

Identifying the Victims of Human Trafficking

BY SUZANNA L. TIAPULA AND ALLISON TURKEL

Editor's Note: The first article in this trafficking series, "Identifying the Victims of Human Trafficking," published in the last issue of *The Prosecutor* magazine,¹ focused primarily on state statutory frameworks for charging trafficking and initial investigative strategies emphasizing recognition of these complex cases. This article focuses primarily on understanding the dynamics of commercial sexual exploitation and some specific strategies for the investigation and prosecution of cases involving minor domestic victims of human trafficking. Victim centered investigation and prosecution strategies are presented which include a brief overview of interviewing strategies and identify the child protection linkages needed to appropriately protect victims and prosecute offenders.

ONE OF THE COMMON MISCONCEPTIONS of trafficking is that it involves only foreign born victims crossing international borders into the United States. Human trafficking, as defined in federal statutes² and in most state statutes, involves the commercial sexual exploitation of a victim if that victim is under 18 years old or if fraud, force or coercion are used for a victim of any age. With recent studies suggesting that between one and one and a half million children are runaway/thrown away each year (and recognition that many of these children will be vulnerable to sexual exploitation), the reality of human trafficking in each of our communities is unavoidable.

Given the resource intensive nature of many trafficking cases, collaboration is a key factor in successful investigation and prosecution of these cases. Trafficking victims deserve justice. Only by committing resources to these cases, can we begin the outreach needed to bring justice to these victims and bring an end to the trafficking of our children's bodies. Honing an effective criminal justice response at the state and local levels to cases involving the trafficking of domestic vic-

tims for commercial sexual exploitation requires an understanding of the differences between these cases and the equally troubling cases involving the trafficking of foreign born victims brought into the country for sexual exploitation, labor, debt bondage, peonage or involuntary servitude.³

A willingness to collaborate with other agencies and the various human trafficking task forces is important. State and local law enforcement are key partners in the national efforts to address the exploitation of children in prostitution in the United States through the Innocence Lost Initiative.⁴ Numerous federal and state task forces are also in place to ensure thorough investigations and prosecutions of human trafficking. Familiarity with the various federal and state resources⁵ ensures that resources available for victims are accessed and that appropriate jurisdictional choices are made for these very complex cases.

Armed with well drafted human trafficking, criminal sex or prostitution statutes, working with well trained task forces and utilizing community and national resources prosecutors and allied law enforcement professionals in a number of jurisdictions have begun to aggressively prosecute cases involving the trafficking of domestic victims, often minors, for sexual exploitation. The success of these teams required a shift in the perception of the adolescents and young adults in these cases as victims of prostitution/trafficking rather than as defendants in prostitution cases. The investigators in these jurisdictions have reframed their approach to these cases with significant successes in changing the dynamic and refocusing law enforcement efforts on the individuals and businesses controlling the sexual exploitation of minor victims.

In a particularly cogent comparative analysis of human trafficking in Columbus and Toledo, Ohio researchers noted that

Suzanna L. Tiapula is a senior attorney/chief of publications, NDAA's National Center for Prosecution of Child Abuse. Ms. Tiapula was formerly a deputy prosecuting attorney in Honolulu and an assistant attorney general in Pago Pago, American Samoa. Allison Turkel is a senior attorney and chief of training for NDAA's National Center for Prosecution of Child Abuse. She was formerly an assistant district attorney in the Manhattan District Attorney's Office and the McLean County, Illinois, Prosecutor's Office and a police officer. The authors thank NCPA interns Dylan Alter and Dermot Garrett, law students from American University School of Law, for their research assistance.

the Toledo justice system and specifically, juvenile justice, attempts to identify trafficking victims and provide appropriate outreach.⁶ Federal and local law enforcement in Toledo routinely debrief victims of prostitution, especially juveniles or suspected juveniles, for connections to trafficking.⁷ Neither of the jurisdictions examined in this study have sufficient child welfare resources to address the needs of the trafficking victims identified; in Toledo, however, child welfare organizations both governmental and non-governmental, are designing and implementing formal protocols to identify, assess and treat possible trafficking victims.⁸ As we further analyze effective outreach to domestic victims of trafficking, we need to focus our attention on eliminating the disconnect between criminal justice and child welfare in these cases.

Once a case involving a domestic minor victim of human trafficking⁹ has been identified and the jurisdictional analysis has been completed,¹⁰ investigators and prosecutors will need to consider an investigatory timeframe that might take years to fully develop. The paradigm shift required to recognize these minors as victims of prostitution rather than as defendants in prostitution cases is still relatively new in many jurisdictions. Prosecution of the individuals and organizations coordinating the sexual trade in children's bodies needs to be evidence based and aggressive. As with all cases involving minor victims, a multidisciplinary approach that includes a child protection analysis is critical. Juvenile courts need to recognize that these minors are victims of prostitution and focus on the use of institutional resources to protect them from further commercial sexual exploitation. Courts must be prepared to consider reclassifying the status of children who come into their courts as "prostitutes." Training for law enforcement and allied professionals can support more effective investigations, interviews and prosecutions. Forensic interviewing that produces accurate, detailed information in a setting that empowers child victims will be needed to support any investigation/prosecution. Evidence based prosecutions are key to trafficking cases. The prosecution charging and recommendations might benefit from examination of the context in which these cases usually present.

Any analysis of human trafficking requires some attention to the societal forces contributing to the existence of this modern version of slavery. The criminal justice system and law enforcement professionals do not operate in a vacuum; the trafficking laws we enforce, our interpretation of those laws and the mechanisms by which we prioritize enforcement are shaped by societal attitudes, professional assumptions and expectations. With respect to sex trafficking, the contradictions and ambivalence of societal attitudes towards the sex trade and the individuals involved in that trade are reflected in our laws and our uneven enforcement of those laws.¹¹ Refocusing on the underlying contradictions and societal assumptions which

allow traffickers to operate unchecked in our communities should improve our ability to recognize human trafficking cases and bring justice to these victims through victim focused investigations and effective prosecutions.

With scholars suggesting there may be between 100,000 and 300,000 children being commercially exploited in the United States,¹² law enforcement professionals are beginning to acknowledge the reality of human trafficking of domestic victims in every jurisdiction. Domestic trafficking of victims for commercial sexual exploitation involves children from every locale; the average age of entry into prostitution is estimated to be 14. Professionals need to recognize that children from rural jurisdictions can be equally vulnerable to commer-

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cial sexual exploitation.¹³ The massive increase in the use of computers and cell phone technology have created a pipeline for the luring and subsequent exploitation of many children. Law enforcement professionals need to begin carefully examining the context in which minor victims are being recruited into prostitution and victimized as part of our nation's sex trade.

A series of recent studies suggests that our analysis of prostitution and the adult sex trade might also benefit from a reexamination in light of the federal definition of sex trafficking and the definition of sex trafficking in many state statutes. The perception that the sex trade generally involves a professional choice of willing adults is clouded by studies suggesting that more than 90 percent of the women involved in the sex trade have been abused or battered by a member of their families and 70 percent of the women involved in the sex trade have been sexually abused between the ages of three and 14.¹⁴ Another study which tackles the popular perception of the sex trade as glamorous¹⁵ found that in a control group of 130 prostitutes, 68 percent had been repeatedly raped.¹⁶ Specifically, the authors found that 82 percent of the prostitutes had been assaulted by customers, 88 percent had been physically threatened and 83 percent had been threatened with a weapon.¹⁷ Given the potential overlap between prostitution and sex traf-

ficking investigations, professionals will need to consider the institutional responses to both as part of a coherent response to human trafficking. Identification, then, of available resources, training materials, regional and national expertise on trafficking requires a consideration of materials collected under the trafficking umbrella, the domestic trafficking/commercial sexual exploitation of children umbrella and any materials compiled to address issues of prostitution within our communities.

As with all cases involving minors, a multidisciplinary response is recommended to ensure that the minor's safety and long-term placement needs will be addressed as part of the criminal investigation. Multidisciplinary responses also conserve limited state and local resources since law enforcement and allied professionals work together, sharing information to address these cases. MDT team members should be cognizant of issues these victims may have as survivors of abuse, neglect and trauma. Information gleaned during the forensic interview that will support an assessment of the child's physical, psychological and social well being (for example, substance abuse issues, STDs, etc.) is helpful.

The multidisciplinary team should incorporate child protection to address the minor's safety and long-term placement needs. This can be complicated since many of the minors are runaway/thrown away children from other jurisdictions. The child protection analysis needs to take into consideration sexual and physical abuse history as a factor in the child's decision to run since returning a child to an abusive situation will often simply ensure the child's refusal to further participate in the interview/investigation/prosecution. These multi-disciplinary teams should include the various non-profit organizations¹⁸ that have developed proactive programs to reach out to these victims and provide a continuity of care.¹⁹

Thorough review of the child's history during the forensic interview allows the investigators and child protection to make better placement decisions for each particular child. Many of the trafficking victims in these cases have children; they may often have children fathered by their pimps.²⁰ The MDT and child protection analysis should address safety and placement issues for both the minor victim of the investigation and any children of the minor victim of commercial sexual exploitation.

Training is important given the unique dynamics of many human trafficking investigations. Understanding developmental issues associated with adolescents and compliant victims is critical; adolescents often reject any outreach that is perceived as condescending or irrelevant to their situation. Since the relationship between the victims of prostitution and the individuals controlling these victims is often abusive; interviewers who receive training in domestic violence, cycles of abuse and sexual abuse dynamics are also more effective in working with this population. Finally, an understanding of the street culture associated with prostitution of these victims may be critical to the interviewers' credibility. Training in the different types of prostitution, the various hierarchies and some of the hallmarks

of street culture associated with prostitution can help an interviewer better understand a minor's language. Since these cases include financial elements (e.g. the trafficking and sale of these minor's bodies), training in forfeitures and evidence collection related to financial entities can be helpful.

Interviewing victims of human trafficking is a critical component of the trafficking investigation and prosecution. Interviewers need to recognize that the format of forensic interviewing and the dynamics of these interviews may be significantly different than interviews for more traditional child sexual abuse investigations. These interviews are seldom conducted in a child advocacy center setting; more often, they are conducted in a police station, juvenile facility or in shelters. The victimization of child victims of commercial sexual exploitation often involves multiple instances of sexual exploitation and other forms of abuse. It may be difficult to detail each instance of exploitation, thus, interviewers should isolate information that can result in corroborative evidence and successful charges. Information that might be explored in

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the context of an interview might include clothing proving that the victim is being prostituted, cell phone usage/purchase to link the victim to the pimp (chirps/walking talkies are popular in some enclaves), any items purchased by the pimp that might help establish a linkage, also a thorough review of the victim's immediate living/working conditions, etc. Specific questions that can be helpful include identifying all of the individuals this child has been victimized by in the prostitution organization including (names/nicknames/locations/background of each person/relationships, tattoos, appearance, any body specific scars, piercings, as well as computers, cell phone companies, credit card information or vehicles, etc.). Additionally, if the child was not abducted, investigators will want to consider evidence of the luring or manipulation of the child into a prostitution environment. Frequently the "pimps" groom the children by manipulating them into "love" relationships, engage in sexual abuse of the them and then rape them, isolate them, often get them addicted to drugs and then use them as prostitutes. Interviewers need to question victims about Internet communications, exposure to pornography, whether or not the perpetrator took photographs or videos of

them either naked or when they were being sexually assaulted. Interviewers should be careful to not traumatize victims by showing them pornographic images of themselves or by repeatedly questioning them about issues for which they have other evidence (i.e. asking about chat logs or internet communications that are recorded and accessible to the investigators when the child keeps denying they know the people in the logs).

It can also be important to establish who knew of the victims' age. If the victim needed false identification or was residing in any juvenile facility/had juvenile proceedings, this can be important in establishing elements of certain age specific criminal charges. Did the perpetrators acknowledge the child's birthday in some way or age when communicating with child on the Internet. Can charges be brought against the "johns" as well as the pimps? If the victims were advertised as under age and the "johns" knew this, can they be charged not only with pandering but with sexual assault?

Perhaps most important in these cases is earning the trust of the victims of commercial sexual exploitation. These cases often require the victims' willingness to cooperate in the investigation and, ultimately, testify against these defendants. Where trust is established with the victim, these victims will often notify detectives with new cell phone numbers, addresses and changes in work status. Even simple changes in outreach can make a difference. For example, recognizing that most of these individuals are awake at night and have cell phone contact that is viable at night means regular contact is more likely. Limiting victim outreach to the 8 a.m. to 5 p.m. workday, on the other hand, precludes most reasonable chances of staying in touch with the victims in these cases. Interviewers need to explore ways to contact the victim over long periods of time. Building rapport and earning a child's trust can take skilled interviewing and a significant commitment of time to each child. For many of these victims, the sex part of their exploitation may not be the worst part.

Investigators need to be sensitive to the possibility that these children may not see themselves as victims or they may still have loyalties to the pimps. Some interviews initially take the tone of an interrogation; effective outreach requires, however, that the interviewers work to empower the child and help the child understand and accept his or her "victimization."

The challenges for prosecutors handling these cases typically involve resource availability for victim outreach and statutes that require elements of force or coercion that are difficult to meet given the compliant adolescent dynamics so often present. These cases require thorough investigations and need to be developed over time. These are generally not cases that can be investigated and disposed of quickly. Identifying prosecutors who are committed to this type of case and can establish a rapport with the victims is critical to aggressively responding to

these cases. Victim advocates also need to be involved and utilized to keep in touch with victims during the pendency of the case or cases and help provide a coordinated response by the different systems and resources.

Coordination with civil protection courts and systems is essential for the well being of these victims. Juvenile or civil courts should consider making a finding that the prostituted child is a "child in need of services" and not delinquent. Community resources that provide shelter, outreach, and counseling, medical care specific to these types of victims should be integrated into any case planning. Orders of protection if available or no contact orders may be necessary to protect the victims from dangerous perpetrators or those that may try to keep them from testifying. If the victim becomes unavailable due to the actions of the perpetrator, investigate the possibility of admitting hearsay after a Forfeiture by Wrongdoing hearing. Multiple interviews are usually needed to complete any investigation. Some prosecutors describe cases that take years to develop.

Training in more effective forfeiture practice for prosecution of the individuals/businesses bankrolling the prostitution can also be a critical tool in the arsenal for any prosecutor handling these cases. As more communities become involved in these cases, hopefully more comprehensive responses will be developed so that these children will be properly protected and served and the perpetrators will be prosecuted.

Given the resource intensive nature of many trafficking cases, collaboration is a key factor in successful investigation and prosecution of these cases. Trafficking victims deserve justice. Only by committing resources to these cases, can we begin the outreach needed to bring justice to these victims and appropriate consequences to their abusers.

Endnotes

- ¹ Tiapula, Suzanna and Millican, Melissa. Identifying Victims of Human Trafficking, *The Prosecutor*, Vol. 42, No. 1 (Jan./Feb./Mar. 2008).
- ² The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) Pub. L. No. 106-386 Sec. 103(8) (2000).
- ³ *Id.*
- ⁴ Compiled by the Dept. of Justice, Assessment of U.S. Government Efforts to Combat Trafficking in Persons Sept. 2007, printed by the United States Dept. of State, Office to Monitor and Combat Trafficking in Persons, 1t 15. As of Sept. 2006, Innocence Lost task forces and working groups were in place in the following 26 jurisdictions: Phoenix, Arizona; San Francisco, Sacramento and Los Angeles, California; Denver, Colorado; Miami and Jacksonville, Florida; Honolulu, Hawaii; Chicago, Illinois; Indianapolis, Indiana; Boston, Massachusetts; Detroit, Michigan; Las Vegas and Reno, Nevada; Atlantic City, New Jersey; New York City, New York; Toledo, Ohio; Oklahoma City, Oklahoma; San Juan, Puerto Rico; Dallas and Houston, Texas; and, Washington D.C.
- ⁵ United States Dept. of Justice, Assessment of U.S. Government Efforts to Combat Trafficking in Persons, United States Dept. of State, Office to Monitor and Combat Trafficking in Persons, (Sept. 2007).
- ⁶ Jeremy M Wilson and Erin Dalton, Human Trafficking in Ohio: Markets, Responses and Considerations, RAND (2007) at 32.

⁷ *Id.* at 32.

⁸ *Id.* at 33.

⁹ Often also referred to as victims of commercial sexual exploitation. Several agencies avoid confusion on the distinctions between trafficking of foreign born victims and trafficking of domestic victims by labeling resources designed for prosecution of cases involving domestic victims as material addressing commercial sexual exploitation of children. See, Training Manual on the Commercial Sexual Exploitation of Children and The Community Response Guide to the Commercial Sexual Exploitation of Children Dep. of Justice, (forthcoming Summer/Fall 2008).

¹⁰ Cases involving foreign born victims and cases involving labor trafficking typically will be handled by federal-state trafficking task forces.

¹¹ For example, although most communities have statutory rape laws in place to protect minors, many jurisdictions will still prosecute minors for the selling of sex (often with minimal analysis of the context or circumstances in which the prostitution occurs) when that same act would generate protection of the minor as a victim of statutory rape if no financial exchange was involved.

¹² Richard Este and Neil Weiner, The Commercial Sexual Exploitation of Children in the United States, Canada and Mexico, Executive Summary, (University of Pennsylvania School of Social Work, Feb. 2002), available at: http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf.

¹³ Victor Vieth & Erika R. Ragland, Shadow Children: Addressing the Commercial Last visited Exploitation of Children in Rural America, in Commercial Sexual Exploitation: A Comprehensive Review of Pornography, Prostitution and Internet Crimes, Vol. 2, (2005) at 1033

¹⁴ Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER), Oral History Project, Minneapolis, 1988. The Mary Magdalene Project in Reseda, California, reported that 80 percent of the women

they worked with were sexually abused as children. Genesis House in Chicago reported that 94 percent of the women they worked with were abused as children. These reports were made at the First National Workshop for Those Working with Female Prostitutes, Wayzata, Minnesota, 1985 and documented in Kay Tsenin's One Judicial Perspective on the Sex Trade, Dept. of Justice's Research on Women and Girls in the Justice System: Plenary Papers of the 1999 Conference on Criminal Justice Research and Evaluation-Enhancing Policy and Practice Through Research, Vol. 3 (Sept. 2000).

¹⁵ Consider popular depictions of the sex worker in *Pretty Woman* and *Sweet Charity*.

¹⁶ Melissa Farley and Howard Barkan, Prostitution, Violence Against Women and Posttraumatic Stress Disorder, *Women and Health* Vol. 27 No. 3 (1998), at 37.

¹⁷ *Id.*

¹⁸ For a list of non-profit organizations working to provide support for these victims of commercial sexual exploitation (updated June 2008) see <http://www.ndaa.org/apri/programs/ncpc/statutes.html>.

¹⁹ As one example, Girls Educational and Mentoring Services (GEMS) is a non-profit organization in New York whose mission is to empower young women, ages 12-21 years, who have experienced sexual exploitation and violence to exit unsafe and abusive lifestyles and to develop their full potential. GEMS is a co-founder of the New York City Task Force Against Sexual Exploitation, available at <http://www.gems-girls.org/index.html>. Another organization working to address trafficking both nationally and internationally, the Polaris Project, available at <http://www.polarisproject.org/> operates the Nightingale Center, the only transitional shelter exclusively for victims of trafficking in the Washington, D.C. area.

²⁰ Consider statutory provisions which address the parental rights of an individual convicted of sexual trafficking of the mother of his child.