Human Trafficking: National Problem, Local Solutions

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In July 2017, a tractor trailer truck containing over one hundred victims of human trafficking was discovered in a Wal-Mart parking lot in San Antonio, Texas. Eight victims were found dead in the truck, two more died after being rescued, and nearly thirty of the victims were hospitalized having suffered from heat stroke and dehydration, with some experiencing "irreversible brain damage" according to the city's fire chief.[1] Tragedies like these, while devastating, are neither uncommon nor uncharacteristic of human trafficking in the United States.[2] As a result, foreign nationals transported across international and state lines have become the expected, even stereotypical, image for victims of human trafficking and sexual slavery in the United States.

But the smuggling of foreign persons is representative of only one side of the human trafficking epidemic. Domestic trafficking, particularly domestic sex trafficking, is perhaps as pervasive as its international equivalent, yet its magnitude is consistently misunderstood and unrecognized by most citizens and governmental leaders.[3] A common misperception of trafficking is that physical transportation of a victim is a prerequisite for the crime.[4] Sex trafficking is also often mistaken as prostitution, which perpetuates the fallacy that the trafficked victim chose that way of life.[5] According to the founder and executive director of the Girls Educational Mentoring Service, Rachel Lloyd, herself a survivor of sex trafficking, this represents the "two-tiered system of victims" present in the United States in which internationally trafficked women and children are considered "real" victims, while American women and girls who are subjugated and forced into prostitution are not.[6]

This article will identify the legal framework under which sex trafficking crimes are currently recognized and prosecuted, discuss the deficiencies that remain under this statutory structure, and provide recommendations to local government leaders to facilitate a coordinated response with law enforcement agencies and the courts to eliminate this criminal industry.

Legal Framework

Human trafficking is the largest manifestation of slavery today and involves the exploitation and commoditization of sexual and physical servitude through force, fraud, and coercion.[7] The United States Department of State estimates that over 12 million individuals are trafficked globally, and nearly one-half of trafficking victims are children and teens under the age of eighteen.[8] Women and girls account for 80% of all trafficking victims, of which 70% are sold into sexual slavery.[9] The sex trade is the third most profitable illegal activity in the US, behind only drug and weapon trafficking, generating revenues estimated between seven and nineteen billion dollars annually.[11] Unlike other unlawful enterprises, sex trafficking involves very little risk to the principal transgressors, who often go unidentified and uncharged.

At the federal level, Congress first addressed the issue of human trafficking in 2000 by enacting the Trafficking Victims Protection Act (TVPA). The statute defined sex and labor trafficking as crimes in the United States, established criminal penalties, and provided victim services for these wrongdoings.[12] The United States Department of State's Office to Monitor and Combat Trafficking in Persons identifies this approach as the 3P paradigm: prosecution, protection, and prevention.[13] However, the statute has a decidedly foreign posture and focuses primarily on women and girls who are often disproportionally affected by human trafficking due to the lack of economic opportunities and discrimination in their countries of origin.[14]

Understanding that trafficking also has a significant domestic component, the New York State Legislature in 2007 and 2008 enacted the Anti-Human Trafficking Law and the Safe Harbor for Exploited Children Act, respectively, to fill the gaps left by TVPA. The laws reflect the methodologies promulgated by the TVPA and support the 3P approach by creating the crimes of labor trafficking and sex trafficking in New York State, establishing criminal culpability for buyers and traffickers, and requiring all trafficked persons be connected with necessary services.[15]

Another facet to New York's approach to combatting human trafficking is its development of Human Trafficking Intervention Courts (HTIC). These specialized courts exist almost exclusively in urban jurisdictions, and are intended to connect trafficking victims being prosecuted under prostitution charges with social services. Judge Toko Serita, the presiding judge of the inaugural HTIC in Queens County, explains, "The HTIC provides alternatives to incarceration for people arrested on prostitution-related charges, premised upon the understanding that many of the defendants are victims of sex trafficking. Thus, the objective of this

court is to provide supportive services to enable these defendants to leave the commercial sex trade."

Practical Realities are Sustaining Sexual Slavery Despite Available Legal Remedies

Despite having the most progressive and comprehensive legal framework to combat sex trafficking in the county, New York ranks among the top four states with the worst human trafficking problem in the nation, behind only California, Florida, and Texas. Nearly all communities throughout New York State are impacted by human trafficking. Minors trapped by sex traffickers are almost always runaways, street youth, or children who experienced domestic dysfunction and suffered from physical, psychological, or sexual abuse. The Center for Court Innovation estimates that between 70-90% of prostituted minors sustained childhood sexual abuse and children who suffer from sexual abuse are 28 times more likely than their peers to be exploited in the commercial sex industry.[19] Traffickers understand that children with these histories are "perfect prey" given their "profound vulnerability and powerlessness."[20]

While exploiters are often victims' significant others, traffickers may be anyone in the victim's life, including parents, family members, friends, and employers. However, the same power and control dynamics perpetrated by aggressors of domestic violence and sexual assault are used by sex traffickers to manipulate and influence their victims, irrespective of the nature of the relationship.[21] Isolation and intimidation is commonly used to eradicate victims' independence and resources.[22] Drug addiction also plays a significant role in trafficking, as both a coercive mechanism to engage victims (i.e. trading drugs for sex with those who are already addicted to illegal substances) and to exert and preserve control over victims' lives (i.e. involuntary drugging and ultimately addiction).[23]

The internet and more specifically the "dark web"[24] have driven the sex trade even further underground, virtually eliminating most street solicitations, and perpetuating the obscurity of this criminal enterprise**.** While street-level and pimp-controlled protection still constitutes the predominant forms of domestic sex trafficking, higher income and suburban communities are not devoid of traffickers. Safe Inc., a nonprofit organization operating in the City of Schenectady to provide supportive services to runaway homeless youth who are sexually exploited or trafficked,[25] reports that affluent populations are also being targeted by sex traffickers and compelled into the sex trade through revenge porn. Revenge porn generally takes the form of sexually explicit pictures taken of the victim without her consent and often while the victim is under the influence of drugs or alcohol. The threat of exposing these photographs for some victims is so coercive that they capitulate to the trafficker's demands.

Notwithstanding the universality of this criminal industry, there is a disconnect between the intent of the law and prosecutions under its provisions. In 2016, there were just 65 arrests and arraignments for sex trafficking under New York State Penal Law § 230.34.[26] Forty-eight of those cases remain open and only eight resulted in convictions. Of the convictions, only five resulted from a violation of Penal Law § 230.34.[17] In contrast, the same time period produced 1,560 total dispositions for prostitution related arrests, of which 484 resulted in convictions, and 251 of those verdicts produced sentences of jail or time served.[28] Clearly, traffickers are undeterred from continuing their nefarious trade, while victims endure criminal charges and convictions. This has resulted in exceptionally skewed statistics overemphasizing prostitution as a culpable decision and underrepresenting the ubiquitous incidence of forced sex trafficking.

Coordinated Efforts Lead to Local Solutions

The crimes of trafficking and prostitution are sometimes considered insignificant or unworthy of law enforcement, because the women, girls, and other individuals engaged in prostitution are perceived as choosing that life. Additionally, these crimes are considered lower priority when compared to other criminal infractions because there are fewer short-term results and visible community benefits to managing sex trafficking and prostitution offenses relative to other more easily recognized arrests and prosecutions. As the governmental entity closest to citizens, cities and villages can serve a pivotal role in combating domestic sex trafficking and reversing the inaccurate perceptions held among community members regarding the commercial sex trade.

Local governments are best situated to coordinate the efforts of the different, and sometimes divergent, interests of local agents. Bringing together the different perspectives of law enforcement and social service providers will ensure a more dynamic response to human trafficking is achieved. The United Nations suggests:

> Local authorities should promote the understanding of and respect for human rights of all individuals within their jurisdiction through education and training. Organize on a systematic basis human rights trainings for elected officials, staff, and police departments and disseminate relevant information among citizens. By promoting human rights local authorities can help build a culture of human rights in the community.[29]

Anti-trafficking organizations and community service providers, like Safe Inc., often provide these types of trainings at no cost to municipalities. Comprehensive instruction is essential to show to law enforcement and local courts how arresting victims might be the best way to connect victims with the services that may lead to their rehabilitation. Training police departments and local officials to work in conjunction with service providers will also facilitate a cooperative approach to trafficking-related offenses that will help validate the importance of addressing these issues throughout the community.

Community organizations that train public officers also frequently have the resources and ability to connect victims with social services.[30] Additionally, by determining which service providers are available to assist trafficking victims, courts will be better equipped to engage in judicial diversion programs to provide treatment alternatives to incarceration for prostitution offenses, even where HTICs are unavailable. Connecting defendants with services and recognizing that most individuals engaged in prostitution are victims of trafficking is part of a trauma-informed approach to combating these crimes.

Instituting such an approach among law enforcement officers may also help to direct the arrests of those patronizing the sex trade because increased awareness of human trafficking among the law enforcement community should hasten efforts to identify and prosecute sex industry traffickers and consumers. Reducing the demand for commercial sex by addressing consumer accountability and targeting consumption will starve the industry by decreasing its profitability. Developing awareness among community members may also be achieved through local awareness campaigns. The New Jersey Coalition Against Human Trafficking urges mayors and municipal officials to post public service announcements and videos on the municipal-

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ity's social media platforms to raise awareness about human trafficking and local events and organizations that support anti-trafficking efforts.[31]

While 2017 marked the centennial of women's suffrage in New York, so many women and girls in this state are disenfranchised and commoditized by the commercial sex industry. Neither New York's robust legal framework to combat sex trafficking, nor the collective understanding that trafficked persons are victims forced into the sex trade, has diminished the viability of the commercial sex industry. But by developing a coordinated response to human trafficking, local governments may help stymie the commercial sex industry and serve and an integral component to effectively abolishing domestic sexual slavery.

For more information relating to local solutions for domestic sex trafficking or to obtain copies of the references cited herein, please contact NYCOM Counsel Rebecca Ruscito at 518-463-1185 or by email at rebecca@nycom.org.

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Notes

1. Holly Yan and Jason Morris, *San Antonio Driver Says He Didn't Know Immigrants Were In Truck,* CNN, July 25, 2017, www.cnn.com/2017-07-24-us/san-antonio-trailer-migrants/index.html; Manny Fernandez, Richard Perez-Pena, and David Montgomery, *For Human Cargo, Truck Door Closed Out the Light, and Life,* N.Y. Times, July, 25, 2017 at A1, https://www.nytimes.com/2017/07/24/us/san-antonio-truck-trafficking.html?mcubz=0.
2. Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking,* NYU Rev. Law & Soc. Change 635, 637 (2013).
3. Despite this article's reference to several Department of State statistics, other estimates supplied by the United Nations have been significantly lower. These discrepancies result from the difficulty in accurately accounting the total number of trafficking victims worldwide due to the illegal and clandestine nature of the enterprise (Madevi Sun-Suon, *Human Trafficking and the Role of Local Governments: Good Practices, Challenges and Ways Forward,* United Nations Institute for Training and Research, available at https://www.unitar.org/dcp/sites/unitar.org.dcp/files/uploads/newcoverhuman_trafficking_final.compressed.compressed.pdf).
4. 2017 Department of State Trafficking in Persons Report at 3.
5. Serita, *supra* note 3 at 639 (quoting, Nicholas D. Kristof, *What About American Girls Sold on the Streets?* N.Y. Times, Apr. 24, 2011 at WK10).
6. Serita, *supra* note 2 at 638.
7. 22 USC § 7101 (2000). *See also,* Safe Inc. of Schenectady, June 19, 2017 (unpublished PowerPoint on file with author).
8. Serita, *supra* note 3, at 636 n.8; Safe Inc. *supra* note 6, at 6 (citing US Department of Justice figures from 2005).
9. Serita, *supra* note 3, at 636 (citing Theodore R. Sangalis, *Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act,* 80 Fordham L. Rev. 403, 409 (2011)).
10. *Id.* at 637 (citing US Department of Justice figures from 2008).
11. Safe Inc., *supra* note 6 at 19 (citing UN Office on Drugs and Crime).
12. 22 USC § 7101 (2000).
13. Office to Monitor and Combat Trafficking in Persons, *The 3Ps: Prevention, Protection, Prosecution,* (2016) ("The United States also follows this approach, reflected in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* supplementing the *United Nations Transnational Organized Crime Convention* (Palermo Protocol) and in the United States' Trafficking Victims Protection Act, as amended").
14. 22 USC § 7101(4).
15. N.Y. Penal Law §§ 135.35, 230.34 (2007); Soc. Serv. Law §§ 447-a, 447-b, (2008); Soc. Serv Law §§ 483-AA – 483-FF (2007).
16. Serita. *Supra* note 2, at 635 n.5.
17. Safe Inc. of Schenectady, June 19, 2017 (citing US Department of Justice. 2005) (unpublished PowerPoint) (on file with author).
18. Serita, *supra* note 2, at 641.
19. Center for Court Innovation, *Identifying and Responding to Sex Trafficking: A Guide for the Courts,* available at http://www.courtinnovation.org/sites/default/files/documents/DV_SJI_Risk%20Need_.pdf.
20. Serita, *supra* note 2, at 641.
21. Danielle Malangone and Katie Crank, *The Intersection of Domestic Violence, Sexual Assault, and Human Trafficking,* Center for Court Innovation, available at http://www.courtinnovation.org/sites/default/files/documents/UnderstandingHumanTrafficking_2.pdf.
22. *Id.* at 1.
23. Serita, *supra* note 3, at 641.
24. *See* https://en.wikipedia.org/wiki/Dark_web
25. Safe Inc. of Schenectady, What We Do, available at https://safeincofschenectady.org/what-we-do/.
26. DCJS, Computerized Criminal History System, as of February 17, 2017.
27. *Id.* The remaining three convictions resulted from non-trafficking charges. DCJS, Computerized Criminal History System, as of August 18, 2017.
29. Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee, Aug. 7, 2015, U. N. Doc A/HRC/30/49; HRC, 30th Sess., Agenda No. 3, 5 (2015).
30. Center for Court Innovation, *supra,* note 19, at 1.
31. NJ Coalition Against Human Trafficking, *Community Awareness Toolkit*, available at https://static1.squarespace.com/static/58a7d370ff7c50f538d6a78e/t/58c9d92f440243bf342b9521/1489623347662/NJCAHT+Community+E-Toolkit+2017.pdf



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