *see also* Kirsten M. Lindee, *Note, Love, Honor, or Control: Domestic Violence, Trafficking, and the Question of How to Regulate the Mail-Order Bride Industry*, 16 Colum. J. Gender & L. 551 (2007); Daniel Epstein, *Romance is Dead: Mail Order Brides as Surrogate Corpses*, 17 Buff. J. Gender L. & Soc. Pol’y 61 (2010). Advocates have estimated that 11,000 to 16,500 women enter the United States on fiancé visas, and thousands more as foreign spouses, as a result of meeting a United States citizen husband through an international marriage broker. *See* Tahirih International Justice Center, *Frequently Asked Questions: International Marriage Broker Regulation Act of 2005 (IMBRA)* 7, nn. 3-5 (2009), <http://www.tahirih.org/site/wp-content/uploads/2009/03/frequentlyaskedquestionsaboutimbria.pdf>.
11. *Supra* notes 8 and 9. In contrast, no such restrictions exist for labor trafficking under federal or NY State law. 22 USC § 7102 (8)(B) (2010); NY Penal Law § 135.35 (Consol. 2010).
12. NY Penal Law § 135.35 (Consol. 2010). The penalties for labor trafficking in New York are less than those for sex trafficking. Labor trafficking is a Class D felony, with a maximum sentence of 7 years, while sex trafficking is a Class B felony, with a maximum sentence of 25 years. NY Penal Law § 230.34 (Consol. 2010); NY Penal Law §§ 70(2)(b), (2)(d) (Consol. 2010) (maximum sentences for Class B and D felonies).

13. The internet offers a dizzying selection for U.S. citizen males who seek a docile foreign wife. One site for Filipina brides boasts, “Filipina girls tend to be of traditional type who respect **family values**. Over-independence and feminism have not spoiled their belief in traditional family values. Unlike their Western sisters, Filipina wives still put family ahead of career.” See Filipina Romance for Dating and Marriage, *Why Filipina Brides?*, <http://www.filipinaromance.com> (emphasis in original). The site helpfully adds that overweight men are very desirable among Filipinas, and that an age difference of 10 to 25 years is regarded as “absolutely normal.” *Id.* Similarly, a Russian bride website explains that “The main difference between Russian women and Western women is that Russian women do not suffer from the ‘Cinderella syndrome’ so common to Australian, U.S., or UK females. Over-independence and feminism **have not spoiled Russian women** [sic] **belief in traditional family values**. Unlike their Western sisters they still put family ahead of career.” See Russian Brides, *Five REAL Reasons for Choosing Russian Brides*, <http://www.russianbrides.com.au> (emphasis in original). Likewise, prospective grooms are reassured that age is no barrier to happiness, and “[a]n average man can attract **a much younger and more beautiful bride in Russia** than he ever could home.” *Id.* (emphasis in original).
14. International Marriage Broker Regulation Act of 2005 (IMBRA), 8 USC § 1375a (2006).
15. For example, another victim represented by the author was transported to California instead of New York, having been convinced by her traffickers that the two states were “right next to each other.”
16. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 225(a)(1), 122 Stat. 5072 (prostitution not a valid form of employment under federal law).
17. Human Smuggling and Trafficking Center, *Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking* (Jan. 2005), http://www.justice.gov/crt/crim/smuggling_trafficking_facts.pdf. The Immigration and Nationalization Act, § 274(a)(1), (2), provides criminal penalties under Title 8, USC 1324, for acts or attempts to bring unauthorized aliens to or into the United States, transport them within the U.S., harbor unlawful aliens, encourage entry of illegal aliens, or conspire to commit these violations, knowingly or in reckless disregard of illegal status. 8 USC § 1324(a) (2010).

18. The Tahirih Justice Center, which provides direct service and advocacy on behalf of immigrant women and girls seeking justice in the United States from gender based violence, has made education about mail order bride abuses a cornerstone of their work. For a more detailed discussion as to how IMBs operate, *see* Tahirih Justice Center, *IMB Campaign: Campaign to Prevent Abuse and Exploitation through the International Marriage Broker (IMB) Industry*, <http://www.tahirih.org/advocacy/policy-areas/imb-campaign/>.
19. William Sherman, *Bloods Gang Members Went to Brooklyn Schools to Recruit Underage Girls as Hookers: Prosecutors*, N.Y. Daily News, June 2, 2010; Jonathan Lemire, *2 Busted In Craigslist Hooker Scam*, N.Y. Daily News, June 19, 2009, at 45; Alexandra Marks, *Craigslist Under Fire Over Erotic Ads*, Christian Sci. Monitor, April 23, 2009, at 2; Elizabeth Stull, *Sadistic Sex 'Master' Sentenced in Brooklyn Federal Court*, Brooklyn Daily Eagle, Sept. 10, 2007.
20. For an analysis of why coyotes' fees have increased even as immigrant demand to enter the United States has dropped during the economic downturn, *see* Catherine Rampell, "Why Are Mexican Smugglers' Fees Still Rising?," *The New York Times*, May 18, 2009. An earlier study notes that, as a result of increased border enforcement, smuggling fees charged by coyotes skyrocketed from a low of \$150 in 1990 to \$525 in 1998. Jorge Durand & Douglas S. Massey, *The Costs of Contradiction: U.S. Border Policy from 1986-2000*, 1 *Latino Stud.*, 233, 248 (2003).
21. Free the Slaves, Wash., D.C., and the Human Rights Ctr. of the Univ. of Cal., Berkeley, *Hidden Slaves: Forced Labor in the United States*, 23 *Berkeley J. Int'l L.* 47, 61 (2005). The link between organized crime and the trafficking in persons was explicitly addressed by the United Nations in the formulation of the Palermo Protocol. Palermo Protocol, *supra* note 4.
22. Joseph Berger, "Sex Trafficking Arrests are Few, Despite Laws," *The New York Times*, Dec. 4, 2009, at A32. In December 2009, a defendant was the first to be convicted under the New York Law, and was sentenced to 25 years to life in February 2010. Press Release, District Attorney, Queens County, *Queens Man First In New York State To Be Sentenced Under Sex Trafficking Statute: Victim Made to Work as Prostitute while Defendant Acted as her Pimp*, Release No. 30-2010 (Feb. 9, 2010), available at http://www.queensda.org/newpressreleases/2010/february/brown_sen_2_9_2010.pdf.
23. Polaris Project, *Human Trafficking Statistics*, (2009), <http://nhtrc.polarisproject.org/materials/Human-Trafficking-Statistics.pdf>.

Immigration Labor Exploitation and Human Trafficking

by Daniel Werner

Since the federal Victims of Trafficking and Violence Prevention Act (TVPA) was enacted in 2000, the anti-human trafficking movement has blossomed from a few lone voices attempting to publicize modern-day slavery to a cause *célèbre*, with big names and big money behind it. The human trafficking of the cause *célèbre* garners voices of outrage across political persuasions and party lines. The human trafficking of reality, however, will not be remedied by anti-trafficking legislation alone, nor can it be addressed in isolation. As a major step in the process of developing a more sophisticated approach, labor trafficking should be viewed as merely a form of immigrant labor exploitation, with roots and remedies far more complex than the oft-heard platitudes.

To explore what is and is not labor trafficking, this essay will first introduce two case studies.¹ The first is a labor trafficking case, and I will explore why the factual scenario constitutes human trafficking under New York law. The second is not trafficking but is a form of labor exploitation in some ways as severe — if not more so — as the human trafficking case. I will again evaluate this second case in the context of New York’s anti-trafficking law to show why it could not be prosecuted as labor trafficking. I will then compare New York’s labor trafficking law to the federal TVPA’s parallel provisions, and I will apply the TVPA’s protections to the two case studies. I will conclude with some general observations and policy suggestions.

Case Studies

Case Study One — Dmitri's Story

What I'm going to tell you is very similar to what happened to over 500 other Latvian and Estonian welders and pipe fitters in 2006 and 2007.

In early 2006, a contractor named Sergei Darinski put ads in newspapers all over Latvia and Estonia. In the ads, he said that skilled welders and pipe fitters were needed in the United States. The ads said that anybody hired would get a green card (permanent residency) and would be able to bring his family with him to the United States. The ads said anybody who was interested should go to one of several seminars at various locations in Latvia and Estonia.

I went to the seminar in Riga, Latvia on January 21, 2006. At that meeting, Mr. Darinski and a lawyer from the United States named Mark Reywal said there was a shipyard on Long Island named Pish Industries that needed skilled welders and pipe fitters to repair ships that had been damaged during recent hurricanes. They said we had to pay \$11,000, but that would get us green cards for us and for our families. Anybody who was interested would need to show up for a skills test with the first installment of \$6,500. The economy in Latvia is very depressed and I wanted the best for my family, so I decided to take advantage of this opportunity. I later learned that Pish Industries paid no money to Mr. Darinski or Mr. Reywal; that the money they made off of this deal came entirely from the job candidates themselves.

In Latvia, there are few opportunities for workers like me. Therefore, most of us are poor. To raise the money for both installments, I had to take out a loan from Naol Krahskov, who lived in my neighborhood and had no connection with Mr. Darinski, Pish Industries, or Mr. Reywal. As security for the loan, he put a lien on my house. I also understood that things might be "bad" for me and for my family if I didn't pay off the debt. I understood that to mean Mr. Krahskov would hurt or kill me or someone in my family if I defaulted. In Latvia, these kinds of deals are a common way poor workers can get big sums of money.

I went to the skills test. Those of us who passed went to another room where Mr. Darinski, Mr. Reywal, and a guy from Pish Industries gave more details about the work and again told us we would become permanent residents in the United States. Then Mr. Darinski told the group that he would collect the first installment. I gave him the money. I don't know if the representative of Pish Industries understood him because he was speaking Latvian.

Two months later, I received a letter telling me to deliver the second installment. I got the money from Mr. Krahskov and brought it to Mr. Darinski, who told me we'd be hearing from him shortly. After another month, Mr. Darinski's office assistant called me and told me to go to another meeting. At that meeting, Mr. Darinski and Mr. Reywal told us that the green card applications were taking a very long time. They told us there was another program called H-2B that would allow us to get visas quickly for work in the United States. They said we would have to pay another \$3,500 to get those visas. I later learned that Pish Industries had applied for our H-2B visas even before the first meeting, and they had told the U.S. government that we would be employed for only ten months rather than on a permanent basis.

I didn't want to wait for a long time to go to the United States because Mr. Krahskov was breathing down my neck, so I decided to go for the H-2B visa. Mr. Darinski told me I had to go to an interview at the U.S. consulate. He told me not to tell the consulate that I had paid any money for the visa or that I eventually expected to get a green card for me and my family. I went to the interview and right afterwards Mr. Darinski made me give him my passport. He told me to show up in Riga two weeks later with the money and I'd get my passport and a plane ticket. I rounded up the \$3,500 from friends, family, and by selling my motorcycle and made my way to Riga. At Mr. Darinski's office, I gave him the money. We had to sign a bunch of paperwork he didn't give me a chance to read, and he returned my passport with the visa. We got on a plane and flew to the United States.

The situation in the United States was not what we had expected. Pish Industries paid us \$15 per hour but housed us in a large barrack-style labor camp and charged us over \$1,000 per month for the housing and our meals. They told us they would still charge us for the housing even if we moved off-site. The labor camp itself was always guarded. Visitors were not allowed. Although we could leave during non-work hours, we had to sign in and out and our bags were always searched when we returned. Also, our work assignments were in the most dangerous parts of the rigs. Even though a "fire watch" is required for some welding work, we were scolded if we had someone with us as a "fire watch" or if we did "fire watch" for someone else.

Although I don't know whether anybody from Pish Industries knew about our debt during the recruitment process itself, we told them about it during our first week of employment. Nevertheless, Pish Industries continued to use Mr. Darinski and Mr. Reywal for the recruitment and legal work for the next rounds of H-2B workers.

A small group of workers started to complain about their living and working conditions, and the fact that none of the workers had been updated about the permanent residency process. They had a meeting at a church to discuss what to do. The next day, some of the worker leaders were roused out of bed by armed guards. In view of all of the workers, they were paraded to a room and locked in, with a guard posted outside. The guards told the workers they would be returned to Latvia. We were all very upset. One of the workers who had been detained went to the bathroom and slit his wrist. Apparently, he thought death was preferable to returning to Latvia mired in debt. Only after some people from our church heard about this and gathered outside the camp gates were the other workers released. They were told they were fired and had to leave the camp immediately. A guard later told us that Pish Industries rounded up these workers in front of all of us so we would all understand what would happen if we complained.

A couple days later, Mr. Reywal and a man from Pish Industries told us they were still working on the green cards, but we had to keep working for Pish Industries to get them. They also told us we shouldn't trust outside people who told us they could give us protection if we complained about our conditions.

We were scared. We wanted to leave but we needed the money to pay off our debts. We also knew that we would be deported if we complained. We shut up and kept working. After another year of working and living in these miserable conditions and after unfulfilled promise upon unfulfilled promise of green cards and visa extensions, I decided to leave. I didn't tell the company I was leaving for good but I was able to get out without any problems, although I had to sign out as usual. Most of the other workers eventually left as well.

Dmitri's Story and New York's Anti-Trafficking Statute

Dmitri's story is, in many ways, the quintessential brand of labor trafficking Congress, and subsequently New York legislators, attempted to remedy when they passed their respective anti-trafficking laws.

The following chart examines the provisions of New York's labor trafficking prohibition, N.Y. Penal Law § 135.35, and whether or how it applies to a possible prosecution of Pish Industries, Mr. Reywal, and Mr. Darinski in Dmitri's story:

Statutory Provision	Application	Explanation
§ 135.35 (initial): A person is guilty of labor trafficking if he or she compels another to engage in labor or recruits, entices, harbors, transports such other person by means of intentionally . . .	Yes.	As set forth in the analysis of the subsequent provisions, Pish, Reywal, and Darinski compelled and enticed Dmitri to engage in labor. Further, Reywal and Darinski recruited and transported Dmitri. Intent is discussed with more detail below.
1. Unlawfully providing a controlled substance to such person with intent to impair said person's judgment.	No.	There is no evidence here that this occurred in Dmitri's case. There was one successful prosecution of traffickers in Florida who had recruited mostly homeless and chemically dependent U.S. citizen men to harvest crops. The traffickers took advantage of the isolation of the labor camps and the victims' addictions, selling them alcohol and illegal drugs at rates far above the "street" prices, which placed the victims in ever-increasing debt to the contractors — debt that could never be paid off by their labor. By keeping the victims under the influence of alcohol and drugs, the traffickers also ensured that the victims would not have the capacity to escape.
2. Requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person.	Probably, with respect to Pish; yes, with respect to Reywal and Darinski.	This provision can be split into two key questions: first, was the labor required to service the debt, and second, did Pish cause the debt with the intent to defraud Dmitri. Starting with the first question, even if Pish only learned of the high levels of debt once the first wave of workers arrived, they publicly threatened to deport non-compliant workers with full knowledge of the debt and its repercussions. Dmitri himself felt compelled to continue working for Pish

Statutory Provision	Application	Explanation
		<p>because of the intentional public display and the fear of the financial ruin deportation would bring. A separate issue is whether a prosecutor could prove that Pish knew of the debt at the time of recruitment. Certainly, the fact that Pish paid nothing to the lawyer and the recruiter suggests that the job candidates were paying for the job. Still, it would probably be difficult in the criminal context for a prosecutor to meet the required burden of proof to show Pish knew of the debt from the beginning (nor is it necessary).</p> <p>As to the second question, it is fairly clear that Pish caused the debt with the intent to defraud the candidates. The candidates themselves paid the exorbitant recruitment fees based on the promises of permanent residency, promises that conflicted with Pish's statements to the U.S. government in its H-2B application that the work period would last for only ten months. Of course, Pish could argue that it actually was defrauding the government based on advice from an attorney (Reywal) who knew he could make more money off the workers by promising green cards, and that Pish actually believed (albeit incorrectly) at the time that he would get green cards for the candidates.</p> <p>Finally, Reywal and Darinski directly caused the debt and recruited Dmitri with the intent and understanding that the debt would be repaid through labor.</p>

Statutory Provision	Application	Explanation
3. withholding . . . or confiscating any actual or purported passport [or] immigration document . . . of another person with intent to impair said person's freedom of movement . . .	No, with respect to Pish; yes, with respect to Darinski.	Darinski confiscated Dmitri's passport and visa after he had already paid \$11,000. The only way Dmitri could recover his passport and now very valuable visa was to show up in Riga with the last installment, at which point Dmitri was given his plane ticket and immediately proceeded to the airport for his trip to the U.S. Therefore, Darinski withheld Dmitri's passport to force him to travel to Riga and on to the U.S. for the purpose of recruiting him for and transporting him to Pish.
4. using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:		
(a) cause physical injury, serious physical injury, or death to a person	Possibly.	Dmitri certainly understood the repercussions of not paying off his debt: the loan shark Krahskov would hurt or kill Dmitri or someone in his family. This question would hinge on whether it would be too attenuated to claim that Pish, Darinski, or Reywal understood these consequences and intentionally used this to compel Dmitri's labor.
(b) cause damage to property, other than the property of the actor	No.	

Statutory Provision	Application	Explanation
(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of § 135.05 of this chapter	Yes, with respect to Pish.	<p>During the attempted forced deportation incident, workers were locked in a room under armed guard. This would constitute unlawful imprisonment under N.Y. Penal Law § 135.05. Dmitri understood that he would suffer a similar fate if he did not comply with the demand to continue to work.</p> <p>Conceptually, part of the problem here is whether the forced deportation incident was a consequence of the imprisoned workers' attempt to not "continue to engage in labor" or whether Pish simply targeted them for organizing activity, a violation of collective bargaining and anti-retaliation laws but probably not anti-trafficking laws. Still, the workers were complaining about being forced to live in segregated and closely monitored and guarded company housing, unsafe working conditions, and fraudulent promises of green cards. They were meeting with advocates because they felt trapped and defrauded. The forced deportation incident also must be viewed in the overall context of the workers' extreme debt and the H-2B program itself, which ties visa holders to a single employer and requires terminated workers to leave the U.S. Pish understood the repercussions of deportation and that Dmitri and his colleagues could not stop working without risking deportation into desperate debt. By engaging in the public attempted deportation, Pish intentionally sent the message to the remaining workers that they must keep working and accept their dismal living and working conditions, conditions that would lead non-trafficked workers to leave.</p>

Statutory Provision	Application	Explanation
(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person	Yes, with respect to Pish.	Again, the message Pish sent with the attempted forced deportation was that others would suffer a similar fate. Dmitri understood this to be true.
(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule	No.	
(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense	No.	
(g) use or abuse his or her position as a public servant	No.	

Perhaps the most significant obstacle to criminal prosecution in Dmitri's case is the burden of proof and the use of largely circumstantial evidence. In a civil action the burden of proof on a plaintiff-victim of trafficking would be lighter, but the final version of the law has no provision for a private right of action.

Case Study Two: Josefina's Story

I came to the United States in 2006 from Cuenca, Ecuador. I entered the U.S. on a tourist visa but I did not leave when the visa expired. Ecuador's economy is weak and there are few opportunities for work. I decided I could best support my family by working in the United States, even without a work permit.

I struggled to find work for several months. Then I learned there were some other Ecuadorians — many from Cuenca — in a small town in western New York. I called my cousin who lives there. He said he thought he could find me a job at a local poultry plant. I used the little money I had earned so far in the United States to buy a bus ticket to that town.

Once I arrived, right away I met with one of the owners of the plant. He was also from Ecuador. He told me I would share an apartment with seven others. He had his assistant drive me to the apartment. The apartment was really small. Paint was peeling off the walls, the worn-down carpet had large gashes across it that we tried to patch with duct tape, there were rat droppings all over the place, and everything smelled like mildew. There was an electric stove but only one burner worked. There was one toilet and one shower. I was put in a bedroom with a married couple and one other woman. The mattress was stained and had patches of mold.

The next morning I showed up for work. There I learned of my schedule: three separate three- to four-hour shifts per day, with three to four hours of rest between shifts, seven days per week, year-round. At my job, I stood ankle deep in a mush made up of feed, feathers, and feces while using a hydraulic mechanism to force a grain mixture down the birds' throats. For this work I was paid 327 dollars per week, resulting in an hourly wage I later learned was well below the minimum wage.

With more time at the poultry plant, I noticed one of the supervisors giving me looks that made me uncomfortable. I had heard rumors that this supervisor had raped a woman as she left the plant one evening. Once, the supervisor told me he could get me a job in the butchering section of the plant, where the hours were better and the pay a little higher, if I would spend the night with him. I turned him down and told him to stop looking at me like that. He told me, "If you don't like it here, just leave. We won't stop you."

I knew I couldn't leave, and my supervisor and the owners of the plant probably knew the same. Although my pay is low, it is steady work and my family in Ecuador depends on my money. I also know that finding steady work without papers requires connections, and I knew of no other place with a stable work opportunity and connections with other immigrants from Cuenca. I also was afraid to complain to the police or any enforcement agencies because I was worried the government would deport me. I put my head down and kept working. I'm still working at the plant. The supervisor still periodically makes sexual advances, which I reject. Nothing more has happened with the supervisor, although I never leave the plant after my shift by myself.

Josephina's Story and New York's Anti-Trafficking Statute

Josefina's case could not be prosecuted under the provisions of New York's anti-trafficking law. Although Josefina was sending remittances to her family and her family was dependent on this money, her pay was not being used to

service a debt. Further, while Josefina feared her supervisor, who continued to make sexual advances, these advances — and even the fear of rape — were not a mechanism to compel Josefina to continue to work at the poultry plant. In fact, the supervisor told her she could leave if she did not like working there. There may very well be violations of Title VII and New York's Human Rights Law, but the sexual harassment does not constitute a form of labor trafficking.

Dmitri's Story, Josefina's Story, and the Federal TVPA

The federal Victims of Trafficking and Violence Prevention Act, as recently amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Wilberforce Act)⁵, provides some protections beyond those offered by New York State law. Under the slightly broader TVPA provisions, Dmitri would also be considered a victim of trafficking. The Appendix to this essay shows a side-by-side comparison of the labor trafficking provisions, highlighting the similarities and differences between the two statutes. The TVPA's relatively new provision that punishes anyone who "benefits" from a venture that has engaged in forced labor the same as a direct violator of the statute would be punished strengthens Dmitri's claim. Even if Pish Industries can claim that it had no responsibility for the actions of its lawyer and recruiter, it knowingly received the benefits of Dmitri's labor and a prosecutor, or Dmitri as a civil plaintiff, would only need to show reckless disregard for the fact that the venture was providing Dmitri's services in violation of federal human trafficking law.

On the other hand, Josefina does not benefit from the TVPA. She was a victim of rural and cultural isolation, lack of employment opportunities, dubious immigration status, and probably weak enforcement. The plant operators took advantage of these vulnerabilities — violating federal and state employment laws in the process — but ultimately the employer did nothing to keep the workers from leaving. Thus, the touchstone of a labor trafficking claim under both New York law and the TVPA is missing from Josefina's story.

Reflections on Dmitri, Josefina, and Anti-Trafficking Laws

When I learned of Josefina's situation, I wanted to find elements of labor trafficking. This was one of the more dismal work situations I had come across in my career as a public interest employment attorney. In some ways, Josefina's situation was more dire than Dmitri's. Her wages were lower, she was suffering

routine sexual harassment, and the work schedule can only be described as cruel. Still, although she suffered severe labor exploitation, it was not labor trafficking. Because Josefina's situation did not fit within the labor trafficking box, there was no hope for criminal prosecution of the employers; neither immigration relief nor resettlement benefits were available to the workers; and there were no pro bono attorneys lined up to represent the workers, even though there was a waiting list of volunteer attorneys hoping to take labor trafficking cases.

Josefina's situation highlights the risk of separating human trafficking from other forms of labor exploitation. For a time, I viewed labor trafficking as standing alone in its position at the extreme end of the continuum of immigrant labor exploitation, but it is not so simple. Labor trafficking is merely one brand of severe labor exploitation in a busy and complex immigrant labor market, covering some but not all of the schemes that exploiters of immigrant labor use to ensure access to an acquiescent workforce.

The unfortunate byproduct of separating labor trafficking from the immigrant labor exploitation continuum is that what becomes viewed as success is, at its core, non-systemic change: human trafficking bills passed, cases successfully prosecuted, victims discovered and protected, and dollars distributed. It is far easier to engage in self-congratulations over these results — laudable though they are — than it is to engage in a meaningful debate about the local, national, geo-political, social, and economic causes of severe immigrant labor exploitation, including human trafficking. A discussion of how to combat labor trafficking must include an examination of foreign policy and the weak rule of law in many source countries, immigration laws and enforcement in the U.S., rampant nativism in some U.S. communities, a weakened labor movement, and lackluster enforcement of employment laws.

In conclusion, a number of policy changes beyond passing anti-trafficking legislation would significantly inhibit the kind of severe immigrant labor exploitation that both Dmitri and Josefina suffered. These include:

1. Pass comprehensive immigration reform. The single greatest factor contributing to Josefina's situation was her undocumented immigration status. Undocumented immigrants present in the United States must be permitted to emerge from the shadows and provided a path towards regularization of their status.
2. Give immigrants confidence in law enforcement. Many communities have entered into agreements with U.S. Immigration and Customs Enforcement (ICE) allowing local law enforcement personnel to arrest and detain

immigrants they suspect have violated federal immigration laws, including the civil offense of unlawful presence. Many of these cooperation agreements exist as a result of pressure from nativist contingents in the communities. As an example of the repercussions of these policies, in a recent survey in the state of Georgia, only 27 percent of Latino immigrants interviewed reported they had trust in the police.⁶ Immigrant victims of crime, including labor trafficking, and victims of other forms of labor exploitation will not report those crimes or employment law violations if they fear law enforcement. This gives credence to labor exploiters' claims to victims — or, as in the case of Josefina, a perception based on experiences other members of her community had with law enforcement — that they will be deported if they approach the police. Immigration enforcement should be left to ICE to be performed in a humane manner that preserves immigrants' civil rights. Involving local law enforcement virtually guarantees that unreported crimes against immigrants will continue to increase unabated.

3. Prohibit ICE from placing immigrants who report labor trafficking in removal (deportation) proceedings. Currently, federal human trafficking criminal investigations are generally conducted by the FBI or ICE. Unfortunately, ICE has taken the position that any undocumented immigrant who reports human trafficking and sits for an interview with ICE officers must be placed in removal proceedings. A Notice to Appear is issued for the alleged trafficking victim to appear in Immigration Court, although no court date is set. If ICE and the federal prosecutor determine that the reported labor exploitation does not rise to the level of human trafficking, ICE has indicated that it may set a court date and require the victim to appear to defend against removal. This serves as a tremendous disincentive for undocumented immigrants who believe they are victims of human trafficking to report the trafficking to federal authorities. Further, the emotional toll when a traumatized human trafficking victim is fingerprinted and issued a Notice to Appear — often exactly what the trafficker has threatened — can be tremendous. ICE needs to stop “NTAing” immigrants who present themselves to federal law enforcement believing they are victims of human trafficking. If ICE and the federal prosecutor determine that the labor exploitation the victim brought to their attention is not trafficking, the case should be referred to the appropriate enforcement agency, such as the U.S. Department of Labor, the Equal Employment Opportunity Commission, or the National Labor Relations Board.

4. Ramp up enforcement of employment laws. Federal and state agencies enforcing employment laws must have the resources to investigate and prosecute cases and should pay particular attention to immigrant labor exploitation. Currently, most do not.⁷ The New York Department of Labor's relatively new Bureau of Immigrant Workers' Rights is a large step in the right direction.
5. Strictly regulate foreign labor contractors and U.S. employers who use them. Suppliers of foreign labor to U.S. employers should be required to register with the U.S. government, should be prohibited from charging laborers with recruitment, transportation, and visa fees (these fees should be paid by the U.S. employer), and the full and truthful terms and conditions of employment should be provided to the job candidates at the point of initial recruitment. U.S. employers should be required to post a bond equivalent to the promised wages to be paid to the foreign worker and should be subject to civil and criminal penalties for using the services of unregistered foreign labor contractors. Violations of these recruitment protections should be subject to both public and private enforcement. Finally, no work visa should limit an immigrant worker to a single employer.
6. Support rule of law initiatives in source countries. Frequently, source countries lack the capacity to develop systems to protect their citizens from labor exploitation abroad. Government and non-government organizations as well as bar associations should continue to support rule of law initiatives in these countries, including providing technical assistance to help establish best practices for prosecutors, courts, legislators, and enforcement agencies.

Appendix

Side-by-Side Comparison of Federal and New York State Laws

New York Law	Federal TVPA	Discussion
Compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally . . .	Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of [Title 18, Chapter 77 of the U.S. Code] (§ 1590(a)) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means (§ 1589(a))	Both New York's law and the TVPA require specific intent or knowledge. The TVPA includes "provides" and "obtains" but this is likely a distinction without a difference, as it is probably encompassed in the New York law's "compels or induces another" language.
. . . Using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity <i>by means of instilling a fear in such person</i> that, if the demand is not complied with, the actor or another will do one or more of the following:	by means of serious harm or threats of serious harm to that person or another person (§ 1589(a)(2)); <i>by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint</i> (§ 1589(a)(4))	As highlighted in the italicized phrases, New York law and the TVPA include language clarifying that a labor trafficker need not actually intend to carry out a threat, but rather only must instill the fear or cause the victim to believe that the threat would be carried out.
Cause physical injury, serious physical injury, or death to a person; Engage in other conduct constituting a felony or unlawful imprisonment in the second degree	by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person (§ 1589(a)(1))	The New York and TVPA's provisions appear to have similar effect.

New York Law	Federal TVPA	Discussion
Cause damage to property	For the purposes of §§ 1589(a)(2) and (a)(4), “serious harm” is defined as “any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.” (§ 1589(c)(2))	<p>The TVPA definition of “serious harm” does not specifically include damage to property, although the listing of psychological, financial, and reputational harm is not exclusive of other kinds of harm. Because “serious harm” may be non-physical, a threat to cause damage to property would fall within the TVPA definition if “a reasonable person of the same background and in the same circumstances” would feel compelled to perform the labor to avoid the harm.</p> <p>The “reasonable person of the same background and circumstances” language is important because it allows prosecutors (or civil plaintiffs under the TVPA) to introduce expert evidence of what would be reasonable for, for example, a person with the victim’s cultural background, religious beliefs, or physical and/or mental capacities. New York’s anti-trafficking statute does not include this language.</p>
Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule	“Serious harm” specifically includes reputational harm (§ 1589(c)(2))	The New York and TVPA’s provisions appear to have similar effect.

New York Law	Federal TVPA	Discussion
<p>Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person</p>	<p>by means of the abuse or threatened abuse of law or legal process (§ 1589(a)(3)), which is defined as “the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.” (§ 1589(c)(1))</p>	<p>The TVPA’s definition of “abuse of law or legal process” includes criminal processes (similar to the New York language), but also includes civil and administrative processes. Courts have without exception found that threats of deportation fall within the TVPA’s definition of “abuse of law or legal process.” <i>See, e.g., United States v. Calimlim</i>, 538 F.3d 706, 713 (7th Cir. 2008); <i>Catalan v. Vermillion Ranch Ltd. Partnership</i>, No. 06-cv-01043-WYD-MJW, 2007 U.S. Dist. LEXIS 567, at *24 (D. Colo. Jan. 4, 2007); <i>United States v. Garcia</i>, No. 02-CR-110S-01, 2003 U.S. Dist. LEXIS 22088, *23 (W.D.N.Y. 2003).</p>
<p>Testify or provide information or withhold testimony or information with respect to another’s legal claim or defense</p>	<p><i>See</i> definition of “abuse or threatened abuse of law or legal process,” <i>supra</i></p>	<p>Although not specified in the TVPA definition of “abuse of law or legal process,” this would likely be included in the broad language.</p>
<p>Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely</p>	<p><i>See</i> definition of “abuse or threatened abuse of law or legal process,” <i>supra</i></p>	<p>Although not specified in the TVPA definition of “abuse of law or legal process,” this would likely be included in the broad language if the public servant was abusing an administrative, criminal, or civil procedure.</p>

New York Law	Federal TVPA	Discussion
There is no equivalent New York provision.	Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in [the forced labor statute], knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished [in the same manner as a direct violator of the statute]	Although there was similar language in the New York Assembly version of the anti-trafficking bill, it was removed by the Senate and therefore was not included in the final bill.
There is no equivalent New York provision.	An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees	Although there was similar language in the New York Assembly version of the anti-trafficking bill, it was removed by the Senate and therefore was not included in the final bill. There is similar language attached to the other federal human trafficking-related crimes.
withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or	Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other	The New York and TVPA's provisions appear to have similar effect.

New York Law	Federal TVPA	Discussion
<p>purported government identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat</p>	<p>immigration document, or any other actual or purported government identification document, of another person —</p> <p>(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594 (a);</p> <p>(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or</p> <p>(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons</p>	

Notes

1. Because both case studies involve matters that are still in litigation, identifying information, including the names of the parties, the national origin of the victims, and the location of the work, has been changed.
2. *See Under Siege: Life for Low-Income Latinos in the South*, Southern Poverty Law Center, 2009.

The Passage of the Safe Harbor Act and the Voices of Sexually Exploited Youth

by Katherine Mullen and Rachael Lloyd

I was arrested for prostitution, and put in jail. The John was released. I was sentenced and sent upstate for a year. He was sent to a special school [for a couple of evenings] and his case was dismissed. There was no school for me.

— *A youth arrested on prostitution charges
in New York City, circa 2003*

The Safe Harbor Act,¹ signed into law by New York Governor David Paterson on September 25, 2008, is the first state law recognizing that young people who have been subjected to commercial sexual exploitation are victims — not perpetrators — of crimes. The passage of the Safe Harbor Act represented the culmination of over four years of efforts, including bill drafting, public education, and most importantly, youth advocacy. It also marked the beginning of a national movement to pass similar state laws for the protection of child victims of sexual exploitation.

Genesis of The Safe Harbor Act

In 2003, Nicolette, a twelve year old girl, was charged with an act of prostitution. Representing her in an appeal before the First Department of New York's Appellate Division, The Legal Aid Society argued that because of her age she was legally incapable of consenting to participate in a sexual act, that Nicolette was, in fact, a victim, not a perpetrator, of child prostitution, and that, therefore, she could not be charged with committing an act of prostitution. While sympathetic to Nicolette and willing to change the dispositional order that had sent her to a juvenile detention facility upstate, the Appellate Division

declined to address the inequity within the different sections of New York law.² Sadly, Nicolette's case was not unusual. Throughout New York City, teenage and pre-teen girls were routinely arrested and charged with acts of prostitution even though they were too young to legally consent to sex.

In the fall of 2004, the Juvenile Justice Coalition of the Correctional Association of New York (Juvenile Justice Coalition), the Juvenile Rights Practice of The Legal Aid Society, and the Girls Educational Mentoring Services (GEMS) formed a working group to redress this inequity. Together these three organizations made a commitment to drafting and working to pass legislation that would establish that commercially sexually exploited youth are victims of crimes who should be provided with services, not prosecuted for committing criminal acts.

Each of these organizations was well-positioned to contribute to the project. The Juvenile Justice Coalition is a network of child advocacy groups, legal service providers, alternative sentencing programs, and community-based organizations working to make the juvenile justice system in New York more fair and effective. The Juvenile Rights Practice of The Legal Aid Society represents in Family Court many of the children who have been the victims of commercial sexual exploitation. The largest child advocacy organization in New York State, it represents children in child protective proceedings, persons in need of supervision (PINS) proceedings, and juvenile delinquency proceedings in all five boroughs of New York City. GEMS is the only non-profit organization in New York specifically designed to provide services to commercially sexually exploited girls and young women founded by a survivor of commercial sexual exploitation. GEMS is committed to developing survivor leadership and to ensuring that the voices and experiences of commercially sexually exploited youth are at the forefront of the movement against trafficking and the commercial sexual exploitation of children.

The Campaign for the Safe Harbor Act

Soon after this working group was formed, meetings were arranged in Albany between legislators and youth survivors from GEMS. The girls shared their stories of abusive homes, fractured families, and institutional failures that left them vulnerable to the advances of adult men who would offer shelter, food, and the promise of love. They spoke of the high price that this "love" cost them: a life of being bought and sold night after night to adult men and repeated

violence and torture from both their pimps and the “johns.” Along with their physical trauma, the girls told how alone they felt when the police, who were supposed to protect them, arrested and incarcerated them. They spoke of the stigma and scorn that they faced from other youth and staff alike within juvenile detention facilities and how they received no support or services from these facilities, often returning to their exploiters as soon as they were released. The girls also talked about their experiences with GEMS, the importance of hearing for the first time that they were not criminals but victims, and the impact of having a place like GEMS where people understood what they had experienced and provided them with services, safety, and most importantly, real support. The girls said that they felt lucky and told legislators that their advocacy was grounded in the hope that their peers would not need luck to be treated as victims and receive much-needed services.

The meeting was a success. After listening to the young women from GEMS, NYS Senator Dale Volker and NYS Assembly Member William Scarborough offered to sponsor legislation proposed by the coalition. Following the meeting, J.R. Drexelius, Jr., Counsel to the Senate Codes Committee, wrote to the survivors whom he had heard speak and said “. . . Meeting with your group reminds me of why I enjoy what I do — I can make a difference. It may take some time but we will change the way people think about this issue and end up helping a lot of young people.” His commitment to creating “a safe harbor” in New York State for children who had been sexually exploited was the genesis of the name of the proposed law.

The initial drafting of the Safe Harbor Act was guided by two main objectives: to stop criminalizing the child victims of domestic sex trafficking by prosecuting them for acts of prostitution and to create the services desperately needed by child victims of sexual exploitation and the legal authority to provide these services. The task was difficult because the legal issues involving children who have been commercially sexually exploited are not neatly addressed by one section of New York’s laws. Rather, a web of statutes, including various sections of the Penal Law, the Family Court Act, and the Social Services Law, as well as federal laws governing the protection of trafficked persons and runaway and homeless youth, are all involved in the protection of sexually exploited youth. The Safe Harbor Act was drafted to incorporate the protections already found in federal law and make the necessary changes to existing state law.

The draft legislation helped resolve a contradiction in existing New York law. By establishing the age of consent to sexual activity at seventeen,³ New York law recognizes that, because of infancy, a child under seventeen is

incapable of consenting to a sexual act. Commonly referred to as the statutory rape law, this section of the Penal Law protects children from sexual abuse, with tougher penalties for perpetrators who abuse younger victims. However, the Penal Law definition of prostitution makes no reference to age. It simply states that “[a] person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”⁴ The only age restriction in prosecuting a child for an act of prostitution is found in Article Three of the Family Court Act, the body of law used to prosecute children accused of committing criminal acts, which requires that the subject child of any proceeding be over seven years of age.⁵

Thus, ironically, under New York law, the same child who under Article 130 of the Penal Law was incapable because of age to consent to a sexual act was deemed under Article 230 of the same Penal Law to have the capacity to consent to sexual conduct in return for a fee. A thirteen year old child who was considered the victim of rape in the second degree could simultaneously be prosecuted for committing an act of prostitution.⁶ The decision to prosecute or protect a child victim of domestic trafficking remained solely in the discretion of the District Attorney’s offices and/or the Family Court prosecutorial bodies.⁷

The first version of the Safe Harbor Act attempted to reconcile the dichotomy between the two statutes by amending Article 230 of the Penal Law to include an age requirement, so that the law would provide that a person could only be “guilty of an act of prostitution if that person, *who is over the age of seventeen*, engaged or agreed or offered to engage in sexual conduct with another person in return for a fee.” However, this approach met with overwhelming opposition. At the time, the NYS Assembly was resisting efforts to reinstate New York’s death penalty. Reluctant to look soft on crime while taking a strong anti-death penalty position, the members of the Assembly were unwilling to consider any legislation that would lessen criminal penalties. Also, prosecutors were concerned that without the “hammer” of the threat of prosecution and incarceration they would never have victims willing to testify against pimps and johns, even though efforts to leverage testimony from victims using the threat of incarceration had proven unsuccessful. The original version of the Safe Harbor Act never progressed out of committee.

By the spring of 2006, it had become clear that a bill amending the Penal Law definition of prostitution to exclude youth under the age of eighteen would never pass the Assembly. Some opponents of the bill viewed commercially sexually exploited youth as “teen hookers” and “lolitas” who should be held criminally accountable for their actions. Others wanted to protect prostituted children but were concerned that without the ability to lock up these young people there was

no way to keep them safe. Thus, the challenge in drafting the Safe Harbor Act became changing the law without changing the Penal Law and creating a mechanism for keeping the child victims of commercial sexual exploitation safe without relying on the default “safest course” of incarceration. A version of the Safe Harbor Act was introduced that proposed amending the Family Court Act, first, to change the definition of a juvenile delinquent to exclude youth who were charged with committing acts of prostitution, and, second, to amend the Persons in Need of Supervision article to include the provision of services to commercially sexually exploited youth.

While this new version passed in the Assembly, it died in the Senate. However, the Assembly and Senate did pass legislation requiring the New York State Office of Children and Family Services to conduct a study on sexually exploited youth by December 2006. Although the methodology of the resulting survey was compromised by its brevity and the difficulty in finding what is frequently a hidden population, it did identify approximately 2,300 commercially sexually exploited youth in New York City, and 400 commercially sexually exploited youth upstate and in western New York.⁸

While additional drafts of the Safe Harbor Act were proposed and debated, the lobbying efforts of the youth survivors continued. The young women from GEMS continued to speak out at legislative briefings, at City Council hearings, in meetings with individual legislators, and to the press. In March of 2007, several survivors of juvenile prostitution, most of them girls who had been active advocates from the inception of the bill, spoke at a roundtable of NYS Assembly Members. One girl told about how she had been placed in juvenile detention for three years despite the fact that she had been the primary witness in the prosecution of her pimp. Another girl talked about her multiple incarcerations in Rikers Island Correctional Facility, all prior to the age of 16. In addition to sharing their stories, the young women provided recommendations about what worked for helping commercially sexually exploited youth and what did not. These young people had become confident advocates, showing considerable insight and expertise on the issue and impressing the audience with their strength and resilience.

It was clear to everyone in the room that criminalizing these girls was unfair and unjust. An article in the *Legislative Gazette* described their moving testimony before the “teary-eyed” roundtable of Assembly Members. It noted that Assembly Member Joseph Errigo had to regain his composure before thanking the girls for sharing their stories.⁹ Within hours of this meeting, Assembly Member Errigo and dozens of other Assembly Members, both Democratic and Republican, had signed

on as sponsors of the bill. Unfortunately, the Assembly and Senate could not agree on a final version of the Safe Harbor Act.

Despite the legislative setbacks, public support for the bill continued to grow. *The New York Times*, in editorials and columns, called for the passage of the Safe Harbor Act.¹⁰ In addition to the Juvenile Justice Coalition, GEMS, and The Legal Aid Society, many other organizations, including The Empire State Coalition for Youth and Family Services, Equality Now, Sanctuary for Families, NOW NYC, the Coalition Against Trafficking in Women, and ECPAT, advocated for passage of the Safe Harbor Act. But the voices of the young survivors continued to be the most powerful of all.

The Final Legislation

In 2008 the Assembly and Senate came to an agreement on language, and the final version of the Safe Harbor Act was introduced. Under the existing Article Three of the Family Court Act, a Family Court judge, prior to a trial or plea and with the consent of a prosecutor, could convert a delinquency proceeding to “a person in need of supervision,” or PINS, proceeding.¹¹ This allowed the Court to authorize the provision of services, and, since he or she was no longer charged with committing a criminal act, the court no longer had authority to lock up the child. However, since converting the delinquency proceeding to a PINS proceeding required the consent of the prosecutor, it was rarely done — and in cases involving allegations of prostitution never done.

The version of the Safe Harbor Act on which both houses of the NYS legislature ultimately agreed creates a presumption that a child who is charged in Family Court with committing an act of prostitution is a victim of human trafficking as defined in federal law. As such, the court must convert the proceeding to a PINS proceeding, and specialized services for the child must be provided. Only if the child has previously been found to have committed an act of prostitution or declines to accept services does the court have the discretion to continue the delinquency proceeding.¹²

The Safe Harbor Act also recognizes that the majority of youth who are commercially sexually exploited do not get arrested yet are equally in need of services. Accordingly, the Safe Harbor Act amends the PINS provisions of the Family Court Act¹³ and the Social Services Law¹⁴ to allow the Court to authorize the provision of services to any sexually exploited youth under the age of eighteen. The law also calls for the creation of safe houses and authorizes safe

houses to accept sexually exploited youth. It further requires that a long term residential program be available to the young victims of domestic sex trafficking with a panoply of services to address their special needs. In addition, the law makes provisions for specialized law enforcement training.

Final Victory: Enactment of the Safe Harbor Act and Beyond

On June 19, 2008, by unanimous vote, the Safe Harbor Act was passed by the NYS Assembly. On June 23, 2008, the NYS Senate passed the Safe Harbor Act, also with a unanimous vote. On September 25, 2008, Governor David Paterson signed the Safe Harbor Act, and it became law with an effective date of April 1, 2010.

The passage of the law sent a strong message to the rest of the nation that commercially sexually exploited youth in New York would, rightfully, be treated as victims not criminals. Since then, three other states have passed “Safe Harbor” laws¹⁵ and many other states have similar legislation pending. In June of 2010, six years after the Appellate Division heard the *Nicolette* appeal that triggered interest in reforming New York’s laws, the Supreme Court of Texas, in *The Matter of B.W.*,¹⁶ held that because a thirteen year old child cannot consent to sex as a matter of law, a thirteen year old could not be prosecuted for prostitution. The Texas Court concluded, “It is difficult to reconcile the Legislature’s recognition of the special vulnerability of children, and its passage of laws for their protection, with an intent to find that children under fourteen understand the nature and consequences of their conduct when they agree to commit a sex act for money, or to consider children quasi-criminal offenders guilty of an act that necessarily involved their own sexual exploitation.”¹⁷

To a large extent, this victory belongs to a courageous group of girls and young women who shared their stories, fought for their peers, and sparked a national reform movement. For girls who had been stigmatized and marginalized because of their race, age, socio-economic status, gender, and histories of commercial sexual exploitation, it was no small victory. The young women’s determination to create change and to help other sexually exploited children throughout the country made a huge impact on their own lives. Recently, one of the young women, who at fourteen was part of the original group who went to Albany in 2004, testified before Congress on the need for nationwide Safe Harbor laws and services. When Senator Al Franken commended her for her poise, she credited her lack of nervousness to the fact that she had “grown up

advocating.” This young woman and her peers have already achieved what many said was impossible. In doing so, they have proved to themselves and to others that the voices of survivors of commercial sexual exploitation are uniquely powerful in the ongoing fight against the trafficking of children and youth in our country.

Appendix

Provisions of the Safe Harbor Act of 2008

The Safe Harbor Act made changes to a number of laws, including the Social Services Law, the Executive Law, and the Family Court Act.

Social Services Law: Definition of “Sexually Exploited Child”

The term “sexually exploited child” is now defined in Social Services Law § 447-a as any person under the age of eighteen who has been subject to sexual exploitation because he or she (a) is the victim of the crime of sex trafficking; (b) engages or agrees or offers to engage in sexual conduct with another person in return for a fee; (c) is a victim of the crime of compelling prostitution; or (d) engages in loitering for the purpose of prostitution.

Social Services Law: Short-Term Safe Housing

In recognition that one of the greatest needs of a sexually exploited child is supportive housing, Social Services Law § 447-a defined “short-term safe house” as a residential facility that provides emergency shelter, services, and care to sexually exploited children including food, shelter, clothing, medical care, counseling, and appropriate crisis intervention services. Significantly, short term safe housing is available to youth at the time that they are taken into custody by law enforcement or are with the commissioner of social services, residing with the local runaway and homeless youth authority, or are either the complaining witness or the subject child of a legal proceeding, for the duration of any legal proceeding or proceedings.

Social Services Law: Advocate for Children in Safe Housing

A sexually exploited youth who resides in a short-term safe house will have an advocate, which is defined in the social services law as someone who has been trained to work with, and advocate for the needs of, sexually exploited children, and who shall accompany the child to all court appearances and serve as a liaison between the short-term safe house and the court.

Social Services Law: Notification to Parents, Guardians, and Custodians

Once a sexually exploited youth arrives at a short-term safe house, Social Services law § 447-a(4) requires that an advocate or other appropriate staff shall, to the maximum extent possible, preferably within twenty-four hours but

within no more than seventy-two hours following admission other than pursuant to a court order, notify the child's parent, guardian, or custodian of his or her physical and emotional condition and the circumstances surrounding the child's presence at the program, unless there are compelling circumstances why that notification should not occur. If necessary, the advocate shall either file the appropriate petition in family court, refer the youth to the local social services district, or, when abuse or neglect is suspected, report such case pursuant article six of the social services law.

Executive Law: Definition of a Safe House

The term "safe house" is defined in § 532 of the Executive law as a residential program for sexually exploited children which provides necessary services including: housing; assessment; case management; medical care; legal, mental health, and substance and alcohol abuse services; and, when appropriate, counseling and therapeutic services and educational services. The safe house is available for a sexually exploited child for duration of a legal proceeding, or for a sexually exploited child who is not the subject of a proceeding.

All of the services created may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through diversion services provided through a PINS proceeding, through a juvenile delinquency proceeding, a child protective proceeding, or through a referral from a local social services agency.

Family Court Act: Authorization for Police to Take Arrested Children Directly to a Safe House

If a youth under the age of sixteen is arrested for an act of prostitution, Family Court Act § 305.2 authorizes the arresting officer to take the child directly to an available short-term safe house instead of a detention facility.

Family Court Act: Presumption that Sexually Exploited Children are Victims of a Severe Form of Trafficking

Family Court Act § 311.4(3) creates a presumption that a respondent brought to Family Court for a prostitution-related offense meets the criteria as a victim of a severe form of trafficking as defined in § 7105 of title 22 of the United States Code (Trafficking Victims Protection Act of 2000).

Family Court Act: Treating Sexually Exploited Children as PINS

Upon the motion of the respondent, without the consent of the presentment agency, a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition. If, however, the respondent has been previously adjudicated as a juvenile delinquent under this article for an act which would be a crime pursuant to § 230 of the Penal Law, if the respondent was an adult, or expresses a current unwillingness to cooperate with specialized services for sexually exploited youth, continuing with the delinquency proceeding shall be within the court's discretion. The necessary findings of fact to support the continuation of the delinquency proceeding shall be reduced to writing and made part of the court record. If, subsequent to issuance of a substitution order under this subdivision and prior to the conclusion of the fact finding hearing on the petition alleging that the respondent is a person in need of supervision, the respondent is not in substantial compliance with a lawful order of the court, the court may, in its discretion, substitute the original petition alleging that the respondent is a juvenile delinquent for the petition alleging that the respondent is in need of supervision.

Family Court Act: Amending the Definition of a Person in Need of Supervision

So that the Family Court can authorize the provision of services to all sexually exploited youth under the age of eighteen, whether they are the subject of or complainant in a criminal court proceeding, the subject of another family court proceeding, or voluntarily wish to access services, the definition of a "Person in need of supervision" was amended. It now includes a child who has violated the Penal Law § 230.00, or who appears to be a sexually exploited child as defined by the social services law, but only if the child consents to the filing of a petition under this article.

Notes

1. L 2008, Ch. 569, *amended by* L 2010, Ch. 58.
2. *Matter of Nicolette*, 9 AD 3d 270 (1st Dept. 2004).
3. Penal Law § 130.05(3)(a).
4. Penal Law § 230.00.
5. Family Court Act § 301.2(1).
6. Children over the age of seven and under the age of sixteen are prosecuted in Family Court for committing criminal acts and are accused of being juvenile delinquents. Sixteen year old youth, also deemed incapable of consenting to sexual conduct by reason of infancy, are prosecuted as adults in criminal court.
7. In New York City, the Office of the Corporation Counsel prosecutes children in Family Court.
8. Frances Gragg, *et al.*, *Final Report: New York Prevalence Study of Commercially Sexually Exploited Children*, April 28, 2007.
9. Ariana Cohn, *Legislative Gazette*, March 12, 2007.
10. Opinion, “Children in Need of Safe Harbor,” *The New York Times*, Sept. 15, 2007; Clyde Haberman, “Helping Girls as Victims, not Culprits,” *The New York Times*, July 8, 2008; Opinion, “Safe Harbor for Exploited Children,” *The New York Times*, June 5, 2007.
11. Family Court Act § 311.4.
12. Family Court Act § 311.4(3).
13. Family Court Act § 712(a) adds “or has been the victim of sexual exploitation.”
14. Social Services Law § 447-a and b.
15. Connecticut (Public Act 10-115); Washington (SB 6476, passed Apr. 1, 2010); Illinois (Safe Children Act HB 6462, passed Aug. 20, 2010).
16. *In the Matter of B.W.*, 313 S.W. 3d 818 (Texas 2010).
17. *Id.* at 821-22.

Sexually Exploited Youth: A View From the Bench

by Hon. Fernando Comacho

In the winter of 1985, during the early morning hours of the “lobster” arraignment shift at 100 Centre Street, amid chuckles from the audience, the scantily-clad kids with the sad faces would walk out of the holding pens and face the judge. I, as the Assistant District Attorney, would recommend thirty days in jail. My friend Mike Piniero, the Legal Aid attorney, would ask for ten days. Judge Herb Adlerberg would peer down at the trembling teenagers and, as the mascara streaked down their tear-stained faces, he would offer them twenty days in jail. In a barely audible whisper they would take the plea. As they were being led back to the cells, I would avoid their gaze so as not to look into vacant eyes that reflected an innocence lost and a soul in turmoil.

Twelve years later, in Brooklyn Criminal Court, I saw the same young faces all over again as I presided over their arraignment as a Criminal Court Judge. The same script was repeated and I reluctantly played my part: “The Court’s offer is twenty days in jail.”

I have since come to appreciate that this approach to cases involving teenagers charged with prostitution is, to a large degree, shaped by certain misconceptions that continue to impact the criminal justice system’s treatment of sexually exploited youth.

Many of us assume that the overwhelming majority of women engaged in street prostitution in New York City are mature adults. In truth, many are not. Children’s advocates estimate that there are roughly five thousand youths involved in prostitution in New York City and the average age of entry into prostitution in the city is between twelve and thirteen years old.¹ New York City is home to more than two thousand sexually exploited youngsters under the age of eighteen.² Outreach workers report that they have come across children as young as eight years old who are forced into prostitution.³

Recent prosecutions of alleged pimps by the Queens District Attorney for charges including Promoting Prostitution, Kidnapping, and Endangering the Welfare of a Child included the following alleged victims: a twelve year old; another twelve year old girl who had turned twelve a mere four days earlier; thirteen and fourteen year old runaways; a thirteen year old; another thirteen year old; a fifteen year old runaway who was locked in a basement for one month; another fifteen year old kidnapped by a “Bloods” gang member, allegedly forced to have sex with strangers until she was able to escape by running naked into the street; and a twelve and seventeen year old who were allegedly forced into prostitution.

Over the last several years, I vacated numerous criminal convictions of girls who were eleven, twelve, and thirteen years old when they took adult pleas. They lied about their ages on the instructions of pimps who found it difficult to secure their release from the juvenile justice system. The ugly truth is that many of those charged with prostitution are in fact kids, not mature adults, and their decisions are far from knowing and intelligent.

In the past we have based our criminal justice policies on the false assumption that all women who enter the world of prostitution are free to leave at any time. This is rooted in a lack of understanding of who many of these women are, where they come from, and what they face once they enter the “game.” In fact, many are throwaways and runaways from dysfunctional homes where they suffered physical, psychological, and sexual abuse.⁴ As one survivor explained:

We’ve all been molested. Over and over, and raped. We were all molested and sexually abused as children. Don’t you know that? We ran to get away. . . . We were thrown out, thrown away. We’ve been on the streets since we were twelve, thirteen, fourteen.”⁵

Young, frightened, and homeless, many find themselves in unfamiliar places — bus and train stations, homeless shelters, and group homes, where they are driven into the arms of an older male, a pimp, who promises them, sometimes for the first time in their young lives, friendship, security, and a sense of belonging to a family.

Comparisons between pimps and batterers are inescapable. Some years ago, a defendant in a domestic violence case pending in my court was the victim’s pimp. The victim was sitting in the first row of the courtroom waiting to speak to the prosecutor. When the case was called the defendant calmly walked toward the bench and, as he reached the first row, stopped by the victim, cocked his fist

and knocked her unconscious. She lay motionless on the floor as dozens of court officers, attorneys, litigants, and one bewildered judge looked on. He could have done this to her on the street but instead he chose to do it in the courtroom, to send a message — *I own you and no one can protect you from me* — not the police, not the prosecutor, and certainly not the person in the black robe sitting under the sign that reads In God We Trust. Just like victims of domestic violence, many sexually exploited youth do not have the ability to walk away.

By its very nature, the world of street prostitution makes it difficult for a young woman to escape. She is put to work on the “track,” a desolate stretch of road where on any given night she has sex with a dozen or more total strangers. Some are nice, some are not. She is told how much to charge and what the “quota” is — the amount of money she is expected to bring in every night. She is under the supervision of the “bottom bitch,” a more experienced girl who trains the younger ones. Discipline is imposed by the “gorilla pimp,” the enforcer who walks the “track” swinging a chain. She better meet her “quota” because, if she does not, she is “out of pocket” and subject to discipline. She is sometimes given a new name and is often tattooed. A pimp nicknamed “Worm” forced all of his girls to get a tattoo depicting an apple with a worm. On the “track” she can’t look the pimps in the eye, she must look down. “Pimp’s up, ho’s down” is the rule: if the pimps are on the “track” she has to move down to the street level so the pimps can walk on the sidewalk. If she is guilty of a violation of the rules she is sometimes placed in a “pimp circle” where she is surrounded by a group of men who stomp on her with fists and boots. If she commits the most egregious transgression — she tries to leave — she is hunted down, brought back, and severely punished, as in a recent prosecution where a defendant’s alleged torture of choice was burning with a hot iron.

A couple of years ago, in putting together a presentation entitled *From Let’s Make a Deal to Let’s Make a Difference: Changing the Criminal Justice System’s Approach to Teen Sex Trafficking*, I included the following accounts from two young survivors:

“Cheryl”:

I was thirteen or fourteen when I was turned out to the life and he was 30, 31. When I first met him I did not know what to expect, all I knew was that he was a gorgeous man and I had to meet him. . . . He told me that I was going to make money and the way I was going to make money was to give my stuff away

to men I didn't know . . . he took my innocence, I was supposed to be running around and playing with Barbie dolls and all that, but instead. . . . The reason they pick the girls so young is because they don't know any better, catch them around thirteen or fourteen, they are going to believe what you say, they want you to like them . . . how do I know because I've been there. . . . When I was on the track you see so many girls lined up behind cars, just sitting there and waving, and you know, it's kind of scary, because when you see a girl, standing there one minute, the next minute she is gone, sometimes they don't return back. . . . I know because I was close to losing my life in the game.

“Stephanie”:

I was in Covenant House and I met him in the park and he told me all about himself, making it seem like a guy who really wanted to get to know a female, and he asked me all about myself, whether I had kids, my sign, and what I wanted to do with my life. He asked me do you want to make money in the streets and I said ‘yeah,’ I had nowhere to go, no food, no money. I was fifteen, he was 26 or 27. . . . On the track I saw females get stabbed, get doped up, slipped mickeys by their pimps, pimps forcing drugs into their system. . . . I seen a gun pointed at a female's head, I've been in life and death situations, getting choked out, getting beat up for no reason or because you don't bring home a lot of money . . . you get really stressed out in this game, if you are not doing drugs when you come in, you leave with it . . . you don't care about yourself really, you feel there is no help and you just want to go to a suicide house.

Many of these victims turn to alcohol and drugs as a way to cope with the terror. They develop physical ailments, they contract sexually transmitted diseases, they engage in a coping mechanism called disassociation as a result of engaging in numerous intimate sex acts with total strangers. Many of them develop psychological ailments including clinical depression, schizophrenia, Post Traumatic Stress Disorder, and Stockholm Syndrome.⁶ Young women, many of them “physically, mentally, emotionally, and spiritually devastated,”⁷ facing unimaginable dangers on the “track” and fearing the wrath of the pimps, find it extremely difficult to leave the “life.”

A number of years ago at a trafficking seminar I came across the following quote:

More and more children are going into prostitution . . . because of a lack of will to combat it.⁸

When I first read it, I thought it referred to the children, that they lacked the will. I have now come to interpret it differently. It refers to *us*, all of *us*. In the past, we as a community lacked the will to confront the sexual exploitation of our children. We tried not to look them in the eye and shook our heads sadly as they were led off to jail. We unfairly accused their advocates of proposing the legalization of prostitution. In truth, advocates for sexually exploited youth never called for the legalization of prostitution. They asked us to find a more enlightened way to deal with these lost children. When pioneers of the drug treatment courts were clamoring for a change in our approach to addiction, were they calling for the legalization of drugs?

Several years ago, a sixteen year old walked into my courtroom in Queens County. She had been arrested more than five times for prostitution and had the same sad and vacant expression I had seen on the faces of countless teenagers over the years. Rather than sentencing her to a jail term, I adjourned her case to the following day for an assessment and to facilitate her referral to an organization that could provide her with services. That was the spark that led to the creation of a judicial diversion program in Queens County, a program dedicated to working with sexually exploited youth.

When we began, there were few resources available for this population. I was able to locate one Harlem-based program, the GEMS program, founded by a woman named Rachel Lloyd, and shortly thereafter we partnered with the Sexual Assault and Violence Intervention Program at Mount Sinai. Over the last four years, we have referred hundreds of young women charged with prostitution-related offenses to these two programs. Many have succeeded and have escaped the “life.” Some have failed, including a teen named Erin who was found frozen to death in a railroad yard on a blustery winter morning, a tragic reminder that we still have much work to do.

As a result of some very courageous voices who simply refused to be silent, the tide has begun to change. Columnists for *The New York Times* are taking notice:

The big problem out there is the teenaged girls who are battered by their pimps, who will have to meet their quotas tonight and every night, who are locked in car trunks or

basements, who have guns shoved in their mouths if they hint of quitting . . . those innumerable girls . . . for whom selling sex isn't a choice but a nightmare.⁹

The Legislature is listening as well, as evidenced by the recent passage of the Safe Harbour for Exploited Children Act. We are now beginning to recognize two fundamental truths: (1) many of the kids charged with prostitution in New York City are *victims* and not *criminals*; and (2) the justice system's treatment of these kids needs to change. Let's not punish them, let's get them help.

As for myself, I have also come a long way from those nights in the "lobster" shift twenty-four years ago. I no longer avoid the gaze of sexually exploited youth. I now look them in the eye and what I see is not despair — I see kids, full of hopes and dreams, ready to soar if only given the chance.

Notes

1. Mia Spangenberg, *Prostituted Youth in New York City: An Overview*, ECPAT-USA (2001).
2. Cassi Feldman, “Report Finds 2000 of State’s Children Are Sexually Exploited, Many in New York City,” *The New York Times* (April 24, 2007).
3. National Center for Missing and Exploited Children, *Female Juvenile Prostitution: Problem and Response* (Nov. 2002).
4. Spangenberg, *supra* note 1.
5. Melissa Farley, *Prostitution, Trafficking and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, Yale Journal of Law and Feminism (2006).
6. Melissa Farley, *Prostitution Is Sexual Violence*, Psychiatric Times (Oct. 2004).
7. United States Department of State, Bureau of Public Affairs, *The Link Between Prostitution and Sex Trafficking* (Nov. 2004).
8. Spangenberg, *supra* note 1.
9. Nicholas Kristof, “The Pimp’s Slaves,” *The New York Times* (Mar. 16, 2008).

Trafficking and the Commercial Sexual Exploitation of Young Men and Boys

by Brett M. Figlewski and Lee W. Brannon

A Hidden Phenomenon

In recent years, human trafficking has become an increasingly recognized phenomenon at the international, national, and state levels. A corresponding awareness on the part of the public at large has been forthcoming, but, even so, there remains a picture of who the victims are and to whom they are in servitude: young women or girls trafficked for prostitution to men, commonly referred to as “johns.”¹ According to this picture, trafficking occurs within a triad: the trafficked woman or girl, the trafficker or pimp who controls and abuses her, and the third party “john” who purchases her sexual services. While such a picture is not incorrect, it is not complete.² Although limited, the research that currently exists shows that men and boys³ are also trafficked for commercial sexual exploitation, both abroad and within the United States, and in ways that may not conform to the conventional triad.

Internal trafficking of men and boys occurs in many countries around the globe.⁴ In Pakistan and Afghanistan, for example, the practice of wealthy older men keeping young males for sex is common and tolerated,⁵ as recently and graphically featured in the documentary, “The Dancing Boys of Afghanistan.”⁶ In Sri Lanka, “beach boys” make up the majority of identified sex trafficking victims, with estimates ranging up to 30,000 affected children.⁷ Spain recently reported its first major bust of a sex trafficking ring known to use primarily male victims held under the bondage of unpayable debts.⁸

In the United States, too, males are trafficking victims. As of June 2007, males made up 31% of adults and 18% of children certified by the United States as trafficking victims, whether for sexual or labor exploitation.⁹ Within the United States, dynamics of power, abuse, and poverty similar to those abroad create an invisible epidemic of commercially sexually exploited youth of all

sexes.¹⁰ A 2001 study using conservative estimates indicated that between 244,000 and 325,000 youth within the United States are at risk for commercial sexual exploitation.¹¹ This study and various other commentaries suggest that the prevalence of domestic commercial sexual exploitation among boys and young men may be much higher than previously believed and that a constellation of risk factors coupled with subtle tactics of psychological control, rather than overt abuse, may be more likely to precipitate males into situations of commercial sexual exploitation.¹² The authors of one study, “The Commercial Sexual Exploitation of Children in New York City” (New York City CSEC study),¹³ had initially expected to recruit mainly girls controlled by pimps, but young males ultimately comprised 48% of the total sample.¹⁴ While its methodology — peer recruitment — undoubtedly contributed to this result, the study underscores the surprisingly high incidence of young males in conditions of commercial sexual exploitation. Additionally, the New York City CSEC study does not capture the possibly greater numbers of boys and young men (as well as girls and young women) subjected to commercial sexual exploitation in settings such as massage parlors, escort services, clubs, or as individuals advertised as providing “adult” services on the internet. Until it eliminated its more overt advertisements soliciting sex for money, Craigslist, a well-known source of online classified advertisements, had a large number of postings for males offering to provide “body work,” “massages,” and more explicit sexual services.¹⁵

The ways in which young males are initiated into commercial sexual exploitation may be somewhat different from those of girls and young women. According to one commentator:

Although peer introduction is common for both males and females, it is especially so for males who by and large operate without a pimp. A typical peer introduction occurs when a boy complains that he needs money and an older friend suggests that the youth can make quick money by prostitution. These peers haunt bus stations, malls, homeless shelters, or any place where they might find vulnerable youth in need of shelter and money.¹⁶

Two New York City service providers described the phenomenon of young men and boys engaging in “survival sex,” in which an older man, or sometimes a woman, offers a homeless young male shelter, and perhaps food or drugs, implicitly or expressly in exchange for sex.¹⁷ Other types of encounters include street-based pickups primarily by married or ostensibly heterosexual men¹⁸ or recruitment into pornography, either directly or through peers.¹⁹ One service provider to homeless

lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) youth in New York City believes that the vast majority of clients are commercially sexually exploited and that the phenomenon is evenly distributed across sexes.²⁰

Is This Trafficking? A Dyadic Model

Even when the stereotype of a trafficking victim expands to include those trafficked domestically, it remains that of a young female induced to engage in commercial sexual activity by a pimp who profits from the transaction between her and the man who purchases her sexual services. Thus, the trafficker or pimp exists as one corner of a triad, distinct from the purchaser and the victim. In contrast, the model for many sexually exploited males is that of a dyad: rather than operating under the control of an individual pimp, they are most often subjected to commercial sexual exploitation by an initial patron or at the behest of a peer.²¹ Patrons often take advantage of the emotional needs of the young males, including the need for a parental figure or consistent caregiver and the need to feel desired and valuable, as well as their often obvious and desperate poverty. Likewise, peers often act as recruiters, and, in this way, the patrons and peers may act in the stead of pimps, holding no less sway over youth susceptible to influence and control. Nonetheless, the assumption of independence based on the lack of an intermediary between young males in prostitution and their patrons has often inaccurately transformed victims into criminals under common but incomplete understandings of human trafficking.

The definition of human trafficking advanced in the United Nations Trafficking Protocol addresses the commercial sexual exploitation of these boys and young men, identifying them not as criminals or independent actors but as victims. Under this definition, trafficking in persons is “the recruitment, transportation, transfer, *harboring or receipt* of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, *of the abuse of power or of a position of vulnerability*, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (emphasis added).²² The Trafficking Protocol makes clear that inducing a young person under eighteen years of age to engage in commercially sexually exploitative acts is inherently abusive of a position of vulnerability and does not require force, fraud, coercion, abduction, or any question of consent in order to be considered trafficking. This definition does not require a “broker” who profits from the sexual transaction between victim

and patron. Under this definition, a youth who recruits a younger peer into prostitution is abusing a position of vulnerability, as is the mature adult who offers shelter, food, money, or drugs to a homeless young man in exchange for sexual services. Thus, the Trafficking Protocol encompasses not only the triadic model, but also the dyadic model so common to many male victims.

Although the federal and New York criminal laws are narrower in scope than the Trafficking Protocol in that they require that the exploitation be commercial in nature and that the exploiter have engaged minimally in fraud, they do not require a trafficked person to have been under the control of a third-party broker. New York law states that a person has trafficked another if he or she “intentionally advances or profits from prostitution” under certain circumstances.²³ This language covers consumers of prostitution who intentionally advance such prostitution, including by “unlawfully providing to a person who is patronized, with intent to impair said person’s judgment . . . a narcotic drug.”²⁴ The high incidence of cases in which a customer or peer recruiter provides illegal substances to boys and young men in the context of “hustling” further supports the identification of these commercially sexually exploited young males as trafficking victims.²⁵ While a commercial sexual transaction between adult peers that does not involve one’s abuse of the other’s position of vulnerability is not trafficking under even the most inclusive definition, legal and social service providers, as well as law enforcement officials, should exercise great caution to avoid narrow and stereotypical definitions about males as independent actors who operate outside systems of abuse and exploitation when evaluating them for assistance and services.

A Constellation of Risk Factors

The first time I came up here, I was staying with my dad. And he kicked me out when he found out I was gay. . . . I was sleeping at the Pier. . . . Off and on, I was finding guys online and sleeping at their house and all that. I didn’t really have anywhere to go though. I couldn’t go back to Indiana. . . . Adam was this guy, a lawyer that I met online. He was really cute and really charming. And he found out where I was staying and invited me to stay at his house. We had done drugs recreationally, but I didn’t know how bad it was with him, until I moved in. . . . And at the time I was fine with it because I had a place to stay. . . .

Then he started being very controlling, and . . . by that time I was so addicted that I just had to put up with it. . . . It got to the point where I just wanted to quit, and I just didn't want to be with him anymore, but I didn't know how to make that transition. I didn't have anywhere to go. . . . Adam gave me HIV. He told me he was negative. . . . I was having unprotected sex, from being so uninhibited on the drugs. . . . He got very abusive. First it was verbally, then it was emotionally, then at the very end, the last couple of weeks, he started pushing me around. . . .

I had been partying with this other cute guy I had met online. We had partied once for like a week. Finally I passed out and when I woke up two days later, I was in his bathroom. . . . I was bleeding. I had these cuts all over my body and I was covered in glass and I was butt naked. And when I woke up, I had all this money. I had a lot of money. And there was like ten or twelve guys sprawled out, passed out all over the house. I had no idea who they were. It was really scary. I couldn't have told you my name when I woke up. . . . I didn't remember people's names. I had that money, but I didn't know where to go. It turns out I had been slammed. When I had passed out they had slammed me with crystal meth, you know, injected it into my body. They did all kinds of things to me. . . .

I finally talked to [my mom] about everything. . . . I think a lot of my family relationships is what I was lacking. I'm not saying that's the cause of it, but I didn't have any other relationships besides the people I was doing drugs with, any type of relationship where I felt a connection. And I think I was looking for it in a lot of places.

—Benji, resident of a shelter serving homeless youth
age 16-24, in *Shelter* by Lucky S. Michaels.²⁶

As Benji's story illustrates, the factors that contribute to heightened risk for young men and boys of trafficking and commercial sexual exploitation are manifold, and those who exploit those risk factors — such as Adam, “the cute guy,” and the group of men in the story — do so in myriad ways. Traumatic life events related to the family of origin loom particularly large. Authors of one study highlighted unstable family backgrounds and caretaker fluidity: “Some

had parents that were separated or divorced, while others discussed new caretakers entering the household, such as boyfriends, foster parents, stepfathers, and grandparents. None of the boys were raised by both of their natural birth parents past the age of five.”²⁷ Unsurprisingly, according to these authors, commercially sexually exploited males commonly report involvement with child protective services, including reports of abuse in foster care and multiple moves through foster homes,²⁸ and many of the young men and boys had also experienced domestic violence, including sexual abuse, at an early age.²⁹ In addition to the trauma and consequent psychological effects, which put young males at greater risk for commercial sexual exploitation, these researchers found that childhood sexual abuse plays a disturbing role in the experience of young males in the street economy of commercial sexual activity: “A key connection between childhood sexual abuse and entry into sex work is the knowledge that abused youth have that other youths do not: abused youth know there is a demand for certain types of sexual activity.”³⁰ These researchers also found that having had caretakers or influential peers involved in prostitution greatly increases the chances that at-risk boys and young men view prostitution as “natural or inevitable” for survival and that alcohol or drug abuse by family members and influential peers is correlated to exploitation in commercial sexual activity.³¹ They concluded that “. . . the elements of work, money, alcohol, drugs, and sexual encounters . . . formed the basis for a kind of practical logic to . . . a street career.”³²

By far the most salient of the many socioeconomic risk factors is poverty. Service providers report poverty and a lack of economic opportunity as the most critical, predisposing factor for vulnerability to sex trafficking for young males, and one of the more difficult to escape.³³ Some sexually exploited youth do hold regular employment but continue to be exploited in commercial sexual activity and other street-based ways of generating income, such as drug distribution, or live with someone who exchanges shelter for sex, to supplement a meager paycheck.³⁴ Indeed, youth report the inability to find work earning comparable income to commercial sexual activity as a primary reason they cannot escape involvement in it.³⁵ The addition of a non-conforming sexual or gender identity and homelessness to the reality of poverty forms a trifecta of vulnerability and the emergence of a demographic profile: that of a young, homeless, gay, bisexual, or otherwise sexually-non-conforming male. The New York City CSEC study states that:

[R]esearch indicates a relatively high percentage of homeless youth — between 13 and 35% — identify as a sexual minority,

such as gay, lesbian, bisexual, transgender, or other. Gay-identified male homeless youth are at high risk to engage in male sex work. However, straight-identified male homeless youth also undertake sex work with other men. . . .³⁶

Indeed, an estimated quarter or more of homeless LGBTQ youth and up to 50% of gay or bisexual boys who have been victims of commercial sexual exploitation left home because of their sexual orientation or gender identity.³⁷ Consequently, the service providers most in contact with trafficked and commercially sexually exploited boys are those who aim to address the needs of either LGBTQ youth or homeless youth or both.

The exploitation of these youth occurs within the context of increasing normalization of commercial sexual activity in the broader culture. While the adage “sex sells” has long been commonly understood as the reason for the widespread use of sexual images to sell mundane goods and services, in recent years the prevalence of the glamorous depiction of commercial sex has grown.³⁸ Within particular LGBTQ communities, the trend may be amplified. The aims of the early gay liberation movement included dismantling the social, psychological, legal and other institutional factors that contributed to the long history of demonization of homosexuality and the oppression and marginalization of gays and lesbians. Consequently, many activists were wary of attempts to limit sexual expression in any form and resisted feminist critiques of the eroticization of power hierarchies, violence, and pornography.³⁹ These emphases have provided LGBTQ communities with a distinctive culture of sexual freedom and tolerance but may have contributed to its sexualization, including heightened focus on conformity to body stereotypes⁴⁰ and normalization of advertisements for commercial sexual activity in magazines, on websites, and in social gathering places.⁴¹ As a result, LGBTQ youth without stable means of financial and emotional support are particularly susceptible to commercial sexual exploitation.

Social Issues for Legal Service Providers

Because of the pervasive belief that commercial sexual exploitation affects only females, exploited boys and men receive little legislative attention, and the services available to trafficking survivors may either explicitly exclude male victims or not appropriately recognize their needs. Also, lawyers may find it necessary to help courts understand that males may be victims of trafficking and commercial sexual exploitation. Two studies note a tendency on the part of male

participants to downplay the exploitative dynamics of their commercial sexual activity, and they document the ways that young male survivors of commercial sexual exploitation often adopt an indifferent attitude even when recounting extreme abuse or power imbalances with customers.⁴² While this stoic attitude may facilitate a lawyer's ability to obtain relevant information, it could mask mental health issues and also undermine a victim's credibility, allowing a court to deem him a free actor responsible for participation in commercial sexual activity. Frequently, a victim's lack of emotional responsiveness is a telling sign of acute trauma; indeed, the definition of post-traumatic stress disorder (PTSD) includes a "feeling of detachment or estrangement from others" and a "restricted range of affect."⁴³ This seemingly nonchalant or "flat" affect of many victims may arise from a mistrust of authority due to negative encounters with police and authority figures. A lawyer will have to cultivate the attorney-client relationship with extra care to build the level of trust necessary to represent a male trafficking victim, and some victims may require additional supportive services to participate meaningfully in their legal cases.⁴⁴

The New York City CSEC study also found that a number of males volunteered enthusiastic claims of serving female customers, and, ultimately, the researchers excluded some males because their statements about pursuit by women were not credible.⁴⁵ Several boys, however, admitted that their customers included men.⁴⁶ This suggests that commercially sexually exploited boys and young men, particularly those who do not identify as gay or bisexual, are reluctant to volunteer information about sexual activity with men. Internalized homophobia, the taboos that may lead ostensibly heterosexual men to solicit sexual services from them, and rigid concepts of gender may contribute to male survivors' reluctance to acknowledge the sex of their customers. Some of these boys and young men may wrestle with guilt over their sexual exploitation and the social mores against same-sex sexual activity.⁴⁷ Those who identify as gay or bisexual may fear retribution or discrimination if their sexual identity becomes known, or they may come to believe that their sexual orientation led them into commercial sexual exploitation. Lawyers and other service providers should be aware that their trafficked male clients may initially provide inconsistent stories about their customers and may reveal more accurate information over time.

Anxiety, depression, and suicide attempts are widely observed in commercially sexually exploited males,⁴⁸ and there exists a strong correlation between commercial sexual activity and substance abuse.⁴⁹ In addition, male victims of sex trafficking and commercial sexual exploitation are at high risk of police contact and arrest for reasons other than commercial sexual exploitation,

such as assault or drug possession.⁵⁰ Lawyers and other service providers should remain alert to the potential for a history of commercial sexual exploitation among low-income or homeless young men and boys with mental health problems or histories of arrests.

One observer has suggested that boys and young men commonly identify their commercial sexual exploitation as “hustling” or “escorting,” casting themselves as entrepreneurs rather than as victims.⁵¹ Although prostituted girls and women, especially those under the control of an intimate partner pimp, can sometimes obtain shelter from domestic violence organizations, there are few domestic violence shelters available for males, who must turn to an array of alternatives, including homeless shelters, churches, and hotels.⁵² However, some boys and young men are exposed to, or enter commercial sexual activity through, contacts made at homeless shelters.⁵³ Thus, male survivors may need extra support in overcoming the psychological and practical obstacles to exiting commercial sexual exploitation, and legal and social service providers should strive to ensure that shelters do not inadvertently facilitate the commercial sexual exploitation of their vulnerable male clients.

Legal Issues

Commercially sexually exploited males may face many legal issues. For example, the New York City CSEC study reported arrests for prostitution, drug possession or distribution, assault, and robbery, among other less common charges.⁵⁴ The current legal framework provides some remedies for trafficked boys and young men in certain situations, but many commercially sexually exploited boys and men avoid the legal system because they fear authority and prosecution for prostitution or other offenses; they may only encounter lawyers as a defendant with court-appointed counsel.⁵⁵ Furthermore, existing evidence suggests a tendency to view boys as more responsible and, thus, criminally liable for their commercial sexual activity, notwithstanding their inability to consent to sexual relations because of their youth or the exploitative dyad between the boy and his patron.⁵⁶ One commentator observed that “This tendency for boys to rely on peer rather than on pimps or parent-equivalent adults can be problematic in viewing sexually-solicited boys as victims of CSE. Presumably, when juveniles are pimped by adults they will tend to be seen as victim, and when they take a more active role in soliciting sexual activities, they will tend to be seen as offenders.”⁵⁷

Of some assistance to sexually exploited men and boys is New York's Safe Harbor for Exploited Children Act, which creates a rebuttable presumption that youth under eighteen charged with prostitution meet the definition of human trafficking victims under federal law.⁵⁸ The law requires courts, with a few exceptions, to find that a young person arrested for prostitution is a Person in Need of Supervision instead of a Juvenile Delinquent. Under this designation, sexually exploited youth charged with prostitution may be diverted to "safe houses," interventions for runaway and homeless youth, and other supportive services in lieu of adjudication on criminal charges. This statute employs gender-neutral language, indicating the legislature's intent to apply it to boys and girls alike, and includes an explicit recognition that "sexually exploited youth have separate and distinct service needs according to gender," albeit without a promise that gender-appropriate services exist to meet those disparate needs. Given one service provider's indication that youth consider incarceration at Rikers Island less severe and thus preferable to commitment to a juvenile detention center,⁵⁹ lawyers and judges encountering commercially sexually exploited boys should be aware of the Safe Harbor Act's protections. Concerns also exist over incidence of abuse, discrimination, and negative experiences commercially sexually exploited young men and boys have with the child welfare system's administration of the "safe houses" and supportive services, especially for those who identify as gay or bisexual.⁶⁰

Young men who are too old for protection under the Safe Harbor Act may have grounds to vacate prostitution charges if they can prove that they meet the definition of a human trafficking victim and have either escaped trafficking or accessed supportive services.⁶¹ Sex trafficking victims must have engaged in commercial sexual activity through "force, fraud, or coercion,"⁶² and the assumption is often that the coercive force will have come from an identifiable pimp. While some young men over eighteen may meet this narrow definition of trafficking, the law excludes the vast majority of those for whom the initiation into commercial sexual activity originated from the solicitor in an exploitative dyad or through similarly manipulated peers. Given that boys are commonly initiated into commercial sexual exploitation at age thirteen or younger⁶³ and almost universally show despair over ever escaping it or surviving without the income it generates, it is easy to predict that many young men will continue to be commercially sexually exploited after "aging out" of protections afforded to minors. Some commercially sexually exploited young men in particularly dire circumstances may seek a dismissal of criminal charges against them in the form of a "Clayton motion," or a motion to dismiss in the interests of justice,⁶⁴

this mechanism has been invoked by people with advanced AIDS so that they may seek better medical care.⁶⁵

Patrons, peers, and pimps as well as other street contacts commonly commit crimes against young male victims besides inducement to engage in commercial sexual activity. Robbery, sexual assaults, physical assaults, forced drug injection, and kidnapping occur with alarming frequency according to statements made by commercially sexually exploited young men and boys about their experiences.⁶⁶ Because of their aversion to police out of fear of arrest, however, commercially sexually exploited young men and boys rarely report the crimes committed against them.⁶⁷ This is exacerbated by patrons' tendencies to reinforce the young men's and boys' feelings of guilt and shame and to emphasize the victims' isolation and the low probability of fair treatment or help from police. Because trafficked young men and boys may also encounter judges and court staff with limited familiarity with males as victims and with issues of sexual orientation, a zealous advocate will need to be prepared to address and navigate these various barriers to justice.

These crimes, if committed against immigrant commercially sexually exploited boys and young men, may open a path to permanent legal residency for victims willing to cooperate with law enforcement authorities. Victims of crimes who have been trafficked across international borders and who can demonstrate "extreme hardship" if deported may establish legal residency under the T-Visa.⁶⁸ A few trafficked males may be able to seek asylum in the United States because of the persecution they experienced or feared within their countries of origin and which may have included or set the stage for their commercial sexual exploitation.⁶⁹ Undocumented immigrant survivors who have suffered "substantial physical or mental abuse" as a result of certain crimes, including rape, domestic violence, trafficking, and sexual exploitation, may also apply for U-Visas.⁷⁰ To qualify for the U-Visa, victims must disclose information useful to law enforcement in prosecuting the crime against them.⁷¹ Since the U-Visa does not require a showing that the applicant would endure "extreme hardship" in his or her country of origin if deported and does not require that the applicant was brought to the United States for the purpose of trafficking, it may have broader applicability.⁷²

Conclusion: Expanding the Movement

Despite the stereotype that young males are independent actors who engage in “survival sex” and related commercial sexual activity of their own volition, nascent research and testimonials from service providers indicate otherwise. While less likely to have a conventional pimp than girls and women, these young men and boys may be no less exploited. What may be notable is the degree to which patrons of sexual services from young men and boys employ a variety of coercive tactics, from exerting power differentials of race and class to exploitation of positions of vulnerability of homeless youth. Lawyers and advocates would do well to forge collaborative relationships with organizations providing services to homeless youth — particularly gay, bisexual, or questioning young men and boys. These relationships may further the recognition of trafficking’s universal scope, as well as garnering widespread support for its redress.

Notes

1. An example of the initial concern of the anti-trafficking movement is the very name of one of its leading international organizations: the Coalition Against Trafficking in Women (CATW), founded in 1988.
2. One study concluded that: “What is known about victims of human trafficking is focused primarily on the trafficking of international women into the United States for sexual exploitation, with little attention to domestic trafficking, minor victims, and in particular, male victims of sex and labor trafficking.” Heather J. Clawson, Nicole Dutch, Amy Solomon, and Lisa Goldblatt Grace, *Human Trafficking into and Within the United States: A Review of the Literature*, U.S. Department of Health and Human Services, at 40 (2009) (*hereinafter* “Clawson *et al.*”).
3. In this article, we focus on the experiences of commercially sexually exploited men and boys, particularly those who identify as gay or bisexual or who are questioning their sexual identity. We recognize that transgender people are also at pronounced risk for trafficking and commercial sexual exploitation, and lesbian, bisexual, or questioning girls and women also endure trafficking and exploitation. Their experiences are both unique and under-researched, and the development of more resources for those assisting these victims should be encouraged.
4. U.S. State Dept., *Trafficking in Persons Report* (2010), at 5.
5. Tufail Muhammad, Naeem Zafar, and Anil Raghuvanshi, *Situational Analysis Report on Prostitution of Boys in Pakistan (Lahore & Peshawar)*, EPCAT International (2006).
6. PBS *Frontline*, April 20, 2010.
7. Karen C. Tumlin, *Trafficking in Children in Asia: A Regional Overview*, International Labour Organization (2000).
8. Raphael Minder, “Spain Breaks up a Trafficking Ring for Male Prostitution,” *The New York Times*, Aug. 31, 2010.
9. See Clawson *et al.*, *supra* note 2, at 4.
10. *Id.* at 6-7.
11. Richard J. Estes and Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico*, at 10-14 (2001). Given the hidden nature of commercial sexual exploitation of youth and the nearly ten years that have elapsed since this data was collected, this is

very likely an underestimate of the problem. For example, this study may fail to capture youth exchanging sex for shelter. In addition, nearly 105,000 children are identified each year as survivors of sexual abuse. *Id.* at 10.

12. See Clawson *et al.*, *supra* note 2, at 4-5; Taya Moxley-Goldsmith, *Boys in the Basement: Male Victims of Commercial Sexual Exploitation*, Child Sexual Exploitation Update, American Prosecutors Research Institute (2005) (*hereinafter* “Moxley-Goldsmith”).
13. Ric Curtis, Karen Terry, Meredith Dank, Kim Dombrowski, and Bilal Khan, *The Commercial Sexual Exploitation of Children in New York City, Volume 1: The CSEC Population in New York City: Size, Characteristics, and Needs*, Center for Court Innovation (2008) (*hereinafter* “Curtis *et al.*”). In this study, researchers conducted in-depth interviews with a cohort of young people aged eighteen years and under. The young people were ascertained through “seeds” who recruited study participants through their acquaintances.
14. In reference to the unexpectedly large number of boys recruited into the CSEC study, the authors observed that “The large number of boys that were recruited was a surprise to the researchers because even though boys had been occasionally mentioned by policymakers, practitioners, and some researchers prior to the beginning of data collection for this project, *no one focused on boys as a significant segment of the market or said anything about the unique sets of problems — quite different from those of girls — that these boys face.* . . . [T]hey remain almost entirely invisible in the shadow cast by the stereotypical CSEC victims: pimped girls.” *Id.* at 113 (emphasis added).
15. Further research targeted at this still less visible “indoor” population could greatly inform legal and social service providers on the backgrounds, needs, and policy issues facing the full range of commercially sexually exploited men and boys in New York. A casual perusal of the “men seeking men” personals section of Craigslist continues to yield multiple profiles seeking “donations” in return for sexual services. See <http://newyork.craigslist.org/m4m/>.
16. Moxley-Goldsmith, *supra* note 12, at 1. In these types of scenarios, peers behave functionally as pimps, whether or not an ongoing, abusive brokerage relationship is established.

17. Author interview with John Welch, Director of Client Services, Safe Horizon Streetwork Lower East Side Drop-in Center, Aug. 29, 2010 (*hereinafter* “Interview with John Welch”); author interview with Lucky Michaels, Director, Sylvia’s Place, Shelter for Homeless LGBTQ Youth, New York, Sept. 7, 2010 (*hereinafter* “Interview with Lucky Michaels”).
18. Author interview with Trudee Able-Peterson, author of *Children of the Evening* and founder of The Streetwork Project, Sept. 11, 2010 (*hereinafter* “Interview with Trudee Able-Peterson”).
19. *See Doe v. Menefee*, 391 F.3d 147, 150 (2d Cir. 2004) (predatory network of adult males called the “Boy Lovers” recruited boys into commercial sexual activity with attention, food, and money; shared them among themselves; used them in pornography; and sent some boys out as “seeds” to recruit peers).
20. Interview with Lucky Michaels, *supra* note 17.
21. Young people’s reasons for initiating others into commercial sexual exploitation may vary widely, and more research on recruiters would help to explain this complex phenomenon. However, it appears that, among other reasons, some young people recruit other youth out of a wish to help untempered by a full understanding of the implications of their actions. Also, for the recruiting, “helpful” peers, this may be the only way that they know to make enough money for self-support. *See* Stephen E. Lankenau, Michael C. Clatts, Dorinda Welle, Lloyd A. Goldsamt, and Marya Viost Gwadz, *Street Careers: Homelessness, Drug Use, and Sex Work Among Young Men Who Have Sex with Men (YMSM)*, 16 Int’l J Drug Pol 12, 15 (2005) (*hereinafter* “Lankenau *et al.*”); Curtis *et al. supra* note 13, at 49, 51; Moxley-Goldsmith, *supra* note 12, at 1.
22. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), *entered into force* Sept. 9, 2003.
23. N.Y. Penal Code § 230.34.
24. N.Y. Penal Code § 230.34(1).
25. Interview with John Welch, *supra* note 17; Interview with Lucky Michaels, *supra* note 17; *see also* Michael Clatts, Lloyd Goldsamt, Huso Yi, & Marya Viorst Gwadz, *Homelessness and Drug Abuse Among Young Men Who Have Sex with Men in New York City: A Preliminary Epidemiological Study*, 28 J. Adolesc. 201, 205 (2005) (*hereinafter* “Clatts *et al.*”).

26. Lucky S. Michaels, *Shelter*, at 119-121 (2007).
27. Lankenau *et al.*, *supra* note 22, at 16.
28. *Id.* at 13.
29. *Id.*
30. *Id.* at 11, 16.
31. *Id.* at 14, 16.
32. *Id.* at 15, 16.
33. Interview with John Welch, *supra* note 17; Interview with Trudee Able-Peterson, *supra* note 18; Curtis *et al.*, *supra* note 13, at 101.
34. Interview with John Welch, *supra* note 17; Curtis *et al.*, *supra* note 13, at 67.
35. Curtis *et al.*, *supra* note 13, at 100-01.
36. *Id.* at 11, 16. Service providers' estimates of the percentage of LGBTQ-identified youth among those accessing their services range up to 50-70%. Interview with John Welch, *supra* note 17; Interview with Lucky Michaels, *supra* note 17.
37. The U.S. Dept. of Health and Human Services reports that 26% of gay and lesbian youth are forced to leave home because of conflicts over their sexual orientation. Clawson, *et al.*, *supra* note 2, at 10.
38. *See, e.g.*, Meredith Levande, "Women, Pop Music, and Pornography," 8 *Meridians* 293, 314 (2008) (arguing that the 1996 Telecommunications Act permitted media conglomerates to profit more directly from adult entertainment, resulting in a drastic increase in pornographic imagery in media since the 1990's).
39. In the aftermath of the AIDS epidemic, prevention of the spread of HIV through safer-sex practices remains a paramount priority of the movement and community, perhaps to the exclusion of other analyses of sexual ethics.
40. *See* Gilad Padva, "Heavenly Monsters: The Politics of the Male Body in the Naked Issue of 'Attitude' Magazine," 7 *Int'l J Sexuality and Gender Studies* 281, 281 (2002).
41. *See, e.g.*, Chong-suk Han, "Sexy Like a Girl and Horny Like a Boy: Contemporary Gay "Western" Narratives about Gay Asian Men," paper presented at the annual meeting of the American Sociological Association, Montreal Convention Center, Montreal, Quebec, Canada, Aug. 10, 2006, at 15 ("While advertisements in gay periodicals seem to advertise to gay white

men, they advertise gay Asian men as a commodity for consumption.”). Han also notes the open sexual commodification of Asian men at LGBT community events.

42. Curtis *et al.*, *supra* note 13, at 113 (“As traumatic as these various incidents of violence must have been, most youth rattled off the accounts in somewhat emotionless terms, and they seemed to accept them as part of the danger of the business.”); Lankenau *et al.*, *supra* note 21, at 14.
43. American Psychiatric Association. (2000). *Diagnostic and Statistical Manual of Mental Disorders* (Revised 4th ed.), section 309.81.
44. Interview with John Welch, *supra* note 17; Clawson *et al.*, *supra* note 2, at 35.
45. Curtis *et al.*, *supra* note 13, at 24.
46. *See* Curtis *et al.*, *supra* note 13, at 77.
47. *Id.* at 113.
48. Interview with Lucky Michaels, *supra* note 17; Clawson *et al.*, *supra* note 2, at 13; Clatts *et al.*, *supra* note 26.
49. Lankenau *et al.*, *supra* note 22, at 11; Clawson *et al.*, *supra* note 2, at 13; Curtis *et al.*, *supra* note 13, at 93; Clatts *et al.*, *supra* note 26, at 207-08 (finding that onset of drug use and initiation into commercial sexual activity tended to occur at roughly the same time among current or formerly homeless young men who have sex with men).
50. Curtis *et al.*, *supra* note 13, at 87.
51. Moxley-Goldsmith, *supra* note 12, at 2.
52. Clawson *et al.*, *supra* note 2, at 13.
53. Lankenau *et al.*, *supra* note 22, at 16.
54. Curtis *et al.*, *supra* note 13, at 87.
55. Interview with John Welch, *supra* note 17.
56. Clawson *et al.*, *supra* note 2, at 18.
57. Moxley-Goldsmith, *supra* note 12, at 2.
58. N.Y. Family Court Act § 311.4 (3).
59. Interview with John Welch, *supra* note 17.

60. See Flor Bermudez, “Mischief and Mayhem: A Symposium on Legal Issues Affecting Youth in the Child Welfare and Juvenile Justice Systems,” 14 Cardozo L.J. 609, 679-80 (2008).
61. N.Y. CPL § 440.10 (1)(i), effective Aug. 13, 2010.
62. N.Y. Penal Law § 230.34 and the United States Trafficking Victims Protection Act.
63. Clawson *et al.*, *supra* note 2, at 9.
64. N.Y. C.P.L. § 210.40.
65. See John F. Wirenius, “A Model of Discretion: New York’s ‘Interests of Justice’ Dismissal Statute,” 58 Alb. L. Rev. 175, 218 (1994).
66. Interview with John Welch, *supra* note 18; Interview with Trudee Able-Peterson, *supra* note 19; Interview with Lucky Michaels, *supra* note 18; Curtis *et al.*, *supra* note 13, at 81-83.
67. Interview with John Welch, *supra* note 17.
68. See U.S. Citizenship and Immigration Services, *Instructions for Form I-914, Application for T Nonimmigrant Status*, p. 1, retrieved from <http://www.uscis.gov/files/form/i-914instr.pdf> on Sept. 8, 2010. See also Texas Council on Family Violence, *Immigration Frequently Asked Questions*, retrieved from <http://www.tcfv.org/policy/immigration-frequently-asked-questions/> on Sept. 8, 2010.
69. See, e.g., Calvin C. Cheung, “Protecting Sex Trafficking Victims: The Persecution Element,” 14 Asian Am. L. J. 31, 35 (2007).
70. Anna Hanson, “Legislative Note: The U-Visa: Immigration Law’s Best Kept Secret,” 63 Ark. L. Rev. 177, 191 (2010).
71. *Id.* at 192. Some further exceptions exist for very young or incompetent crime victims.
72. *Id.* at 200.

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Representing Victims



Interviewing and Assisting Trafficking Survivors

by Dorchen A. Leidholdt

Barriers to Interviewing and Assisting Survivors

As challenging as it can be to identify human trafficking and recognize victims, the tasks of interviewing and assisting survivors of human trafficking can be even more daunting. Trafficking victims endure the same kind of harms as victims of many commonly occurring crimes. What distinguishes trafficking is that, while most crime victims suffer discrete injuries that occur during a limited period of time, victims of human trafficking are often subjected to a wide array of criminal acts inflicted over a period of months or even years.

Trafficking victims have much in common with other kinds of crime victims and frequently have experienced the same forms of violence as victims of intimate partner violence, rape and sexual harassment, theft and extortion, stalking and torture, and official corruption. Like intimate partner violence, trafficking often involves betrayal by individuals the victim trusted and loved as well as a course of abusive conduct that extends over years. Like rape and sexual harassment, trafficking often involves a profound violation of the victim's most intimate boundaries. Like theft and extortion, trafficking almost always robs victims of economic resources, leaving victims with urgent material needs. Like stalking and torture, trafficking deprives victims of privacy and peace of mind, instilling in them a state of fear. Like official corruption, trafficking too often denies victims the possibility of justice and protection.

The multifaceted and prolonged nature of the victimization affects trafficking victims in ways that can impede the efforts of attorneys and other service providers to interview victims and develop strong working relationships with them. The many obstacles faced by the legal or social service professional attempting to assist trafficking victims are almost always the direct result of the harm — physical, psychological, and material — inflicted by the traffickers who carry out this profoundly injurious crime.

Trauma

Many trafficking victims have sustained psychological trauma, symptoms of which can range from depression, often accompanied by listlessness or flattened affect, to panic attacks and extreme emotionality. Often victims attempt to distance themselves psychically from their terrifying and humiliating experiences through minimization, memory loss, and dissociation. Many try to numb feelings of anxiety through alcohol and drugs. Post traumatic stress disorder (PTSD) is extremely common among victims of human trafficking.¹ A normal response to abnormal degrees of stress, PTSD is characterized by intrusion (emotional reactions, flashbacks, images, nightmares), avoidance (dissociation, minimizing, numbing, denial), and arousal (anger, difficulty concentrating, insomnia).²

Prior to being trafficked, many victims suffer traumatic events that inflict psychic trauma. This prior trauma not only attracts the attention of traffickers, who are adept at seeking out vulnerable victims and exploiting their vulnerability, but also magnifies the psychic harm of subsequent trauma. Typical is the experience of Kika, a sex trafficking victim from Latin America who was a client at Sanctuary for Families, a large New York City not-for-profit organization serving domestic violence and trafficking victims and their families.³ Before Kika met the man who lured her to the United States, pressed her into debt bondage, and handed her over to a brothel manager, she had been beaten by her mother as a child, raped by her mother's boyfriend, and battered by a boyfriend. Like sharks that scent blood in the water, Kika's traffickers were attracted by and preyed on her vulnerability. The psychic damage they inflicted was greatly compounded by her previous psychic injury and rendered her so disabled that she was unable to resist the demands of her traffickers and identify routes of escape.⁴

Many victims display the hallmarks of traumatic bonding, also known as Stockholm syndrome, sometimes viewing their exploiters as their protectors. Mario, a labor trafficking victim from Honduras, had witnessed the murder of his beloved older brother by a rival street gang and had been threatened and held captive by the "coyotes" he paid to smuggle him through Mexico and across the border. Once in the United States he fell under the control of a construction boss who confiscated his passport and held him in a trailer on the construction company's work site, forcing him to work long hours for no pay. However, the construction boss occasionally wired money to Mario's family in Mexico. Sporadic acts of apparent kindness like the payments to his family led Mario to feel indebted to the man who was brutally exploiting him. Mario's traumatic bonding intensified his trafficker's domination and control.⁵

High degrees of trauma like that sustained by Kika and Mario heighten the challenges faced by lawyers and other professionals attempting to interview and assist victims. Minimization, denial, and memory loss, all symptoms of psychological trauma, can make it extremely difficult to elicit information necessary to understand whether the exploiter's conduct rises to the level of actionable trafficking, to draft petitions and criminal complaints, and to prepare the victim to testify at trial.

Physical trauma, especially traumatic brain injury, may also be at the root of difficulties victims have remembering. Traffickers and other abusers know that leaving victims with visible physical injuries can tip off authorities and render victims less marketable. Beatings sustained in and around the head can leave even cooperative victims with enduring difficulties producing a coherent narrative of their histories and details of their trafficking experience.

Interviewing survivors and preparing them for court proceedings require them to recount the traumatic events. Not infrequently this can cause them to reexperience the earlier trauma and trigger traumatic symptoms. For survivors, the pain of reliving traumatic events can discourage them from attending meetings with attorneys and other service providers and cooperating with law enforcement officials. For the providers attempting to assist survivors and not cause further harm, the experience of inadvertently retraumatizing a client during interviews or preparation sessions can be extremely uncomfortable and thwart well-intentioned efforts to provide help.

Anger and irritability are frequent symptoms of the kind of depression and trauma victims experience, and it is not unusual for survivors to misdirect these emotions caused by abuse at the hands of their traffickers to those attempting to provide protection and assistance. Attorneys at Sanctuary for Families provided legal representation to Kristina, an Eastern European trafficking victim who had been serially raped, first by the American man who recruited her on an internet bride website and then, when she fled from him, by a man who falsely claimed to be a police officer. The efforts of attorneys to help Kristina obtain immigration relief and medical assistance for her seizure disorder were frequently met with outbursts of rage and, on two occasions, with physically menacing acts. Staff struggled to maintain their composure in the face of repeated incidents of provocative and even frightening behavior.⁶

Fear

Traffickers maintain control over their victims by deliberately instilling in them high degrees of fear, often by threatening to harm them and those they

love.⁷ Since traffickers often have connections with victims' communities and know the whereabouts of their family members, victims are acutely aware that their exploiters can make good on such threats. Olga, a Sanctuary for Families client and a labor trafficking victim from the Ukraine, was subjected to chilling threats. Not only was she told that she would be forced into prostitution if she disobeyed her traffickers' orders, after she tried to escape she was warned that if she did not do everything her traffickers demanded they would murder her two small children in the Ukraine, eviscerate them, and sell their organs. Olga was paralyzed by fear, and when she was rescued had frequent and uncontrollable panic attacks. This made it extremely difficult for her attorney to gather the information she needed to prepare Olga's application for a T-visa.⁸

Traffickers also instill in their victims fears about the response of law enforcement and immigration authorities. Sex trafficking victims are routinely told by their traffickers that if they try to seek help from the police they will be arrested for prostitution and, if they are immigrants, summarily deported. Sex traffickers threaten victims with children that, if the authorities find out that they were in prostitution, their children will be put in foster care and they will be deported and never see their children again. Labor traffickers tell victims that authorities will separate them from their families, incarcerate them in immigration jails, and deport them back into the conditions of poverty they had hoped to escape.

Sadly, too often these threats are realized. Both sex and labor trafficking victims often experience mistreatment by authorities, not only in their countries of origin, where official corruption may be rampant, but also in the United States. Survivors of sex trafficking often report that law enforcement officers tell them after arrest that they will be released if they provide sexual services to the officers. Sex trafficking victims who are apprehended by the police are far more likely to be arrested and treated as law breakers than identified as victims and offered services. Trafficking victims who are undocumented immigrants are frequently subjected to arrest, detention, and deportation by American criminal justice and immigration authorities more used to expelling "illegal immigrants" than identifying victims and providing them with protection.

Existing in conditions of heightened fear for months or even years not only can exacerbate trauma and its symptoms but also can make it difficult for survivors to trust anyone, especially someone who is or appears to be connected with government authorities, including lawyers. Repeated experiences of betrayal and exploitation, often by those in whom survivors had placed their trust, render them suspicious, guarded, reluctant to disclose important information, and likely to resort to giving those attempting to assist them the false narratives drilled into them by their traffickers.

Shame

Like all those who are victimized, survivors of human trafficking experience shame — shame at having been tricked and deceived, at having been taken advantage of, at having been exploited, and often at failing to provide family members with money survivors had intended to send them. Because the period of victimization is often prolonged, the shame they experience is often deeper and more persistent than that experienced by other crime victims.

Sex trafficking victims almost invariably experience a profound degree of shame.⁹ Over and over, they are required by both their traffickers and their customers to perform acts that are degrading, humiliating, and repugnant to them. Deepening their shame, they often are required to feign pleasure in the degradation and to pretend that they are engaging in humiliating acts of their own volition. Not infrequently these acts are photographed or filmed, and the victims are threatened that the pornographic images will be shown to family members and/or publicized on the internet. Victims are often subjected to verbal abuse by their exploiters and their customers, called names like “dirty whore,” “puta,” and “slut” that suggest that their very beings are vile and that they are in prostitution because they are prostitutes by nature.

In most societies, especially traditional ones, prostitution is considered the lowest human condition, one that renders those in it permanently stigmatized and cast out of normal society. Prostitution is considered immoral, a violation of religious precepts, and prostitutes are regarded as “fallen women.” In many countries, including our own, prostitution is a crime. By inducing their victims into prostitution, sex traffickers marginalize them, creating a vast gulf between victims and those attempting to assist them. It is not surprising that sex trafficking victims often find it difficult if not impossible to recount experiences that are mortifying in the extreme.

Isolation

Extreme isolation, the *sine qua non* of human trafficking, takes place in a variety of settings — private homes, farms and factories, brothels, strip clubs, and sex shops. This isolation does not separate victims from all human contact; indeed, they are usually surrounded by others, they enjoy little if any privacy, and human contact of the most invasive nature imaginable is often pressed upon them. Instead, the isolation that is endemic to human trafficking takes the form of the trafficker rigorously controlling the victim’s ability to communicate, cutting the victim off from systems of support, and curtailing his or her freedom of movement.

Traffickers isolate their victims for many, interconnected reasons: to separate them from sources of help, to prevent them from obtaining information that could facilitate escape, to keep them in a state of disorientation and dependence, to stop them from discovering the truth about the trafficker's campaign of misinformation, and to shield their operations from detection by law enforcement authorities. Often trafficking victims suffer in conditions of isolation for weeks, months, or years.

The isolation imposed by traffickers amplifies their power and control over their victims and impresses the traffickers' world view and belief system on them. Sex traffickers often carry this to an extreme, employing a process called "seasoning," which systematically breaks down and reconstructs the victim's values, sense of self, and understanding of her or his relationship to society. A victim who has been successfully seasoned regards the trafficker as an omniscient, omnipotent god and offers him devotion and blind obedience. Isolation and its consequences mean that the legal professional trying to connect with a victim may first need to deal with someone deeply influenced by, if not still in the service of, the trafficker.

Adaptation

While trafficking is often precipitated by tactics of overt brutality and/or deception, as months turn into years, traumatized, fearful, shamed, and isolated victims may begin to accept their circumstances. They struggle to make the intolerable survivable. They learn that fighting against their exploiters is dangerous and futile. The best that can be achieved is accommodation. If traumatic bonding kicks in, victims come to regard traffickers as family and protectors.

When exploitation in trafficking becomes routine, victims no longer try to escape but instead try to find a way to survive physically and emotionally within its confines. Often it takes an overtly violent experience to rouse the victim from this trauma-induced stupor and precipitate an effort to escape. Kika, one of Sanctuary for Families' sex trafficking clients, is a good example. Psychologically devastated by having to provide sexual services to twenty customers a night, Kika adapted to life in a brothel by creating a family with the other victims. Annie, a trafficking victim from the Dominican Republic, became her confidante and best friend. Only when Annie was murdered in front of her by an irate customer did Kika's illusion of safety shatter, and she began to try to find an exit route.¹⁰ Similarly, Olga, the labor trafficking victim from the Ukraine, became inured to life as a labor slave until her trafficker tried to rape her. Then she tried the only exit available to her — suicide.¹¹

When she first met with her lawyer at Sanctuary for Families, Katerina presented as a battered wife who needed an order of protection. Later she told her attorney that she had previously been in prostitution, which she described as entirely voluntary. To the attorney's surprise, a law student intern who had been preparing Katerina's application for a civil order of protection reported that Katerina was a trafficking victim. In her mid-20's she had gone to an employment agency in Moscow in response to an ad for babysitters in New York City. When she arrived at Kennedy Airport, she was met by a man, working with a female confederate, who placed her in debt bondage, confiscated her passport, and, with the debt mounting, offered Katerina a way to settle it: stripping in Newark or performing "massage" in Brooklyn. Katerina's entry into prostitution was far from volitional, and the three years in brothel and escort prostitution that followed left her suicidal, self-hating, and alcoholic. Nonetheless, Katerina continued to insist that she was not a victim and that the other women in the brothel had suffered far more than she.¹²

Katerina's attorney came to realize that her client was engaged in the psychological strategy of "reappraisal," "cognitively transforming the situation so as to alter its emotional impact."¹³ As a team of psychologists explains, "This process may include an individual reappraising an aversive situation as not as bad as it could be, minimizing the harm, [providing] justification for the situation, [making] social comparisons to others who are worse off, or [demonstrating] acceptance of the situation."¹⁴

Lawyers and other service providers working with possible victims of trafficking who deny sustaining harm or minimize negative effects should be alert to the likelihood that reappraisal or other mechanisms of adaptation may be at work. Rather than simply accepting a client's disclaimer of harm at face value, as initially occurred in Katerina's case, the legal professional should sensitively explore all of the facts and circumstances before ruling out the crime of trafficking. Once Katerina was correctly identified as a victim of human trafficking, not only did her self-blame abate but she became eligible for a T-Visa and the many benefits available to T-Visa applicants.

Recommendations to Legal Professionals

Work to Develop a Relationship of Trust

Building the trust that is essential to a healthy attorney-client relationship is not an easy task but there are steps you can take to help create a strong, trusting relationship. Your first task may be dispelling misunderstandings about your role. Even though you may be a private practitioner or a lawyer employed by a public interest organization, your client may assume that you are a government official and regard you with suspicion and fear.

As soon as possible, explain to your client, if it is accurate, that you are not working for the government and that all of his or her communications to you will be kept strictly confidential. Emphasize that your client can speak with you freely and openly, without concern that you will disclose his or her confidences to the government or the traffickers. If your client is an immigrant, broach the subject of immigration status with sensitivity: For example, instead of asking “Are you undocumented?” you could say “We may be able to help you with your immigration legal needs.” Be alert to the power imbalance inherent in the attorney-client relationship and work to diminish it by acknowledging the client’s strengths, listening to his or her concerns, and demonstrating responsiveness to his or her needs.

Prioritize Effective Communication

Effective communication is the foundation of a strong attorney-client relationship. If your client does not speak English and you do not speak her or his language, be sure that you communicate through a competent interpreter who not only speaks your client’s language but, if appropriate, your client’s dialect. Equally important, make sure that the interpreter treats your client with sensitivity, professionalism, and respect. If you can communicate with your client at all without an interpreter, after the interpretation has begun try to ask your client, outside of the interpreter’s earshot, whether he or she feels comfortable with the interpreter’s level of skill and attitude. Both your client and the interpreter must understand his or her duty of confidentiality. If the interpreter is from your client’s ethnic community, inquire as to whether he or she has connections to your client’s kinship group or that of the exploiters and, if so, find another interpreter.

Whether your client speaks your language or not, try to use language that is readily accessible to a layperson and, whenever possible, avoid legal jargon.

Take time to thoroughly explain to your client the available legal remedies, each step of the process, the identities and role of key players, what to expect during interaction with each of them, and what will be expected of your client in and outside of court. The better prepared your client is for each stage of the case, the more comfortable he or she will feel, the better he or she will present, and the more confidence he or she will have in the representation. Because emergencies often arise suddenly in trafficking cases, make sure that your client has a way to reach you if necessary.

Be Alert to Symptoms of Psychological Distress

Legal professionals working with trafficking victims need to be alert to the possibility that their clients are experiencing psychological distress and be able to recognize its symptoms. Many trafficking victims suffer from anxiety, depression, and other symptoms of trauma. A normal response to acutely distressing abnormal experiences, these symptoms can interfere with the victim rebuilding her life and working with her attorney on her case. Victims may avoid talking about painful experiences, may deny that they occurred, or may break down when attempting to describe them. You may discover that your client has suicidal ideations or is actively suicidal. If possible, attempt to make referrals to appropriately trained professionals with experience and skill in working with trauma victims. Be aware that your client may have developed substance abuse problems in an effort to alleviate feelings of depression and anxiety. If you see signs that this is the case, identify appropriate substance abuse treatment providers and encourage your client to seek their assistance.

Strive to Mitigate the Effects of Recounting Traumatic Events

Describing traumatic experiences almost invariably forces trafficking survivors to relive them and often sparks traumatic symptoms. Legal professionals cannot avoid such inquiries because an accurate, detailed account of incidents of trafficking, the tactics of the traffickers, and the effects on the victim is essential to almost every kind of case intended to provide survivors with legal relief. While there is no easy solution to this dilemma, there are ways that the psychological harm from participation in the legal process can be alleviated. It may be less injurious, and even therapeutic, for victims to transcribe accounts of their traumatic experiences. If your client is literate, consider asking her or him to prepare a written narrative of her or his experiences. Ask questions in a supportive, nonjudgmental way and affirm your client's responses in a manner that demonstrates understanding and compassion. Avoid body language,

expressions, or comments that indicate that you find her pitiful or her experiences shocking or disgusting or that you take a voyeuristic interest in her ordeal.

Understand that there may need to be multiple meetings before your client can disclose incidents that are especially painful to remember or humiliating to reveal. Scheduling the interview over several days may help prevent your client from being flooded with feelings of distress. If your client breaks down in the course of a session and timing permits, take a break and consider ending early. Reassure your client that it is not unusual to become upset in an interview when asked to remember traumatic occurrences. Remember that your client has survived an experience in which his or her autonomy was severely curtailed if not destroyed; in the interview, let your client determine the timing and pace to the greatest extent possible. Try to end the interview in a positive way, for example, by acknowledging your client's strength and courage.¹⁵

Avoid Exacerbating Feelings of Embarrassment, Shame, or Self-blame

Choose a meeting location that is private and avoid interruptions once your interview begins. Do not disclose your client's circumstances to anyone other than colleagues who are part of your legal team. Realize that your client may not have disclosed the trafficking to family members or friends, who could be judgmental or critical, so don't interview her or him in their presence or allude in their presence to her or his victimization. Be careful not to imply in your comments or questions that your client was responsible for the exploitation or stayed in an abusive situation voluntarily. Avoid, for example, asking, "Why couldn't you leave?" When inquiring about sexual abuse, let your client guide the discussion and reassure her or him that such victimization is common in trafficking cases and that he or she is not to blame. Understand that sex trafficking victims often experience prostitution as rape. Avoid asking questions such as "Was sex a part of your job?" that downplay the seriousness of the violation survivors typically feel.

Be Sensitive to Issues of Gender

If you are male and your client is a female victim of sexual exploitation or abuse, ask her if she would be more comfortable talking with a legal professional who is female and, if so, try to enlist the help of a sensitive female colleague. Demonstrate through your words and actions that you are not being judgmental. You may wish to acknowledge the strength and agency that facilitated her survival. Recognize that trafficking victims often have complex relationships with and feelings about their traffickers and that traumatic bonding

may still be at work. If appropriate, explain that it is not unusual for victims to have feelings of love or gratitude toward those who abused them.

Develop and Implement a Safety Plan

Safety planning is as essential in trafficking cases as in cases of domestic violence. It may have begun before you even meet your client; inquire about safety considerations from any referral sources, such as law enforcement providers. Ensure that the meeting place for your interviews with your client is in a safe location, ideally one that is confidential. Help your client understand the importance of keeping the fact and substance of your meetings confidential. Find out where your client's traffickers and any confederates are, and work with your client to develop a plan in which they can be avoided.

Often the next step — and the most difficult one — is identifying a safe place for the survivor to live. Shelter resources for trafficking survivors are scarce. Explore the possibility of your client entering a domestic violence shelter and, if there is resistance on the part of shelter staff, emphasize to them the similarities of trafficking to intimate partner violence. Be sure that the shelter is not near the living quarters or operations of the traffickers and their associates. If local shelter is not available, explore the possibility of your client relocating to another part of the state or to another state with such facilities.

Other safety measures available to domestic violence victims may be equally beneficial to trafficking victims, such as criminal orders of protection, which usually require the initiation of a criminal case against the trafficker, and civil orders of protection, which usually require that the trafficker and victim have an intimate relationship. Because the family members of victims are frequently the subject of traffickers' threats, your safety plan should include steps that protect the safety of the client's family members in the home country. In one Sanctuary for Families' case, a survivor's attorney persuaded the prosecutor to postpone the arrest of her client's traffickers, who operated between Mexico and the United States, until her daughter in Mexico, whom the traffickers had under surveillance, could be spirited to safety in a domestic violence shelter in New York City.

Be Attentive to Your Client's Material Needs

Trafficking survivors have an array of urgent material needs. Be attentive to these needs and work to address them. They include the need for a safe place to live, food, toiletries, clothing, and medical care. Survivors who are undocumented may not be eligible for traditional public benefits such as food stamps and cash

assistance; explore the possibility of obtaining benefits for them under New York State's anti-trafficking law and available to T-Visa applicants. Material assistance also includes providing your client with a glass of water, tissues, and snacks during the interview. Helping the survivor address these needs not only will free him or her from dependence on exploiters but will help facilitate a relationship of trust.

Conclusion

Interviewing and assisting survivors of human trafficking pose many of the same challenges as interviewing and assisting victims of domestic violence. For this reason, it can be immensely helpful to reach out to experienced domestic violence victim advocates for suggestions about safety planning and addressing clients' other needs. While working in respectful partnership to assist a client with the strength and courage to survive the unimaginable will test the knowledge and skill of even the most seasoned legal professional, it is likely to be one of the most rewarding experiences of an attorney's legal career.

Notes

1. Melissa Farley, *et al.*, *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 (3/4) *Journal of Trauma Practice* 33, 35 (2003); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Post-Traumatic Stress Disorder*, 27 (3) *Women & Health* 37, 40-41 (1998).
2. *See, e.g.*, Mary Ann Dutton, *Empowering and Healing the Battered Woman*, at 16-3 (1992).
3. The trafficking victims whose experiences are drawn upon to provide examples for this chapter were all clients of the Center for Battered Women's Legal Services at Sanctuary for Families in New York City. The author of this chapter is the Center's Director.
4. Kika Cerpa, "The Human Toll of Sex Trafficking and the Way Out: Kika's Story," presentation at Mercer University (Mar. 20, 2009).
5. Information provided by the victim to the author.
6. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women's Legal Services, Sanctuary for Families.
7. Kevin Bales, *Disposable people: New slavery in the global economy* (1999).
8. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women's Legal Services, Sanctuary for Families.
9. Judith Lewis Herman, "Introduction: Hidden in Plain Sight: Clinical Observations on Prostitution," in Melissa Farley, ed., *Prostitution, Trafficking, and Traumatic Stress* (2003).
10. Information provided by the victim to the author.
11. Information provided by the victim to Lori Cohen, Senior Staff Attorney, Center for Battered Women's Legal Services, Sanctuary for Families.
12. Information provided by the victim to the author.
13. J. Gross, *Antecedent-and response-focused emotion regulation: Divergent consequences for experience, expression, and physiology*, *Journal of Personality and Social Psychology*, 74, 284 (1998).
14. T.K. Logan et al., *Understanding Human Trafficking in the United States, Trauma, Violence, and Abuse*, Vol. 10, No. 1, 15 (January 2009).
15. World Health Organization, *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women* (2003).

Representing and Defending Victims of Commercial Sexual Exploitation in Criminal Court

by Courtney Bryan

As a new public defender, the first time the concept of “sex trafficking” crossed my mind was when I represented a foreign-born Chinese woman in her early twenties, who had been arrested with two men for running an illegal gambling operation out of an apartment in Sunset Park, Brooklyn. The charge was a misdemeanor, and it was her first arrest. When I met her in the holding cell, she was crying and seemed very frightened. She wore heavy eye make-up that was smeared on her face, and she was dressed in short denim shorts, a tight tank top, and high-heeled strappy sandals. Through an interpreter, I asked her about what had happened, the circumstances of her arrest, and how she came to the United States. She provided little information. I spent only a short time with her, explaining that when we appeared before the judge I would ask for an ACD (adjournment in contemplation of dismissal), which meant that the case would be dismissed and sealed in six months if she was not re-arrested, and she would be free to go home. As predicted, the judge granted the ACD — another easy win and one fewer matter to add to my increasing caseload. As my client walked out of the courtroom, I saw two men (later I learned they were her co-defendants) stand and escort her out. As I watched them leave the courtroom I felt uneasy. Was she afraid of these men? What was she really involved in? Could it be prostitution? Then I returned to the grind of arraignments.

At home later that night, I kept thinking about this woman. I asked myself, “Should I have spent more time with her? Should I have asked more questions? Should I have encouraged her to come to my office the next day to meet with a social worker? What if she’s desperate for help and I failed her?”

Months later I represented an immigrant woman after a raid on an apartment. She and several other women had been arrested for prostitution and a few men were arrested for promoting prostitution. My client was distraught and fearful. Through an interpreter I tried to get information about whether she was being pressured or forced to prostitute. She too gave me very little information.

As this was her first arrest for what the criminal justice system considers a fairly benign offense, she was granted an ACD and walked out the courtroom door, free to go but leaving me to wonder how free she really was.

In the jargon of criminal court, these cases were called “disposables” or “dispos.” After considering the charge, the defendant’s criminal record, and the “worth of the case,” these cases were very likely to be disposed of at arraignment, either with an ACD or a plea. The typical disposition for a first arrest was an ACD and for a second or third arrest a plea to a non-criminal violation (e.g., disorderly conduct). While someone with a lengthier record faced a misdemeanor conviction and jail time, plea offers from the prosecutor or judge were often enticing enough so that many defendants pled guilty at arraignment. Everyone — the defense attorney, the prosecutor, and the judge — considered these cases trivial. No one seemed concerned that they likely involved acts of violence or exploitation or that the defendant might be at risk. We now know that victims of trafficking are arrested and prosecuted, sometimes numerous times, but are rarely identified as victims by the criminal justice system.

It is easy to miss the sex trafficking victims coming through our criminal courts arrested for prostitution offenses. In addition to the institutional practice and pressures to dispose of cases quickly with a plea or ACD to avoid additional court dates, criminal conviction, and jail time, criminal defense attorneys, prosecutors, and criminal court judges often know very little about trafficking. Also, unlike most labor trafficking victims whose work is not in and of itself illegal, victims of sex trafficking are induced to engage in illegal activities and therefore often are arrested and treated as criminals. Finally, sex trafficking victims rarely reveal right away that they are indeed victims. Because of the fear and abuse they experience, disclosure takes time and is only achieved after rapport, trust, and confidentiality have been established. The result is that criminal defense attorneys, prosecutors, and criminal court judges learn very little about the victims before them or about trafficking in general.

These realities pit victims of sex trafficking arrested for prostitution against the very government actors designed to protect crime victims — the police and prosecutors. Given this dynamic, it is unlikely that victims will be identified and protected. It is far more likely that they will be re-victimized by our criminal justice system and left at the mercy of their traffickers. Thus, it is crucial that criminal defense attorneys take a leading role in identifying potential trafficking victims and that other criminal justice system players work with defense attorneys to develop policies designed to identify and protect sex trafficking victims arrested for prostitution and other offenses.

Current Law

The federal Trafficking Victims Protection Act,¹ which qualifies foreign-born, non-citizen victims for immigration relief and social services, has led to confusion about who qualifies as a trafficking victim and the mistaken belief that trafficking is by definition international and that U.S. citizens cannot be trafficking victims. This is not the case. Under federal law, immigrants and non-immigrants may be prosecuted for the crimes of sex and labor trafficking, and immigrants and non-immigrants may be trafficking victims.

New York is one of many states that have created crimes of sex and labor trafficking. New York State's 2007 legislation on human trafficking² defines trafficking with reference to the typical kinds of fraud and coercion that traffickers use on their victims, rather than strictly relying on the threat or use of physical force. Under New York's Safe Harbour for Exploited Children Act of 2009,³ a person under the age of eighteen who is engaged in prostitution is presumed to be a trafficked person. Consistent with federal law, which deems prostituted children up to the age of eighteen trafficking victims without requiring proof of force, fraud, or coercion, the law permits the child to avoid criminal charges of prostitution and instead to be considered a "person in need of supervision" within the meaning of the Family Court Act.⁴ Rather than requiring these sexually exploited youth to be placed in a juvenile detention facility, the statute provides them with support and services, including safe houses, crisis intervention programs, and community-based programs. It also requires law enforcement training to help officers identify and assist sexually exploited youth.

Practice Tips for Criminal Defense Attorneys

In general, criminal defense attorneys should consider every defendant arrested for prostitution a potential trafficking victim. While foreign-born, non-U.S. citizens typically come to mind when trafficking is mentioned, U.S. citizens are also victims. Defense attorneys should conduct interviews, investigate, and explore defenses with this in mind. Finally, defense attorneys should try to identify victims of trafficking pre-plea because only limited post-conviction relief is available.

Training is key. Criminal defense attorneys must seek training on the dynamics of trafficking, and learn how to identify potential victims and to forge relationships with them. Trafficking service providers can partner with

defender organizations to provide training to defense attorneys. Public defender organizations should be encouraged to cover trafficking in new staff attorney trainings, since new public defenders typically start out by handling low-level, seemingly simple cases, like prostitution, but all defense attorneys should receive ongoing training about human trafficking.

Partnering with Service Providers

Criminal defense attorneys should partner with trafficking service providers not just for training but also to assist in screening people arrested for prostitution for trafficking. Trafficking service providers may have already developed a screening protocol, or they can work with the defense bar to develop one. The protocol can also be used to train social workers assisting defense attorneys.

Recognizing that even with robust screening, victims will rarely disclose their trafficking history right away, defense attorneys should link their clients with trafficking service providers or staff social workers with trafficking expertise. The social service needs of trafficking victims are critical and serious, often including safety, shelter, medical and mental health care, services for victims' children, and economic support.

Defense attorneys must be cautious about the limits of confidentiality when social service workers are involved in their cases. While communications between clients and social workers have some protection under state law,⁵ these communications may not be covered by attorney-client privilege, even if the social worker is counseling the defendant at the attorney's request to explore a defense strategy and reasonably could be considered a member of the defense team. Defense attorneys should instruct non-attorney advocates and social workers, especially those who are not employed by the attorney's office, to avoid taking notes in case a court later requires the non-attorney advocate to testify or turn over notes about communications with the defendant.

Identifying Child Victims

Defense attorneys should try to verify the age of clients and determine whether they are under eighteen years old and thus covered by the Safe Harbour Act. Many young people involved in the commercial sex industry are familiar with, and want to avoid, the intrusions of family court. When stopped by law enforcement, teenagers may lie about their age because they know that in criminal court they will receive less scrutiny, suffer fewer consequences, and be subjected to fewer conditions than they would in family court. For children who are sixteen or younger, family court is without question the appropriate place for

them. In New York State, sixteen to eighteen-year olds are treated as adults under the criminal law. Although the Safe Harbour Act does not explicitly require that prostituted children sixteen to eighteen years old be diverted to family court instead of being arrested and arraigned in criminal court, the *intent* of Safe Harbour is clear — children under eighteen are presumed to be trafficking victims. Defense attorneys who learn that a client is under eighteen should notify the court and prosecutor, and they should move to dismiss the charges on jurisdictional grounds and/or in the interest of justice.

Negotiating with Prosecutors

Once defense attorneys learn that a client is a trafficking victim, they should contact the prosecutor and persuade him or her to withdraw or dismiss the charges. Defense attorneys may also explore whether the client wants to provide the government with evidence about the traffickers in exchange for dismissal of the charges.

Moving to Dismiss

Criminal defense attorneys should consider filing a motion to dismiss the case in the interest of justice whenever their client is a trafficking victim.⁶ According to *People v. Clayton*, the leading case on these motions, courts should consider: (a) the nature of the crime, (b) the available evidence of guilt, (c) the prior record of the defendant, (d) the punishment already suffered by the defendant, (e) the purpose and effect of further punishment, (f) any prejudice resulting to the defendant by the passage of time, and (g) the impact on the public interest of a dismissal of the indictment.⁷ Factors (a), (d), (e), and (g) are particularly relevant when a trafficking victim is arrested and prosecuted for prostitution. To create a compelling picture of the circumstances of a client's sexual exploitation, current and past, defense attorneys should work with trafficking service providers, who may be better positioned to elicit useful information from the client.

Defenses at Trial

Attorneys defending trafficking victims should explore defenses aggressively. For example, using the general defense of duress may be possible even though being trafficked into prostitution may not present a classical case of duress. To assert duress successfully, the lawyer must show that the danger used to compel the commission of the crime was not a danger of future violence but of present and immediate violence at the time of the offense.⁸ Some trafficking victims

may have faced “present and immediate violence” at the time they were induced to engage in the act of prostitution for which they are charged, but most trafficking victims’ experiences do not fit so neatly into the statutory requirements. Many victims in prostitution are threatened with future violence to themselves and/or their families, but few trafficking victims are threatened with “present and immediate violence” each time they are induced into an act of prostitution. Past violence and threats of future violence to the victim and the victim’s family are often enough to coerce acts of prostitution, but this may not appear to meet the legal definition of duress. Prostitution is usually not a single act but a series of acts that take place over time and often under circumstances that suggest a defendant could have escaped from the trafficker. This leads to the misconception that the defendant is under no immediate threat of danger. In this respect, as in others, the experience of a trafficking victim mirrors the experience of a domestic violence victim, whose abuser’s pattern of coercive control has established ongoing risk even though it may appear to an outsider that the victim could have escaped during a lull in the violence. Defense attorneys, with the help of an expert, must educate prosecutors, judges, and juries about the violence, threats, coercion, and ongoing effects of the terror tactics that keep trafficking victims in a constant state of fear and in immediate danger. Without this information, fact finders may rely on myths and misconceptions that could undermine the victim’s defense.

Another potential hurdle in the assertion of duress is the unavailability of the defense to a defendant who “recklessly placed” herself in the situation.⁹ For example, if the defendant knew or had reason to know the person who exploited her was a trafficker or pimp, she may be viewed as responsible for her predicament even if she was under immediate threat of physical injury when she was induced to commit the act of prostitution. The defense attorney, with assistance from an expert, must explain how the dynamics of trafficking, like those of domestic violence, impair a person’s agency and ability to avoid or leave the situation and relationship.

The New York sex trafficking law itself helps defense attorneys establish that their prostituted clients are sex trafficking victims and therefore not criminally responsible for the crime for which they were arrested.¹⁰ If a person is guilty of sex trafficking for engaging in the conduct enumerated in the statute, then it stands to reason that someone subjected to that conduct is a victim of sex trafficking. For example, a person arrested for prostitution who has experienced some violence and threats from a pimp may not, depending on the circumstances, be able to successfully assert a duress defense, but should be considered a

trafficking victim under the New York State law and therefore should not be charged with the crime of prostitution. The crime of sex trafficking includes, among other things, the use of force or deception to compel or induce a person into prostitution by instilling a fear that, if the victim does not comply with the demand, she will be injured, arrested, or deported.¹¹

Post-Plea and Post-Conviction Relief

If at all possible, defense attorneys should determine if their client is a trafficking victim *before* conviction and sentencing to avoid further victimization and because it may be difficult to meet the standard required to withdraw a plea or vacate a conviction. Very few defendants arrested for prostitution fight their cases and go to trial. The overwhelming majority of prostitution convictions result from pleas. If, however, defense attorneys do not learn that their client is a trafficking victim until *after* plea or conviction, attorneys may still be able to pursue a few avenues of relief. On August 14, 2010, the governor of New York signed into law the first legislation in the nation that specifically allows trafficking victims to vacate prostitution-related convictions resulting from coerced prostitution.¹² Defense attorneys can file a motion to vacate convictions under this statute. As a practical matter, defense attorneys should seek the support of prosecutors in moving to withdraw a plea or vacate a trafficking victim's conviction for prostitution. If the prosecutor does not oppose the motion or plan to appeal the decision, the judge will be more likely to grant the motion.

Under New York law, in the court's discretion, a defendant may withdraw a plea of guilt before sentence is imposed.¹³ A defendant's decision to plead must be voluntary and intelligent.¹⁴ The circumstances of the case may allow a defense attorney to argue that the trafficking victim's plea was not voluntary because the trafficker forced the victim to plead guilty and/or to remain silent about her exploitation.

However, even if attorneys can successfully argue that the defendant's plea was not voluntary, attorneys can only make a motion to withdraw a plea prior to sentencing. In most prostitution and other low-level cases in New York City, conviction and sentencing occur at the same appearance before the judge. Practically, the only option available to defense attorneys is a motion to vacate the conviction, an even more difficult avenue of relief.¹⁵ Finally, Constitutional challenges, more difficult still, might also be made. Defense attorneys can argue that the conviction by plea was obtained in violation of the client's constitutional rights because the plea was not voluntarily entered or, if the attorney did not explore or assert a viable defense such as duress, because counsel was ineffective.

Systemic Change

In New York City, two criminal courts are especially positioned to identify trafficking victims arrested for prostitution and to serve as models for other courts. The first is the Midtown Community Court, which handles approximately 80 percent of the prostitution cases in the borough of Manhattan. The presiding judge orders defendants who plead guilty to attend an on-site social service program designed to address many potential issues — economic instability, violence, physical and mental health, trauma, lack of education and job training, and addiction. Because of this special program the court not only handles the prostitution arrests originating in its catchment area but also the prostitution cases from the traditional downtown criminal court that are not resolved at arraignment. The court partners with service providers, including trafficking victim service providers, who work with the court's clinical staff to screen defendants for trafficking and provide voluntary services to those in need. Also, one attorney from the public defender's office is specially assigned to handle all of the office's prostitution cases. This attorney works closely with the trafficking service providers and the court's clinical staff to screen clients for trafficking.

Second, Queens Criminal Court has created a prostitution diversion courtroom. The presiding judge orders many defendants who plead guilty to participate in counseling sessions with partnering service providers. The service providers screen for trafficking during counseling and continue to work with some defendants on a voluntary basis after they complete their court-ordered program.

Conclusion

No longer a public defender, I now serve as the Director of the Midtown Community Court. I regularly speak with trafficking service providers, defense attorneys, prosecutors, and judges about the challenges that arise when trafficking victims are arrested for prostitution. In spite of the special attention paid to these defendants in the model Midtown and Queens courts, defense attorneys, prosecutors, and judges still do not know how many defendants are, in fact, trafficking victims. We can only imagine the vast number of victims who go unidentified in traditional criminal courts.

Even when a service provider has identified a defendant arrested for prostitution as a trafficking victim, the defense attorney, prosecutor, and criminal court judge may never learn that this defendant was a victim. In many ways, this

is understandable — service providers are interested in helping victims and may decide that the criminal justice system, which treats these victims as criminals, offers very little to their clients. Also, service providers have varied definitions of what constitutes trafficking from both clinical and legal perspectives. Many service providers, including attorneys in these organizations, focus on the immigration legal needs of foreign-born victims. These advocates may not have the victim's criminal conviction uppermost in their minds. Figuring out how to track down the defense attorney who represented the client months or even years before and may have critical information about the case or may be able to vacate a conviction may be a low priority. The process may be unfamiliar and daunting. Finally, trafficking victims may not want a service provider to reveal information about their experiences and the abuse they suffered to defense attorneys, and service providers may be compelled by client confidentiality protocols to remain silent. Without this communication, however, opportunities to prevent or vacate convictions are lost, and the criminal justice system never learns about victims wrongly arrested, convicted, and processed through the system.

If we are to combat sex trafficking effectively, the criminal defense bar must act as a partner in identifying and advocating for trafficking victims who are arrested for prostitution and other offenses. Defense attorneys are the first and often only players in the criminal justice system and beyond who have the opportunity and the protected attorney-client relationship that allows them to identify victims facing criminal charges. For these reasons, the defense bar must be involved in developing strategies and policies to better identify and serve victims. Without this, justice and safety for all trafficking victims cannot be achieved.

Notes

1. The Trafficking Victims Protection Act of 2000 (“TVPA”), Pub. L. 106-386, was enacted in October 2000. Congress has reauthorized the TVPA under the title Trafficking Victims Protection Reauthorization Act. *See* Pub. L. 108-193, Dec. 19, 2003; Pub. L. 110-457, Dec. 23, 2008.
2. Laws of 2007, Ch. 74.
3. Laws of 2008, Ch. 569.
4. N.Y. Family Court Act, Art. 7.
5. N.Y. Civ. Proc. Law and Rules § 4508 governs social worker-client privilege.
6. N.Y. Crim. Proc. Law § 210.40 governs motions to dismiss in furtherance of justice.
7. 41 AD 2d 204 (2d Dept 1973).
8. N.Y. Penal Law § 40.00(1) defines the defense of duress. *See, e.g., People v. Staffieri*, 251 AD 2d 998, 999 (2d Dept 1998) (“[p]rior threats and assaults may support a claim of duress at the time of the crime, but only when combined with a present and immediate compulsion”).
9. N.Y. Penal Law § 40.00(2).
10. N.Y. Penal Law § 230.34.
11. N.Y. Penal Law. § 230.34(5).
12. Bill (A.7670/S.4429).
13. N.Y. Crim Proc. Law § 220.60(3).
14. *See Boykin v. Alabama*, 395 U.S. 238 (1969).
15. N.Y. Civ. Proc. Law § 440.10.

Representing Adult Trafficking Victims in Family Offense, Custody, and Abuse/Neglect Cases

by Amanda Norejko

Attorneys typically picture victims of human trafficking as the victims identified when police break up a trafficking ring, and their primary legal need is often thought to be immigration services. However, trafficking victims frequently come to the attention of lawyers in very different ways and with very different legal needs. Quite often, lawyers are serving clients who were not initially, and may never be, properly identified as trafficking victims.

Both international and domestic trafficking victims may seek assistance with family law matters. Adult victims often enter the court system as victims of domestic violence by filing family offense petitions under Article 8 of the Family Court Act.¹ They also appear in court as parents of children who are the subject of custody proceedings under Article 6 of the Family Court Act² or abuse and neglect actions under Article 10 of the Family Court Act.³

It can be critical to trafficking victims' cases that their attorneys recognize their clients have been trafficked and know how to assist trafficking victims. Recognition of trafficking can be essential to developing the theory of the case, strengthening legal arguments, and finding appropriate supportive services for the clients. Attorneys many find that the clients' experiences as trafficking victims are closely tied to the reasons that the clients are now in family law litigation. Being subjected to one form of gender-based violence and exploitation can make victims vulnerable to other forms of gender-based violence and exploitation. For example, there is a significant overlap between victims who have experienced domestic violence and human trafficking.

Many victims are recruited into commercial sexual exploitation by a husband or boyfriend, who acts as the victim's pimp. This form of trafficking is a subset of domestic violence, as the tactics used to maintain control over intimate partners are frequently taken to extremes to compel victims into prostitution.

Other victims attempt to escape prostitution by marrying one of the men who bought them. They hope that, as their husbands, the buyers will protect them from the abuses they suffered at the hands of their traffickers and hundreds of other buyers. However, they often are abused by these new intimate partners. These batterers are able to control their victims by exploiting the shame and stigma of the victims' past in prostitution.

Domestic violence also may be present in labor trafficking cases. Victims, both children and adults, who are trafficked for forced labor are often sexually abused by their traffickers. Victims who work in domestic labor live with those who are exploiting them in quasi-familial relationships. They often have no other place to go, their movements are restricted, and their phone calls are limited and monitored. Their abusers use tactics of power and control that are similar to those employed by batterers to isolate their victims and prevent them from finding assistance.

Assisting Trafficking Victims with Orders of Protection

Since many traffickers are relatives, husbands, and boyfriends, victims may be able to find relief by filing for an order of protection in Family Court, or in Supreme Court in the context of a divorce action. Article 8 of the Family Court Act grants courts jurisdiction to hear family offense petitions, defined as petitions against persons related by blood or marriage, persons legally married to one another, persons formerly married to one another, persons who have a child in common regardless of whether they have been married or have lived together, and persons who have had an intimate relationship with one another.⁴ Many traffickers fall into these categories, especially since the 2008 addition of the last category: persons who have had an intimate relationship with one another.

The "intimate relationship" category is an issue likely to be litigated in cases involving trafficking victims seeking orders of protection. Traffickers often obtain or strengthen their control over their victims by establishing romantic relationships, but they are likely to deny such relationships to contest Family Court jurisdiction. Pimps attempting to recruit girls into prostitution commonly woo them by offering them affection, comfort, or security. What follows the initial courtship is usually a combination of physical, psychological, and sexual abuse. In instances of labor trafficking in which there is sexual abuse and/or a quasi-familial relationship in which the victim lives with the abuser, attorneys may argue that these are "intimate relationships" that fall under the legal definition necessary for Family Court jurisdiction.

Many of the incidents of abuse suffered by trafficking victims would establish the elements of a family offense under the Family Court Act, which takes its definitions from the Penal Code. The Family Court has jurisdiction over enumerated family offenses including Disorderly Conduct; Harassment in the first and second degree; Aggravated Harassment in the second degree; Menacing in the second and third degree; Reckless Endangerment; Assault in the second and third degree; Attempted Assault; Criminal Mischief; and Stalking in the first, second, third, and fourth degree; and, under a recently passed amendment, misdemeanor sex offenses including Sexual Misconduct, Forcible Touching, and Sexual Abuse in the second and third degree. In both sex and labor trafficking, the physical violence, sexual violence, verbal threats, and intimidation suffered by victims may satisfy the elements of several of these offenses.

While the acts of abuse committed by traffickers against their victims could be prosecuted in Criminal Court, such prosecutions are difficult.⁵ For many victims, obtaining a civil order of protection in Family Court, where the burden of proof is lower and the victims will have access to attorneys to represent them, may be a far better option. Orders of protection can enhance a victim's safety because they can contain provisions directing the traffickers to stay away from the victims, their places of residence, schools or places of business, their children, or other household members, and to refrain from harassing and menacing them either directly or through a third party.⁶

Civil orders of protection are also important because victims often face threats to their lives when they attempt to escape from their traffickers. Without orders of protection requiring the traffickers to stay away from the victims, victims may have difficulty obtaining police intervention when a trafficker tries to re-ensnare a victim. An order of protection can be an effective deterrent to re-offending when a perpetrator knows that mandatory arrest and criminal charges may result from a violation of its terms.⁷

Although there is a lower burden of proof in civil matters, attorneys representing trafficking victims in family offense cases still face significant challenges in establishing the credibility of their clients. The victims need help presenting their testimony as thoroughly and accurately as possible. Victims will have to describe in a petition and perhaps testify in court about the abuse, which in itself may be difficult. Overcoming the dissociation that victims often develop to shield themselves from trauma may be necessary before victims can fully explain the abuse they suffered.⁸ Enlisting the assistance of mental health professionals specially trained to work with victims of trauma, particularly sexual trauma, can be key in preparing victims to tell their stories.

Despite the challenges involved in proving the case, obtaining an order of protection can be helpful to trafficking victims for a number of reasons in addition to protecting their safety. First, victims often feel enormous pressure to return to their abusers. If traffickers are able to communicate freely with victims and have physical access to them, the same tactics used to ensnare them in the first place, including threats to the victims and their families, can be used to bring victims back under the control of the traffickers. Second, obtaining an order of protection can open doorways to other kinds of desperately needed relief. Many victims have no housing other than what the trafficker provided. With the documentation of the abuse that an order of protection provides, victims may qualify for shelter at a confidential location and eligibility for priority in public housing or other government housing subsidies such as Section 8.⁹ Court findings may also be useful to support the victims' applications for various immigration remedies, which may be critical since immigrant trafficking victims often have difficulty breaking free when they lack valid immigration status and authorization to work lawfully in the United States.

Representing Trafficking Victims in Custody Cases

Clients who have been trafficked for commercial sexual exploitation may face child custody trials in which the abusive fathers attempt to use the victims' history in prostitution against them. These fathers are frequently the victims' traffickers or buyers who purchased their bodies for sex when they were in prostitution.

A history in prostitution becomes relevant in a custody case through New York State's standard of the "best interests of the child," which is used to determine child custody cases.¹⁰ This broad standard allows judges to inquire into many aspects of the lives of parents. A criminal history is considered relevant to the parents' ability to provide appropriate guidance to the children.¹¹ Many sex trafficking victims have convictions for prostitution. Since prostituted people are more likely than pimps or patrons to have a criminal record,¹² victims of sex trafficking are more likely than their abusers to have criminal backgrounds that would reflect badly upon them in custody proceedings. If clients have convictions for prostitution, their lawyers should consider advocating with the district attorney to have the convictions vacated.

Victims are often at a disadvantage when they have no stable housing and no resources. Traffickers who benefit economically from the exploitation of their victims may be financially secure while the victims who escape usually

leave without money to start a new life. The best interests of the child standard includes an assessment of the parents' respective abilities to provide appropriate living conditions for the children. In addition, when the relationship between the parties has changed over time from pure labor or sex trafficking to a familial structure, a relationship is likely to develop between the children and the abusive fathers. The court system is extremely protective of father-child relationships and may overlook the way in which the children were conceived or the father's treatment of the mother.

Parties to custody cases are deemed to place their mental health at issue.¹³ They are subject to mental health evaluations that will become evidence in the case and a key factor in the court's decision about their parental fitness. Trafficking victims often suffer severe physical and psychological damage. They may have experienced direct or indirect physical injury such as: traumatic brain injury; chronic headaches; pervasive body aches; dizziness; insomnia and disrupted sleep patterns; damage to reproductive and uro-genital systems; STDs; HIV/AIDS; drug and alcohol dependency; unwanted pregnancy; high levels of anxiety; minimization/denial; numbness/flattened affect; memory loss; depression; dissociation; post-traumatic stress disorder; traumatic bonding with traffickers; mistrust and suspicion of authorities and service providers; shame and self-blame; and eating disorders.¹⁴ Misinterpretation of any of these injuries or symptoms might lead a court-appointed forensic evaluator to draw incorrect conclusions about the victims' mental health, which would have a devastating effect on the victims' chances of succeeding in custody trials.

Additionally, shame about their history in prostitution may lead sex trafficking victims to withhold information in mental health evaluations. Attempts at hiding a history in prostitution, which is integral to understanding the psychology of the person being evaluated, can have disastrous results on the outcome of the evaluation. Evasive answers, holes in the victims' histories, and lack of a background against which to interpret the victims' answers may lead forensic evaluators to reach damaging conclusions. Even when victims do reveal their experiences as trafficking victims, forensic evaluators, who rarely have training in the dynamics of human trafficking, may have difficulty believing the victims' stories or understanding the negative aspects of victims' presentation as the normal, and probably temporary, consequence of the victimization they have suffered.

Attorneys for victims must prepare their clients for their forensic evaluations. Victims should practice telling their stories so that the important details will be clear. Attorneys should help their clients analyze their cases and learn to reveal

their strengths and show how they are appropriately addressing their weaknesses. Clients need help preparing to tell their stories in words that accurately describe the abuse and exploitation they have suffered. Many victims internalize the traffickers' views of them and their circumstances and, consequently, adopt the traffickers' terminology, minimize the abuse, and place the blame on themselves. Attorneys must dig deeper into the details of what transpired and reframe events so that clients see how their memories have been shaped by their traffickers in a way that does not accurately portray their respective culpability. Finally, attorneys must make sure that clients know the forensic evaluator's role and understand that everything said in the sessions is for use in the litigation and not for therapeutic purposes. Clients should be told that nothing they say will be kept confidential.

When the report favors the adversary, the first opportunity to attack the credibility of the expert is at voir dire. To prepare, attorneys should obtain as much information about a forensic evaluator's background as possible. Usually, attorneys will be furnished with the curriculum vitae of any experts appointed by the court and may request in discovery the same information about any additional experts the adversary plans to call as witnesses at trial. Even when a forensic evaluator is court-appointed and has been qualified as an expert many times, there is still an opportunity for the victim's attorney to influence the amount of weight the judge will give to the expert's opinion. Experts' training about, and experience treating victims and perpetrators of, trafficking, domestic violence, sexual assault, and other forms of gender-based violence are a key line of cross-examination. If the expert has no specialized training in these areas and has not treated many patients for the effects of these forms of abuse and exploitation, the court may begin to question the expert's ability to assess the parties accurately. This can be a critical victory even when the forensic evaluator is still qualified as an expert for trial purposes because the judge may limit the scope of his or her expertise, allowing the judge to disregard the expert's opinions when they fall outside that expertise or when specialized expertise may have led to a different conclusion.

The next opportunity to attack the report is the cross-examination of the forensic evaluator. To prepare, attorneys should subpoena the notes and raw data from psychological testing used by the evaluator in preparing the report. If significant information in the notes is not reflected in the final report, it may have been left out because it does not support the conclusions drawn by the forensic evaluator. Inconsistencies offer opportunities to call those conclusions into question and to reveal possible biases of the evaluator. If possible, attorneys should reach out to experts with specialized knowledge and experience working

with victims of trafficking and sexual and domestic violence for assistance in analyzing the forensic evaluator's report in light of the notes and raw data. In some cases, an expert working with a victim's lawyer may reveal that the court-appointed forensic evaluator has incorrectly interpreted the results of psychological testing of the parties.

A third opportunity to attack the forensic evaluator's report is by calling an expert to rebut the evaluator's findings. This may not be financially feasible in every case, but it is worth exploring the possibility of finding an expert who will appear pro bono or for a low fee. Giving the court an opportunity to contrast the neutral evaluator or the adversary's expert's conclusions with an expert who has specialized training and experience in trafficking and sexual and domestic violence can have a significant impact on the outcome of the case. It should be noted, however, that some case law suggests that the court should give less weight to the opinions of an expert who has met with only one of the parties.¹⁵

Some of the consequences of trafficking can also pose challenges to preparing trafficking victims to testify at trial. For example, clients' inability to remember details of traumatic events they suffered as well as flattened affects, while common symptoms, may cause judges to doubt their credibility. Also, attorneys must have frank discussions with their clients about the ways in which the opposing attorney will likely use the victims' history of commercial sexual exploitation against them. Victims' attorneys must make clear that they are not blaming the victims and that the victims should not be ashamed to reveal information about the trafficking to their own attorneys.

Further complicating these cases is the victims' tendency to adopt the view of their traffickers. They may describe their situations in a way that sounds more like the traffickers' victim-blaming or sanitized version of events rather than an accurate account that describes the abuse they suffered and identifies the trafficker as the cause of that suffering. Attorneys representing trafficking victims play a crucial role in shaping the way the victim tells her history to ensure that the court gets an accurate portrayal of the events leading to the court case. In addition, helping victims to reconnect with their sense of self and reclaim their former identities separate from the identities the traffickers have created for them can give them the strength to face the daunting task of making their story public and withstanding harsh cross-examination on the witness stand.

Alcohol or drug abuse, often an issue for trafficking victims, is considered antithetical to the best interests of the child.¹⁶ Traffickers often control victims by administering drugs or alcohol. Creating or facilitating drug or alcohol dependency is one way to ensure that the victims will not be able to escape their

exploitation. In addition, trafficking victims commonly use drugs or alcohol to self-medicate when they are trying to dissociate from their experiences, numb the impact of the exploitation, or forget the trauma they have suffered.¹⁷ However, a history of drug or alcohol abuse can raise concerns about parental fitness. Attorneys need to find out whether the drug or alcohol abuse is a past or current problem. When victims are still struggling with substance abuse, connecting them to appropriate treatment can be critical.

In many cases, obtaining supportive services for victims from psychiatrists, psychologists, social workers, or substance abuse counselors may be useful. However, the records kept by service providers are subject to discovery and could be used against the victims in a custody case. If evidence of the victims' mental health or substance abuse problems is already before the court, counteracting this negative information with proof that they are obtaining necessary treatment may be important. Victims' attorneys should make appropriate referrals, but should counsel their clients that what they reveal in treatment may not remain confidential because the adversary is likely to subpoena those records. Victims should be cautious about revealing potentially negative information in therapy sessions. In addition, attorneys should reach out to the therapists treating their clients, explain that there are ongoing court proceedings, and caution the therapist about the potential that the therapy records will be subpoenaed and become evidence in the case. Therapists treating trafficking victims should be conservative rather than comprehensive about including statements by their patients in their case notes. When used appropriately and with an understanding of the implications on the court case, records of treatment can be helpful to trafficking victims attempting to convince the court that they are, in fact, victims and that they are properly addressing any mental health or substance abuse issues that may affect their ability to parent their children.

Representing Trafficking Victims in Abuse and Neglect Cases

Under Article 10 of the Family Court Act, child abuse occurs when a parent (or any person legally responsible for the child's health and safety) causes injury to a child, or creates a risk of serious physical injury, or engages in sexual activity with a child.¹⁸ In addition, it is considered maltreatment if a parent allows someone else to physically or sexually harm a child.¹⁹ Under the statute, child neglect occurs when a child is harmed, or is at immediate risk of harm, because the parent fails to provide for the child's basic needs, such as adequate food,

clothing, shelter, medical care, or proper supervision.²⁰ Excessive corporal punishment may also lead to charges of neglect.²¹ Drug or alcohol “misuse” by the parent may also form the basis for a neglect proceeding.²² Child Protective Services, a public agency that is a division of the local Department of Social Services, is responsible for investigation of suspected abuse or neglect upon receipt of a report and for filing cases in court where there appears to be a need for court intervention to protect the child.

Many of the issues for trafficking victims in abuse and neglect cases are similar to the issues they face in custody cases. Trafficking victims are particularly vulnerable to having their children removed from their care and custody by child protection agencies if they are seen as criminals. In abuse and neglect cases, just as in custody cases, trafficking victims’ parenting capacities are scrutinized by the court. Victims may face losing custody of their children upon arrest, often for acts that they were compelled or induced to commit by their traffickers. Federal data reveal that one-eighth of the children in homes investigated by child protective agencies have a parent who was recently arrested.²³ In 90% of these cases, it is the children’s mother who was arrested.²⁴ When victims are in police custody and have no one to care for their children, the children may be placed into foster care or the custody of the perpetrators or their relatives.

Trafficking victims may have arrests and convictions for engaging in prostitution. Trafficking victims also may have been arrested for drug possession because they often become addicted to drugs. When the child protective services agency proves that parents are substance abusers, courts generally find that the parents are neglectful. This can lead to the removal of children from their care for a period of time. Other possible neglect allegations are failure to supervise or failure to provide for the child’s needs. Trafficking victims are not in control of their own schedules and living conditions. Traffickers typically control their victims’ access to money and restrict their freedom of movement. Thus, victims may be investigated by child welfare systems because their traffickers required them to leave their children without appropriate adult supervision or without access to adequate food, heat, electricity, or medical care.²⁵

There is a strong correlation between mothers’ involvement in criminal activity such as prostitution and drug possession and the removal of their children, longer presence of the children in foster care, and loss of parental rights. One study showed that over one-third of mothers whose children entered foster care in New York City during the 1990s were arrested at some point during their lives.²⁶ The highest percentages of the mothers in this study were arrested for drug offenses (35.3% in 1996) and prostitution (23.7% in 1996).²⁷

The study also showed that children whose mothers have a criminal history remained in foster care longer than children of mothers without such a history, and that children whose mothers have a criminal history are more likely to be adopted by others, signifying a loss of parental rights by the mother.²⁸

A holistic approach to assisting trafficking victims is critical. Attorneys should consider engaging in criminal justice advocacy to prevent prosecution or to expunge the convictions of their clients. By coordinating with defense counsel and making the prosecutor aware that the defendant is a trafficking victim, attorneys can help keep clients from losing custody of their children. Attorneys should also advocate with child protective services to convince them that referring the family to appropriate preventive services is sufficient to protect the children and preferable to removing them from the care and custody of their victim parent. The best way to prevent a trafficking victim from being charged with abuse or neglect is to connect the victim with services to address the issues that could bring the family to the attention of a child protective services agency before an investigation is initiated. When an investigation has been initiated, attorneys should attempt to educate the child protective services caseworkers about human trafficking, its impact on the family, and how to protect the children by providing protection and stability for victim parents.

Conclusion

Legal services providers should be aware that clients in family law matters may be victims of trafficking, even if they have not told their attorneys about their trafficking experiences. Attorneys must listen carefully for key words or gaps in the clients' stories that may indicate they are victims. Once a relationship of trust has been established, attorneys may be able to explore more fully the clients' histories as trafficking victims.

A client's history of trafficking may become a central issue in a family law case, and the long-term consequences of the trafficking may pose the most significant challenge to a positive legal outcome. Understanding their clients' experiences can help attorneys make referrals to appropriate support services, offer opportunities to ameliorate negative evidence against the clients, reveal important arguments that can be made against the opposing parties, and help attorneys connect with their clients in the trusting attorney-client relationship that is necessary to make the strongest cases and win the best outcomes.

Notes

1. N.Y. Family Court Act § 821(1).
2. N.Y. Family Court Act §§ 651-656.
3. N.Y. Family Court Act § 1033-b.
4. N.Y. Family Court Act § 812(1).
5. Despite New York State's strong anti-trafficking statute, there have been few criminal trafficking cases since it came into force on November 1, 2007. In criminal cases, the district attorney must prove that the offense happened "beyond a reasonable doubt," whereas in civil cases, the petitioner only needs to prove that the act occurred "by a preponderance of the evidence." In many trafficking cases, prosecutors need the testimony of the victims to make their cases. Unfortunately, it can be difficult to erase the doubts of the jury about the credibility of victims who have a history of arrests and criminal convictions. Many victims are reluctant to cooperate because of negative experiences with law enforcement in the past, indoctrination by their traffickers to fear and mistrust law enforcement authorities, and fear of the punishment they will receive from the trafficker.
6. N.Y. Family Court Act § 842.
7. The majority of victims who apply for orders of protection against their abusers report significantly lower levels of violence during the subsequent 18 months. *See* Judith McFarlane, Ann Malecha, Julia Gist, Kathy Watson, *et al.*, *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94(4) *Am. J. Public Health* 613-18 (2004); Victoria L. Holt, *Civil Protection Orders and Subsequent Intimate Partner Violence and Injury* (2004), *available at* www.ncjrs.gov/pdffiles1/nij/199722.pdf.
8. *See* Melissa Farley, "*Bad for the Body, Bad for the Heart*": *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 *Violence Against Women* 1123 (2004).
9. The United States Department of Housing and Urban Development (HUD) provides federally subsidized housing for low-income families and individuals. Commonly known as "Section 8" because of the provision in which the subsidy program was created in the U.S. Housing Act of 1937, it can be found under U.S. Code Title 42, Chapter 8, Section 1437f. There are also low-income housing options under state subsidy and local public

housing programs. Many of these programs grant priority on their long wait lists to victims of domestic violence where documentation requirements are met to prove the applicant's status as a victim.

10. *See Eschbach v. Eschbach*, 56 N.Y.2d 167, 436 N.E.2d 1260 (1982).
11. *See In re Esposito v. Shannon*, 823 N.Y.S.2d 159, 165 (2d Dept. 2006); *In re Tompkins v. Holmes*, 811 N.Y.S.2d 184, 186 (3d Dept. 2006).
12. Prostitution patrons are usually allowed to expunge their convictions if they attend a session of so-called "John School." However, even where programs exist that are aimed at helping prostituted persons to change their lives, they are usually required to accept a guilty plea that stays on their record before they are sentenced to a program.
13. *See Baecher v. Baecher*, 396 N.Y.S.2d 447, 448 (2d Dept. 1977), *appeal denied*, 373 N.E.2d 995 (N.Y. 1978); *Anonymous v. Anonymous*, 772 N.Y.S.2d 866, 867 (2d Dept. 2004); *Ace v. State*, 616 N.Y.S.2d 640, 641 (2d Dept. 1994), *aff'd*, 665 N.E.2d 956, 642 (N.Y. 1996); *Burgel v. Burgel*, 533 N.Y.S.2d 735, 736 (2d Dept. 1988); *DeBlasio v. DeBlasio*, 590 N.Y.S.2d 227, 228 (2d Dept. 1992).
14. *See* Melissa Farley, Ed., *Prostitution, Trafficking, and Traumatic Stress* (Haworth Press 2003). *See also* Poppy Project, *Routes In, Routes Out: Quantifying the Gendered Experience of Trafficking to the UK* (Aug. 2008).
15. *See In re Renee B. v. Michael B.*, 611 N.Y.S.2d 831, 832, 833 (1st Dept. 1994); *Walden v. Walden*, 492 N.Y.S.2d 827, 829 (2d Dept. 1985); *Young v. Young*, 628 N.Y.S.2d 957, 961 (2d Dept. 1995); *Gallant v. Gallant*, 482 N.Y.S.2d 272, 276-77 (1st Dept. 1984).
16. *See Laba v. Laba*, 281 A.D.2d 686, 721 N.Y.S.2d 158 (3d Dept. 2001).
17. *See* Melissa Farley, et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Post-Traumatic Stress Disorder*, 2(3) *Journal of Trauma Practice* 33, 62-63 (2003).
18. N.Y. Family Court Act § 1012(e).
19. N.Y. Family Court Act § 1012 (e)(iii).
20. N.Y. Family Court Act § 1012(f)(i)(A).
21. N.Y. Family Court Act § 1012(f)(i)(B).
22. N.Y. Family Court Act § 1012(f)(i)(B).

23. Susan D. Phillips, Ph.D., James P. Gleeson, Ph.D., Center for Social Policy and Research, Jane Addams College of Social Work, University of Illinois at Chicago, *Children, Families, and the Criminal Justice System* (2007).
24. *Id.* at 2.
25. Children with mothers who were recently arrested were more likely to be subjects of reports of neglect such as failure to supervise or failure to provide for their needs than of reports of physical abuse, in comparison to all other children whose families were reported to child protective authorities. *Id.* at 3.
26. Vera Institute of Justice and Administration for Children's Services, *Patterns of Criminal Conviction and Incarceration Among Mothers of Children in Foster Care in New York City* (2003).
27. *Id.* at 11.
28. *Id.* at 25.

Immigration Remedies for Victims of Human Trafficking

by Kathleen Slocum

Like immigrant victims of domestic violence, immigrant victims of trafficking often face special barriers to escaping their abusers and re-building their lives.

One of the most significant barriers is the lack of legal immigration status in the United States. Fortunately, there are a number of ways for immigrant victims of trafficking to legalize their immigration status, particularly since the passage of the Victims of Trafficking and Violence Prevention Act by Congress in 2000 and its subsequent reauthorizations. In addition, the recent expansion of asylum case law to incorporate gender-based claims such as domestic violence and trafficking has provided increased opportunities for immigrant trafficking victims to legalize their status.

This article will provide an overview of immigration remedies available to victims of human trafficking. It will summarize the requirements of the various forms of immigration relief, describe the benefits of each, and discuss factors to consider when deciding which may be best for a particular trafficking victim.

Brief Overview of Obtaining Immigration Status in the United States

Victims of human trafficking are most often eligible for the forms of immigration relief that fall within the humanitarian and family-based categories. Humanitarian forms of immigration relief include T status, U status, asylum, withholding of removal, and Convention Against Torture (CAT) claims. Family-based forms of relief for which some trafficking victims may be eligible include the Violence Against Women Act self-petition (VAWA self-petition), the battered spouse waiver (BSW), and VAWA cancellation of removal.

T status and U status are the most commonly used forms of humanitarian-based immigration relief for trafficking victims. T status was created by Congress specifically for victims of trafficking, while U status was created to provide relief to immigrant victims of a larger category of crimes, including trafficking. Both were intended to encourage immigrant victims of crime to come forward and cooperate with law enforcement, with the hope of reducing crime within the immigrant community. Asylum, another humanitarian form of relief, has also recently been used by trafficking victims.

In addition to humanitarian forms of relief, some victims may be eligible for family-based relief. The VAWA self-petition is available to those married to, or children of, abusive U.S. citizens or lawful permanent residents, also known as green card holders. Because it is not uncommon for abusive spouses to traffic their partners, particularly into the commercial sex industry, trafficking victims may be able to use the VAWA self-petition process. The battered spouse waiver is similar to the VAWA self-petition, but is reserved for applicants who have conditional green cards obtained through sponsorship, usually by a U.S. citizen spouse, within two years of the date of their marriage. VAWA cancellation of removal may be an option for those who are already in removal (*i.e.*, deportation) proceedings before an immigration judge. One advantage of VAWA cancellation of removal is that victims need not be legally married to the abusive U.S. citizen or lawful permanent resident to qualify. Instead, it is sufficient for the victim to have a child in common with a U.S. citizen or lawful permanent resident. This form of relief may be helpful to trafficking victims who were under the control of U.S. citizen pimps or traffickers and have children by them but were never legally married.

However, it is never sufficient for applicants to establish that they are eligible for a specific form of immigration relief. They must also establish that they are *admissible* to the United States.¹ Grounds that would make a person ineligible for a visa or admission include health-related grounds, criminal-related grounds, and security-related grounds, as well as grounds related to the way an immigrant entered the United States.² These are referred to as inadmissibility factors. To complicate matters, each form of immigration relief treats inadmissibility factors differently. For example, for U status most inadmissibility factors can be waived, while for employment-based immigration status few if any of these inadmissibility factors can be waived. Admissibility along with eligibility and benefits should always be weighed when deciding which form of immigration relief to pursue.

T Nonimmigrant Status

T nonimmigrant status is the most commonly known form of immigration relief for victims of human trafficking. Created by Congress in 2000 as part of the Victims of Trafficking and Violence Prevention Act,³ it allows victims of severe forms of trafficking who have cooperated with law enforcement the opportunity to remain in the United States legally. T status permits a person to live and work in the United States for four years.⁴ Certain family members may be granted T status as derivative beneficiaries.⁵ T status also provides a path to lawful permanent resident status. A person in T status may apply for lawful permanent resident status after three years in T status or earlier if the investigation or prosecution into the trafficking that gave rise to the T application is complete.⁶ Up to 5,000 grants of T status may be made per year,⁷ not counting family members included derivatively in T applications.⁸ Immigrants in T status are eligible for the same benefits as refugees.⁹ These benefits include Refugee Cash and Medical Assistance, Temporary Assistance to Needy Families, Medicaid, SSI, Food Stamps, Refugee Social Services, and access to federal financial aid as well as other benefits. In contrast, U status does not open the door to these benefits.

Eligibility

To establish eligibility, applicants for T status must show that (1) they are victims of a severe form of trafficking, (2) they are physically present in the United States on account of the trafficking, (3) they have complied with reasonable requests for assistance in the investigation or prosecution of acts of trafficking (unless they are under the age of eighteen), and (4) they would suffer extreme hardship involving unusual and severe harm if they were forced to leave the United States.¹⁰

Severe Form of Trafficking

Applicants for T status must establish not only that they are victims of trafficking but that they are victims of a *severe* form of trafficking. For sex trafficking, this means sex trafficking in which a (1) commercial sex act is induced by force, fraud, or coercion or (2) the person induced to perform the act is under eighteen years of age.¹¹ For labor trafficking, this means the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion or by subjection to involuntary servitude, peonage, debt bondage, or slavery.¹²

Thus, the key to applicants establishing that they are victims of a severe form of trafficking is showing that the trafficking happened through either force

or fraud, or coercion. There is an exception, however, to the requirement of force, fraud, or coercion. Minors under the age of eighteen who have been sex trafficked (but not labor trafficked) are automatically considered victims of severe trafficking and do not need to establish that they have been trafficked through means of force or fraud or coercion.¹³

While the meanings of the terms force and fraud are self-evident, the term coercion requires further explanation. The legislative history of the Victims of Trafficking Protection Act calls for a broad interpretation of the term coercion.¹⁴ The statute defines coercion as (1) threats of serious harm or physical restraint, (2) a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm or physical restraint against any person, or (3) the abuse or threatened abuse of the legal process.¹⁵ Serious harm includes psychological, financial, or reputational harm as long as it is serious enough to compel a reasonable person with the victim's background and in the victim's circumstances to do what the traffickers demand.¹⁶

Understanding the meaning of coercion is vitally important for practitioners advising potential T status applicants. Many practitioners focus on force or fraud and neglect the details of trafficking victims' stories that make a case for coercion. As a result, practitioners may miss worthwhile claims for T status. At Sanctuary for Families, the nonprofit agency where I represent immigrant trafficking victims, we have learned that traffickers are highly skilled psychological manipulators who rely heavily on coercion. We have also found that coercion may manifest itself differently in different cultures. For example, some traffickers from Korea exploit a culture of shame and obligation or respect towards elders to coerce women into prostitution. In some Latin American countries, it is not uncommon for traffickers to seduce and marry their victims first, then bring them to the United States and force them into prostitution.

Applicants may establish that they are victims of a severe form of trafficking in persons through one of three ways: (1) by submitting a Law Enforcement Agency endorsement; (2) by demonstrating that they have previously been granted continued presence status by immigration authorities; or (3) by submitting secondary evidence describing the nature and scope of the force, fraud, or coercion used against the victim (unless the applicant is a victim of sex trafficking under the age of eighteen).¹⁷ In contrast, to apply for U status, U petitioners must have a certification from law enforcement.¹⁸

Present in the United States on Account of the Trafficking

In addition to establishing that they are victims of a severe form of trafficking, applicants for T status must show that they are present in the United States on

account of the trafficking.¹⁹ This requirement does not mean that applicants have to establish that they were brought into the United States for the purpose of trafficking. Rather, the issue is why an applicant is still or, if the applicant left, why the applicant is again in the United States. For example, applicants who escape traffickers on their own and then report the trafficking to law enforcement much later must show that they have had no chance to leave the United States in the interim.²⁰ While this requirement is an added burden, it is not quite as harsh as it sounds. When deciding whether an applicant has had a chance to leave, immigration officials will take into account trauma and injuries related to the trafficking, a victim's lack of resources, or a victim's inability to produce travel documents taken by the traffickers.²¹

Two examples illustrate this point. If victims come to the United States on their own to find work and later become ensnared by a trafficking ring, these victims will be considered present in the United States on account of trafficking. In contrast, victims might not be considered present on account of trafficking if they were brought into the United States by traffickers and remained trapped in a brothel for two years but manage to escape and five years later report the traffickers to the police. These victims would have to establish that they had no chance to leave in the interim.

Applicants who voluntarily leave or are removed from the United States after the acts of trafficking generally are not considered present in the United States as a result of trafficking.²² However, victims may still meet this requirement if their return to the United States was the result of continued victimization or a new incident of a severe form of trafficking,²³ or if they came back to the United States to participate in an investigation or prosecution of trafficking.²⁴

Compliance with Reasonable Requests for Assistance from Law Enforcement

In addition to establishing that they are victims of a severe form of trafficking and that they are present in the United States on account of the trafficking, applicants for T status must show that they have complied with reasonable requests for assistance from law enforcement investigating or prosecuting trafficking or crimes related to trafficking.²⁵ Law enforcement in this context includes state and local law enforcement as well as federal law enforcement.²⁶ Exempt from this cooperation requirement are victims of labor or sex trafficking who are under eighteen and victims who were unable to cooperate "due to physical or psychological trauma."²⁷

The reasonableness of requests for assistance depends on the totality of the circumstances, the nature of the victimization, and the specific circumstances of

the victim, including fear, physical trauma, mental trauma, and the age and maturity of young victims.²⁸ The determination of the reasonableness of the request is made by immigration authorities, not by law enforcement.²⁹

Trafficking victims may establish compliance with reasonable requests for assistance from law enforcement by submitting a law enforcement agency endorsement on a form, signed by a federal, state, or local law enforcement official.³⁰ However, if trafficking victims cannot obtain law enforcement agency endorsements, they can provide secondary evidence of their cooperation instead.³¹ Secondary evidence can include victims' own detailed statements of contacts with, and requests for assistance from, law enforcement, and good faith attempts to cooperate with law enforcement.³² It may also include affidavits from witnesses, transcripts, court documents and police reports.³³

Extreme Hardship upon Removal

Finally, applicants for T status must show that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.³⁴ Note that this is higher than the "extreme hardship" standard for other types of immigration relief.³⁵ This hardship cannot be based on economic considerations or the lack of social opportunities in countries to which victims would be returning.³⁶

Among the factors that immigration authorities will consider when deciding whether an applicant meets the extreme hardship requirement are:

- the age and personal circumstances of the applicant;
- serious physical or mental illness that necessitates medical or psychological attention not available in the foreign country;
- the nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
- the impact of the loss of access to United States courts and its criminal justice system on the ability of the applicant to redress wrongs relating to the trafficking;
- The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- the likelihood of re-victimization and the ability or willingness of foreign authorities to protect the applicant;

- the likelihood that the traffickers or their confederates in the foreign country would severely harm the applicant; and
- the likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict.³⁷

Applicants should provide documents relevant to all possibly applicable factors since there is no guarantee that a particular reason will result in a finding that a removal would cause extreme hardship.³⁸ It is also helpful to include country condition reports and sources of information that would help demonstrate the extreme hardship that the applicants would face if returned to their home country.³⁹ Immigration authorities will consider all credible evidence submitted.⁴⁰

Admissibility and Waivers

Victims of trafficking are expressly exempt from the public charge inadmissibility ground.⁴¹ They may also request a waiver of the health-related grounds.⁴² In addition, trafficking victims may request waivers for a number of other grounds of inadmissibility, *if related to trafficking victimization*.⁴³ The only grounds that cannot be waived are those that relate to security, international child abduction, and renunciation of citizenship to avoid taxes.⁴⁴ Applicants are also ineligible for T status if they themselves have committed a severe form of trafficking in persons.⁴⁵

Derivative Applications for Family Members

One of the benefits of T status is that applicants may include certain family members as derivatives in their applications. Applicants 21 years and older may include a spouse and children.⁴⁶ They also may include parents and unmarried siblings under eighteen if their family members are in danger from the applicants' traffickers or their accomplices.⁴⁷ Applicants younger than 21 may include not only a spouse and children but also parents and unmarried siblings.⁴⁸ For all derivatives, the relationship must exist at the time the principal's application for T-1 status was filed.⁴⁹ Like the principal applicant, derivative applicants are given permission to remain in the United States for four years (or until the principal's T status expires, whichever occurs first).⁵⁰ They are also eligible for work authorization.⁵¹ After three years in T status, or once the investigation into, or prosecution of, the acts of trafficking is closed, they may apply to become lawful permanent residents.⁵²

Adjudication

T applications are adjudicated by officers at the Vermont Service Center of the United States Citizenship and Immigration Services. These officers have been trained on the dynamics of domestic violence, trafficking, and other forms of gender-based violence so the Vermont Service Center is a favorable venue for immigrant trafficking victims. There is no fee for submitting a T status application. Fees can be waived for other forms required to accompany the T application, including the form that is needed to request a waiver of inadmissibility.⁵³ T applications that are denied by the Vermont Service Center usually are not referred to immigration authorities or immigration court.

Adjustment of Status to Legal Permanent Resident for T Status Holders

Those granted T status (including derivatives) may apply for adjustment of status to lawful permanent resident after they have been in T status for three years or once the investigation or prosecution into the acts of trafficking is closed.⁵⁴ To adjust status, they must show that (1) they have been continuously physically present in the United States in T nonimmigrant status for at least three years, or, if the investigation or prosecution is complete, for a continuous period during that time, (2) they have been a person of good moral character, although this requirement may be waived if connected to the trafficking, (3) they are not inadmissible, and (4) they meet any one of the following three criteria:

- they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;
- they would suffer extreme hardship involving unusual and severe harm upon removal from the United States; or
- they were younger than eighteen at the time of the trafficking.⁵⁵

U Nonimmigrant Status

Like T nonimmigrant status, U nonimmigrant status was created by Congress in 2000 as part of the Victims of Trafficking and Violence Prevention Act.⁵⁶ Implementing regulations for U status, however, were not issued until 2007, making this a relatively new form of immigration relief. Like T status, U status

was created with the intent of increasing cooperation with law enforcement and protecting immigrants from certain types of crimes.⁵⁷ While T status protects immigrant victims of trafficking, U status covers a wider range of crimes, most of which are related to domestic violence, sexual assault, prostitution, or trafficking.⁵⁸ Up to 10,000 grants of U status may be made per year.⁵⁹ This limit does not include derivatives.⁶⁰

The benefits bestowed by U status are in some ways like T status benefits. Like people with T status, people with U status are granted work authorization and permitted to stay in the United States for four years, and they may apply for their green card after just three years in U status.⁶¹ However, unlike T status holders, those with U status cannot apply for their green card earlier if the investigation into the crime is complete, nor are they entitled to refugee benefits.

Although T status confers more benefits, U status application requirements are less onerous. Virtually every inadmissibility ground may be waived.⁶² Only “[p]articipants in Nazi persecution, genocide or the commission of any act of torture or extrajudicial killing” are inadmissible.⁶³ Furthermore, the eligibility requirements for U status are not as stringent as they are for T status. For example, U applicants need not establish that they would face extreme hardship of an unusual and severe nature if removed from the United States.

Eligibility

Applicants for U status must establish that (1) they are a victim of a qualifying crime, (2) they have cooperated with law enforcement in investigating or prosecuting that crime, and (3) they have suffered substantial physical or mental harm as a result of the crime.⁶⁴

Victim of a Qualifying Crime

U status applicants must be a victim of one of the crimes enumerated in the statute. These are rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, and any attempt, conspiracy, or solicitation to commit any of these crimes.⁶⁵ Qualifying crimes are not limited to violations of federal law. Victims of violations of state and local laws are eligible as well under broad statutory language extending protection to victims of “any similar activity in violation of federal, state or local criminal law.”⁶⁶ Thus, for example, while New York State does not have a specific crime of domestic violence, crimes entitling

victims to orders of protection under the New York Family Court Act would be qualifying crimes.

Also, applicants must be *direct victims* of crimes, not witnesses, bystanders or, with a few exceptions, family members of crime victims.⁶⁷ Certain immediate family members of victims of murder and manslaughter are themselves considered crime victims.⁶⁸ Also, certain family members of victims of crimes who are incompetent or incapacitated are considered crime victims.⁶⁹

Cooperation with Law Enforcement

In addition to establishing that they are victims of a qualifying crime, applicants for U status must show that they have cooperated with law enforcement in the investigation or prosecution of the crime. This means, according to the statute creating U status, that they “have been helpful, are being helpful to, or are likely to be helpful” to a federal, state, or local law enforcement official, prosecutor, or judge.⁷⁰

In contrast to T status, the *only* way for U applicants to establish that they have cooperated with law enforcement is by submitting a certificate of cooperation on a form signed by law enforcement.⁷¹ Note that law enforcement policies about certifications of cooperation are not uniform throughout the United States. Not all state or local law enforcement choose to issue certifications. When agencies do issue U certificates of cooperation, practices about the timing of certifications vary, even within the same municipality. For example, the district attorney’s office for one borough in New York City issues U certificates of cooperation at the beginning of an investigation while the district attorney for another borough delays U certificates until the close of a case. Postponing certification until a case has ended could mean a wait of up to two years before the crime victim can apply for U status.

Authority to issue certificates of cooperation is not limited to police or prosecutors. Under the regulations, any government agent with authority to investigate a crime may issue certificates.⁷² Thus, judges as well as agencies with investigative powers, such as child protective services or the Department of Labor, can issue certificates of cooperation.

Substantial Harm

Finally, applicants for U status must establish that they have suffered substantial physical or mental harm as a result of being a victim of a qualifying crime.⁷³ The harm does not have to result only from a particular qualifying crime, but can result from a “series of acts taken together [which] may be considered to constitute substantial physical or mental abuse even where no single act alone

risers to that level.”⁷⁴ For example, if a victim has been repeatedly beaten by a trafficker but the trafficker was only charged with one incident of assault, immigration authorities would take into consideration all of the abuse, not just the single incident for which the trafficker was charged.

Applicants for U status can document substantial harm through their own detailed affidavits, hospital records, reports or letters from social workers, counselors, or psychologists, court documents, newspaper articles, or any other record that can substantiate the harm they have suffered.⁷⁵

Waivers

Perhaps the most significant advantage of U non-immigrant status over other forms of immigration relief is the many waivers of inadmissibility that are available to applicants. Entering the United States without border inspection by an immigration official can be waived, as can past crimes.⁷⁶ Indeed, almost any inadmissibility factor can be waived except for participation in Nazi persecution, genocide, and torture.⁷⁷ Once inadmissibility factors are waived in connection with the U application, they are also considered waived when applying for lawful permanent resident status.⁷⁸

There is no guarantee, however, that all inadmissibility factors will be waived. While immigration authorities have discretion to waive inadmissibility factors, they are not required to do so.⁷⁹ Thus, for example, it may be very difficult for applicants with an extensive history of violent crimes to receive U status without showing significant rehabilitation, and, even then, their request for a waiver could be denied.⁸⁰

Derivative Applications for Family Members

U status applicants who are 21 years or older may only include their spouse and their children as derivatives on their applications.⁸¹ U status applicants who are under 21 years old may include their parents, their spouse, their children, and unmarried siblings under eighteen as derivatives.⁸² The age cutoffs are determined at the date the U application is submitted, not the date of the qualifying crime.⁸³

Adjudication

Like T applications, U applications are adjudicated by officers at the Vermont Service Center.⁸⁴ There is no fee for submitting a U status application, and fees for accompanying forms can be waived as well.⁸⁵ U applications that are denied

by the Vermont Service Center usually are not referred to immigration authorities or immigration court.

Adjustment of Status for U Status Holders

Those granted U status (including derivative family members)⁸⁶ may apply for adjustment of status to lawful permanent resident after they have been in U status for three years. To adjust their status, they must show that (1) they have been continuously physically present in the United States in U nonimmigrant status,⁸⁷ (2) they are not inadmissible,⁸⁸ (3) they have not “unreasonably refused to provide assistance in a criminal investigation nor prosecution,”⁸⁹ and (4) their “continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.”⁹⁰ There is no requirement to show good moral character as there is for T status holders.

Deciding Between T Status and U Status

While U status and T status have many overlapping features, they are not interchangeable. One remedy may be better than the other for any particular client.

Advantages of T status

When victims are unable to obtain the law enforcement certification necessary for U status applications, applying for T status is a better option, since secondary evidence of cooperation can take the place of certification by law enforcement for T applications. Also, clients who need public benefits and other services may be better served by applying for T status, particularly in states that restrict most immigrants’ access to benefits. Fortunately, in New York people with U status as well as T status have access to most public benefits, so this is not as much of a consideration. However, clients with adolescent children eligible for status as derivatives may want to pursue T status instead of U status since those with T status, but not U status, are eligible to apply for federal financial student aid.

Advantages of U Status

Clients who have many inadmissibility factors and are unable to tie them directly to trafficking may be better off applying for U status because of the broad waiver provisions. U status is also an option for victims unable to meet the T status requirement that they be present in the United States on account of

trafficking or the extreme hardship requirement. Also, lawyers at Sanctuary for Families have found that U status is a useful alternative for the trafficking clients, particularly sex trafficked victims, who are afraid that a stigma may attach to T status. Victims are often concerned that T status might signal to potential employers or to family members a history of involvement with prostitution. While we have reassured victims that this is not the case and that Employment Authorization Cards will not mention their T status, they often remain uncomfortable enough that they prefer pursuing U status. In addition, we have clients who are reluctant to discuss the details about their trafficking experiences required for T status. Unsympathetic law enforcement agents who view trafficking as “just prostitution” present another barrier for T status applicants. When a trafficking victim has also been a victim of a crime such as rape, sexual assault, felonious assault, domestic violence, or kidnapping, it may be easier to persuade law enforcement to sign a U certification than a T endorsement.

VAWA Self-Petition, the Battered Spouse Waiver, and VAWA Cancellation of Removal

At Sanctuary for Families, we often see clients who are victims of both domestic violence and trafficking. Some victims are trafficked by spouses who decide to turn a profit through sexual exploitation. Other trafficking victims escape traffickers through marrying someone, often a customer in a brothel, and the marriage turns abusive. Victims also may be mail-order or internet brides, frequently a disguised form of trafficking. In each of these cases, when the abusive spouse is a U.S. citizen or a lawful permanent resident, a VAWA self-petition is a viable option. A VAWA self-petition is also an option for children who have suffered abuse at the hands of their U.S. citizen or lawful permanent resident parent or step-parent.⁹¹ Victims with conditional green cards may be eligible for a similar form of relief called a battered spouse waiver, while those already in removal proceedings may be eligible for VAWA cancellation of removal.

VAWA Self-Petitions

To qualify for a VAWA self-petition, applicants must show that (1) they have a legal and valid marriage to a U.S. citizen or lawful permanent resident, (2) they were married in good faith, (3) they have resided with their spouse in the United States, (4) they have endured either physical abuse or extreme

cruelty at the hands of their spouse (or their children have endured this kind of abuse), and (5) they are a person of good moral character.⁹² Divorce from an abuser is not necessarily a bar to approval of a VAWA self-petition. Applicants, however, must file the VAWA self-petition within two years of legal termination of the marriage and show that there was a connection between the divorce and the domestic violence.⁹³

Battered Spouse Waivers

The battered spouse waiver is similar to the VAWA self-petition but was created for spouses who already have conditional resident status, commonly known as a conditional green card.⁹⁴ Conditional resident status was designed to discourage fraudulent marriages entered solely for the purpose of obtaining lawful permanent resident status. It is granted when a U.S. citizen petitions for lawful permanent resident status for a spouse prior to the second-year anniversary of their marriage,⁹⁵ and it is good for only two years.⁹⁶ Ninety days prior to the end of this two year period, the couple may file a joint petition to have the condition lifted.⁹⁷ Once the condition is lifted, the spouse receives permanent resident status. Abusive spouses, however, often refuse to join in filing a petition or to appear at the necessary interview with immigration authorities. Also, a victim may have left an abusive spouse before the condition is lifted. Battered spouse waivers allow immigrant victims of domestic violence who are conditional residents to file petitions on their own, without their spouses' cooperation.

As with the VAWA self-petition, those filing battered spouse waivers must demonstrate that (1) they are married to a U.S. citizen, (2) the marriage was in good faith, and (3) the applicant (or the applicant's child) suffered from physical battery or extreme cruelty from the U.S. citizen spouse.⁹⁸ However, unlike the VAWA self-petition, applicants for the battered spouse waiver do not need to establish good moral character.

VAWA Cancellation of Removal

Victims who are in removal proceedings and are either married to, or have children in common with, an abusive U.S. citizen or lawful permanent resident may be eligible for VAWA cancellation of removal. As with the VAWA self-petition, applicants for VAWA cancellation of removal need to establish that (1) they have a legal and valid marriage to a U.S. citizen or lawful permanent resident (or that they have a child in common), (2) they entered into the marriage in good faith, (3) they were subjected to physical battery or extreme cruelty by their spouse, and (4) they are a person of good moral character.⁹⁹ Applicants for

VAWA cancellation of removal must also establish two additional elements: that they had at least three years of continuous physical presence in the United States prior to submitting the application and that they (or their child or parent) would suffer extreme hardship if removed from the United States.¹⁰⁰

Advantages and Disadvantages of the VAWA Self-Petition and Related Forms of Immigration Relief

Advantages

One major advantage to obtaining immigration status through the VAWA self-petition and related forms of relief is that they do not require victims to cooperate with law enforcement. This is a great benefit for trafficking victims who are too traumatized to discuss their experiences with law enforcement or to face the possibility of testifying in court against their trafficker. It is also helpful for victims who fear retribution if they report their trafficker to the police or who do not want their traffickers deported, which is a realistic danger of law enforcement cooperation. Deportation may be undesirable if the victim has children that the trafficker is supporting or if the victim fears punishment by traffickers' family and friends if the victim were to be seen as the cause of the deportation.

Furthermore, there are no numerical caps on the approval of VAWA self-petitions, battered spouse waivers, or applications for VAWA cancellation of removal as there are on U or T status. Additionally, for victims who are married to U.S. citizens, the VAWA self-petition offers a more immediate path to a green card. Rather than having to wait four years to adjust their status to that of lawful permanent resident, VAWA self-petitioners married to U.S. citizens can file applications for green cards simultaneously with the VAWA self-petition. Additionally, those who are in removal proceedings and request VAWA cancellation are immediately granted their green card if VAWA cancellation is approved by the immigration judge. Those who are married to lawful permanent residents, though, may not adjust their status immediately, but rather must wait for their priority date to become current.

Disadvantages

Applicants for VAWA self-petition and related remedies, however, face more inadmissibility problems since waivers are not as broad as they are for T and U status. In particular, a false claim to U.S. citizenship is an admissibility factor that cannot be waived for a VAWA self-petition or related remedy. This is a problem for victims whose traffickers forced them to obtain false social security numbers or other identification documents by claiming that they were

U.S. citizens. Also, the VAWA self-petition requires a showing of good moral character.¹⁰¹ This may be a problem for trafficking victims who have been arrested. Often law enforcement fail to recognize trafficking victims or a trafficker's lawyer represents victims and instructs them to plead guilty, for example, to a prostitution charge. The VAWA self-petition and related forms of relief also require more extensive documentation and usually take longer to adjudicate than T status or U status. Finally, these forms of relief are limited to those who are either (1) married to abusive U.S. citizens or green card holders, (2) are step-children of abusive U.S. citizens or green card holders, or (3) in the case of cancellation of removal, have a child with an abusive U.S. citizen or green card holder.

Asylum and Related Remedies

Trafficking victims who fear persecution by their traffickers or their confederates in their home country or fear persecution because they were involved in prostitution may be eligible for asylum or the related immigration remedies of withholding of removal and Convention Against Torture (CAT) relief. However, these cases are challenging, require considerable commitments of resources, and have had mixed records of success.¹⁰²

Asylum

Asylum is available generally to those who fear persecution in their home country. Asylum applicants must show that the government in their home country is the persecutor or is unwilling or unable to protect the victim from persecution.¹⁰³ Applicants must also show that the persecution is on account of one of five protected grounds: race, religion, nationality, political opinion, or membership in a social group.¹⁰⁴ While gender is not one of the enumerated grounds, asylum law has evolved in recent years to recognize that women fleeing gender-based violence, such as female genital mutilation, forced marriage, honor killing, domestic violence, prostitution, and trafficking, may have valid asylum claims.¹⁰⁵ These claims are often made by casting the applicant as a member of a particular social group. Members of a particular social group share an immutable characteristic that they cannot change or should not be required to change, such as gender, family membership, or marital status.¹⁰⁶ In addition, gender-based claims often overlap with other protected grounds such as political opinion and religion. All grounds that apply should be included in an application.

Asylum applications must be filed within one year of the applicant's arrival in the United States, with very limited exceptions.¹⁰⁷ Applicants who are granted asylum are eligible to adjust their status to lawful permanent resident one year later.¹⁰⁸ They may also petition for lawful permanent residency for children living abroad who were not included in the original asylum application.¹⁰⁹

Withholding of Removal

When applicants are not able to overcome the one-year deadline required for asylum applications, they may be eligible for relief in the form of "withholding of removal." Withholding of removal is similar to asylum, and, like asylum, it requires persecution on account of one of the five enumerated grounds found in asylum law.¹¹⁰ Unlike asylum, it has no one-year deadline. Those requesting withholding of removal, however, are subject to a higher standard of proof than asylum seekers. They must show that it is *more likely than not* (a greater than 50% chance) that they would be persecuted.¹¹¹ Also, if the withholding of removal is granted, they cannot adjust their status to that of lawful permanent resident.

Convention Against Torture (CAT) Relief

Applicants who do not qualify for asylum or withholding of removal because they do not fall in one of the five protected grounds may be able to obtain Convention Against Torture (CAT) relief. CAT prohibits returning people to countries where it is more likely than not that they will be tortured.¹¹² The definition of "torture" under CAT includes some gender-based crimes, such as rape or female genital mutilation.¹¹³ There is no one-year deadline for CAT claims as there is for asylum.

Advantages and Disadvantages of Pursuing Asylum and Related Claims

Unlike U status and T status, asylum does not require cooperation with law enforcement. Thus, asylum is an option for victims who may not want to cooperate with law enforcement. It may also be an option for trafficking victims who were trafficked outside of the United States.

However, asylum cases generally require extensive preparation and documentation to succeed. Also, they are not adjudicated at the Vermont Service Center but by asylum officers and immigration judges who do not have specialized training in gender-related violence. Those who request asylum defensively, *i.e.*, while in removal proceedings before an immigration judge,

have their asylum claim decided by an immigration judge, and immigration judges grant asylum at widely varying rates. Some judges consistently have grant rates as high as 90%, while others only grant asylum in 10% of the cases in front of them.¹¹⁴ Applicants who request asylum who are not already in removal proceedings (also known as an affirmative asylum application) have their cases decided by a local asylum officer. Applicants whose request for asylum is denied by the asylum officer are automatically put into removal proceedings before an immigration judge. Thus, an asylum application should not be made unless there is no other option and the applicant is willing to risk being in removal proceedings.

Conclusion

Obtaining legal immigration status and the work authorization that comes with it can make a monumental difference in immigrant trafficking victims' lives. It can free them from unscrupulous traffickers who ruthlessly exploit their vulnerabilities. It can pave the way to reunion with children they left behind in their home country. And it can provide them with the opportunity to work legally, in safe jobs, and build a life that is free from violence and exploitation.

Appendix

Legal Resources for Immigrant Victims of Trafficking

NEW YORK CITY

A more extensive listing of services in New York City can be found on the Mayor's Office website:

http://www.nyc.gov/html/endht/downloads/pdf/human_trafficking_services_resource_directory.pdf

City Bar Justice Center, Immigrant Women and Children Project

42 West 44th Street, New York, NY 10036

(212) 382-4711

<http://www.citybarjusticecenter.org>

The City Bar Justice Center is located in midtown Manhattan. After an initial telephone screening, callers are scheduled for an in-person intake. Legal services are free, and there are no income screening requirements. Languages spoken: Spanish, English, Korean, and French.

Catholic Charities Community Services, Department of Immigration

1011 First Avenue, 12th Floor, New York, NY 10022

(212) 419-3700

<http://www.catholiccharitiesny.org>

Catholic Charities Community Services provides legal services including application for citizenship, petitions to bring relatives to the U.S., application for employment authorization, representation in political asylum and deportation, and petitions for battered women and children. Fees are on a sliding scale but can be waived in certain circumstances.

Center for Battered Women's Legal Services at Sanctuary for Families

(212) 349-6009, ext. 246

<http://www.sanctuaryforfamilies.org>

Leave a message on the intake voicemail. Indicate a safe number to which your call can be returned. After an initial telephone screening, callers are scheduled for an in-person intake.

The Door

555 Broome Street, New York, NY 10013

(212) 941-9090 (for legal and immigration, dial ext. 3280)

<http://door.org>

The Door provides legal assistance and advocacy for immigrant and nonimmigrant youth in New York City. For legal assistance, you can walk into the third floor of The Door, Monday through Friday from 2:00 to 5:00 p.m. If requesting assistance on the telephone, call (212) 941-9090 ext. 3280 and leave a message with your contact number.

Safe Horizon

2 Lafayette Street, 3rd Floor, New York, NY 10007 (corporate address)

Hotline: (800) 621- HOPE

Anti-Trafficking Program: (718) 943-8631

Immigration Law Project: (718) 943-8632

<http://www.safehorizon.org>

Safe Horizon provides free and low-cost legal services for immigrant victims of trafficking through its Immigration Law Project.

Urban Justice Center

123 William Street, 16th Floor, New York, NY 10038

Sex Workers Project: (646) 602-5617

<http://www.urbanjustice.org>

The Sex Workers Project at Urban Justice Center offers free legal services for victims of trafficking. Appointment for legal consultation can be made by calling the number for the Sex Workers Project.

Asian American Legal Defense and Education Fund (AALDEF)

99 Hudson Street, 12th Floor, New York, NY 10013

(212) 966-5932

<http://www.aaldef.org>

The Anti-Trafficking Initiative at the Asian American Legal Defense and Education Fund (AALDEF) provides free legal representation to victims of human trafficking and exploitation. For legal questions, contact staff attorney Ivy Suriyopas at ext. 235, and for referrals, contact Mabel Tso at ext. 224.

New York Anti-Trafficking Coalition

NOW-NYC, 150 West 28th Street, Suite 304, New York, NY 10001

(212) 627-9895

<http://www.stophumantraffickingny.org>

OUTSIDE NEW YORK CITY**Catholic Charities Immigrant Services/Refugee Resettlement**

143 Schlegel Boulevard, Amityville, NY 11701

(631) 789-5210

<http://www.catholiccharities.cc/ourservices/immigration.html>

Catholic Charities, Diocese of Rockville Center, offers legal assistance to immigrant victims of human trafficking and other crimes including domestic violence. Other forms of legal assistance for immigrants include adjustments of immigration status, family reunification, work authorizations, political asylum, visa extensions, and citizenship applications. Fees are based on individual's ability to pay.

Empire Justice Center

Albany: (518) 462-6831, nkrupski@empirejustice.org

Rochester: (588) 454-4060, mpeterson@empirejustice.org

White Plains: (914) 422-4333, nkrupski@empirejustice.org

<http://www.empirejustice.org>

Empire Justice Center is a statewide, non-profit law firm focused on poverty law, including immigration and domestic violence. It provides direct client

representation as well as research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community-based organizations. Legal services are free for immigrant victims of domestic violence, with no income eligibility requirement.

Hiscock Legal Aid

351 South Warren Street, Syracuse, NY 13202

(315) 422-8191, ext. 129

Upstate New York Immigration Project: (800) 963-5604, ext. 2

<http://www.hiscocklegalaid.org>

Free legal services for income-eligible residents of the following counties: Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Schuyler, Tioga, and Tompkins.

In addition, please see information regarding the Upstate New York Immigration Project, listed under the Legal Aid Society of Rochester.

The Legal Aid Society of Northeastern New York

55 Colvin Avenue, Albany, NY 12206

(518) 689-6300

Upstate New York Immigration Project: (800) 963-5604, ext. 3

<http://www.lasnny.org>

Free legal services are available to income-eligible residents of the following counties: Albany, Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren, and Washington.

In addition, please see information regarding the Upstate New York Immigration Project, listed under the Legal Aid Society of Rochester.

**The Legal Aid Society of Rochester and
the Upstate New York Immigration Project**

One West Main Street, Suite 800, Rochester, NY 14614

(585) 232-4090

Upstate New York Immigration Project: (800) 963-5604, ext. 1

http://www.lasroc.org/dom_viol.html

Serves income-eligible residents of the following counties: Allegany, Cattaraugus, Chautauqua, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Steuben, Wayne, Wyoming, and Yates. A nominal fee is charged.

In addition, The Legal Aid Society of Rochester administers the Upstate New York Immigration Project, a cooperative effort with Hiscock Legal Aid and the Legal Aid Society of Northeastern New York. Immigrant domestic violence victims who live within the jurisdiction of any of these three legal aid organizations may receive legal services through the Upstate New York Immigration Project.

My Sisters' Place

(914) 683-1333

<http://www.mysistersplaceny.org>

My Sisters' Place serves residents of Westchester County. After an initial telephone screening, callers are scheduled for an in-person intake.

New York State Coalition Against Trafficking

350 New Scotland Avenue, Albany, NY 12208

(518) 482-5465

<http://www.nyscadv.org>

The New York State Coalition Against Trafficking is a statewide membership organization whose mission is to prevent and eliminate trafficking.

RESOURCES FOR ATTORNEYS

American Immigration Lawyers Association (AILA)

918 F Street, NW, Washington, DC 20004

(202) 216-2400

<http://www.aila.org>

The American Immigration Lawyers Association (AILA) is a membership organization for attorneys practicing immigration law. Member services include access to an extensive database on a range of immigration subjects, including VAWA and asylum, and links to a number of other organizations

that serve immigrants. In addition, AILA maintains a list of mentor attorneys who offer technical guidance to less experienced attorneys at no charge.

ASISTA

<http://www.asistaonline.org>

ASISTA is a collaboration between four nationally-recognized legal experts who provide technical assistance on the intersection between immigration and domestic violence law. The ASISTA website offers useful material on VAWA self-petitions, T and U non-immigrant status, and links to other organizations that assist domestic violence victims. ASISTA provides free technical assistance to organizations that receive money from the federal Office on Violence Against Women or state STOP grants. Other attorneys and organizations that would like access to Asista staff can do so for a contribution. Contact ASISTA for details.

Coalition to Abolish Slavery & Trafficking (CAST)

5042 Wilshire Boulevard, Suite 586, Los Angeles, CA 90036
(213) 365-1906
<http://www.castla.org>

The Coalition to Abolish Slavery & Trafficking (CAST) provides comprehensive long-term services to victims of human trafficking. While based in Los Angeles, the organization is also a national leader in providing technical advice to social and legal service providers who work with victims of human trafficking. To join CAST's national T Visa working group, sign up at <http://www.castla.org/training>.

Center for Gender and Refugee Studies (CGRS)

University of California, Hastings College of the Law
200 McAllister Street, San Francisco, CA 94102
(415) 565-4877
<http://cgrs.uchastings.edu>

The Center for Gender & Refugee Studies (CGRS) supports women asylum-seekers fleeing gender-related harm. CGRC provides free training and technical assistance to individuals representing asylum applicants. It tracks gender asylum decisions nationwide, and maintains country conditions

research, a brief bank, and unpublished decisions. Its online database offers extensive legal research and guidance to assist the practitioner in preparing a gender-based asylum claim, including trafficking-based claims.

Equality Now

PO Box 20646, Columbus Circle Station, New York, NY 10023
<http://www.equalitynow.org>
info@equalitynow.org

Equality Now is a human rights organizations that works to end violence and discrimination against women throughout the world. Advocacy and education issues include domestic violence, female genital mutilation, rape and trafficking.

Immigrant Legal Resources Center (ILRC)

1663 Mission Street, Suite 602, San Francisco, CA 94103
(415) 255-9499
<http://www.ilrc.org>

The Immigrant Legal Resources Center (ILRC) is a national resource center that provides trainings and advocacy to advance immigrant rights, including domestic violence issues. It offers materials for purchase, including The VAWA Manual: Immigration Relief for Abused Immigrants. The website provides information on VAWA and U visas. ILRC also offers phone consultation and technical assistance for a fee.

National Immigration Project of the National Lawyers Guild (NIP)

14 Beacon Street, Suite 102, Boston, MA 02108
(617) 227-9727
<http://www.nationalimmigrationproject.org>

The National Immigration Project of the National Lawyers Guild (NIP) manages a VAWA listserve for the latest developments on VAWA laws, including self-petitions, U visas, trafficking issues, and related issues. NIP offers free online access to a range of VAWA policy documents and sample forms. In addition, extensive legal research is available for purchase to non-NIP members. Individuals who join NIP have access to an even larger library of VAWA resources online. Membership includes unlimited technical

assistance by NIP attorneys via e-mail or by telephone. NIP members who wish to join the VAWA listserve should send a request to Ana Manigat at ana@nationalimmigrationproject.org. Non-members who wish to join should contact the listserve manager, Linda Olson, at linda@asistaonline.org.

Polaris Project

PO Box 53315, Washington, DC 20009
(202) 745-1001
NHTRC Hotline: (888) 3737-888
<http://www.polarisproject.org>

Polaris Project is an anti-trafficking organization that provides outreach, services, and referrals to victims of trafficking and engages in advocacy efforts. Polaris Project operates the National Human Trafficking Resource Center (NHTRC), a toll-free national hotline available for 24 hours every day. Individuals should call the hotline at (888) 3737-888 to report a tip, find service providers in an area, or request training, technical assistance, or information on anti-trafficking resources.

Tahirih Justice Center

6066 Leesburg Pike, Suite 220, Falls Church, VA 22041
(703) 575-0070
<http://www.tahirih.org>

The Tahirih Justice Center provides legal services for immigrant and refugee women who have fled to the U.S. to seek protection from human rights abuses. Tahirih staff attorneys are a useful resource on current developments in gender-based asylum law.

The New York Immigration Coalition (NYIC)

137-139 West 25th Street, 12th Floor, New York, NY 10001
(212) 627-2227
<http://www.thenyic.org/>

The New York Immigration Coalition (NYIC) is an umbrella policy and advocacy organization for approximately 150 groups in New York State that work with immigrants and refugees. NYIC offers trainings for CLE credits to attorneys on a range of immigration issues, including VAWA relief and

gender-based asylum claims. The NYIC website offers a referral link to an extensive list of service providers.

GOVERNMENT RESOURCES

NYC: Let's End Human Trafficking

Telephone: 311 for non-emergency and 911 for emergency calls on trafficking
<http://www.nyc.gov/html/endht/html/home/home.shtml>

Let's End Human Trafficking is a New York City public awareness campaign that seeks to increase public knowledge of human trafficking and encourage victims to come forward and seek help.

New York State Office of Temporary and Disability Assistance (OTDA) Bureau of Refugee and Immigrant Assistance (BRIA)

(518) 473-1090

<http://www.otda.state.ny.us/main/programs/bria/programs.asp>

The Bureau of Refugee and Immigrant Assistance (BRIA), under the Office of Temporary and Disability Assistance (OTDA), provides services for trafficking victims who are certified by the Office of Refugee Resettlement. The OTDA Coordinator of Human Trafficking Programs is Christa Stewart, who may be reached at (212) 961-5688 or christa.stewart@otda.state.ny.us.

USCIS VAWA Information Line Vermont Service Center

(802) 527-4888

The USCIS VAWA Information Line provides recorded information about the application filing process and updates on self-petitioning issues to applicants, attorneys, service providers, and others assisting battered immigrants. It also allows callers to leave messages. While USCIS employees will return the call, they will not discuss specific cases.

U.S. Department of Justice

Trafficking in Persons, Office for Victims of Crime

(888) 428-7581

<http://www.ojp.usdoj.gov/ovc/help/tip.htm>

U.S. Department of Health and Human Services

Trafficking in Persons/Office of Refugee Resettlement

901 D Street, SW, Washington, DC 20447

trafficking@acf.hhs.gov

<http://www.acf.hhs.gov/trafficking/>

U.S. Department of Labor

Office of Child Labor, Forced Labor, and Human Trafficking

200 Constitution Avenue, NW, Room S-5307, Washington, DC 20210

202-693-4843

globalkids@dol.gov

U.S. Department of State

Office to Monitor and Combat Trafficking in Persons

<http://www.state.gov/g/tip/>

The Department of State's Office to Monitor and Combat Trafficking in Persons engages in diplomacy, foreign assistance, and public engagement to combat trafficking. The annual Trafficking in Persons Report, which evaluates anti-trafficking policies in all countries in the world, is accessible on its website free of charge.

U.S. Department of State

Bureau of Democracy, Human Rights and Labor (DRL)

<http://www.state.gov/g/drl/hr/>

The U.S. Department of State, Bureau of Democracy, Human Rights and Labor (DRL) develops an annual report on human rights conditions throughout the world, *Country Reports on Human Rights Practices*, accessible on its website free of charge. It also provides information on country conditions to USCIS and immigration judges in asylum cases.

Notes

1. INA § 212(a).
2. *Id.*
3. Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000) (VTVPA), as amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193 (Dec. 19, 2003) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457 (Dec. 23, 2008) (*hereinafter* “TVPA”).
4. INA § 214(o)(7).
5. INA § 101(a)(15)(T)(ii).
6. INA § 245(l).
7. INA § 214(o)(2).
8. INA § 214(o)(3).
9. § 107(b)(1)(E)(1) of the VTVPA.
10. INA § 101(a)(15)(T)(i).
11. § 103 of the TVPA.
12. *Id.*
13. *Id.*
14. *See* 146 Cong. Rec. H 2675- 87.
15. 18 USC § 1591(e)(2).
16. 18 USC § 1589(c)(2) and 1591(e)(4).
17. 8 CFR § 214.11(f).
18. 8 CFR § 214.14(c)(2)(i).
19. INA § 101(a)(15)(T)(i)(II).
20. 8 CFR § 214.11(g)(2).
21. *Id.*
22. 8 CFR § 214.11(g)(3).
23. 8 CFR § 214.11 (g)(2).
24. INA § 101(a)(15)(T)(i)(II).

25. INA § 101(a)(15)(T)(i)(III).
26. INA § 214(o)(6), INA § 101(a)(15)(T)(i)(III)(aa).
27. INA §§ 101(a)(15)(T)(i)(III)(bb) and (cc).
28. 8 CFR § 214.11(a).
29. INA § 101(a)(15)(T)(iii) and 8 CFR 214.11(h).
30. *See* USCIS Form I-914B, <http://www.uscis.gov>.
31. 8 CFR § 214.11(h)(2).
32. *Id.*
33. *Id.*
34. INA § 101(a)(T)(i)(IV).
35. 8 CFR § 214.11(i)(1).
36. *Id.*
37. *Id.*
38. 8 CFR § 214.11(i)(2).
39. 8 CFR § 214.11(i)(3).
40. *Id.*
41. INA § 212(d)(13)(A).
42. INA § 212(d)(13)(B)(i).
43. INA § 212(d)(13)(B)(ii).
44. *Id.*
45. INA § 214(o)(1).
46. INA § 101(a)(15)(T)(ii)(II).
47. INA § 101(a)(15)(T)(ii)(III).
48. INA § 101(a)(15)(T)(ii)(I).
49. 8 CFR § 214.11(o)(4).
50. INA § 214(o)(7).
51. 8 CFR § 214.11(o)(10).
52. INA § 245(l).

53. 8 CFR § 103.7(c)(5). To request a waiver of an inadmissibility factor use USCIS Form I-192, *available at* <http://www.uscis.gov>.
54. INA § 245 (l)(1)(A).
55. INA § 245 (l)(1), 8 CFR 245.23.
56. TVPA, *supra* note 3.
57. 72 Fed. Reg. 53014 (Sept. 17, 2007).
58. INA § 101(a)(15)(U)(iii).
59. INA § 214(o)(2).
60. INA § 214(o)(3).
61. INA § 214(p)(6), INA § 245 (m).
62. INA § 212(d)(14).
63. *Id.*
64. INA § 101(a)(15)(U)(i).
65. INA § 101(a)(15)(U)(iii).
66. *Id.*
67. *Id.*
68. 8 CFR § 214.14(a)(14)(i).
69. INA § 101(a)(15)(U)(i)(II).
70. INA § 101(a)(15)(U)(i)(III).
71. This must be submitted on USCIS Form I-918 Supplement B, *available at* <http://www.uscis.gov>.
72. 8 CFR § 214.14.(a)(2).
73. INA § 101(a)(15)(U)(i)(IV).
74. 8 CFR § 214.14(b)(1).
76. INA § 212(d)(14).
77. *Id.*
78. *Id.*

79. “The Secretary of Homeland Security in the Secretary of Homeland Security’s *discretion may* waive the application of subsection (a) [of INA § 212] . . . in the case of a nonimmigrant described in section 101(a)(15)(U), if the Secretary of Homeland Security considers it in the public or national interest to do so.” INA § 212(d)(14) (emphasis mine).
80. See 8 CFR § 212.17.
81. INA § 101(a)(15)(U)(ii)(II). Eligibility for derivative family members is detailed further at 8 CFR § 214.14(f).
82. INA § 101(a)(15)(U)(ii)(I).
83. 8 CFR § 214.14(f)(4).
85. 8 CFR § 103.7(c)(5)(ii).
86. Derivative family members granted U nonimmigrant status for a period of less than three years (because they obtained U status more than a year after the principal U petition) may file to extend U status in order to meet the three years of continual presence in U status requirement prior to filing for adjustment. Such applications for the extension of status may be filed on Form I-39. 8 CFR § 214.14.(g)(2). Additionally, pursuant to INA § 245(m)(3) and 8 CFR § 245.24(h), at the time of adjustment of status, noncitizens in U status may petition for certain derivative family members who were never granted U visas upon the showing of extreme hardship. U principals who are 21 at the time of adjustment may petition for their spouses and children. U principals who are younger than 21 may only petition for their parents (not their spouses, children, or siblings). These petitions are filed on Form I-929.
87. INA § 245(m)(3)(1)(A).
88. *Id.*
89. *Id.*
90. INA § 245(m)(1)(B).
91. INA § 204(a)(1). Note that parents of abusive U.S. citizen children are also eligible to file a VAWA self-petition. Section 816 of VAWA 2005 amended the INA so that noncitizen parents of abusive U.S. citizen sons or daughters over 21 may now file VAWA self-petitions. INA § 204(a)(1)(A)(vii).
92. INA § 204(a)(1)(A)(iii). For an in-depth description on how to establish each of these elements, see “Representing Immigrant Victims of Domestic Violence” by Lori Cohen in the *Lawyers Manual on Domestic Violence*:

Representing the Victim, 5th ed., edited by Jill Laurie Goodman and Dorchon A. Leidholdt (available by request to womeninthecourts@courts.state.ny.us). See also “Options for Immigrant Victims” by Julie Dinnerstein, in the *Immigration and Nationality Law Handbook* (2007-08 Ed.), AILA Publications.

93. INA §§ 204 (a)(1)(A)(iii)(II)(aa)(CC) as it applies to spouses of U.S. citizens and B(ii)(II)(aa)(cc)(bbb) as it applies to spouses of lawful permanent residents.
94. INA § 216(c)(4)(C).
95. INA §§ 216(a)(1) and (g)(1). While conditional residence is theoretically available to immediate relatives of lawful permanent residents, because of the current waiting period to process family petitions for relatives of lawful permanent residents, practically speaking, it is only available currently to spouses of U.S. citizens.
96. INA § 216(d)(2)(A).
97. *Id.*
98. INA § 216(d)(4)(C).
99. INA § 240A(b)(2).
100. *Id.*
101. Bars to a finding of good moral character are listed in INA § 101(f).
102. For a more detailed description of pursuing asylum and related claims for trafficking victims, please consult the Center for Gender and Refugee Studies at <http://cgrs.uchastings.edu>. In particular, see Knight, Stephen, *Asylum from Trafficking, a Failure of Protection*, Interpreter Releases (July 2007), available at http://cgrs.uchastings.edu/documents/cgrs/advisories/Knight_%20ImmigBriefings_Trafficking_Asylum.pdf
103. INA § 101(a)(42)(a); INA § 208(b)(1)(A); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).
104. *Id.*
105. *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996) (female genital mutilation); *Gao v. Gonzales*, 440 F3d 62, 66-70 (2d Cir. 2006) (forced marriage in China); *Matter of R-A-*, 22 I&N Dec. 906 (BIA 1999), vacated, 22 I&N Dec. 906 (A.G. 2001), remanded, 23 I&N Dec. 694 (A.G. 2005), remanded, 24 I&N Dec. 629 (A.G. 2008) (domestic violence in Guatemala). For unpublished grants of asylum to women fleeing honor killing, prostitution,

and trafficking, *see* Center for Gender and Refugee Studies, <http://cgrs.uchastings.edu/law.index.php> (*last viewed* Aug. 1, 2010).

106. *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985), modified on other grounds, *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *Matter of C-A-*, I&N Dec. 951 (BIA 2006) (social visibility of group an important consideration).
107. INA § 208(a)(2)(B). For the government's analysis of the one-year filing provisions, *see* INS, *Asylum Officer Basic Training Course, One-Year Filing Deadline* (2001), http://www.asylumlaw.org/docs/united_states/asylum_officer_training_oneyear_112001.pdf (*last viewed* Aug. 19, 2010).
108. INA § 209, 8 CFR § 209.2.
109. Form I-730, Petition for Refugee/Asylee, *available at* <http://www.uscis.gov/graphics/formse/fee/forms/files/I-730.htm>.
110. INA § 241(b)(3).
111. *Cardoza-Fonseca*, 480 U.S. 421, 423 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).
112. 8 CFR §§ 208.16, 208.16; 1208.16, 1208.17. For a more detailed discussion of relief under the Convention Against Torture, *see* 3 Gordon, Mailman & Yale-Loehr, *Immigration Law & Procedure*, §§ 33.10, 34.07.
113. 8 CFR § 208.18(a), § 1208.18(a) (definition of "torture" under CAT); *Zubeda v. Ashcroft*, 333 F3d 463 (3rd Cir. 2003) (rape); *Tunis v. Gonzalez*, 447 F3d 547 (7th Cir. 2006) (female genital mutilation).
114. Ramji-Nogales, Jaya, Schoenholtz, Andrew and Schrag, Philip G., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 Stan. L. Rev. 295, 334-35 (2001).

Services for Trafficking Victims: A Brief Guide for Lawyers

**by Amy Siniscalchi, Christine M. Fecko,
and Hamra Ahmad**

Victims of human trafficking¹ are among the most vulnerable and needy of legal clients. The physical, sexual, and emotional abuse they have suffered, along with the isolation, deception, and coercion that have been imposed on them, make for extremely complicated legal cases, often requiring a lawyer expert in a number of different fields. However, trafficking victims, who often are subjected to horrible abuse, have needs that extend far beyond the legal sphere. These needs — which can include medical care, psychological care, safety, housing, children’s welfare, economic sustenance, and more — are not at the core of attorneys’ training or knowledge. To focus their energies on these clients’ legal rights and remedies, attorneys should try to find comprehensive case management services or be prepared to locate and coordinate services themselves. Indeed, the effectiveness of an attorney’s intervention in a trafficking victim’s legal case may hinge on whether non-legal needs are addressed.

Identifying a Victim Who Has Been Trafficked

Although human trafficking is not new, its prominence as an important global issue is recent. While direct work with trafficking victims has steadily increased over the past decade or so for both attorneys and social service providers, many trafficking victims are never identified. Thus, the first priority for lawyers is to make sure they uncover cases of human trafficking when they present themselves, as they often do, as something else.

Attorneys are used to clients approaching them with discrete legal issues and responding in kind with what we might call a “laser” approach, zeroing in on the legal issue initially raised. A trafficking victim may, for example, meet with a family law attorney to talk about an order of protection or child custody

case or a victim will be assigned to a criminal defense attorney after a prostitution or immigration arrest. Only through careful listening, broad and in-depth questioning, and patient trust-building, what we might call in contrast a “searchlight” approach, may a client reveal that she is a trafficking victim with a panoply of urgent non-legal needs. Eventually, probably over the course of multiple sessions, the lawyer’s interview must cover: the circumstances surrounding the request for legal help and, in a criminal case, the nature of the arrest and the criminal activity; underlying reasons for a sense of fear or anxiety on the part of the client; where and how the client is living; her medical and mental health concerns; where her children are and any concerns she has for their welfare; any history of physical, emotional, or sexual abuse by a companion, boyfriend, or husband; and her work history, including the conditions of the workplace and pay.

Of course, it is also possible that a trafficking victim will already have been identified when she first meets her attorney. Victims of human trafficking come to the attention of social service providers, law enforcement, friends, and family, all of whom may assist the victim in getting access to services including legal representation. This can happen in a variety of ways, and how it happens can have an impact on the victim’s attitudes towards service providers and offers of help. For example, police or prosecutors investigating a sex trafficking operation may refer victims after a prostitution raid in which victims were arrested or held in police custody. A lawyer meeting a client immediately after a raid may need to spend significant time building a relationship to be able to represent the victim effectively. Other victims may have been referred by a social service organization. The referring agency may already have established a level of trust and comfort so that the client may be more prepared to work with an attorney.

Whether a history of trafficking is uncovered by the lawyer or already known at the initial consultation, lawyers must explore this history fully, identify all appurtenant legal and other needs of the client, and establish a basis for trust.

Identifying Victims’ Needs

Trafficking victims may need a range of services, particularly victims who are still linked to their traffickers or subject to their control and those who have recently escaped or been freed from their traffickers. Some victims may have solved a portion of the problems they initially faced or the trafficking may have

been less severe, long-lived, or life-shattering. Lawyers should be aware of the range of possible needs and be prepared to discuss them with clients. Among these needs are:

- **Safety** First and foremost is a client's immediate physical safety. Is the trafficker pursuing her? Does he have access to her because he is a husband, boyfriend, or father of her child? Does she have a safe place to stay? Is there a trafficking ring or are there multiple traffickers involved?
- **Immigration** Is she a foreign-national? Does she understand English? Does she need an interpreter to communicate? What is her immigration status?
- **Shelter** If she does not have a safe place to stay, what are her options? Can she live with a friend or family member? Does she need to go to a women's shelter?
- **Housing** What is her long-term housing option? Does she have a safe place to reside and can she afford it? Will she need (and qualify for) public housing?
- **Health** Does she need immediate physical or psychological care? Has she been physically abused? Has she been raped? Has she been exposed to sexually transmitted diseases? Is she addicted to drugs or alcohol? Does she have children with these needs? What are her long-term mental health needs?
- **Future Planning** Will she need education, job training, or job placement to provide for herself and her children? Does she need public benefits, and will she qualify?
- **Other Legal Needs** What other legal needs have been uncovered once the "searchlight" approach revealed her to be a trafficking victim? If she initially said she needed custody of her children, is it now clear that she needs an order of protection, immigration services, or housing advocacy? If she was arrested for prostitution, does she need help with her criminal defense? Does she need a lawyer to explain to police and prosecutors that she should be treated as a victim, not a criminal? Does she need an immigration lawyer?

Meeting Victims' Needs with Comprehensive Case Management or Coordinated Services

Not all of a trafficking victim's needs may be unmet at the time of her legal consultation. A trafficked client may have been referred to a lawyer by a doctor, social worker, or law enforcement officer who is already assisting her. Whether or not the legal client is receiving some care for her non-legal needs, the ideal arrangement is comprehensive case management.

The National Association of Social Workers defines case management as services provided by someone who:

. . . assesses the needs of the client and the client's family, when appropriate, and arranges, coordinates, monitors, evaluates, and advocates for a package of multiple services to meet the specific client's complex needs.²

Case management goals include:

- Enhancing developmental, problem-solving, and coping capacities of clients.
- Creating and promoting the effective and humane operation of systems that provide resources and services to people.
- Linking people with systems that provide them with resources, services, and opportunities.
- Improving the scope and capacity of the delivery system.
- Contributing to the development and improvement of social policy.³

A trained case manager, who can take on this role and coordinate the range of services needed by a trafficking victim, is the best option.

Undocumented Immigrants and Access to Comprehensive Case Management Through the NYS Confirmation Process

New York State's Human Trafficking Law,⁴ one of the strongest statutes of its kind in the country, established a framework for providing services, including comprehensive case management, to trafficking victims who are undocumented immigrants. Under the law, the New York State Office of Temporary and Disability

Assistance (OTDA) and the New York State Division of Criminal Justice Services (DCJS) jointly determine whether to “confirm” that an individual is a trafficking victim.⁵ Confirmation allows victims access to social services and public benefits for which they would not otherwise have been eligible.

Only law enforcement agencies can refer victims to DCJS for confirmation. To make a referral — a simple one-page form — the law enforcement agent needs a “reasonable level of suspicion” that a person is involved in a trafficking situation.⁶ The referral is faxed to DCJS, which consults with OTDA and issues a decision, usually in one to three days, in the form of a letter to the victim and to the referring law enforcement agency. To date, the majority of referred cases have been confirmed. Denials are generally attributed to the trafficking having occurred outside New York or prior to the effective date of the human trafficking law. A lawyer who is working with a client for whom confirmation is a possibility should communicate with the appropriate law enforcement agency and ask that the referral be made.

Confirmation gives the client access to one of the eight regional service providers designated by OTDA as part of its Response to Human Trafficking Program⁷ to provide comprehensive case management services. The regional providers offer trafficking victims, either directly or indirectly through subcontracts with other providers, food, shelter, legal services, rent, medical and mental health treatment, and “other” services (which must be approved by OTDA and have included transportation, translation services, and life skills training).⁸ Most, if not all, of the regional providers were serving undocumented trafficking victims long before the human trafficking law was enacted, but few funding sources existed for such work. The Response to Human Trafficking Program provides badly needed additional funding. Regional providers are reimbursed for services provided to confirmed, undocumented immigrant victims according to a schedule, including \$289 per month per client for up to six months for case management services as well as funds for shelter and legal assistance. In addition, the agency may provide direct financial assistance to victims for rent, medical care, food, clothing, or other practical needs up to a cap of \$10,754 per client.⁹ OTDA, which set these caps, allows some flexibility depending on the individual client’s needs. The ongoing availability of these funds, however, is subject to the vagaries of the New York State budget.

A perhaps unanticipated benefit for many victims receiving confirmation is that it confirms for them their status as victims of serious crimes. At the social service agency where the authors work, we have noticed that after victims receive their confirmation letters from DCJS they tend to blame themselves less

for what happened and they are more willing to cooperate with law enforcement. Lawyers may find their clients more motivated and empowered in pursuing their legal cases after confirmation.

Federal Law and Coordinated Services

Attorneys can also help their immigrant, undocumented clients find coordinated services, if not the ideal model of case management, through provisions in federal law. Under the Trafficking Victims Protection Act of 2000,¹⁰ federal law enforcement — usually Immigration and Customs Enforcement — can apply for continued presence status on behalf of undocumented trafficking victims. Continued presence status entitles victims to employment authorization and federal public benefits while they remain in the United States during the investigation and prosecution of their trafficking case. Attorneys should monitor progress of an application for continued presence status and, when it is granted, inform the U.S. Department of Health and Human Services. HHS, in turn, will issue a certification letter that initiates federal benefits, which are administered by the Office on Refugee Resettlement. Victims are eligible for Temporary Assistance for Needy Families, Medicaid, Social Security, refugee cash and medical assistance, refugee social services, health screening, food stamps, and match grant (employment alternative to public assistance). These services are generally available to U.S. citizens and foreign nationals with immigration status, so the certification process does not benefit them.

HHS distributes funds to aid federal trafficking victims through the United States Conference of Catholic Bishops (USCCB)/Migration and Refugee Services. Similar to OTDA, USCCB subcontracts with trafficking service providers throughout the country to reimburse agencies for some of the services provided, as well as for direct assistance to victims. Pre-certified victims may be eligible for up to nine months of this assistance up to a cap of \$600 per month (subcontracting service providers can receive up to \$700 per month to cover their administrative expenses). Certified victims and family members are eligible for up to three months of assistance up to a cap of \$400 per month. Agencies can receive up to \$500 per month to cover their own expenses.¹¹

Whenever possible, both New York State confirmation and federal certification should be sought to maximize the type, amount, and duration of benefits. Victims with confirmation under New York law may receive a wider range of benefits and services than they would receive from the federal

government, but both state and federal benefits are limited in amount and duration. State confirmation coupled with federal certification can help provide long-term, stable support for victims before, during, and after the criminal investigation and prosecution. Once undocumented victims become federally certified, however, they are no longer considered undocumented for purposes of receiving benefits from the regional providers established under New York's Human Trafficking Law.

When a Client Cannot Get Confirmation or Certification

It may be possible to find case management even if the client cannot obtain confirmation under the Human Trafficking Law or certification under federal law. Some service agencies, including some regional providers, receive funding to establish programs dedicated to trafficking victims. Others assist these victims because their missions or core values overlap with the issue of human trafficking. Providers that regularly work with trafficking victims include organizations devoted to domestic violence victims, immigrant and refugee populations, rape and sexual assault victims, homeless and other displaced persons, troubled youth, and crime victims in general. These service providers make their resources available whether or not a trafficking victim has been confirmed and state funding is available.¹² Again, the lawyer's help in connecting with these organizations and making a case for the client can be pivotal in accessing services.

When Case Management Is Not Available

If it is simply impossible to find case management for a client, lawyers must be willing to serve as substitutes. They must assess client needs and then search out necessary services. Providers regularly working with trafficking victims are key resources.

Finding help for a trafficking client's various needs is a critical means of establishing a working relationship. Gaining a client's trust is essential for the effective provision of legal services to someone who has been subjected to the physical, emotional, and sexual traumas of trafficking. A lawyer takes a great step towards gaining that trust by showing that he or she understands a victim's needs and will work to find help.

A lawyer who is filling the role of case manager will likely need assistance from multiple service providers. Each agency's areas of expertise should be considered to maximize the benefits to the client. The victim's comfort level with each service provider is also important, and her preference about service providers should be honored whenever possible. The lawyer should explain to service providers the importance of working together to achieve the shared goals for the client. Best practices call for case management that:

... empowers one person to arrange meetings with or otherwise communicate with other agencies to identify additional needed services, to avoid duplication of services, to develop unified strategies for dealing with difficult clients, and to avoid working at cross purposes.¹³

A lawyer filling in as the client's case manager should attempt to meet this standard.

Confidentiality Considerations

Lawyers are well-versed in, and aggressive at protecting, the attorney client privilege. New York law also provides for social worker/client confidentiality.¹⁴ However, when lawyers collaborate with service providers on behalf of their clients or when they take on the role of case manager, they must be careful not to allow these walls of confidentiality to be breached.

The general rule is that a communication in the presence of a third party is not protected by attorney client privilege. There is an exception, however, when the third party acts as an agent of the attorney in the legal relationship.¹⁵ A person may be considered an agent of an attorney if he or she is necessary for the transmission of communications to and from the client.¹⁶ Courts have protected communications to and from a wide range of agents assisting lawyers in rendering legal advice to their clients. They can include social workers, case managers, and translators whose function is to assist the attorney in effectively communicating legal advice to the client.¹⁷

In the current climate of shrinking government funding for social services, collaborations between attorneys, service providers, and law enforcement agencies will likely increase. It is essential that attorneys keep in mind the limits of confidentiality and that they be vigilant in protecting communications.

Here are a few guidelines:

- Clients must always give informed consent before providers share information.
- Attorneys SHOULD NOT share information — including names, photos, locations, and identifying facts — with anyone who could undermine privilege.
- Attorneys SHOULD NOT share any privileged documents with anyone outside attorney client privilege.
- Attorneys SHOULD instruct victims that they have the right to refuse to disclose information.
- Attorneys SHOULD inform victims about the limitations of privilege and confidentiality.
- Attorneys SHOULD label all documents “Confidential and Privileged.”
- Attorneys SHOULD define the nature of communications.

Conclusion

Trafficking victims bear the wounds of the abuse and anguish of modern day slavery. Their needs are deep and varied. They may seek the help of an attorney at any point — when they have already accessed social services, when they have received no other services, or when they have not yet even identified themselves as trafficking victims. Lawyers need to be prepared to identify these victims, assess their needs, and help them find the services that will keep them safe, help them heal, and give them a hopeful future. Lawyers must be prepared to seek out, and work together with, service providers and government agencies in a way that respects victims’ wishes while achieving their goals of safety and support. Legal intervention for trafficking victims simply cannot be effective in the absence of this approach.

Notes

1. Although My Sisters' Place, where the authors work, provides services to men and boys as well as women and girls who are victims of trafficking, the majority of victims of both sex and labor trafficking are and have been female. For that reason, the authors have chosen to use gendered terminology.
2. http://www.socialworkers.org/practice/standards/sw_case_mgmt.asp
3. *Id.*
4. Laws of 2007, Ch. 74.
5. See N.Y. Soc. Serv. Law § 483-cc; see also *United States v. Schwimmer*, 892 F.2d 237 at 243 (2d Cir. 1989), *cert. denied*, 502 U.S. 810 (1991).
6. See <http://otda.ny.gov/main/bria/documents/Human-Trafficking-Report.pdf>.
7. *Id.*
8. *Id.*
9. *Id.*
10. Pub. L. 106-386, Div. A, Oct. 28, 2000. Since 2000, Congress has reauthorized the Act under the title Trafficking Victims Protection Reauthorization Act. See Pub. L. 108-193, Dec. 19, 2003; Pub. L. 110-457, Dec. 23, 2008.
11. United States Conference of Catholic Bishops, *Migration and Refugee Services Program Operations Manual: Anti-Trafficking Services Program, 2010-2011*, at 43.
12. My Sisters' Place in Westchester County, New York, has long recognized the link between domestic violence and trafficking. While we were recently designated case management services provider for the seven-county region directly north of New York City, we provided a range of services including case management for trafficking victims even before the human trafficking law was passed.
13. Hepworth, D., Rooney, R., Larson, J., *Direct Social Work Practice: Theory and Skills* (1997), at 455.
14. See <http://www.op.nysed.gov/prof/sw/swconfidential.htm>.
15. See, e.g., *United States ex rel. Edney v. Smith*, 425 F. Supp. 1038, 1046 (EDNY 1976).

16. *See, e.g., Urban Box Office Network, Inc. v. Interfase Managers, L.P.*, No. 1 Civ. 8854 (LTS)(THK), 2006 U.S. Dist. LEXIS 20648, at 20-32 (S.D.N.Y. Apr. 18, 2006)(protecting communications involving financial advisor who assisted attorney in providing advice to the client); *cf. Browne of N.Y. City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, at 494-92 (S.D.N.Y. 1993)(privilege does not attach to communications between client and her financial advisor because the agent was not assisting the attorney).
17. *See, e.g., Carter v. Cornell University*, 173 FRD 92, 94 (SDNY 1997).

Using Criminal Law



Sex Trafficking Investigations and Prosecutions

by Lauren Hersh

Jennifer's Story

Jennifer,¹ fifteen years old, was having a difficult time adjusting to her family's move to Georgia. She was lonely and fought with her mother constantly. Jennifer took refuge online. That is where she met Roslyn, a 25 year old living in New York City. The two developed a fast friendship. Jennifer explained her circumstances, telling Roslyn she wanted to leave Georgia. After seeing Jennifer's photos, Roslyn told Jennifer that she could make her a successful model. Roslyn, sensing Jennifer's urgency, encouraged her to come to New York City. Roslyn arranged for Jennifer's bus ticket and picked her up from Port Authority one Thursday afternoon.

The two spent the next week dining out, shopping, and partying. In addition to introducing Jennifer to new people, Roslyn introduced Jennifer to marijuana, ecstasy, and cocaine.

Jennifer lived in Roslyn's apartment for several weeks. Jennifer was happy, enjoying her new life in New York City. One afternoon Roslyn told Jennifer she was having trouble paying the rent. She asked her to help out. Roslyn suggested that Jennifer start dancing at a club that Roslyn knew about; it would be good money and a good way for Jennifer to meet people. Eager to help and fearful of losing her place to stay, Jennifer agreed.

A few more weeks passed. Roslyn's demeanor changed. She grew hostile. Roslyn began restricting Jennifer's movement and monitoring her telephone conversations. With increasing urgency, she insisted that Jennifer pay off the debt she was accumulating. Then she proposed a solution. She would set Jennifer up with a friend who would pay Jennifer to have sex with him. When Jennifer protested, Roslyn threatened to call Jennifer's mother and tell her about Jennifer's drug use. Jennifer reluctantly agreed. That was the beginning

of the cycle. In several weeks, Jennifer was having sex with approximately three men a week.

About a month later, Jennifer could no longer take it. She fled Roslyn's apartment and called her mother. Her mother contacted the Kings County District Attorney's Office, where I work, and we contacted the New York Police Department. Fortunately, we were able to rescue Jennifer and over time we learned her story, but Jennifer refused to testify before the Grand Jury. Consequently, the Kings County District Attorney's Office has been unable to prosecute the case.

The Challenges of Prosecuting Sex Trafficking Cases

Effective prosecution of sex trafficking cases is an extraordinarily challenging task. Despite heightened awareness of human trafficking as a crime, the number of arrests and prosecutions has been small. While it is important to examine challenges associated with prosecuting sex traffickers, including the reluctance of victims to cooperate with law enforcement, it is more important to develop innovative approaches. Once challenges have been identified, focus must shift to creative strategies that will lead to successful prosecutions.

While victims of sex trafficking are hard to identify, additional factors make trafficking difficult to prosecute. Approaching sex trafficking like any other crime ignores the complexity of the victim-trafficker relationship. In trafficking cases, there is often a lengthy history of physical, financial, and psychological abuse. The relationship between victim and perpetrator is one of power and control, and many victims have been allowed few, if any, significant relationships other than those with the trafficker and his or her confederates. The trafficker often serves as the victim's employer, family, landlord, and sexual partner or love interest.

Just as in domestic violence cases, prosecutors must minimize dependence on the victim in building cases and use creative investigative techniques to support each detail of the victim's story. Photographs, computer analysis, wiretaps, and other creative measures can provide crucial corroboration of the victim's account.

Prosecutors must also find ways of working with social workers and social service agencies experienced with assisting trafficking victims. The needs of victims are often immense, and, without support, victims are likely to be too frail, too frightened, or too traumatized to provide much help in building cases or to testify before grand juries or in open court. People providing services to trafficking victims are essential links to victims. They can help victims gain the strength necessary to cooperate with law enforcement and to understand the importance of pursuing traffickers.

While the interests of police, prosecutors, and service providers may diverge, finding common ground and working together are essential. Victims have lived in environments filled with mistrust and exploitation, and they have dire needs for stability, assistance, trust, and consistency. A comprehensive collaboration among law enforcement, prosecutors, and non-government organizations provides necessary support and services to victims, increasing the likelihood of building the strongest case possible against perpetrators.

The New York Anti-Trafficking Statute

Enacted in 2007, the New York State Anti-Human Trafficking Law addresses the growing concern about human trafficking. The Anti-Human Trafficking Law created two new offenses: sex trafficking and labor trafficking. In passing this legislation, the New York legislature stated that:

[H]uman trafficking is modern day slavery . . . [that] has scarred the lives of countless innocent individuals . . . [New York must take] strong action against this heinous crime by imposing tough penalties on sex and labor traffickers and sex tour operations and by providing a wide array of services to trafficking victims.²

The portion of the statute that addresses sex trafficking³ prohibits a person from intentionally advancing or profiting from prostitution by the following means:

1. **Providing the victim with certain drugs**, including narcotics, concentrated cannabis, methadone, GHB, or Rohypnol, in order to impair the victim's judgment,
2. **Making material false statements, misstatements, or omissions to the victim** in order to persuade the victim to engage in or continue to engage in prostitution,
3. **Withholding or destroying government identification documents**, including a passport, in order to impede the victim's freedom of movement,
4. **Requiring repayment of a debt**, whether real or perceived, through the commission of commercial sex acts, or
5. **Using force or engaging in any scheme, plan, or pattern** to compel or induce a person to engage in prostitution by making that person fear one or more of the following: physical injury or

death, property damage, unlawful imprisonment, accusation of a crime, deportation, exposure of victim's secrets, or providing information regarding the victim's legal claim or defense, and any act calculated to harm the health, safety, or immigration status of the victim.

Sex Trafficking is a class B felony, with a maximum sentence of 25 years imprisonment.⁴ In addition, a court may order a defendant to pay a fine or forfeit the defendant's gain from the commission of the crime.⁵

Investigating Trafficking Cases

Sometimes we learn about a girl,⁶ sometimes we learn about a location, and sometimes we learn about a pimp. Our approach must be flexible, but the goal is always the same: we must corroborate the victim's testimony and minimize the need for her cooperation with the prosecution.

Raids

A police raid is a law enforcement action in which undercover officers gain entry into a location of suspected criminal activity. Because there is significant overlap between prostitution and trafficking, raids of prostitution locations are likely to produce evidence of trafficking. In prostitution-related raids, officers usually pose as clients and request sex for money. Once an agreement has been made, the officer calls for backup and law enforcement enter the location to make arrests, question the participants, and gather evidence.

Police raids on prostitution houses allow law enforcement access to, and information about, activities and people within the location, including the chance to speak with individuals who may be victims of trafficking. Raids afford law enforcement a critical opportunity to speak with potential victims, but having social service providers available at the scene of the raid or soon after to attend to the immediate needs of victims is critical to building the trust necessary for fruitful communications with victims. Raids also permit law enforcement to observe the crime scene, find evidence, and confiscate it.

Adult Service Websites

Among the most significant sources for investigating trafficking cases are websites advertising adult services. As the popularity of the internet has grown,

the past means of trafficking, such as “walking 42nd Street,” have been transformed into a “virtual 42nd Street” on craigslist and backpage.com. These websites facilitate pimps’ ability to post girls instantaneously on websites that men can access with the click of a mouse. Using risqué subject lines, pimps “market” their girls by uploading provocative photos, delineating costs in code (for example, instead of fifty dollars, it is common to see fifty roses as the chosen form of payment on craigslist), and writing sexually explicit descriptions to tempt potential clients.

Internet exploitation in a virtual trafficking market has advantages for investigators. For example, for each posting, there is often a listed phone number. By subpoenaing the phone records, the investigating agency can gather the telephone numbers of johns using the victim’s services’ phone numbers and the pimp’s phone number. Oftentimes, one pimp’s phone number will appear on several girls’ postings, making it easy to show a pattern of sex trafficking. Furthermore, many pimps have signature tag lines. Whether it be by a specific location or by the use of the same street names in each posting, it is easy to spot a particular pimp’s modus operandi.

Beyond the sites that facilitate the trafficking transactions, there are also websites where johns and pimps review girls and their experiences with them. BestGFE.com is one such website, which, although vulgar and difficult for investigators to read, provides important insights into how the girls are being treated and what types of men are using their services. Unfortunately, the privacy laws that protect these websites have created the difficult question of whether individuals’ identities can be obtained simply by subpoenaing their chosen “posting names.” Until more is done to address demand for the prostitution services found in these often offensive review sites, the supply on craigslist and backpage.com will continue to thrive and serve as a boon to investigators.

Examining Cases Throughout Prosecutors’ Offices

Evaluating cases in various areas of a prosecutor’s office may shed light on trafficking cases. For example, because the pimp/victim dynamic often resembles, or could in fact be, a boyfriend-girlfriend relationship, trafficking cases may be misunderstood and found in a domestic violence unit. Comprehensive domestic violence intakes may reveal that a relationship initially thought to be boyfriend-girlfriend is in fact trafficker-victim.

Recently, we modified the Kings County District Attorney’s Office Domestic Violence Unit intake form to include questions designed to identify

sex trafficking. In a very short time, these additional questions have proven effective in building new sex trafficking cases.

Other Sources

There are many other methods of investigating potential trafficking. Missing persons organizations and community complaints all may lead prosecutors to trafficking operations. Other prosecutors' offices, state agencies, and non-governmental organizations are excellent sources of potential trafficking victims.

Arresting the Victim

Monitoring patterns of prostitution arrests within a community may provide insight into a specific trafficking location and pattern. For example, patterns that illustrate repeated arrests at the same location where girls/women originate from the same area or country and have the same contrived "story" should raise red flags. Patterns may also include one individual posting bail for multiple women. This may help identify the trafficker or agents working for the trafficker.

Arresting victims is a highly controversial tactic, fraught with ethical dilemmas and possible human rights violations. While views vary, from a purely practical, prosecutorial perspective, arrests have pros and cons.

Benefits of Arresting the Victim

Arresting victims may be a tool for uncovering the details of trafficking operations and preserving victim involvement. Prosecutors may have an easier time maintaining reliable contact with an arrested victim. She will be required to make periodic court appearances and, in the event that she disappears, prosecutors can seek a warrant for her arrest.

An arrested victim who fears prosecution may offer useful information in exchange for a dismissal. The prosecutor may also negotiate with the victim by offering social services throughout the duration of the court case. Drug treatment, job training, or other services may be used as part of a conditional plea, ultimately resulting in dismissal of charges.

Also, arresting a victim may afford the prosecutor a necessary time buffer to remove the victim from the immediate threat of the trafficker. During this time, a victim advocate may work to obtain housing, medical care, and other social services for the victim, all the while attempting to empower the victim and break the trafficker's control.

Drawbacks of Arresting the Victim

However, arresting victims is not always a prosecutor's favored technique. Arrest risks ruining the possibility of trust between a victim and the prosecutor, ultimately reducing any chance of cooperation. Victims often have endured psychological, emotional, and physical abuse, so arrest re-victimizes and may re-traumatize an already fragile victim. Arresting a victim also confirms what many traffickers tell victims: that law enforcement will never believe her and will "lock her up."

When prosecutors choose to discourage the police from arresting the victim, they accomplish the dual purposes of gaining the victim's trust and preventing the prosecution of individuals who are, in fact, victims of a crime and grave human rights offenses. A trafficking victim will be more likely to assist the prosecution in building a case if she feels that she is working with an advocate who understands that she is a victim.

Interviewing

When working with victims of human trafficking, prosecutors must develop supportive relationships and effective communication. Since assembling a case and proceeding without the victim's testimony or assistance are extremely difficult, a prosecutor should strive to gain the victim's trust. The prosecutor must signal that the victim's well-being is a priority and help the victim feel as comfortable as possible.

Location of Interview

The location of the interview is critical. *No one* feels comfortable at a police precinct, particularly a trafficking victim, so a police precinct should be used to conduct an interview only as a last resort. Similarly, a witness should never be interviewed by someone who is armed or in uniform.

Demeanor/Interview Style

Victims are more likely to speak freely when they feel respected and safe. Having a victim advocate present during interviews helps create a secure environment. Prosecutors must avoid derogatory labels like "prostitute" and "delinquent." Prosecutors should also refrain from making any promises unless they are absolutely certain they can keep them.

To learn the truth of the situation, which is essential for prosecutors, the victim must be separated at the outset, before the questioning begins, from her trafficker. Bearing in mind that most victims do not self-identify as “trafficking victims,” the prosecutor should use an informal conversational style rather than legal terms such as “trafficking.” At first, victims may tell the false story that they have been coached to give, and it may take three to five encounters before the true circumstances emerge. Prosecutors should allow the victim to set the length and pace of interviews and should watch for, and respond to, nonverbal cues. During interviews, prosecutors must avoid pity, judgment, patronization, victim-blaming, or any other attitudes that would alienate victims and make them unwilling to confide in the interviewer. Prosecutors should be aware of their tone and body language as well as their actual words.

Breaking the Pimp’s Control

Breaking the pimp’s control over the victim is one of the greatest challenges that prosecutors face. During the interview, the prosecutor should explain that the pimp, not the victim, was breaking the law. The victim may believe that she is in love with the pimp, or she may have been told that the police would not believe her. While it is difficult to interview a victim who is convinced that the police and other government officials will harm her, a prosecutor can connect with the victim by treating her with respect and patience, building trust through several interviews until the victim feels ready to disclose her true story.

The main messages that a prosecutor must convey to the victim through the interviews are that the prosecutor is there to help and that the prosecutor’s first priority is the victim’s safety. By the time the victim has reached the prosecutor, she has been through deeply traumatic experiences and is usually still recovering. She is often in a period of readjustment back to normal life before her involvement with an abusive trafficker. Prosecutors should explain to the victim that if she is an undocumented immigrant she may be eligible for immigration remedies and able to avoid deportation. Additionally, a prosecutor may make referrals to appropriate social service agencies to provide her with material assistance.

In spite of prosecutors’ most sensitive efforts, a victim may still be reluctant to testify. A victim may still be afraid of retaliation from a trafficker or she may simply be too embarrassed to admit what happened in open court. A victim who is merely trying to move on with her life may also become frustrated with the reality that a successful case takes time to build.

Even when victims do cooperate, they may not be ideal witnesses, since they may remain fragile and the circumstances in which they have been forced to live

may appear compromising to juries. The average juror may find it difficult to understand why the victim seems to have chosen to stay with a trafficker or may lack sympathy with a victim who appears to have chosen to prostitute. Typically, jurors want the “perfect victim,” someone with whom they can easily sympathize and who has a clear understanding of how she came to be victimized. This expectation is unrealistic. The “perfect victim” rarely, if ever, exists.

Most importantly, prosecutors should assure the victim that she is entitled to help and will receive it. The prosecutor must see that the victim receives medical care if necessary, a safe place to stay, counseling, and legal assistance. Prosecutors should work with community agencies and social workers who can provide the kind of comprehensive recovery system that the victim needs.

Strengthening the Case: Corroborating Evidence

In any human trafficking case, the ultimate goal is corroboration of victims’ testimony. This can be accomplished with a variety of investigative tactics.

Phone Records

Phone records subpoenaed from phone companies can reveal crucial details about the identity and location of victims and suspects. Comparison of phone records may also reveal the structure of the trafficking operation. For example, a witness may insist that she does not know the suspected trafficker, yet her phone records may show hundreds of calls to and from him. Phone numbers in the trafficker’s phone records may lead to other victims and other perpetrators. Furthermore, investigation may reveal that the suspect is paying for the victim’s phones or the victim is living at the trafficker’s address.

I recently interviewed a young woman shortly after a raid. Her phone rang repeatedly during the interview. With each call she became increasingly agitated and fearful. The woman told me that it was her concerned boyfriend. She gave me permission to examine her phone, and by subpoenaing the subscriber information of the caller I learned that the repeated calls were coming from our target, her trafficker.

Pimps, traffickers, and madams frequently call victims after a raid in an attempt to control the information victims share during an interview with law enforcement. Surprisingly, I have found that most victims will let you look at their cell phones. A cell phone may provide information that the victim would never willingly share, including the identity of her trafficker. Additionally, the

victim's contact list may help to identify locations or persons of interest for future surveillance, including the identities of johns.

Prosecutors, however, must obtain the witness's written consent before examining the contents of her phone. Without this document, the prosecution is open to a defense argument that a phone was unlawfully searched and a motion to dismiss what may be critical information.

Transportation Receipts

Train, bus, and plane ticket information, obtained via subpoena, can be used not only to track a victim's travel but also to connect the victim to the trafficker and to establish the means by which the trafficker obtained control over the victim. This information can verify the victim's account of the story, but it also can elucidate the way the trafficker exercised control by moving the victim from place to place. Records may reveal the victim's departure and arrival points, the identity of the purchaser, and the method of payment. In a recent case, we found that the trafficker had purchased a ticket for a victim and later demanded that the victim work off this transportation fee and other debts through commercial sexual acts.

Electronic Evidence

Computer information is vital to any trafficking investigation. Like young adults everywhere, trafficking victims often have accounts on Facebook, MySpace, Twitter, and other social networking websites. Regardless of whether these pages were created by a young woman before she is trafficked or by her trafficker to promote her image online, they often reveal important details. Posts may include the victim's name, location, nation of origin, activity updates, names of the individuals with whom the victim interacts, and even contact information. These sites are also excellent sources for photographs of the victim, her friends, and locations frequented by the victim and her acquaintances. On occasion, the victim's user profile may even contain information about, or images of, her trafficker/pimp.

Many traffickers post advertisements on different classified ad websites for prostitution-related services. They may even post recruitment materials, such as promotional parties and price ranges, to entice girls to come work for them. Sites such as craigslist and backpage.com charge a nominal fee for each posting in the "adult services" section. A prosecutor can subpoena information relating to a post, including the internet protocol (IP) address used by the creator, the email and street addresses associated with the ad, and the poster's credit card

information. IP addresses can often be connected to a region or even an exact location. Credit card numbers and bank account information can be used to investigate a suspect's financial records for evidence of criminal activity and are highly useful in subsequent forfeiture proceedings.

Traffickers often try to increase the demand for their victims by including links to websites where johns rate their experiences with different prostituted women. While the content may be disturbing to investigators, websites such as BestGFE.com and The Erotic Review (<http://www.theeroticreview.com>) can provide substantial insight into trafficking operations. In one recent post, a customer indicated that the brothel we were investigating had moved from one location to another. At that time, we had detectives conducting surveillance, and this tip prevented many wasted hours observing a wrong location.

Photographs

New York case law allows photographs to be used to prove elements of crimes or to defeat potential defenses as long as they are relevant⁷ and are not offered to “arouse the emotions of the jury and to prejudice the defendant.”⁸ Pictures of the victim can demonstrate the extent of a sex trafficking operation by illustrating that traffickers are advertising their victims on escort or adult services sections of websites.

Also, photographs of a victim's injuries can be extremely important in demonstrating that the pimp or madam uses violence. Such photographs not only serve as evidence of the use of force against the victim, but may also be used to defeat a pimp's potential defense of consent or to refute the argument that the victim was simply residing with the pimp. Pictures of a victim's injuries may be offered, however, only after a proper introduction from a witness (such as a police officer) who viewed the subject of the photograph and who can testify that the image accurately represents the person or scene depicted at the time it was taken.⁹

Surveillance and Crime Scenes

Surveillance, the observation of locations and individuals, can be used to verify the location of a human trafficking operation and the identities of those involved in it. Key indicators of trafficking include heavy pedestrian flow, predominantly male foot traffic, and the presence of previously identified individuals near the location. This information is particularly beneficial when trying to understand the business patterns: busy times, frequent visitors, and routine activity.

Crime scene investigations are also helpful, particularly since trafficking investigations often involve police raids that bring police inside locations where crimes have been committed. Physical evidence such as condoms, bed linens, large sums of cash, cameras, log books or journals, and computers can be used to show that the location operated as a prostitution house. Items such as drug paraphernalia and passports or other forms of identification provide evidence that traffickers were using prohibited means to compel victims to perform commercial sex acts.

In the absence of consent to search a location of interest, police officers must ordinarily obtain a search warrant. However, an exception to the warrant requirement for exigent circumstances may be applicable.¹⁰ For example, if an officer has reason to believe there are minors endangered at the location, exigent circumstances may exist.

Wiretaps

Wiretapping is a significant tool for building trafficking cases. By allowing a third party to monitor telephone or internet conversations covertly, wiretapping enables prosecutors to listen to conversations between a trafficker and those involved in the crime. Access to these private conversations grants lawyers insight into the dynamics of trafficking relationships. The intercepted conversations may supplement or even replace the need for a victim's testimony.

New York's wiretap law requires that a particularly targeted person has committed, is committing, or is about to commit a particularly designated crime.¹¹ Sex trafficking is among the designated offenses for which wiretapping is admissible.¹² Furthermore, there must be reason to believe that information about a crime will be obtained from the targeted conversation.¹³ The applicant must also show that other investigative measures have either not worked, are unlikely to work, or are too dangerous to attempt.¹⁴

Ascertaining that each of these elements necessary for a wiretap exists is important because without them there is a danger that the wiretap will be a waste of time and resources, that the risks outweigh the potential gains, or that an innocent person will be wiretapped frivolously. Pre-wiretap research might include sending detectives into the field to observe the location, interviewing victims and/or individuals arrested at the location, doing surveillance, and corroborating the phone number of the location with prostitution ads on websites such as craigslist and backpage.com.

Wiretaps may provide a good deal of information about the trafficking operation, the condition of the victim, or measures taken by traffickers to control the victim. Wiretaps might also intercept conversations with drug providers or record a trafficker inducing a victim into commercial activity by making false statements, demands regarding debt repayment, or threats to harm the victim or her family members. Wiretaps allow prosecutors to avoid risks to victims or compromises to the secrecy of their investigations that direct contact with victims or traffickers might entail. An excellent tool for getting a plea, and thereby avoiding the need for victim testimony, is playing for the defendants the tape catching them in the act, in which case their defense is ship-sunk.

Interpreters

Human trafficking cases often require the use of interpreters. For example, during a raid, prosecutors and their investigators may encounter many non-English speaking individuals. To ensure access to statements that could be important evidence during trial, it is of critical importance that interpreters are available from the onset of the investigation. When an interpreter is used to communicate with a defendant, victim, or witness, the interpreter must provide an affidavit of translation, since testimony by the interrogator about what the interpreter said that the interviewee said is hearsay.¹⁵

Excited Utterances

In human trafficking cases, perpetrators may make excited utterances, especially during vice raids. Excited utterances are spontaneous declarations relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition, and they are exceptions to the rule against hearsay.¹⁶ These statements can provide crucial clues to help law enforcement officials distinguish trafficking victims from their exploiters. When a witness/victim makes excited utterances, individuals must be on hand who can hear, document, and later testify about the incriminating statements. The witness to the excited utterance, of course, must understand the language in which the statement is made. Precautions must be taken to ensure that the excited utterances do not go unrecorded.

Business Records

Business records are often key pieces of evidence, but a prosecutor wishing to introduce records, documents, or ledgers as a business record must lay a proper foundation. New York law requires that the records be entered in a

systematic way, at or near the time the information was received, by someone with knowledge, in the ordinary course of business, and that it was in the regular practice of business to make such entries.¹⁷ Traffickers often keep ledgers with financial data and personal information about their victims or patrons that qualify as business records. These ledgers may contain victims' names and telephone numbers in addition to the names and numbers of customers, and they may be used as evidence to show that the trafficker or pimp was acquainted with the victims or buyers. They can also be used to demonstrate that the customers were committing the crime of patronizing a prostitute.

Expert Witness Testimony

Generally in New York, expert testimony is admissible when the subject matter is professional, technical, or beyond the scope or comprehension of an average juror.¹⁸ The activities of prostitution rings, the dynamics between traffickers and the women and girls they prostitute, and the complexities of victim trauma are likely to be foreign to average jurors and thus suitable for expert testimony.

Expert witnesses can testify generally about psychological phenomena like traumatic bonding, also known as Stockholm Syndrome. They can also provide insight into the effects of trafficking on the psychology of individual victims. While expert testimony cannot be used to prove the occurrence of specific events, the expert's personal observations and interactions with the victim may be used to explain the victim's psychological state. For example, a social worker certified by the court as an expert in counseling trafficking victims may explain to the jury why a victim stayed with the trafficker or why a victim's response to law enforcement may have evolved over time. Expert testimony may help jurors understand the dynamics of exploitation and why a victim might behave in a manner contrary to common sense expectations.

Conclusion

Prosecutors can indeed make strong cases against traffickers. However, only by forging comprehensive collaborations with local law enforcement and social service organizations and by using creative long-term investigative techniques will we successfully investigate and prosecute human trafficking cases.

Notes

1. The facts in this case have been changed to protect the identity of the victim.
2. Laws of 2007, ch. 74. “Legislation to Prevent Human Trafficking Signed into Law,” June 6, 2007, <http://www.ny.gov/governor/press/0606071.html>.
3. N.Y. Penal Law § 230.34.
4. *Id.*
5. *Id.*
6. Men and boys as well as women and girls are victims of sex trafficking. However, the vast majority of sex trafficking victims are females and most of experience of my office is with female victims, so throughout this paper I have used female-gendered pronouns and terms like “girl.” Without question, more attention should be paid to male victims of sex trafficking.
7. *People v. Poblner*, 32 N.Y. 2d 356, 359 (1973).
8. *People v. Wood*, 79 N.Y. 2d 958, 959 (1992).
9. *People v. Carranza*, 306 AD.2d 351 (2d Dept 2003) (mem).
10. *Id.*
11. N.Y. CPL § 700.15 (2).
12. N.Y. CPL § 700.15 (8).
13. N.Y. CPL § 700.15 (3).
14. N.Y. CPL § 700.15 (4).
15. *People v. Chin Sing*, 242 N.Y. 419 (1926).
16. Fed. R. Evid. § 803(2).
17. N.Y. CPLR § 4518(a).
18. *DeLong v. Eerie*, 60 N.Y. 2d 296, 307 (1983).

Federal Prosecution of Human Traffickers

by Pamela Chen and Monica Ryan

In October 2000, Congress enacted the landmark Trafficking Victims Protection Act (TVPA or “the Act”),¹ which squarely targeted human trafficking for federal criminal prosecution. While anti-slavery and peonage statutes had long been on the books,² the Act specifically criminalized “forced labor” and “sex trafficking,” thereby adding these concepts to the lexicon of criminal jurisprudence. Even more ground-breaking was Congress’s holistic approach to the problem of human trafficking. In crafting the Act, Congress addressed three different aspects of the trafficking problem: (1) deterrence and punishment of traffickers through robust and far-reaching criminal statutes; (2) victim support and rehabilitation through the funding of human services for trafficking victims and immigration relief for alien victims; and (3) stemming the flow of trafficking from source countries by conditioning U.S. monetary assistance to foreign countries based on their efforts to combat trafficking. With each reauthorization and amendment of the TVPA in legislation known as the Trafficking Victims Protection Reauthorization Act (TVPRA),³ Congress has strengthened and fine-tuned its provisions, as well as extended the reach of its criminal statutes.

The TVPRA, coupled with other federal criminal laws such as the Mann Act, Travel Act and alien smuggling statutes, provides a wide range of options for prosecuting human traffickers in federal court. Indeed, as discussed in this chapter, charging these different offenses in conjunction whenever possible is essential to any successful federal human trafficking prosecution.

Summary of Federal Criminal Statutes⁴

TVPRA (2008)

The new and amended criminal provisions of the 2008 TVPRA took effect on December 23, 2008. The core human trafficking offenses — forced labor and sex trafficking — are codified, respectively, at 18 U.S.C. §§ 1589 and 1591, and provide, in relevant part:

§ 1589. Forced labor

- (a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means —
 - (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
 - (2) by means of serious harm or threats of serious harm to that person or another person;
 - (3) by means of the abuse or threatened abuse of law or legal process; or
 - (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).
- (b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

§ 1591. Sex trafficking of children or by force, fraud, or coercion

- (a) Whoever knowingly —
 - (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1);

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).⁵

* * *

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of eighteen years.

The key element to any forced labor or sex trafficking charge, except where the victim is a minor, is the use of a prohibited means, such as force, threats, fraud, coercion, physical restraint and abuse or threatened abuse of legal process,⁶ to compel a person's labor. In sex trafficking cases involving minor victims, compulsion is not required.⁷ Rather, the government need only show that the defendant knew that the victim was a minor *or* that the defendant "had a reasonable opportunity to observe" the minor victim.

A common misconception is that forced labor and sex trafficking must involve the transportation or smuggling of the victim across a state line or international border. In fact, neither Section 1589 nor 1591 has such a requirement, and Section 1589 does not even require a nexus to "interstate commerce." Indeed, the crime of forced labor under Section 1589 can be a purely domestic or local activity. And while Section 1591 requires that the sex trafficking conduct "affect interstate or foreign commerce," this element can be met without a showing that the victim traveled interstate or internationally as part of the crime. *See, e.g., United States v. Powell*, 2006 WL 1155947, at *3 (N.D. Ill. April 28, 2006) ("in passing 18 U.S.C. § 1591, Congress recognized that human trafficking adversely affected interstate commerce and sought to eliminate it"; thus, government need not prove crossing of state lines to satisfy interstate commerce element). For example, use of an interstate communication facility, such as pagers, telephones or the internet, should be sufficient to meet the interstate commerce element. *See, e.g.,*

United States v. Pipkins, 378 F.3d 1281, 1295 (11th Cir. 2004); *United States v. Atcheson*, 94 F.3d 1237, 1243 (9th Cir. 1996) (finding defendants' "placement of out-of-state phone calls" to be a "connection with interstate commerce"); *United States v. Muskovsky*, 863 F.2d 1319, 1325 (7th Cir. 1988) (finding effect on interstate commerce based on the use of interstate telephone calls to verify credit card transactions).⁸ The Eleventh Circuit has also held that the use of goods, such as condoms, that were manufactured outside the state where the offense occurred was evidence of interstate commerce. *See United States v. Evans*, 476 F.3d 1176 (11th Cir. 2007); *Pipkins*, 378 F.3d at 1295.⁹ Furthermore, the Eleventh Circuit recognized in *Evans* that the requisite effect on interstate commerce can arise from aggregating the effects of purely intrastate commercial or economic activity. 476 F.3d at 1178-79; *see also United States v. Paris*, 2007 WL 3124724, at *8 (D. Conn. 2007) (citing *Evans*).

It is important to note that sex trafficking and forced labor can sometimes be charged in conjunction with one another. This should be considered where: (1) the evidence does not clearly demonstrate that the victim performed a commercial sex act as opposed to some other form of labor, such as where the victim is required to perform massages or lap dances that may not include actual sex acts; (2) the victim performed different types of acts for the trafficker, some of which do not qualify as commercial sex acts, such as where the victim is required to provide restaurant labor by day and commercial sex acts by night; and (3) the evidence does not clearly establish that the prohibited means used by the trafficker was directed at, or resulted in, the compelling of the commercial sex act, as opposed to other labor performed by the victim. In addition, Section 1589 provides greater flexibility with respect to plea negotiations because, unlike Section 1591, Section 1589 has no statutory minimum sentence. *Compare* 18 U.S.C. § 1589(d) (providing for sentences from zero to twenty years) *with* 18 U.S.C. § 1591(b) (requiring mandatory minimum sentences of ten or fifteen years, depending on the victim's age, and providing for maximum sentences of life).

In addition to forced labor and sex trafficking, the TVPRA criminalizes other trafficking-related conduct, including, *inter alia*, confiscating a person's identification documents as part of a trafficking offense (18 U.S.C. § 1592), attempts or conspiracies to commit a trafficking offense (18 U.S.C. §§ 1594(a)-(c)), and obstruction of a trafficking investigation (18 U.S.C. §§ 1583(a)(3), 1584(b), 1591(d) and 1592(c)). The significance of the conspiracy offense, which was created as part of the 2008 TVPRA, is that it carries the same maximum sentence as the underlying substantive offense — life for sex trafficking and twenty years for forced labor — as compared to the five-year

statutory maximum available under the general conspiracy statute, 18 U.S.C. § 371. Also, the new trafficking-specific obstruction offenses appear to offer an advantage over general obstruction laws, which require proof that the defendant sought to obstruct or interfere with a federal investigation or judicial proceeding. *See, e.g.*, 18 U.S.C. §§ 1512, 1515 and 1519. So, for example, under the 2008 TVPRA, it might now be possible to prosecute a trafficker who lies to local, as opposed to federal, authorities about trafficking activity.

Mann Act

The Mann Act, passed in 1910 as the White Slave Traffic Act, prohibits the transportation of individuals across state lines for purposes of engaging in prostitution or other criminal sexual activity. *See* 18 U.S.C. §§ 2421 and 2423. The Mann Act has separate provisions relating to adult and minor “transportees”:

18 U.S.C. § 2421 (Adults)

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than ten years.

18 U.S.C. § 2423 (Minors)

A person who knowingly transports an individual who has not attained the age of eighteen years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than ten years or life.

As Congress has increased the penalties under the TVPRA for crimes involving minors, it has done the same with respect to the Mann Act. Currently, the punishment for transporting a minor in violation of the Mann Act is the same as the punishment in Section 1591 for the sex trafficking of a minor between the ages of fourteen and eighteen, *i.e.*, a mandatory minimum sentence of ten years and a maximum sentence of life. *See* 18 U.S.C. § 2423; 18 U.S.C. § 1591(b)(2). By contrast, a Mann Act violation involving an adult has no mandatory minimum sentence and has a maximum sentence of ten years. 18 U.S.C. § 2421.

The most significant difference between human trafficking offenses, *i.e.*, forced labor and sex trafficking, and Mann Act violations is that the Mann Act does not require any showing that the transported individual was compelled

through improper means to engage in the prohibited sexual activity. In fact, under the Mann Act, it is not even necessary to show that the transported individual engaged in any sexual activity. Rather, it is the act of transporting the individual in interstate or foreign commerce “with the intent” that the individual engage in the prohibited sex act that violates the statute. At the same time, under the Mann Act, physical movement across a state line or international border is required. It also should be noted that the Mann Act does not require that the sexual activity for which the individual is transported be “commercial,” as required by Section 1591. So, for example, a person who transports a minor to a different state simply for the purpose of having sex with the minor, *i.e.*, engaging in statutory rape, would be guilty of a Mann Act violation, even though the sexual activity involved no payment or commercial motivation. Lastly, the Mann Act provides an option for plea negotiations where the trafficking case involves adult victims and the evidence of compulsion is not strong, since Section 2421 contains no mandatory minimum sentence.

The Mann Act can be used to prosecute “sex tourism” cases, in which the defendant travels to another country for the purpose of engaging in sexual conduct that is illegal in the United States (and may also be illegal in the country where the conduct occurs), such as sex with minors. The Mann Act specifically prohibits persons from traveling from the United States to a foreign country to engage in illegal sexual activity and also prohibits U.S. citizens or permanent residents from traveling *between* foreign countries for this purpose.

Finally, a unique and seemingly under-utilized Mann Act provision is 18 U.S.C. § 2424, which criminalizes conduct relating to the keeping, harboring and controlling of illegal aliens for purposes of prostitution or “other immoral purpose[s].” 18 U.S.C. § 2424(a). Section 2424 requires, *inter alia*, that anyone who engages in this activity file a statement with the “Commissioner of Immigration” setting forth each alien’s name, where the alien is being kept and all facts relating to the alien’s entry into the United States. *Id.* The failure to file this report is punishable by up to ten years imprisonment. *Id.*

Travel Act

Title 18, U.S.C. § 1952, known as the “Travel Act,” in essence federalizes the crime of operating a prostitution business.¹⁰ It prohibits, in relevant part, anyone from:

[T]ravel[ing] in interstate or foreign commerce or us[ing] the mail or any facility in interstate or foreign commerce, with intent to . . . promote, manage, establish, carry on, or facilitate

the promotion, management, establishment, or carrying on, of any unlawful activity, [including] any business enterprise involving . . . prostitution offenses in violation of the laws of the State in which they are committed or of the United States.

18 U.S.C. § 1952(a)(3) and (b).

The Travel Act is similar to the Mann Act in that it does not require a showing of compelled prostitution. It does require a showing of a “business enterprise” that was involved in prostitution, which has been interpreted to mean “a continuous course of conduct” as opposed to “isolated, casual or sporadic activity.” *United States v. Mukovsky*, 863 F.2d 1319, 1327 (7th Cir. 1988); see *United States v. Bates*, 840 F.2d 858, 863 (11th Cir. 1988) (same); *United States v. Davis*, 666 F.2d 195, 202 n. 10 (5th Cir. Unit B 1982) (same); *United States v. Corbin*, 662 F.2d 1066, 1073 (4th Cir. 1981) (same); *United States v. Cozzetti*, 441 F.2d 344, 348 (9th Cir. 1971) (same). However, the “business enterprise” need not be sophisticated nor prolific. See, e.g., *Cozzetti*, 441 F.2d at 347-48. The Travel Act, in contrast to the Mann Act, also requires the actual carrying on of the prostitution business as opposed to the mere intent to do so. Like the Mann Act, there is no statutorily mandated minimum sentence where adult transportees or victims are involved. The maximum sentence under the Travel Act is only five years (unless death results), as compared to ten years under the Mann Act.

The Travel Act, however, offers a distinct advantage over the Mann Act in that it proscribes the use of “any facility in interstate or foreign commerce,” such as a telephone or the internet, to carry on the prostitution business. See 18 U.S.C. § 1952(a).¹¹ Thus, under the Travel Act, physical transportation or travel of the person who performs the prostitution is not required.

Alien Smuggling, Harboring and Transportation

There are various immigration statutes that can be applied to trafficking conduct that involves illegal aliens. See, e.g., 8 U.S.C. § 1324(a) (alien smuggling, harboring and transportation). The obvious advantage of these statutes is that, because they are directed solely at illegal immigration activity, they do not require any showing of compelled labor or commercial sex acts. For this reason, they can be used in trafficking cases to supplement trafficking charges, thereby maximizing the chances for a conviction.

In addition, the immigration statutes can be used to arrest and detain a suspected trafficker while the trafficking allegations are still being investigated.

Because trafficking cases frequently are the product of reactive law enforcement activities, there often is an immediate need to detain the suspected trafficker to prevent his/her flight. The immigration statutes provide a means of arresting and detaining a defendant while the trafficking allegations are being investigated.

Prosecuting a Trafficking Case: Some Tips

Beware the Ex Post Facto Clause

Because the TVPRA was only passed in 2000 and has been amended several times since then, it is easy to forget that the particular statutory provision being charged, or the Act itself, might not have been in effect at the time of the crime. Trafficking, after all, almost always involves a course of conduct rather than a single incident, and this course of conduct frequently occurs over a long period of time. It is, therefore, critical to know the effective date of the statutory provision being charged to avoid running afoul of the Ex Post Facto Clause. *See* U.S. Const. Art. I, § 9, cl. 3. Trafficking conduct that occurred before October 2000 cannot be charged under the TVPRA unless the conduct continues after the effective date of the TVPRA. *See United States v. Harris*, 79 F.3d 223, 228-29 (2d Cir. 1996) (“It is well-settled that when a statute is concerned with a continuing offense, the *Ex Post Facto Clause* is not violated by application of a statute to an enterprise that began prior to, but continued after, the effective date of the statute.”); *United States v. Layne*, 43 F.3d 127, 132 (5th Cir. 1995) (finding *no ex post facto* violation where the government put on evidence showing defendant continued to possess child pornography material after the effective date of the statute). However, in this situation, the jury must make a specific finding that all elements of the trafficking offense were present after October 2000 in order to convict the defendant.¹² *See United States v. Marcus*, 538 F.3d 97 (2d Cir. 2008) (reversing sex trafficking and forced labor convictions where conduct straddled TVPRA effective date but the jury was not specifically instructed to find that all elements of the trafficking offenses were established post-TVPRA), *petition for cert. granted*, 130 S. Ct. 393 (Oct. 13, 2009). Similarly, where a defendant pleads guilty to a trafficking offense that straddles the TVPRA’s effective date, the defendant must allocute to post-TVPRA conduct that establishes all elements of the trafficking offense. If a defendant’s conduct straddled the date of an amendment to a TVPRA statute, it will be necessary to prove that the defendant’s conduct met all of the elements of the offense that applied to each period of conduct, *i.e.*, before and after the amendment. The

different periods of conduct should be charged in separate counts, setting forth the time period and version of the statute that applies.¹³ It will also be necessary, at trial, for the jury to be instructed on the different elements that apply to each version of the TVPRA offense.

A timely illustration of this issue is Congress's latest amendment to the sex trafficking statute, 18 U.S.C. § 1591(a), as it applies to minor victims. Prior to the 2008 TVPRA's amendment to Section 1591, which took effect on December 23, 2008, it was necessary to prove that the alleged sex trafficker *knew* that the victim was a minor. As part of the 2008 reauthorization, Congress changed this element to require *either* that the defendant knew or recklessly disregarded the fact that the victim was a minor *or* that the defendant had a "reasonable opportunity to observe" the victim. This is a significant change. It effectively makes Section 1591 a statutory offense with respect to minor victims. Any prosecutor considering whether to initiate a sex trafficking prosecution where the victim is a minor must determine which version or versions of Section 1591 apply to the defendant's course of conduct. If the conduct began prior to December 23, 2008, there must be evidence establishing that the defendant knew that the victim was underage at some point prior to December 23, 2008 in order to prove the sex trafficking crime. Furthermore, as previously discussed, the crime should be charged in two separate counts, one for the period prior to December 23, 2008 and one for the period thereafter.

Corroboration, Corroboration, Corroboration

You can never have too much corroboration in a human trafficking case. Ironically, in these cases there is as much focus on the victim's state of mind as on the defendant's intent. A key issue in a trafficking case is whether the victim remained in the service of the defendant voluntarily or because he or she was compelled to do so by the defendant's misconduct. On the face of it, this would seem easier than proving the defendant's intent, since the victim is usually cooperating with the government in its investigation and prosecution. But, in fact, proving the victim's state of mind is often the most difficult aspect of a trafficking case because frequently the sole source of this evidence is the victim himself or herself. Obviously, because the victim cannot be viewed as an unbiased witness, it is necessary to corroborate as much of his or her account as possible.

While by no means an exhaustive list, types of corroborating evidence include: (1) other victims' accounts; (2) cooperating witness testimony; (3) other witnesses such as neighbors, customers, housekeepers, staff, meter readers; (4) wiretap recordings; (5) audio or video recordings by undercovers, informants or victims;

(6) surveillance; (7) immigration records such as border crossing documents and entry visas; (8) passports, birth certificates and government issued identification; (9) ledgers, diaries and customer lists; (10) bank records; (11) wire transfer receipts; (12) telephone records; (13) computer records, including postings and communication on social networking and advertising sites such as MySpace, Facebook and craigslist, and IP address information; (14) the defendant's recorded prison telephone and visitor information; (15) the victim's reports to police and related law enforcement testimony; and (16) medical reports and other evidence regarding injuries and/or treatment of the victim.

This corroboration is important not only to confirm the victim's account but also to foreclose certain avenues of cross-examination of the victim and other witnesses. It also may be sufficient in itself to prove some offenses. For example, finding the victim's passport in the defendant's locked closet or safe alone may provide extremely strong evidence on an alien harboring or document confiscation charge.

Conclusion

Congress has provided federal prosecutors with an array of tools to combat human trafficking. It is vital that these tools be used to deter and punish those who engage in this form of modern-day slavery, and to vindicate and restore the dignity and well-being of its victims.

Notes

1. Pub. L. 106-386, Div. A, Oct. 28, 2000. Since 2000, Congress has reauthorized the Act under the title of Trafficking Victims Protection Reauthorization Act. *See* Pub. L. 108-193, Dec. 19, 2003; Pub. L. 110-457, Dec. 23, 2008.
2. *See* 18 U.S.C. §§ 1581-1588 (enacted in 1948).
3. *See* Pub. L. 108-193, Dec. 19, 2003; Pub. L. 110-457, Dec. 23, 2008. In addition to the mandatory restitution provision in the TVPRA's criminal statutes, Congress created a civil cause of action for trafficking victims to recover restitution and damages from their traffickers. 18 U.S.C. §§ 1593, 1595. A victim can initiate a civil action under the TVPRA independent of, and without, any criminal prosecution being brought.
4. This summary is not exhaustive. Depending on the facts of the case, different statutes might apply. *See, e.g.*, 18 U.S.C. § 1951(a) (extortion); 18 U.S.C. §§ 2252 and 2252A (production and distribution of child pornography).
5. The penalties for violating Section 1591 include: (1) a minimum term of fifteen years imprisonment if the offense “was effected by means of force, threats of force, fraud, or coercion . . . or by any combination of such means,” or if the victim was younger than fourteen at the time of the offense; and (2) a minimum sentence of ten years imprisonment if the crime was not effected through force, threats of force, fraud or coercion *and* the victim was between fourteen and eighteen years old at the time of the offense.
6. “Abuse or threatened abuse of legal process” is defined as the “use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.” 18 U.S.C. § 1591(e)(1).
7. This is because, under the law, minors cannot “voluntarily” participate in commercial sex acts.
8. *See also United States v. Davila*, 2006 WL 2501459, at *8 (2d Cir. Aug. 30, 2006) (evidence of *de minimis* effect on interstate commerce will satisfy that element), *citing, inter alia, United States v. Fabian*, 312 F.3d 550, 554-55 (2d Cir. 2002); *United States v. Gregg*, 226 F.3d 253, 261-63 (3d Cir. 2000) (defining effect on interstate commerce broadly, to include minimal activity the impact of which is felt in the aggregate, where activity involved is economic or commercial in nature); *United States v. Toles*, 297 F.3d 959,

969 (10th Cir. 2002) (requiring only potential effect on commerce); *United States v. Gray*, 260 F.3d 1267, 1272-73 (11th Cir. 2001) (requiring only minimal effect on commerce); *United States v. Peterson*, 236 F.3d 848, 852 (7th Cir. 2001) (requiring only *de minimis* effect on commerce because of substantial effect when aggregated).

9. The use of this “depletion of assets” theory to prove interstate commerce is well-established in the context of Hobbs Act robbery and extortion cases. *See, e.g., United States v. Rivera-Rivera*, 555 F.3d 277, 287 (1st Cir. 2009) (evidence that lottery business that was robbed purchased goods from out of state and that the business served out-of-state tourists established effect on interstate commerce); *United States v. McAdory*, 501 F.3d 868, 871 (8th Cir. 2007) (“[R]obberies from small commercial establishments qualify as Hobbs Act violations so long as the commercial establishments deal in goods that move through interstate commerce.”), *quoting United States v. Dobbs*, 449 F.3d 904, 912 (8th Cir. 2006); *United States v. Elias*, 285 F.3d 183, 189 (2d Cir. 2002) (“[A] robbery of a local distribution or retail enterprise may be said to affect interstate commerce if the robbery impairs the ability of the local enterprise to acquire — whether from out-of-state or in-state suppliers — goods originating out-of-state.”); *United States v. Peterson*, 236 F.3d 848, 854 (7th Cir. 2001) (discussing “depletion of assets” theory pursuant to which *de minimis* interstate commerce requirement is met by a showing that “the business robbed either served out-of-state customers or bought inventory manufactured out-of-state”).
10. The Travel Act criminalizes travel for the purpose of engaging in other criminal activity such as acts of violence, gambling and extortion. *See* 18 U.S.C. § 1952. In addition, as later discussed, the Travel Act also criminalizes the use of certain interstate facilities to commit crimes.
11. The Mann Act contains a much more limited version of this provision that prohibits the use or attempted use of an interstate facility to communicate information about a minor less than sixteen years old with the intent of enticing, encouraging, offering or soliciting someone to engage in criminal sexual activity with the minor. *See* 18 U.S.C. § 2425.
12. Similarly, where a defendant pleads guilty to a trafficking offense that straddles the TVPRA’s effective date, the defendant must allocute to post-TVPRA conduct that establishes all elements of the trafficking offense.
13. However, to avoid a multiplicity issue, only one penalty should be applied to both counts, since together they are charging a single violation of the statute.

Human Trafficking in Suburban and Small Town New York: A Prosecutor's Local Approach to a Global Problem

by Hon. Janet DiFiore and Audrey Stone

Westchester County's Response to Trafficking

Westchester County brings to mind a picture of affluence, beautiful homes, and quiet streets, an image at odds with the idea of people enslaved by modern day traffickers. Yet, as prosecutors, we know that human trafficking can occur anywhere, in any type of locale, including New York's suburbs, small towns, and even Westchester County, where the authors serve as District Attorney and the Chief of the District Attorney's Special Prosecutions Division. All law enforcement officials need to understand the dynamics of trafficking in order to recognize it in our own communities.

New York State has begun to develop an aggressive response to human trafficking. The first step was the creation of state law. Until New York had a specific law addressing trafficking, state and local police were unlikely to focus on ferreting out trafficking, which is a crime almost always hidden, often in plain view. Prior to passage of the New York Human Trafficking law in 2007,¹ the federal Trafficking Victims Protection Act, passed by Congress in 2000,² was the only criminal law that applied to trafficking in New York State. Enforcement depended principally on federal agencies, with their own priorities and restricted resources, rather than on local law enforcement.³ For local law enforcement to investigate and prosecute these crimes in earnest, New York State needed its own trafficking statute.

In 2007, New York State enacted its Human Trafficking Law, criminalizing both labor and sex trafficking and providing social services and government benefits for victims who might otherwise be ineligible. Also, focusing on the demand that fuels sex trafficking, the law raised the penalty for the lowest level of patronizing offenses from a B to an A misdemeanor. It also made sex tourism a crime, even if prostitution is legal in the place to which a traveler is planning

to go. Announcing the unanimous support of the New York State Legislature, Speaker of the Assembly Sheldon Silver said, “It is absolutely astounding that in the year 2007, we would still need to enact legislation criminalizing human trafficking. But with the continued victimization of millions of men, women and children throughout the world, we have a moral obligation to take aggressive steps to ensure New York does not become a harbor for this reprehensible activity. This legislation takes much-needed action toward eradicating this scourge.”⁴

After the passage of the bill, the next step for the Westchester District Attorney’s Office was training both local law enforcement and our own prosecutors about trafficking and the new law. Our office devoted significant resources to developing materials, and we conducted training sessions for county-wide police audiences, new police recruits, senior investigators, and prosecutors. Each training session included an overview of the law as well as the dynamics of trafficking. Without a doubt, local police are more likely to charge defendants with trafficking when they understand the issue and the legal elements of proof.

We also invited representatives from our regional trafficking coordinator, My Sisters’ Place, to participate in training, describe the services they provide, and help explain the ways partnerships between law enforcement and social service providers are critical to encouraging victims to reveal the circumstances of their lives and their victimization by traffickers. When local police collaborate with community agencies and service providers, as in domestic violence cases, victims are more likely to feel safe enough to cooperate with long term investigations.

Ongoing training has helped to sow the seeds for future prosecutions. We have only begun discovering some of the types of cases that might be prosecuted under the Human Trafficking Law, and our experiences underscore both the difficulties victims face and the problems confronting prosecutors.

Labor Trafficking of an Immigrant in Westchester

The new law has already had an effect on law enforcement and victims in Westchester. Recently, local law enforcement came to the assistance of a young woman who moved here from abroad with her young child intending to live with family members already in the United States. When she arrived with legal immigration status, she found living quarters with a relative who helped her find work as a maid. However, the relative quickly assumed total control over every

aspect of her existence. He brought her to the social security office to apply for a social security card, took her official papers supposedly for safekeeping, and insisted that she turn over her wages to him to pay for the costs of living with him and the expenses he incurred in bringing her and her child to the United States. She was left with a little over \$20 a week for all her expenses, including food for herself and her child. Her exploiter drove her everywhere, arranged for her child's schooling, and monitored her phone calls. The victim was forced to cook and clean for him on weekends. When she asked to leave, he told her that if she left immigration authorities would be called and she would be deported.

Finally, the victim confided in a friend who helped her to understand that she was being illegally exploited and arranged a plan that would allow her and her child to leave the house where she was living with her exploiter. However, when the victim tried to put the plan into action, an argument erupted that led to a call to the police. The police who responded to the call acted wisely. Rather than accepting the case as a simple family dispute, the police sensed something else was wrong and called an advocate who spoke the victim's language. The advocate provided support and understanding to the victim to help her feel enough at ease to talk to the police and explain what had happened.

In the end, we could not prosecute the case. Despite the hard work of the advocate and the police, the victim was unwilling to testify. Her experiences had left her feeling under tremendous pressure. She had left the home where she had been living temporarily after the defendant's arrest and was now negotiating life in a new culture that gave her freedom and independence but also posed challenges. She was struggling to support herself and to provide for her child's needs. While we did not bring the case to trial, law enforcement did succeed in helping this victim leave an abusive environment. She relocated, obtained employment, and made a fresh start as a legal resident in our county.

Domestic Servitude on Long Island

A case of domestic servitude prosecuted under the federal Trafficking Victims Protection Act illustrates one type of trafficking that can easily happen in leafy suburbs. It also demonstrates how easily abuse can remain hidden for years behind placid facades of wealth.

The case erupted into the public eye when, on a Sunday morning in May, 2007, a small, bruised, middle-aged woman dressed in rags was found near a Dunkin' Donuts shop in Syosset, New York.⁵ Employees of the shop tried to

question the woman but, unable to speak English, she gestured as if she were slapping herself repeatedly and uttered a single word that sounded like “master.” Police were called and took the woman to a hospital where an infected wound was treated. At the hospital, with the help of an interpreter who spoke the woman’s native Indonesian language, the woman, whose name is Samirah (like many Indonesians, she uses only one name), told a physician a story of horrendous abuse at the hands of her employers. A search warrant was issued, and during the search of the Samirah’s employers’ house, law enforcement officials found a second servant, named Enung, hidden in a closet under the stairs.

For five years Samirah had worked and lived in Muttontown, New York, a suburban town, in a house described by the press as a “sprawling multimillion dollar home.”⁶ Her employers, Varsha Sabhnani, a native of Indonesia, and her husband, Mahender Sabhnani, who was born in India, had migrated to New York shortly after their marriage. They had built a successful business manufacturing and distributing perfumes, raised four children, and become United States citizens. To friends of the family, they were “an All-American, law-abiding family that worked hard to achieve the American Dream.”⁷

During the trial of the Sabhnanis, details of horrific abuse emerged.⁸ Samirah worked seven days a week, beginning at four in the morning, continuing well into the night, leaving only a few hours for sleep. Given very little food, she ate garbage out of desperation. She slept on a mat on the floor of a kitchen, and she was forced to wear rags that barely covered her. She was beaten with a broom, an umbrella, and a rolling pin, cut with a small knife, scalded with boiling water, forced to eat chili peppers until she vomited, and had her ears pulled until they bled. She was told that if she resisted her children, who were still in Indonesia, would be killed.

While the abuse against Enung, who arrived three years after Samirah, was not as great, she too was forced to work impossibly long hours, deprived of food, physically abused, and told that if she ran away the police would shoot her. Both women had their passports, visas, and identification papers confiscated by their employers. Samirah finally escaped only when she came to believe that her employers would kill her.

After a seven-week trial, Varsha and Mahender Sabhnani were convicted of various crimes of forced labor trafficking and peonage. Their defense at trial rested on the testimony of visitors to the house who said they had seen nothing unusual. Varsha Sabhnani, who was responsible for most of the abuse, was sentenced to 132 months in prison, and Mahender Sabhnani to 40 months. The Sabhnani home was lost to a forfeiture proceeding, the victims were awarded

hundreds of thousands of dollars in restitution, and the Sabhnanis have been sued for damages under the provisions for civil remedies of the federal Trafficking Victims Protection Act.⁹ Although justice seems to have been accomplished, the Sabhnani cases is a chilling tale about the ease with which trafficking can be hidden and the helplessness of victims.

Sex Trafficking in a Small Rockland County Village

An ongoing investigation in neighboring Rockland county illustrates another kind of experience outside the large urban setting most often associated with trafficking.¹⁰ In the small community of Spring Valley, local and federal law enforcement officials have worked together investigating a sex trafficking ring for a number of years. They believe an Ecuadorian gang is behind an operation that traffics in women for purposes of sexual exploitation and supplies them to the local foreign-born population for cheap sex.

In its simplest form, the gang rents ordinary-looking houses and sets up brothels with three to eight women. The windows of the houses are always covered. Buyers are found through word of mouth, slips of paper with telephone numbers left in public locations, or, in the early days when police were just beginning their investigation, by the lines that formed around the houses. Security has become tighter as police enforcement of anti-prostitution laws has stepped up, so the houses now may be protected by a lookout, video surveillance, or passwords that the buyers must know to gain entry.

Men pay \$25 to \$35, are given a token for internal record keeping and are summoned by a woman for a session of no more than fifteen minutes. Detailed financial records are made of the total amount of money received in each house by the day, by the week, and by each woman. Purchases of supplies, such as condoms and paper towels, are also recorded. Money is collected nightly and eventually sent out of the country to the homes of the gang leaders. Storefront travel agencies and check cashing businesses, known as “expresses,” are often used, although sometimes the cash is simply boxed and mailed overseas. The sheer volume of business and the amount earned per woman per night at the low rate charged each customer have led police to believe that the women are being subjected to abuse and coercion. As a result of raids, law enforcement has screened some of the women from these brothels and learned that they were routinely beaten.

Investigating prostitution rings is not a new endeavor for law enforcement. However, viewing women found in brothels as potential trafficking victims requires local law enforcement to take a fresh approach to this criminal activity. Providing people in prostitution with services and understanding their seeming complicity in criminal acts as a possible product of their own victimization takes training.

Use of the Internet

The internet has provided new possibilities for the expansion of sex trafficking. Through under cover investigations there has already been two cases prosecuted in our office involving the sale of sex tours through the internet. Just recently, a district attorney investigator, who was monitoring internet traffic, encountered a website that operated a company known as Big Apple Oriental Tours. The undercover investigator sent an online form request incorporated in the site offering tours to Southeast Asia, principally The Philippines and Thailand. The investigator then engaged the defendant in a series of e-mail communications indicating that he wanted to use the services of Big Apple Oriental Tours to go overseas to have sex for money.

At a meeting with the undercover investigator and defendant to make payment for the trip, the undercover was told that the trip would include a guide/escort to Angeles City, an area approximately forty miles north of Manila known for strip clubs and go-go bars, where the escort would help him meet “eligible” women. The defendant suggested that if the undercover finds a “girl” that he likes, he should keep her for the remainder of his stay in the Philippines. He stated that the “girls” will stay with him all day as long as the fee at the bar is paid.

Just as the internet facilitates shopping for clothes and other items, we expect to see even more uses of the internet to sell illegally the sexual services of young girls and women.

Concluding Observations

Trafficking is a fact of life, not just in big urban areas such as New York City but in New York’s suburbs and towns. To tackle the problem of human trafficking, law enforcement officials throughout New York State must not only know the provisions of New York’s new law and be committed to implementing it,

but they must also be prepared to address the multi-faceted needs of victims. By involving counselors who understand the cultural dynamics of victims, social service agencies that can arrange for housing and medical care, and lawyers who can assist with immigration issues, victims of human trafficking are more likely to cooperate with trafficking prosecutions. Yet law enforcement cannot rely on victims alone to make their cases; they must also seek as much independent evidence as feasible. Photographs, analyses of computers, phone records, independent witnesses, and medical records can all serve important functions in corroborating a victim's testimony. Over time, as law enforcement officials learn about the crime of human trafficking, New York State prosecutors will have more success in freeing victims and bring traffickers to justice.

Notes

1. The New York Human Trafficking Act of 2007, L. 2007, Chap. 74.
2. The Trafficking Victims Protection Act, Pub. Law 106-386, Div. A., Oct. 28, 2000. Congress has periodically reauthorized the Act under the title of the Trafficking Victims Protection Reauthorization Act, most recently codified at 18 U.S.C. §§ 1581-1588.
3. Immigration and Customs Enforcement (ICE) enforces immigration and customs laws and its Office of Investigations investigates cases of human smuggling and trafficking. *See* U.S. Immigration and Customs Enforcement, Section on Programs, *Office of Investigations: About the Office of Investigations*, available at <http://www.ice.gov/investigations/>.
4. Press Release, New York State Assembly Speaker Sheldon Silver, Assembly Expected to Give Final Passage to Legislation Criminalizing Human Trafficking (May 29, 2007), <http://assembly.state.ny.us/Press/20070529/>.
5. The case was well-covered by the press. *See, e.g.*, Paul Vitello, “Couple Held Two Servants Captives for Years, U.S. Says,” *The New York Times*, May 16, 2007; Paul Vitello, “From Stand in Long Island Slavery Case, a Snapshot of a Hidden U.S. Problem,” *The New York Times*, Dec. 3, 2007; Corey Kilgannon, “Long Island Couple Convicted of Enslaving 2 Domestic Workers for Years,” *The New York Times*, Dec. 18, 2007; Eric Konigsberg, “Couple’s Downfall is Culminating in Sentencing in Long Island Slavery Case,” *The New York Times*, June 23, 2008.
6. Paul Vitello, “From Stand in Long Island Slavery Case, a Snapshot of a Hidden U.S. Problem,” *The New York Times*, Dec. 3, 2007.
7. Corey Kilgannon, “Long Island Couple Convicted of Enslaving 2 Domestic Workers for Years,” *The New York Times*, Dec. 18, 2007.
8. For details of the abuse, *see Sabhnani v. U.S.*, 599 F. 3d 215, 224-31 (2d Cir. 2010).
9. *See Sabhnani v. U.S.*, 599 F. 3d 215 (2d Cir. 2010); *Samirah v. Sabhnani*, 2110 WL 2629770 (EDNY 2010).
10. Information about the Spring Valley investigation was supplied by Detective Ted Hughes of the Spring Valley Police Department, who has been part of the investigative team for many years.

Sex Trafficking: Looking at Demand

by Ken Franzblau

In the United States we seem to have more anti-trafficking organizations than we have human trafficking prosecutions. In the 2008 federal fiscal year, the Department of Justice brought 40 prosecutions under the federal Trafficking Victims Protection Act (TVPA),¹ 27 of them for sex trafficking.² We also seem to have more organizations engaged in anti-trafficking activities than we had victims granted T Visas, an immigration remedy specifically designed for trafficking victims, which brings with it access to social services and permanent legal residency. The U.S. Citizenship and Immigration Service granted only 247 in fiscal year 2008.³

The small number of trafficking prosecutions and victims certified for services and U.S. residency suggests that ten years after passage of the TVPA the fight against human trafficking is still being lost. Even a human trafficking investigation that would be considered successful falls short. A case that results in the arrest and conviction of traffickers and the rescue of victims generally takes many months to complete. Substantial human and financial resources of the criminal justice system must be devoted to the effort. Victims suffer horribly and new victims may be recruited during the period of the investigation. Many of these victims will never fully heal from their abuse.

The primary goal of law enforcement concerned about sex trafficking must be prevention, and the most effective and least costly method of achieving this is reducing the demand for prostitution. Preventing sex trafficking by the sustained efforts of law enforcement targeting those who buy victims for sexual use is far less costly and time consuming than the long, expensive, and personnel-intensive investigations that typify sex trafficking cases. The savings in lives and resources by preventing trafficking as opposed to rescuing victims once trafficked into prostitution are incalculable.

Patrons Can Be Deterred

Many dangerous shibboleths surround the issue of prostitution and make reducing trafficking more difficult than necessary. These misconceptions are familiar to all of us. We hear often that prostitution is inevitable, that it is the world's oldest profession, that it is a "victimless" crime, and that men have sexual needs that must be provided an outlet. Yet both statistical and anecdotal evidence suggests that patronizing prostituted persons is a crime of opportunity that can be reduced with thoughtful policies and strategies.

The report of the award-winning project of the Buffalo Police Department, "Workable Solutions to the Problem of Street Prostitution in Buffalo," demonstrates this.⁴ The Buffalo project adopted the strategy of arresting people buying sexual services rather than people selling services, because analysis revealed that arrest was a deterrent for buyers but not for sellers.⁵ Statistics gathered by the Buffalo Police Department showed that 66% of those arrested for prostitution were repeat offenders but only 8% of the patrons were.⁶ As the report concluded:

"For johns, though, arrest is a more effective deterrent. Over 50% of johns interviewed indicated that arrest was their most significant fear."⁷

The report stated that, "once the demand was reduced, prostitution was reduced."⁸

Conclusions from the experience in Buffalo are supported by a more recent study in Chicago.⁹ In this study, 113 purchasers of sex were asked, "What would deter you from buying sex?"¹⁰ Eighty-three percent responded that jail time would; 46% said that they would be deterred by jail time of a day or less.¹¹ The study concluded that, "if potential buyers witness and experience that they are being targeted often, and arrests are increasing, they will be deterred from buying sex."¹²

This statistical evidence is supported by the numerous and continuous stream of postings on websites where patrons exchange detailed information about individual prostituted women and about prostitution locations.¹³ Even casual monitoring of these sites reveals that avoiding arrest is a high priority for prostitution patronizers. Numerous postings warn of law enforcement ("LE") or suspected law enforcement activity and prostituted persons who arouse the suspicion of patronizers as possible under-cover officers. Newspaper articles that report patronizing prostitution arrests are posted and receive numerous

comments, usually expressing relief that the writer was not at the location when the arrests were made and speaking of those arrested in empathetic terms.

One such thread on the website BestGFE (<http://www.bestgfe.com>) titled “Spotting LE” began with a post that read:

“I just wanted to make this post in an effort to compile the knowledge of people on this site. When i am cruising any website looking for girls my #1 concern is always le but how do you spot an ad posted by le any knowledge you have on this please share as I have no idea and always feel very p’noid about it...”¹⁴

This post resulted in 43 responses in an eight-day period. This thread had been viewed 2,928 times as of the writing of this article.

The demand-side approach to limiting prostitution is increasingly recognized as key to diminishing sex trafficking. This approach has been adopted by such diverse actors as the governments of Sweden, Norway, Finland, and South Korea, the City of Atlanta, and the United States Department of Defense.¹⁵ Recognizing the importance of attacking demand, the Trafficking Victims Protection Reauthorization Act of 2005 authorized the Attorney General of the United States to make grants to states and local law enforcement agencies to establish programs to investigate and prosecute persons who engage in the purchase of commercial sex acts.¹⁶

These efforts recognize the efficacy of what has been termed the “Swedish Model.” The Swedish Model proceeds from the premise that the demand for women and children is an important root cause of human trafficking. Swedish law implemented in 1999 recognizes that the purchaser of sex should be criminalized, not the prostituted woman or child. The Swedish government reports that, since the implementation of its demand-side efforts in 1999, “there has been a dramatic drop in the number of individuals in street prostitution” and “there are clear indications that the law that prohibits the purchase of sexual services has had direct and positive effects on the trafficking in human beings for sexual purposes to Sweden and that Sweden no longer is an attractive market for traffickers.”¹⁷

New York’s human trafficking law,¹⁸ passed in 2007, also recognizes the potential efficacy of this approach. The statute raised the lowest level offense for patronizing a prostitute from a class B misdemeanor to a class A misdemeanor.¹⁹ Unfortunately, New York law enforcement has thus far failed to avail themselves of this new weapon to fight sex trafficking. In 2008, the first full year of the increased minimum penalty, the number of arrests in New York State for patronizing a prostitute was only 1,320, and only 107 resulted in convictions.²⁰

That only 107 arrests resulted in conviction translates into only an 8.1% chance of conviction even for the small number of patrons who were arrested. The number of both arrests and convictions for patronizing crimes in 2008 was less than in 2007 and even smaller in 2009. Such favorable odds for the criminal eliminate the deterrent effect of the law.

To date, New York's anti-prostitution efforts have been exactly wrong. Arresting people for offering to engage in prostitution and failing to arrest their patronizers at least partially explains the prevalence of sex trafficking in New York.

Reducing the Demand for Prostitution

Although many of the strategies to reduce the demand for prostitution and thus sex trafficking are familiar, they are rarely applied in a sustained and consistent manner. The paltry numbers of arrests and convictions for patronizing prostitutes suggest the absence of an ongoing law enforcement commitment in New York. The following strategies, combined in a manner appropriate to the various communities where they might be implemented in a sustained manner, have the potential to decrease the patronizing of prostitutes and sex trafficking.

Strict Enforcement of Existing Laws

The most important strategy for reducing prostitution is strict enforcement of sections of the Penal Law forbidding patronizing prostitutes.²¹ Those arrested for patronizing crimes, now at least a class A misdemeanor, should not be offered pleas to lower level misdemeanors or violations, nor should they be offered Adjournments in Contemplation of Dismissal, which allow cases to be dismissed if the defendants avoid re-arrest, typically, for six months. Repeat offenders must be required to serve jail time. Exceptions should be permitted only when the arrested patron provides information to law enforcement about sex trafficking or other serious criminal activity.

The exception for cooperation with law enforcement should be recognized as a potentially powerful tool for police and prosecutors. Through "john boards" and other internet sites, patrons of prostitutes regularly exchange information about prostitutes and pimps. They know which pimps exploit specific girls and women and at what locations and at what prices. They often know the history of particular prostituted persons and pimps. Advances in technology give johns access to much more information, and the ability to disseminate it more widely,

than was possible just a few years ago. Their postings promote the further prostitution of the victims they incessantly review.

One example, certainly not unique, can be seen in the thread titled “FYI the HV Hobby Crew (HVHC)” on the BestGFE website. The purpose of the thread, in the words of one of its organizers and promoters, was to:

. . . use this thread to get real GFE [Girlfriend Experience] providers to the HV [Hudson Valley]. As one, we have little or no power, but in a group, we have tons. Let’s use this thread to get real GFE providers to the HV. . . . So basically say which providers that we want up here and then we have to all message or contact the provider and persuade them into coming up here. . . . One def choice of mine is Jenn the amazing Asian.”²²

Another example of information useful to law enforcement about the organization of prostitution patrons, their interactions with pimps, and their access to information can be seen by the internet activities of the individual using the name SlamasterJay. As of October, 2009, this individual had 1,181 postings on the BestGFE website. Online SlamasterJay admits to a series of prostitution related crimes including patronizing, promoting prostitution, and organizing sex tours to the Dominican Republic. Through his website, <http://www.clubjny.com>, he acts as the pimp for many young women. Patrons of <http://www.bestgfe.com> patronize those prostituted by SlamasterJay and post reviews of them. SlamasterJay also patronizes women and girls not under his control and reviews them online. SlamasterJay and other patrons of the BestGFE website traveled together to the Dominican Republic on a sex tour in June, 2009, and then posted reviews and photos of their prostitution activities there.²³

Charging Related Crimes

Prosecutors should also consider charging patrons of prostitutes with related crimes, including rape, sexual misconduct, criminal sexual act, forcible touching, sexual abuse, course of sexual conduct against a child, and endangering the welfare of a child. The patron of a fourteen year old prostitute can be charged with rape in the second degree. The acceptance of money by a fourteen year old prostituted person cannot constitute legal consent and the fourteen year old prostituted person is no less a victim than the fourteen year old statutory rape victim who does not receive money for participating in sexual activity.

Using Reverse Electronic Stings

Law enforcement agencies should use the same tools to attract patrons as pimps do. Today this is most often accomplished via the internet. Offers of prostitution on the Adult Services section of Craigslist prior to its closing numbered in the thousands per day just for the New York City metropolitan area alone.²⁴ Other sites dedicated to the review of prostituted persons, such as <http://www.backpage.com>, <http://www.theeroticreview.com>, and <http://www.bigdoggie.net>, are also used to attract prostitution patrons.

Reverse electronic stings are not unprecedented. They have been used by dozens of law enforcement agencies throughout the United States including, in New York State, the Greenburgh, Rye Brook, and Nassau County Police Departments.²⁵

Establishing a Police Presence

Much of the prostitution activity in New York takes place in or through establishments that attempt to project an aura of legitimacy by describing themselves as massage parlors, health spas, acupressure centers, and similar titles. Many of these establishments advertise in local newspapers and in the yellow pages of telephone books, in addition to the internet. These businesses are usually clearly marked and easy to locate. Determining whether prostitution is occurring in such locations is not difficult. Often a single undercover visit will be sufficient, or the information will already exist through internet postings.

Even without an actual arrest, potential patronizers may be deterred by the presence of a police car parked by the entrance of these locations. The police car will have the same deterrent effect on the demand for prostitution that it has on speeding vehicular traffic when parked alongside a roadway. Prostitution patrons are extremely afraid of arrest, and to avoid it they often conduct their own surveillance of a location before entering. A parked police car will not only deter patrons but it is also likely to be reported by the frustrated patrons on websites. These warnings create a beneficial multiplier effect flowing from the initial preventive act of placing the police car in such a location.

Naming and Shaming

Law enforcement must also acknowledge that patronizing prostituted persons is a crime that can be deterred through naming and shaming tactics. Patrons of prostitutes fear not only arrest but also exposure of their criminal activity and publicity that might damage their family, business, and friendships.

The March 2009 study by the Chicago Alliance Against Sexual Exploitation, which polled 113 Chicago men who purchased sex, confirms this. When asked, “What would deter you from buying sex?,” 87% responded that having their photo and/or name in the local paper would do so, 83% responded that having their photo and/or name on a billboard would deter them, and 82% said that they would be deterred by having their photo and/or name posted on the internet.²⁶

Naming and shaming tactics can take several forms. The Chicago Police Department has a project called “CLEARPATH” through which photos, names, addresses, and other information about those arrested for soliciting prostitution are posted on a website.²⁷ In St. Petersburg, Florida, a cable television program broadcasts the names of all those convicted of prostitution offenses.²⁸ In Omaha, Nebraska, billboards with the slogan “If you are convicted of soliciting a prostitute, you will see your name here” publicized the names of six to twelve offenders at a time.²⁹ In Akron, Ohio, the “Operation John Be Gone” website, which posted the photographs of men charged with soliciting persons in prostitution, was viewed more than 100,000 times in its first year online.³⁰

Using the Media

The media can also be used in a preemptive effort to deter patrons of prostituted persons. A particularly innovative example of this is the “Dear John” Campaign to end the Commercial Sexual Exploitation of Children in Atlanta, which directly addresses johns in a series of powerful print advertisements as well as award-winning public service announcements.³¹ This program explains the impact of prostitution on the victims from whom sex is purchased.

Publicity for anti-patronizing campaigns can also be done by posting announcements on the same websites that patrons of prostitutes frequent. Postings on websites like <http://www.utopiaguide.com> and <http://www.bestgfe.com> can be done inexpensively and are certain to be seen by the targeted audience.

Creating John Schools

Another method of reducing the demand for prostitution is requiring first time patronizing offenders to attend “John Schools.” These programs provide information to the arrested men about the legal, health, and other risks and effects of prostitution and reinforce the message that prostitution is not a victimless crime. Such programs currently operate in 39 jurisdictions including Brooklyn and Orange County in New York.³² Most of these programs are operated in partnership by law enforcement agencies and non-governmental organizations. They are locally established and sustained, and they are either

fully funded by fees paid by participants or supported by agency budgets. An exhaustive report on San Francisco's First Offender Prostitution Program concluded that "the program was found to have a statistically significant impact of substantial magnitude on recidivism."³³ Efforts should also be made to develop age-appropriate curriculum based on John School materials for health and sex education courses for secondary school students.

Conclusion

Anti-trafficking efforts must be directed toward prevention. Diminishing the demand for prostitution will reduce trafficking of women and girls. Implementation of anti-demand policies in a sustained and consistent manner offers the best chance to prevent trafficking for the purposes of sexual exploitation.

Notes

1. Pub. L. 106-386, Div. A, Oct. 28, 2000. Since 2000, Congress has reauthorized the Act under the title of the Trafficking Victims Protection Reauthorization Act. *See* Pub. L. 108-193, Dec. 19, 2003; Pub. L. 110-457, Dec. 23, 2008.
2. U.S. Dept. of Justice, *Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2008* (June 2009), at 42.
3. *Id.* at 35.
4. Winner of the 2001 Herman Goldstein Award Winners, Excellence in Problem Orientated Policing, *The Prostitution Task Force, Workable Solutions to the Problem of Street Prostitution in Buffalo* (1999), available at http://www.popcenter.org/problems/street_prostitution/PDFs/Workable%20Solutions.pdf.
5. *Id.* at 15.
6. *Id.* at 17.
7. *Id.*
8. *Id.* at 23.
9. Chicago Alliance Against Sexual Exploitation, *Effective Demand Deterrence Strategies* (March 2009).
10. *Id.* at 3.
11. *Id.*
12. *Id.* at 4.
13. For an example, see <http://www.bestgfe.com>.
14. <http://www.bestgfe.com>, BestGFE Forums >New York >Escorts-NYC, *Discussion Spotting LE, Ashman 537*, June 2, 2009, 11:28 a.m., viewed on June 5, 2010.
15. For a more comprehensive list of government action against the demand for prostitution, *see* CATW & UNIFEM, *Confronting the Demand for Sex Trafficking, A Handbook for Law Enforcement* (July 2007), at 87-92.
16. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 204(a)(1)(B).

17. Ekberg, Gunilla, statement of the Swedish Government at the Regional Preparatory Meeting on the 10-Year Review of the Beijing Platform for Action: Theme 3-Trafficking of Women in the Context of Migratory Movements, Geneva, Switzerland, Dec. 15, 2004.
18. Laws of New York, 2007, Ch. 74.
19. *Id.* New York's 2007 law repealed Penal Law § 230.03 and amended Penal Law § 230.04 by deleting the ages of the patron and patronized person. *See* §§ 4 and 5.
20. New York State Division of Criminal Justice Services, *Arrests for Prostitution Offenses in New York State: 2008 and 2009*.
21. These are Penal Law § 230.04 (patronizing a prostitute in the third degree), Penal Law § 230.05 (patronizing a prostitute in the second degree), and Penal Law § 230.06 (patronizing a prostitute in the first degree).
22. <http://www.bestgfe.com>, BestGFE Forums >New York >EscortsNYState, *FYI the HV Hobby Crew (HVHC)*, TMoney, Sept. 7, 2008, 3:32 p.m., viewed on Jan. 31, 2010.
23. SlamasterJay, later identified as Jeffrey Whyte, was subsequently arrested and charged with promoting prostitution in New York County. NYPD daily blotter, New York Post, Dec. 18, 2009.
24. A survey of the Adult Services section for the New York City metropolitan area for the period Apr. 7, 2010 through Apr. 13, 2010 showed a daily average of 2,304 postings.
25. Lambert, Bruce, *As Prostitutes Turn to Craigslist, Law Takes Notice*, The New York Times, Sept. 5, 2007; and Juva, Theresa, *Police Use Craigslist to Make Prostitution Arrests*, The Journal News, Apr. 19, 2008.
26. *Supra* note 9, at 3.
27. <http://www.chicagopolice.org/ps/list.aspx>.
28. *Drives Prostitutes Out of Town* (long version), http://www.popcenters.org/problems/Supplements__Material/Prostitutes/getz1996.htm, Nov./Dec. 1996, accessed Dec. 28, 2007.
29. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Fact Sheet, *U.S. Government Efforts to Fight Demand Fueling Human Trafficking*, Washington, D.C., Jan. 7, 2008, <http://www.state.gov/g/tip/rls/fs/08/100208.htm>, viewed July 21, 2009.
30. *Id.*

31. The “Mayor,” “John” and “Girl” PSAs of the “Dear John” campaign can be downloaded at <http://http://www.wifa.org/psa.html>.
32. Shively, Michael, *et. al.*, *Final Report on the Evaluation of the First Offenders Prostitution Program*, Abt Associates, Inc., Cambridge, Mass. (2008), at 100.
33. *Id.* at 110.

Appendices



Appendix A

Legal Definitions of Trafficking

NEW YORK STATE LAW

New York Penal Law § 230.34 — Sex Trafficking

Sex trafficking is a class B felony. A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment:
 - (a) a narcotic drug or a narcotic preparation;
 - (b) concentrated cannabis as defined in paragraph (a) of subdivision four of § 3302 of the public health law;
 - (c) methadone; or
 - (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;
2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;
5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being

patronized that, if the demand is not complied with, the actor or another will do one or more of the following:

- (a) cause physical injury, serious physical injury, or death to a person; or
- (b) cause damage to property, other than the property of the actor; or
- (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of § 135.05 of this chapter; or
- (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
- (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

New York Penal Law § 135.35 — Labor Trafficking

Labor trafficking is a class D felony. A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
2. requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;

3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. using force or engaging in any scheme, plan, or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:
 - (a) cause physical injury, serious physical injury, or death to a person; or
 - (b) cause damage to property, other than the property of the actor; or
 - (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of § 135.05 of this chapter; or
 - (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
 - (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
 - (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

FEDERAL LAW**18 U.S.C. § 1589 — Forced Labor**

- (a)** Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means —
 - (1)** by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
 - (2)** by means of serious harm or threats of serious harm to that person or another person;
 - (3)** by means of the abuse or threatened abuse of law or legal process; or
 - (4)** by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).
- (b)** Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).
- (c)** In this section:
 - (1)** The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
 - (2)** The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.
- (d)** Whoever violates this section shall be fined under this title, imprisoned not more than twenty years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

18 U.S.C. § 1591 — Sex Trafficking of Children or by Force, Fraud, or Coercion

(a) Whoever knowingly —

- (1)** in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
- (2)** benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is —

- (1)** if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of fourteen years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than fifteen or for life; or
 - (2)** if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of fourteen years but had not attained the age of eighteen years at the time of such offense, by a fine under this title and imprisonment for not less than ten years or for life.
- (c)** In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of eighteen years.
- (d)** Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed twenty years, or both.

(e) In this section:

- (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- (2) The term “coercion” means —
 - (A) threats of serious harm to or physical restraint against any person;
 - (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
 - (C) the abuse or threatened abuse of law or the legal process.
- (3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.
- (4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.
- (5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

INTERNATIONAL LAW

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of the United Nations Convention Against Transnational Organized Crime (also known as the Trafficking or Palermo Protocol)

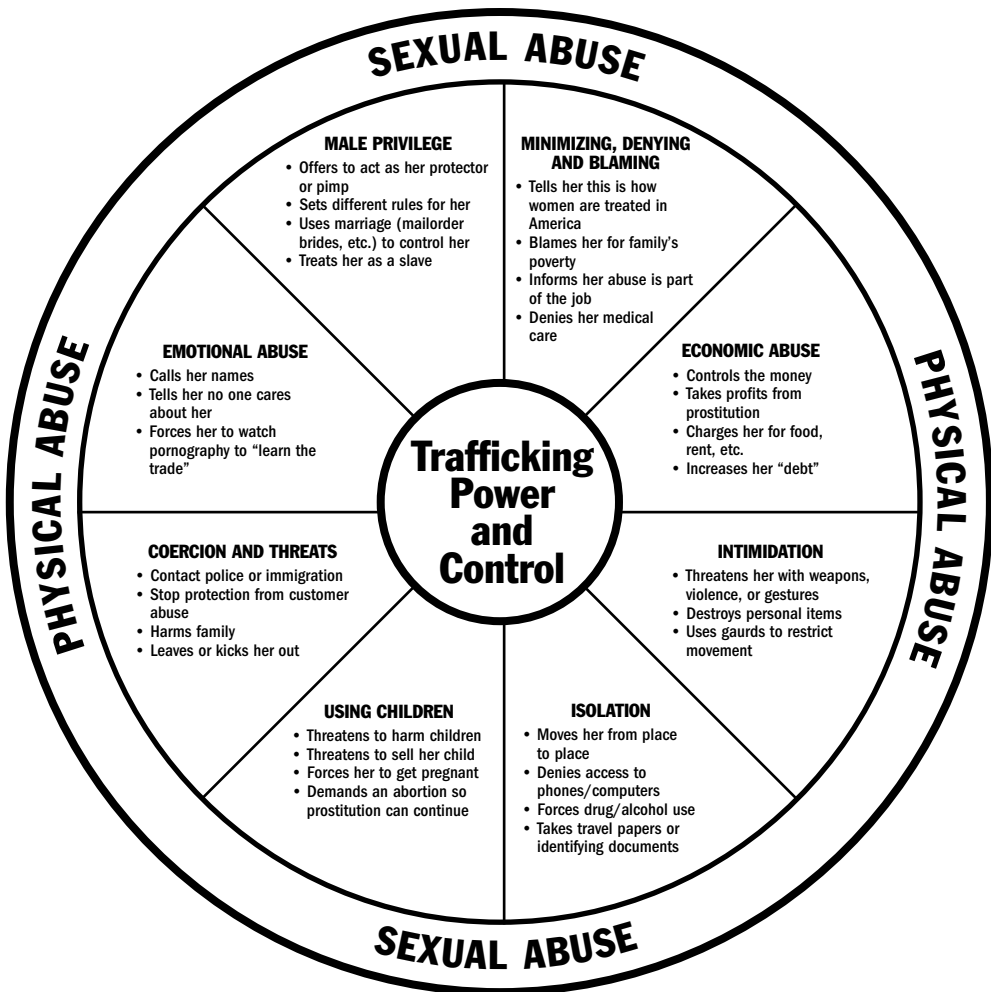
For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Appendix B

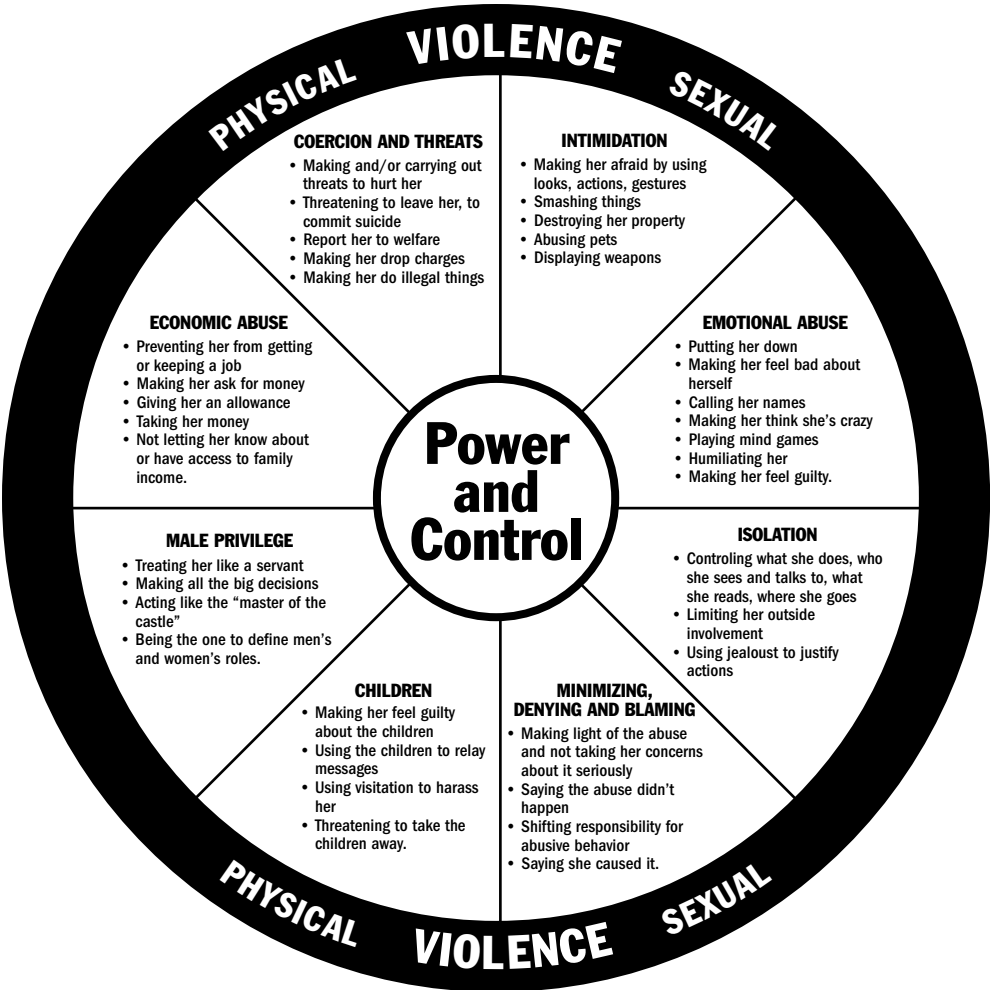
Trafficking Power and Control Wheel

Adapted from the Trafficking Power and Control Wheel produced by the Wisconsin Coalition Against Domestic Violence.



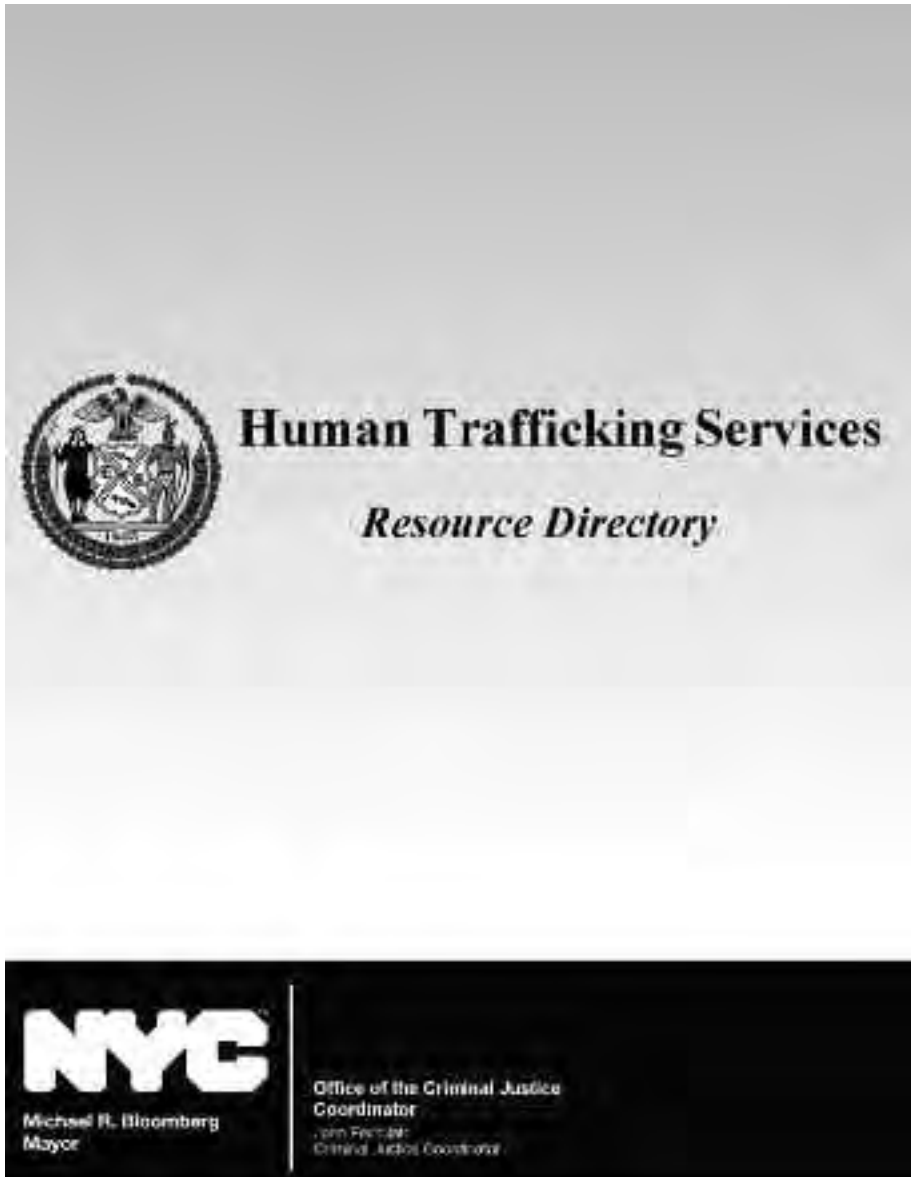
Domestic Violence Power and Control Wheel

Developed by the Domestic Abuse Intervention Project, Duluth, Minnesota.




Appendix C

NYC Office of Criminal Justice Resource Directory



**MESSAGE FROM THE NEW YORK CITY MAYOR'S
CRIMINAL JUSTICE COORDINATOR**

John Feinblatt, the Criminal Justice Coordinator, presents the 2010 edition of the *Human Trafficking Services Resource Directory*. This referral guide is a tool for service providers, law enforcement agencies, attorneys, and victims.

Information is organized alphabetically by organization name. Non-governmental organizations are listed at the beginning of the directory and government agencies are listed at the end. Organizations with a  next to their name provide assistance with housing.

If you or your organization would like to be included in future editions of the directory or if you would like additional copies, please contact the Office of the Criminal Justice Coordinator at: 212-788-6810. In addition, you can contact 311 or the National Human Trafficking Resource Center (1-888-3737-888) for up-to-date service information and assistance in over 170 languages.

Non-Governmental Organizations

Addiction Research and Treatment Corporation • Urban Resource Institute

22 Chapel Street, Brooklyn, NY 11201

Telephone: 718-260-2900

Website: www.artcny.org

Program Hours: 24 hours • **Fee:** None

Boroughs: Brooklyn, Manhattan, Queens

Special Populations: Female Victims, Male Victims, Transgender Victims, Immigrants, Domestic Born

Services Provided: Domestic Violence, Emergency Assistance/Transportation, HIV/AIDS, Job Training, Shelter/Housing Assistance, Emergency Housing - Adult, Emergency Housing - Children

Association to Benefit Children

419 East 86th Street, New York, NY 10028

Telephone: 212-845-3821 • **Fax:** 212-426-9488

Website: www.a-b-c.org

Program Hours: 8am-3pm • **Fee:** None

Boroughs: Manhattan

Languages: Spanish

Special Populations: Immigrants, Domestic Born, Minors

Services Provided: Community Education/Training, Long Term Counseling, Referrals, Shelter/Housing Assistance, Early Childhood Education, Mental Health Services

Arab-American Family Support Center

150 Court Street, 3rd Floor, Brooklyn, NY 11201

Telephone: 718-643-8000 • **Fax:** 718-797-0410

Website: www.aafscny.org

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Brooklyn

Languages: Spanish, Arabic, Urdu, Bengali, Hindi, French, Tamil, Polish, German

Special Populations: Female Victims, Immigrants, Children & Families

Services Provided: Community Education, Court/Police Accompaniment, Crisis Counseling, Domestic Violence, Immigration, English as a Second Language Classes, Referrals, Shelter/Housing Assistance (Referral), After School Enrichment Activities

Bellevue/NYU Program for Survivors of Torture

462 First Avenue, CD732, New York, NY 10016

Telephone: 212-683-7446 • **Fax:** 212-994-7177

Website: www.survivorsoftorture.org

Services Provided: Medical, Mental Health, Social Services, Legal Advocacy

Catholic Charities Community Services, Arch. of New York • Immigration Services

Telephone: 212-419-3700 • **Fax:** 212-751-3197

Website: www.catholiccharitiesny.org

Program Hours: Mon-Fri 9am-5pm • **Fee:** Yes

Boroughs: Citywide

Languages: Spanish, Chinese, Haitian Creole, Korean, Urdu, Punjabi, French, Italian, Albanian, Turkish, Macedonian, Polish, Hindi, Arabic

Special Populations: Immigrants

Services Provided: Immigration, Legal Services

Center Against Domestic Violence • Women's Survival Space, Women's Second Start  

25 Chapel Street, Brooklyn, NY 11201

Telephone: 718-254-9134 • **Fax:** 718-254-9132 • **Hotline:** 718-429-1000

Website: www.centeragainstdv.org

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Brooklyn, Greater NY Metro Area

Languages: Spanish, Haitian Creole, Polish, French

Services Provided: Community Education/Training, Domestic Violence, Shelter/Housing Assistance

Chinatown Manpower Project, Inc. • Refugee/Asylee Program 

70 Mulberry Street, 3rd Floor, New York, NY 10013

Telephone: 212-571-1695 x246 • **Fax:** 212-571-1686

Website: www.cmpny.org

Program Hours: 9am-5pm • **Fee:** None

Boroughs: Brooklyn, Bronx, Manhattan, Queens, Staten Island

Languages: Chinese, Russian, Vietnamese

Special Populations: Immigrants

Services Provided: Community Education/Training, English as a Second Language Classes, Job Training, Legal Services, Job Placement

City Bar Justice Center • Immigrant Women & Children Project 

42 W. 44th Street, New York, NY 10036

Telephone: 212-382-4711 • **Fax:** 212-354-7438

Website: www.citybarjusticecenter.org

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Citywide

Languages: Spanish, French, Interpreters Available

Special Populations: Immigrants, Minors, Sex Trafficking, Labor Trafficking

Services Provided: Community Education/Training, Immigration, Legal Services, Referrals, Trafficking Victim Services

Covenant House  

460 West 41st Street, New York, NY 10036

Telephone: 800-999-9999 • **TTY:** 800-999-9915 • **Fax:** 212-989-9098

Website: www.covenanthouse.org

Program Hours: 24 hours • **Fee:** None

Boroughs: Citywide

Languages: Spanish, Other languages available

Services Provided: Crisis Counseling, Emergency Housing (boys and girls ages 18-20; ages 16-18 if ACS is contacted)

CUNY Citizenship and Immigration Project

Several locations serving all boroughs

Telephone: 646-344-7245 • **Fax:** 212-652-2029

Website: www.cuny.edu/citizenshipnow

Fee: None

Boroughs: Citywide

Special Populations: Immigrants

Services Provided: Immigration

Farmworker Legal Services of New York, Inc. 

1187 Culver Road, Rochester, NY 14609

Telephone: 585-325-3050 • **Fax:** 585-325-7614

Website: www.flsny.org

Program Hours: 9am-5pm • **Fee:** None

Boroughs: Citywide

Languages: Spanish, Haitian, Creole

Special Populations: Immigrants, Sex Trafficking, Labor Trafficking

Services Provided: Legal Services, Trafficking Victim Services

Gay Men's Health Crisis (GMHC)  

119 West 24th Street, New York, NY 10011

Telephone: 212-367-1000 • **Fax:** 212-367-1020

Website: www.gmhc.org

Program Hours: 10am-9pm • **Fee:** None

Boroughs: Citywide

Languages: Spanish

Special Populations: Immigrants, People with HIV/AIDS

Services Provided: Community Education/Training, Crisis Counseling, Domestic Violence (General), Immigration, Health Services, HIV/AIDS, Job Training, Legal Services, Referrals, Sexual Assault, Shelter/Housing Assistance

Girls Educational & Mentoring Services (GEMS)  

201 W. 148th Street, Ground Floor, New York, NY 10039

Telephone: 212-926-8089 • **Fax:** 212-491-2696

Website: www.gems-girls.org

Program Hours: 10am-6pm **Fee:** Yes

Boroughs: Citywide

Special Populations: Female Victims, Domestic Born, Minors, Sex Trafficking

Services Provided: Community Education/Training, Court/Police Accompaniment, Crisis Counseling, Domestic Violence (General), Emergency Assistance/Transportation, Job Training, Long Term Counseling, Referrals, Trafficking Victim Services

International Organization for Adolescents (IOFA)

4305 N. Lincoln Ave, Chicago, IL 60618

Telephone: 773-404-8831

Website: www.iofa.org

Program Hours: 9am-5pm • **Fee:** N/A

Boroughs: Citywide

Special Populations: Female Victims, Male Victims, Transgender Victims, Immigrants, Minors, Sex Trafficking, Labor Trafficking

Services Provided: Community Education/Training, Immigration, Advanced Training, Technical Assistance to Law Enforcement Service Providers

Jewish Child Care Association (JCCA) • Gateways  

1075 Broadway, Pleasantville, NY 10570

Telephone: 914-741-4585 • **Fax:** 212-558-9991

Website: www.jccany.org

Program Hours: 24hrs/day, 7 days/week • **Fee:** None

Boroughs: Citywide

Languages: Spanish

Special Populations: Female Victims, Minors, Sex Trafficking

Services Provided: Residential treatment with support services including Community Education/Training, Court/Police Accompaniment, Crisis Counseling, Domestic Violence (General), Emergency Assistance/Transportation, Health Services, HIV/AIDS, Job Training, Legal Services, Longer Term Counseling, Public Assistance, Referrals, Sexual Assault, Shelter/Housing Assistance, Emergency Housing (Children), Trafficking Victim Services, Recreational Therapy, Family/Group Counseling

Jewish Community Council of Greater Coney Island 

3001 West 37th Street, Brooklyn, NY 11224

Telephone: 718-449-5000 • **Fax:** 718-946-8240

Website: www.jccgci.org

Program Hours: Mon-Thur 9am-5pm, Fri 9am-2pm • **Fee:** None

Boroughs: Citywide

Languages: Spanish, Russian

Special Populations: Female Victims, Male Victims, Transgender Victims, Immigrants, Domestic Born, Minors, Sex Trafficking, Labor Trafficking

Services Provided: Community Education/Training, Immigration, English as a Second Language Classes, Emergency Assistance/Transportation, Job Training, Legal Services, Referrals

Main Street Legal Services, Inc. • Immigrant & Refugee Rights Clinic, International Women's Rights Clinic 

65-21 Main Street, Flushing, NY 11367

Telephone: 718-340-4300 • **Fax:** 718-340-4455

Website: www.law.cuny.edu

Program Hours: Mon-Fri 9am-5pm

Boroughs: Queens

Languages: Spanish, Bengali, Urdu, Hindi

Special Populations: Female Victims, Immigrants

Services Provided: Domestic Violence (General), Immigration, Trafficking Victims Services

Mount Sinai SAVI Program • CSE Program at SAVI

Box 1670 One Gustave L. Levy Place, New York, NY 10029

Telephone: 212-423-2140 • **Fax:** 212-423-1021

Website: www.mssm.edu/savi

Program Hours: Mon-Fri 9am-6pm

Boroughs: Manhattan, Queens

Languages: Spanish, Hindu, Punjabi, French, Portugese

Special Populations: Female Victims, Male Victims, Transgender Victims, Immigrants, Domestic Born, Minors, Sex Trafficking

Services Provided: Community Education/Training, Court/Police Accompaniment, Crisis Counseling, Domestic Violence (General), Long Term Counseling, Referrals, Sexual Assault

New York Asian Women's Center • Project Free 

39 Bowery PMB 375, New York, NY 10002

Telephone: 212-732-0054 x133 • **Fax:** 212-587-5731 • **Hotline:** 1-888-888-7702

Website: www.nyawc.org

Program Hours: Mon-Fri 9am-6pm • **Fee:** None

Boroughs: Citywide

Languages: Chinese (Cantonese, Mandarin), Korean, Vietnamese, Thai, Laos, Japanese, Hindi, Urdu, Bengali

Special Populations: People with Disabilities, Female Victims, Immigrants, Domestic Born, Labor Trafficking, Sex Trafficking, Children, Domestic Violence Victims

Services Provided: Community Education/Training, Court/Police Accompaniment, Crisis Counseling, Domestic Violence (General), Immigration, Emergency Assistance/Transportation, Health Services, Long Term Counseling, Public Assistance, Referrals, Shelter/Housing Assistance, Emergency Housing (Adult and Children), Stalking, Trafficking Victim Services

New York City Family Justice Centers  

Brooklyn Office: 350 Jay Street, 15th Floor, Brooklyn, NY 11201

Brooklyn Office Telephone: 718-250-5111 • Fax: 718-624-5459

Queens Office: 126-02 82nd Avenue, Kew Gardens, Queens, NY

Queens Office Telephone: 718-575-4500

Website: www.nyc.gov/domesticviolence

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Brooklyn and Queens

Languages: All

Special Populations: Female Victims, Male Victims, Transgender Victims, Immigrants, Domestic Born, Sex Trafficking, Labor Trafficking

Services Provided: Community Education/Training, Court/Police Accompaniment, Crisis Counseling, Domestic Violence (General), Immigration, English as a Second Language, Emergency Assistance/Transportation, Legal Services, Long Term Counseling, Public Assistance, Referrals, Shelter/Housing Assistance, Emergency Housing (Adult and Children), Stalking, Trafficking Victim Services

Northern Manhattan Improvement Corporation 

76 Wadsworth Avenue, 2nd Floor, New York, NY 10033

Telephone: 212-822-8341 • **Fax:** 212-568-9169

Website: www.nmic.org

Program Hours: Mon-Fri 9am-5pm, Sat 9am-1pm • **Fee:** None

Boroughs: Manhattan

Languages: Spanish

Special Populations: Female Victims, Immigrants

Services Provided: Immigration, English as a Second Language, Job Training

Restore NYC 

Bowling Green Station, P.O. Box 1003, New York, NY 10274-1003

Telephone: 646-353-8658 • **Fax:** 212-227-0851

Website: www.restorenyc.org

Program Hours: Mon-Fri 9am-6pm • **Fee:** None

Boroughs: Citywide

Languages: Mandarin, Korean

Special Populations: Female Victims, Immigrants, Sex Trafficking

Services Provided: Community Education, Court/Police Accompaniment, Crisis Counseling, Immigration, English as a Second Language Classes, Job Training (Referral), Long Term Counseling, Public Assistance (Referral), Referrals, Trafficking Victims Services, Medical Advocacy Mentoring Program, Yoga

Safe Horizon • Anti-Trafficking Program



50 Court Street, 8th Floor, Brooklyn, NY 11201

Telephone: 718-943-8631 x8648 • **Fax:** 718-943-8653 • **Hotline:** 800-621-4673 (HOPE)

Website: www.safehorizon.org

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Citywide

Languages: All (available by interpreter services)

Special Populations: Female Victims, Male Victims, Immigrants, Sex Trafficking, Labor Trafficking

Services Provided: Community Education, Court/Police Accompaniment, Crisis Counseling, Domestic Violence, Immigration, English as a Second Language Classes, Emergency Assistance/Transportation, Health Services, HIV/AIDS (Referral), Job Training (Referral), Legal Services, Long Term Counseling, Public Assistance (Referral), Referrals, Sexual Assault, Shelter/Housing Assistance (Referral), Emergency Housing (Adult and Children), Stalking, Trafficking Victims Services

Safe Horizon • Streetwork Project Uptown



209 West 125th Street, New York, NY 10027

Telephone: 212-695-2220 • **Fax:** 212-695-2317 • **Overnight:** 917-804-9758

Contact Person: Carolyn Strudwick, MSW

Website: www.safehorizon.org

Program Hours: Mon/Tue/Thurs/Fri Noon – 5pm, Sat/Sun Noon – 4pm (emergency assessments only)

Boroughs: Citywide

Languages: English & Spanish

Special Populations: Runaways & Homeless Youth / Minor Victims of Sex or Labor Trafficking

Services Provided: Crisis Intervention Counseling & Referrals, Emergency housing, Medical Care, Individual and Group Counseling, Independent Living Skills, Mental Health Services, HIV/AIDS Services, Legal Services, Meals, Showers, GED Preparation and Support, Food, Clothing, Laundry

Safe Horizon • Streetwork Project Lower East Side



33 Essex Street, New York, NY 10002

Telephone: 646-602-6404 • **Overnight:** 646-342-9861

Website: www.safehorizon.org

Program Hours: Mon, 2-6pm, Tues/Thurs/Fri 3-7pm

Boroughs: Citywide

Languages: English & Spanish

Special Populations: Runaways & Homeless Youth / Minor Victims of Sex or Labor Trafficking

Services Provided: Crisis Intervention Counseling & Referrals, Emergency housing, Medical Care, Individual and Group Counseling, Independent Living Skills, Mental Health Services, HIV/AIDS Services, Legal Services, Meals, Showers, GED Preparation and Support, Food, Clothing, Laundry

SAKHI for South Asian Women



P.O. Box 20208, Greeley Square Station, New York, NY 10001

Telephone: 212-714-9153 • **Fax:** 212-564-8745 • **Helpline:** 212-868-6741

Website: www.sakhi.org

Program Hours: Mon-Fri 10am-6pm • **Fee:** None

Boroughs: Citywide

Languages: Bangla, Bengali, Hindi, Urdu, Additional South Asian Languages

Special Populations: South Asian Women

Services Provided: Community Education, Court/Police Accompaniment, Crisis Response, Domestic Violence, Emergency Assistance/Transportation, Referrals

St. Luke's- Roosevelt Hospital – Crime Victims Treatment Center 

411 West 114th Street, Suite 2C, New York, NY 10025

Telephone: 212-523-4728 • **Fax:** 212-523-4781

Website: www.cvtc-slur.org

Program Hours: Mon-Fri 9am-5pm, evening hours available • **Fee:** None

Boroughs: Citywide

Languages: French, Spanish

Services: Treatment, Collaboration, Education, Research

Sanctuary for Families • Immigration Intervention Project  

110 Wall Street, 11th Floor, New York, NY 10038

Telephone: 212-349-6009 • **Fax:** 212-566-0344

Website: www.sanctuaryforfamilies.org

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Citywide

Languages: Over 35 languages, including Spanish, Chinese, Hindi, Urdu, Punjabi and French

Special Populations: Domestic Violence, Trafficking Transgender and Immigrant Victims

Services Provided: Community Education, Crisis Counseling, Domestic Violence (General), Immigration, English as a Second Language, Emergency Assistance/Transportation, Job Training, Legal Services, Long Term Counseling, Public Assistance, Referrals, Sexual Assault, Shelter/Housing Assistance, Emergency Housing (Families), Trafficking Victim Services, Emergency Food and Clothing, Advocacy

Sex Workers Project / Urban Justice Center 

123 William Street, 16th Floor, New York, NY 10038

Telephone: 646-602-5617 • **Fax:** 210-533-4598

Website: www.sexworkersproject.org

Program Hours: Mon-Fri 10am-6pm • **Fee:** None

Boroughs: Citywide

Languages: All

Special Populations: Female Victims, Male Victims, Transgender Victims, Immigrants, Sex Trafficking, Labor Trafficking

Services Provided: Community Education/Training, Court/Police Accompaniment, Domestic Violence (General), Immigration, Legal Services, Long Term Counseling, Referrals, Trafficking Victim Services

The Door

121 Avenue of the Americas, New York, NY 10013

Telephone: 212-941-9090

Website: www.door.org

Services Provided: The Door offers a range of programs to serve the diverse young people who come to The Door seeking the services, support and guidance they need to make a successful transition to adulthood.

Women In Need, Inc.

115 West 31st Street, New York, NY 10007

Telephone: 212-695-4758 • **Fax:** 212-736-1649

Website: www.women-in-need.org

Program Hours: Mon-Fri 9am-5pm, Shelters 24/7 • **Fee:** None

Boroughs: Brooklyn, Bronx, Manhattan

Special Populations: Homeless women with children who are referred to WIN by DHS (PATH)

Services Provided: Domestic Violence (General), HIV/AIDS, Referrals, Shelter/Housing Assistance, Substance Abuse Treatment for Women

Government Agencies

Department of Youth and Community Development (DYCD)

156 William Street, 4th Floor, New York, NY 10038

Telephone: 800-246-4646

Contact Person: Youth Connect

Email: from webpage: www.nyc.gov/dycd, Youth Connect Page

Fee: None

Boroughs: Citywide

Special Populations: Runaway and Homeless Youth including Lesbian Gay Bisexual Transgender youth, pregnant and parenting youth and sexually-exploited youth

Services Provided: Includes borough-based Drop-In Centers; youth employment, afterschool and literacy programs; and Crisis Shelter

Division of Criminal Justice Services

4 Tower Place Albany, New York, 12203-3764

Telephone: 518-457-8420

Contact Person: Andra Ackerman

Website: <http://criminaljustice.state.ny.us/pio/humantrafficking.htm>

Services Provided: Confirming victims of human trafficking, assisting law enforcement and all agencies requesting assistance with human trafficking issues. Assistance includes training in areas involving the investigation and prosecution of human trafficking cases.

Federal Bureau of Investigation • Victim Assistance Program; Crimes Against Children

26 Federal Plaza, New York, NY 10278

Fax: 212-384-4104

Victim Assistance Program Contact: Laura Riso, Victim Specialist; **Phone:** 212-384-2564

Crimes Against Children Contact: Special Agent Evan Nicholas; **Phone:** 212-384-4453

Boroughs: Citywide

Special Populations: Female Victims, Male Victims, Transgender Victims, Domestic Born, Minors, Sex Trafficking

Services Provided: Community Education/Training, Referrals, Liaise Between Victim and Special Agent Investigating the case, help with T Visas

Immigration and Customs Enforcement (ICE)

Contact Person: Keith Kolovich, Group Supervisor

Unit: Human Smuggling and Trafficking Unit for ICE in NYC

Telephone: 646-230-3379 • **Email:** keith.kolovich@dhs.gov

Victim Assistance Program Contact: Tenaz H. Dubash, Victim Specialist; **Phone:** 646-230-3471; **E-mail:** Tenaz.Dubash@dhs.gov

New York City Police Department, VICE

Contact Person: Chief Brian Conroy, Chief NYPD Vice, NYPD OCCB VED SECS

Telephone: 646-610-7482 • **Email:** bnconroy@nypd.org

New York State Crime Victims Board 

55 Hanson Place, 10th Floor, Brooklyn, NY 11217

Telephone: 800-247-8035; 518-457-8003 • **TTY:** 888-289-9747 • **Fax:** 518-485-9154

Contact Person: Virginia Miller, Executive Director

Website: www.cvb.state.ny.us

Program Hours: Mon-Fri 9am-5pm • **Fee:** None

Boroughs: Citywide

Languages: Spanish, Chinese

Special Populations: N/A

Services Provided: Provides compensation to innocent victims of crime for their out-of-pocket losses associated with the crime.

Office of Temporary and Disability Assistance (OTDA)

OTDA: 317 Lenox Avenue, New York, NY 10027

NYC Regional Service Provider - Safe Horizon: 50 Court Street, 8th Floor, Brooklyn, NY, 11201

Telephone: 718- 943-8631 (Safe Horizon); 212-961-5688 (OTDA) • **Fax:** 718- 943-8653 (Safe Horizon); 212-961-4441 (OTDA)

Contact Person: Fiona Mason (Safe Horizon) or Christa Stewart (OTDA)

Website: www.otda.state.ny.us/main/bria/trafficking.htm

Boroughs: Citywide

Special Populations: State Confirmed Victims

Services Provided: Trafficking Victim Services

U.S. Department of Labor, Wage and Hour Division 

26 Federal Plaza, Suite 3700, New York, NY 10278

Telephone: 212-264-8185 • **Direct Line for Task Force:** 646-587-5395 • **Email:** Fung.Kim@dol.gov

Contact Person: Kim Fung, Team Leader Investigator – Regional Enforcement Coordinator

Website: www.wagehour.dol.gov

Program Hours: Mon-Fri 8:30am-5pm • **Fee:** None

Boroughs: Citywide

Languages: All

Special Populations: Immigrants, Domestic Born, Minors, Labor Trafficking, Wage Loss and Wage Theft Victims

Services Provided: Community Education/Training, Referrals, Investigate Employers, Compute and Recover Back Wages

NYC District Attorneys

District Attorney – Bronx County

198 East 161st Street, Bronx, NY 10451

Telephone: 718-590-2422

Unit: Rackets

Contact Person: Thomas Leahy

District Attorney – Kings County

Renaissance Plaza, 350 Jay Street, Brooklyn, NY 11201

Telephone: 718-250-2000

Unit: Rackets

Contact Person: Charles Guria

District Attorney – New York County

One Hogan Place, New York, NY 10013

Telephone: 212-335-9000

Unit: Sex Crimes Unit (for age 14 and older) or Family Violence and Child Abuse Bureau (for age 13 and under)

Contact Person: Lisa Friel (SCU) or Audrey Moore and Kerry O’Connell (FVCAB)

District Attorney – Queens County

125-01 Queens Boulevard, Kew Gardens, NY 11415

Telephone: 718-286-6000

Unit: Special Proceedings Bureau

Contact Person: Anthony Communiello

District Attorney – Richmond County

130 Stuyvesant Place, Staten Island, NY 10301

Telephone: 718-876-6300

Unit: Sex Crimes Special Victims

Contact Person: Raja Rajeswari

New York City Law Department

Project SAFETY Coordinator

151-20 Jamaica Avenue; Agency Side, 2nd Floor; Jamaica, NY 11432

Telephone: (718) 658-0500 x 221 • **Email:** liskowit@law.nyc.gov

Unit: Family Court Division

Contact Person: Lori Iskowitz

New York State Attorney General

Telephone: (212) 416-8169 • **Email:** Elizabeth.DeLeon@ag.ny.gov

Contact Person: Elizabeth DeLeon

US Attorneys

US Attorney – Eastern District

271 Cadman Plaza East, Brooklyn, NY 11201

Telephone: 718-254-7575 • **Email:** pamela.chen@usdoj.gov

Unit: Civil Rights Unit, Criminal Division

Contact Person: Pamela Chen

US Attorney – Southern District

1 St. Andrews Plaza, New York, NY 10007

Telephone: 212-637-2200; 212-637-2474; 212-637-2478 (Amanda Kramer) • **Email:** amanda.kramer@usdoj.gov

Unit: Organized Crimes

Contact Person: Elie Honig; Amanda Kramer

Contributors



Contributors

Andra Ackerman is the Director of Human Trafficking Prevention and Policy for New York State's Division of Criminal Justice Services, a position she has held since 2008. She is responsible for training law enforcement, service providers, and educators on human trafficking laws, and she advises New York State agencies working on trafficking efforts and law enforcement agencies around the state. Prior to her work in the area of human trafficking, she spent ten years as a prosecutor handling special victim's cases.

Hamra Ahmad is the Managing Attorney of the Immigration Unit at My Sisters' Place, a Westchester County-based non-profit agency dedicated to serving domestic violence and human trafficking victims and children. Prior to joining MSP, she was a staff attorney at Mid-Minnesota Legal Aid Society, where her practice focused on refugee and asylum law.

Amy Barasch is the Executive Director of the New York State Office for the Prevention of Domestic Violence and a member of the New York State Interagency Task Force on Human Trafficking created by the 2007 New York State Human Trafficking Law.

Taina Bien-Aimé is the Executive Director of Equality Now, an international human rights advocacy organization that works to end violence and discrimination against women and girls around the world. Prior to joining Equality Now, Ms. Bien-Aimé was the Director of Business Affairs at HBO and also practiced law at Cleary, Gottlieb, Steen & Hamilton.

Lee Brannon holds an MSW from Boston University School of Social Work and is currently a student at Fordham Law School and a legal intern with Sanctuary for Families' LGBT Initiative.

Courtney Bryan is the Project Director of the Midtown Community Court, a project of the Center for Court Innovation. Previously, Ms. Bryan worked in the Center for Court Innovation's Domestic Violence Department. Ms. Bryan is a former public defender in Brooklyn, she also worked as an attorney at the National Clearinghouse for Defense of Battered Women.

Hon. Fernando Camacho, a former Assistant District Attorney in Manhattan, has been a judge in the New York City Criminal Term since 1997 and is presently the County Administrative Judge for Criminal Matters in Queens County.

Pamela Chen is an Assistant United States Attorney in the Eastern District of New York and the Chief of the Civil Rights Unit in that office's Criminal Division. In that capacity, Ms. Chen prosecutes and supervises the prosecution of human trafficking, hate crimes, and police misconduct matters. Prior to joining the Department of Justice, Ms. Chen worked as an associate at two Washington, D.C. firms, Arnold & Porter and Asbill, Junkin, Myers & Buffone.

Lori Cohen is a Senior Staff Attorney at the Center for Battered Women's Legal Services at Sanctuary for Families, where she represents immigrant victims of sex trafficking and domestic violence and conducts training sessions for law enforcement and service providers on identifying and assisting victims of trafficking. Prior to joining Sanctuary for Families, Ms. Cohen taught Immigration Law at the University of Michigan Law School and served as the director for the Office of Immigration Legal Services at the Archdiocese of Detroit.

Hon. Janet DiFiore is District Attorney of Westchester County, an office to which she was first elected in 2005. Previously, D.A. DiFiore was elected judge of the Westchester County Court and the Westchester Supreme Court. From 2003-2005, she served as the Supervising Judge of the Criminal Court in the Ninth Judicial District of New York.

Christine Fecko is the General Counsel and Chief Operating Officer of My Sisters' Place, a Westchester County-based non-profit agency dedicated to serving domestic violence and human trafficking victims and children. She also serves as a member of the Westchester County Domestic Violence Council and the New York City Bar Association's Committees on Legal Services for Persons of Moderate Means and Pro Bono and Legal Services.

Brett Figlewski is a senior staff attorney at Sanctuary for Families' Center for Battered Women's Legal Services. He co-directs the Community Law Project, which provides outreach to underserved communities in New York City, and he is founder of Sanctuary's LGBT Initiative.

Kenneth Franzblau is the Director of Anti-Trafficking Initiatives for Equality Now, an international human rights organization. He previously served as the Director of Human Trafficking Prevention and Training with the New York State Division of Criminal Justice Services.

Jill Laurie Goodman is Counsel to the New York State Judicial Committee on Women in the Courts and co-chair of the Lawyers Committee Against Domestic Violence. With Dorchon Leidholdt, she is editor of the *Lawyer's Manual on Domestic Violence: Representing the Victim*, published by the Supreme Court of the State of New York, Appellate Division, First Department (2006).

Lauren Hersh has been an Assistant District Attorney with the Kings County District Attorney's Office since 2004. She currently serves as a Senior Trial Attorney in the Rackets Division, specializing in sex trafficking cases. Prior to working in the Rackets Division, she was a Felony Trial Attorney in the Domestic Violence Bureau.

Barbara C. Kryszko is Director of the New York City Family Justice Center, Brooklyn Legal Project of Sanctuary for Families' Center for Battered Women's Legal Services. She also serves as a Senior Policy Advisor and UN Representative to the Coalition Against Trafficking in Women.

Dorchen A. Leidholdt is the Director of Sanctuary for Families' Center for Battered Women's Legal Services and Founding Board Member of the Coalition Against Trafficking in Women, which she helped found in 1988. She is an adjunct professor at Columbia Law School, where she teaches Domestic Violence Law.

Rachel Lloyd is the founder and Executive Director of Girls Education and Mentoring Services (GEMS), which is the largest organization in the United States offering direct services to victims of child sex trafficking.

Katherine "Cait" Mullen is an attorney with the Juvenile Rights Practice of The Legal Aid Society in New York City. In addition to providing direct representation to youth in Family Court proceedings, Ms. Mullen has been involved in legislative reform and advocacy for commercially sexually exploited youth. She was instrumental in the drafting and passage of the Safe Harbor Act, the first law in the United States to protect domestic child victims of commercial sexual exploitation.

Amanda Norejko is the Director of the Matrimonial and Economic Justice Project at Sanctuary for Families' Center for Battered Women's Legal Services. Ms. Norejko also serves as a Senior Policy Advisor and UN Representative to the Coalition Against Trafficking in Women.

Monica Ryan is an Assistant United States Attorney in the Eastern District of New York and is currently serving a detail at the Office of International Affairs in the Criminal Division of the Department of Justice in Washington, DC. In that capacity, Ms. Ryan facilitates extraditions of fugitives from Mexico to face prosecution in the United States. Prior to joining the Department of Justice, Ms. Ryan clerked for the Honorable Reena Raggi, United States Circuit Judge for the United States Court of Appeals, and worked as an associate at Cravath, Swaine & Moore in New York City.

Katherine P. Scully is a litigation associate at Akin Gump Strauss Hauer & Feld, LLP. She has worked with migrant laborers in Cyprus and in the Philippines.

Amy Siniscalchi, a Licensed Master Social Worker, is the Director of Programs for My Sisters' Place, a Westchester County-based non-profit agency dedicated to serving domestic violence and human trafficking victims and children. She currently serves as the regional representative for the New York State Anti-trafficking Initiative.

Christa Stewart is the Coordinator of Human Trafficking Programming and Supervisor of the Newcomer Transition Unit at the New York State Office of Temporary and Disability Assistance. Prior to this, she served as Director of Legal Services at The Door, a youth development agency in New York City.

Audrey Stone is the Second Deputy District Attorney for the Westchester County District Attorney's Office, where she is Chief of the Special Prosecutions Division, which includes oversight of the domestic violence, child abuse, and elder abuse bureaus. A former director of Pace Women's Justice Center, Ms. Stone also has taught as an adjunct professor at Pace University Law School.

Dan Werner is Deputy Legal Director of the Southern Poverty Law Center and directs its Atlanta-based Immigrant Justice Project. Before joining the Southern Poverty Law Center in 2008, he co-founded the Workers' Rights Law Center of New York, Inc. with an Echoing Green fellowship. He also has worked as an attorney with Farm Worker Legal Services of New York, Inc., and he provided legal representation to citrus harvest workers in Florida. Mr. Werner is co-author of *A Guide to Civil Litigation on Behalf of Victims of Trafficking* (3rd Ed., 2008; 4th Ed., forthcoming).