

UNDERSTANDING HUMAN
TRAFFICKING CASES
A JUDGE'S PERSPECTIVE

Honorable Virginia M. Kendall

United States District Court for the Northern District of
Illinois

Virginia_kendall@ilnd.uscourts.gov

THE SCOPE OF THE INTERNATIONAL PROBLEM

- 12.3 million victims of human trafficking world wide according to 2010 reports
 - \$32 billion in profits to the traffickers
 - Frequently linked to organized crime – complex organizations with specific roles along the route
 - Challenge of working internationally across borders to share information and evidence
 - Big money: money laundering; false identification, bribery
 - Public corruption inherent in its success
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TYPES OF TRAFFICKING

- Forced prostitution of foreign born women and children
 - Forced agricultural labor (farm worker)
 - Domestic servitude
 - Domestic sex trafficking
 - No need to cross international borders for trafficking
 - Crime of control and coercion
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DIFFERENCE BETWEEN TRAFFICKING AND SMUGGLING

- SMUGGLING

- Offense against the integrity of borders
- Business relationship consummated once alien has reached border
- Requires illegal border crossing

- TRAFFICKING

- Offense against a person
 - Coerced or compelled labor or service
 - Smuggling debt
 - Traffickers maintain control over their victims after the border is crossed
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THE INTERNATIONAL COMMUNITY'S RESPONSE

- 1989 UN Convention on the Rights of the child
 - 1996 Hague Convention on the Protection of Children
 - 1998 Rome Statute of the International Criminal Court
 - 1999 International Labor Organization Concerning the Prohibition of Child Labor
 - 2000 United Nations Convention on Organized Crime
 - 2000 TVPA – UN Protocol (revised and updated three times)
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THE NUMBER OF PROSECUTIONS

- Only 3,000 prosecutions worldwide
 - Cyprus TIP report for 2010 reported only 24 victims of sex trafficking and 17 victims of forced labor
 - Low numbers of prosecutions due to:
 - Lack of training, understanding, ability to locate the crime and identify victims
 - Lack of focus on protecting a class of individuals who have little voice or recognition
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GLOBAL LAW ENFORCEMENT DATA

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 added to the original law a new requirement that foreign governments provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to be considered in full compliance with the TVPA's minimum standards for the elimination of trafficking (Tier 1). The 2004 TIP Report collected this data for the first time. The 2007 TIP Report showed for the first time a breakout of the number of total prosecutions and convictions that related to labor trafficking, placed in parentheses.

| YEAR | PROSECUTIONS | CONVICTIONS | VICTIMS IDENTIFIED | NEW OR AMENDED LEGISLATION |
|------|---------------|-------------|--------------------|----------------------------|
| 2005 | 6,178 | 4,379 | | 40 |
| 2006 | 5,808 | 3,160 | | 21 |
| 2007 | 5,682 (490) | 3,427 (326) | | 28 |
| 2008 | 5,212 (312) | 2,983 (104) | 30,961 | 26 |
| 2009 | 5,606 (432) | 4,166 (335) | 49,105 | 33 |
| 2010 | 6,017 (607) | 3,619 (237) | 33,113 | 17 |
| 2011 | 7,206 (508) | 4,239 (320) | 41,210 | 15 |
| 2012 | 7,705 (1,153) | 4,746 (518) | 46,570 | 21 |

The numbers in parentheses are those of labor trafficking prosecutions, convictions and victims identified.

Source: Department of State Trafficking in Persons Report, 2013

WHY?

- Victims do not self identify
 - Victims fear law enforcement
 - Corruption within the states
 - Prosecution of the Victims for crimes
 - Prosecution of the Victims for immigration offenses
 - Fear of Deportation
 - Fear of the reality of their situation: loss of ability to control their lives
 - SHAME
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THE VICTIM INTERVIEW –CLUES TO TRAFFICKING

- not free to leave
 - owes a debt to the person who is in control of her work and residence and care
 - came from another country and is concerned about siblings abroad
 - has no income and no ability to purchase anything for herself
 - does not know exactly where she is – unable to identify places within the community
 - is isolated from others within the community; resides in one location without access to outsiders and outside activity
 - is fearful
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TRAFFICKING = COERCION

- Victims kept in isolation with no ability to learn their surroundings or moved from location to location
 - Victims owe a debt for the transportation to the country
 - Victims do not hold their own money; all basic “needs” are provided by the trafficker
 - Victims often have their passports held by the traffickers or worse by the police who act in conjunction with traffickers
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COERCION

- Victims believe that the trafficker will harm them, or their families, or bring other siblings to the country to be trafficked
 - Victims lose self confidence and shame of who they have become is overwhelming
 - Victims feel that there is no way to escape – traffickers have convinced them that they will be harmed or deported
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COERCION

- Sexual abuse, battery, rape
 - Isolation, neglect of basic needs
 - Physical abuse
 - Observing other victims being raped or abused
 - Psychological abuse: threats of harm to victims or family
 - Controlling all aspects of daily life: food, shelter, health care
 - Threats of reporting their criminality to the authorities
 - Debt bondage
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NEED TO UNDERSTAND THE VICTIMIZATION

- Malleable victims often seeking “better life”
 - Some leaving war torn area, poverty, natural disaster
 - Some duped into coming and do not understand they will be prostituted
 - Others understand they will be prostituted but soon learn that they are no longer free to leave
 - All become controlled and manipulated through a variety of psychological and physical means
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COMMON MISUNDERSTANDINGS

- Victim chose this way of life
 - Victim could seek help if she really wanted it
 - Victim can return to her home country if she wants
 - Victim is being paid and is working normal hours under normal conditions
 - Victim cares for, admires, her pimp
 - Victim is residing in healthy conditions
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REALITY OF THE SITUATION

- Victim is housed in neglectful, often unsanitary, and unhealthy conditions
 - Victim is not free to leave
 - Trafficker enforces rules that result in sanctions if broken
 - Sanctions include violence, sex, rape, and degradation
 - Traffickers instill fear of law enforcement and deportation
 - Traffickers hold on to passports and issue false identification documents
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TRAFFICKER'S CONTROL LEADS TO PSYCHOLOGICAL TRAUMA

- Victim believes there is no way out of the situation
 - Even if victim were to leave, despair over what she has become prevents her from seeking help from family
 - Victim often has no identification documents to prove who she is
 - Victim is completely reliant on trafficker for food, shelter, knowledge of the outside world and medical care
 - Victim is broken psychologically and incapable of asserting independence
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SIGNIFICANCE OF TRAUMA: INCONSISTENT STATEMENTS

- Psychological trauma:
 - efforts to avoid thoughts on the traumatic experience;
 - to avoid anything that reminds the victim of the traumatic experience;
 - inability to recall specific details or strange focus on one detail;
 - inability to remain focused on the discussion; exhaustion
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SIGNIFICANCE OF COERCION: INCONSISTENT STATEMENTS

- Likelihood of
 - inconsistent statements
 - inconsistencies amongst victims due to different levels of psychological ability to address the victimization
 - first statement being less detailed than later statements
 - victim going through phases of refusing to cooperate
 - having to work long hours with victim more than other types of cases
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UNDERSTAND THE PROGRESSION OF INTERVIEWING

- Law enforcement interview differs from social worker interview
 - Law enforcement seeks the who, what, when and how
 - Law enforcement seeks immediate response from fearful interviewee
 - Once victim is provided safe harbor, food, clothing, the interview will expand
 - Once given the time and patience with the victim, the details will expand and victim may recant her earlier denial of harm
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WHAT DOES A JUDGE WANT TO SEE?

- Credible testimony
 - Testimony supported by other evidence
 - Testimony that does not sound forced, created, or cut from a mold
 - Testimony that describes the elements of the crime
 - Testimony that makes sense to her in light of her knowledge of the crime
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HOW DO YOU KNOW THE TRUTH? CORROBORATION OF WITNESS

- Surveillance: photos and videos of the comings and goings
 - Bank records: show the cash deposits on the days she said she paid him
 - Phone records: show the links to his control through the phone calls before and after the “work”
 - Site photos: show the barren rooms, locks on the doors, one dress in the closet, fence around the perimeter
 - Immigration records: show the entry into the country together
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ADVANCED CORROBORATION

- Cooperator testimony of someone on the inside
 - Recorded phone calls between the victim and the trafficker
 - Chats, text messages, emails
 - Undercover operation – entry into the world of the trafficker
 - Undercover operation – money laundering opportunity
 - GPS tracker on vehicle or phone
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ADVANCED CORROBORATION

- Lack of payroll records, tax records, business records
 - Tracing funds – (wire transfers, purchases of large ticket items like cars)
 - Rental records, and other real estate documents – who is on the lease?
 - Who contacts the utilities to set up/change service
 - ISP connection to location?
 - Basic neighbor interviews
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OTHER CRIMES MAY BE INVOLVED

- Identification document fraud
 - Tax evasion
 - Kidnapping
 - Wire fraud
 - Computer luring
 - Violent crimes: rape, battery
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RECOGNIZE THE UNIQUE VICTIMIZATION OF THE CRIME

- Fear, physical illness, lack of basic needs (food, shelter, clothing), potential criminal exposure – all work against the ability to present your case
 - A victim needs to know and have access to services
 - Physical health (medicine, IV testing, STD testing)
 - Mental health (counseling, support, time)
 - Shelter and Basics (food, safe haven, clothing)
 - Communication about the next step
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WORKING WITH NGO'S

- NGOs provide access to the services needed to stabilize the victim
 - NGO's can provide insights into the trafficker based on their experiences with the locale and/or the cultural group of victims
 - NGO's can provide leads to law enforcement based on their interaction with the victims
 - NGO's can provide the emotional and health support needed for the victim while law enforcement investigates
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USE OF TASK FORCE APPROACH

- Building partnerships with local and federal law enforcement, medical personnel, grass roots organizations, immigration organizations
 - Tap into community networks -- foreign language papers and ethnic community groups
 - Identifying victims through non-traditional means: church groups, shelters, hospitals, food pantries, building inspectors, utility companies
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EDUCATE THE JUDGE

- Understand that trafficking is not easily understood
- Understand that victims do not even identify themselves as victims of trafficking
- How can a judge rule that a crime has been committed if she does not understand the crime?

USE AN EXPERT

BENEFITS OF EXPERT TESTIMONY

- Describes a crime that is not easily identifiable and occurs under our noses each day
 - Explains the climate of fear that would cause a victim to have inconsistencies in her telling of her victimization
 - Explains the level of trauma that coercion causes which often keeps a victim from escaping or reporting to the authorities
 - Explains psychological coercion and fear
 - Explains cultural and gender differences that can impact a victim's credibility
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QUALIFICATIONS OF AN EXPERT

- Can be someone with psychological or psychiatric expertise who has dealt with victims of trauma
 - Can be someone with hands-on experience interviewing and dealing with victims of human trafficking
 - Can be someone who has studied a particular culture and has interviewed victims from that particular culture
 - Can be someone in law enforcement, medical field, mental health field, non-profit field, education
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EXPERTS NOT ONLY EDUCATE; THEY CORROBORATE

- Experts can opine on evidence and why it is significant to coercion
 - Experts can opine on behavior of the victims and why that behavior is consistent with coercion
 - Experts can opine on the symptoms and injuries suffered by your victims and explain why they are common to human trafficking victims
 - Experts offer a badge of credibility to your victims
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