INSIDE: A Primer on Trafficking ◆ Why Victims Don't Testify ◆ The Importance of Treatment and Aftercare

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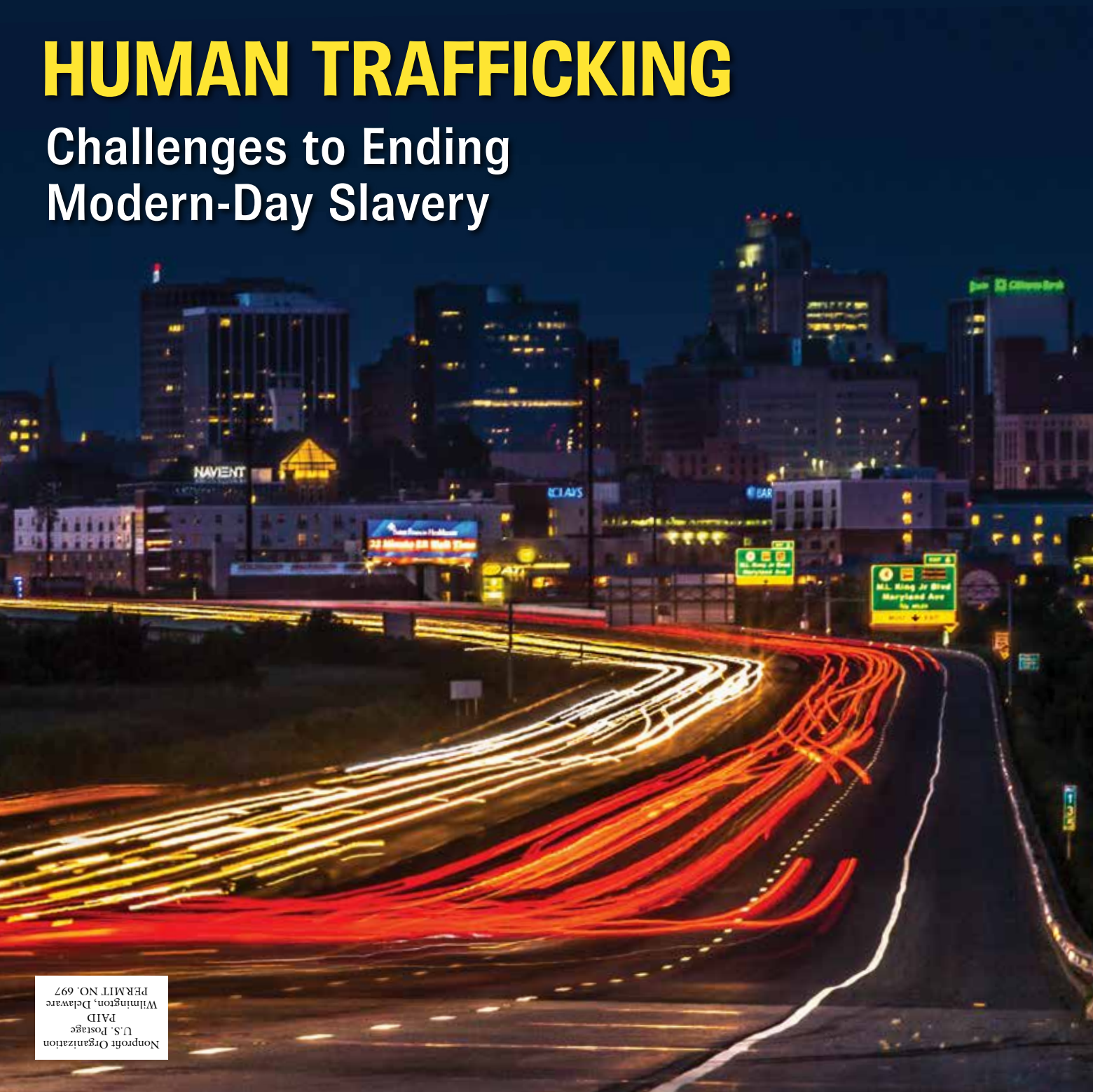
HUMAN TRAFFICKING

Challenges to Ending Modern-Day Slavery



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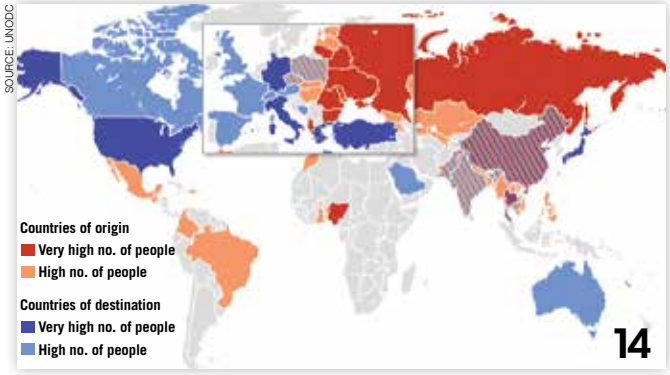

COVER: *I-95 through Wilmington provides an easy transportation link for trafficking. Photograph by BobCraigPhoto.*

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EDITORS' NOTE

Rosemary Killian and Loretta M. Young

Secretary of State John Kerry said it best at the launch ceremony for the *2015 Trafficking in Persons Report on Combating Modern Slavery Around the World*, held at the The State Department, Washington, D.C., on July 27, 2015: "This is a call to action. Governments need to strengthen and enforce the laws that they have on the books, and prosecutors must take pride in turning today's traffickers into tomorrow's prisoners. The private sector also needs to be a part of this effort, by blowing the whistle on companies that use labor that is underage, underpaid, and under coercion. Investigative journalists can continue to assist by shining the spotlight…."

This issue of *Delaware Lawyer* maps out the ground that we have covered in the battle against human trafficking from a Federal and State perspective and looks out over the vast territory that we still must cross. We hope you find it informative and that it stirs you to action.

In this fight, every enlightened eye, every reporting voice, every outstretched hand is a step towards victory. We, as attorneys in our various roles, both in our private and professional lives, are particularly poised to notice a client or other individual who may be in a precarious situation. As attorneys, we are held to the highest of standards and must take appropriate action by reporting appropriately.

In the coming year, as we expose more incidences of human trafficking in our State, there will be numerous pro-bono opportunities for Delaware attorneys to assist in preparing and presenting expungements and pardons for victims of human trafficking, civil lawsuits on behalf of victims, and an increased need for guardians *ad litem* and immigration attorneys.

We encourage you to answer Delaware's call to action.

Rosemary Killian

Loretta M. Young

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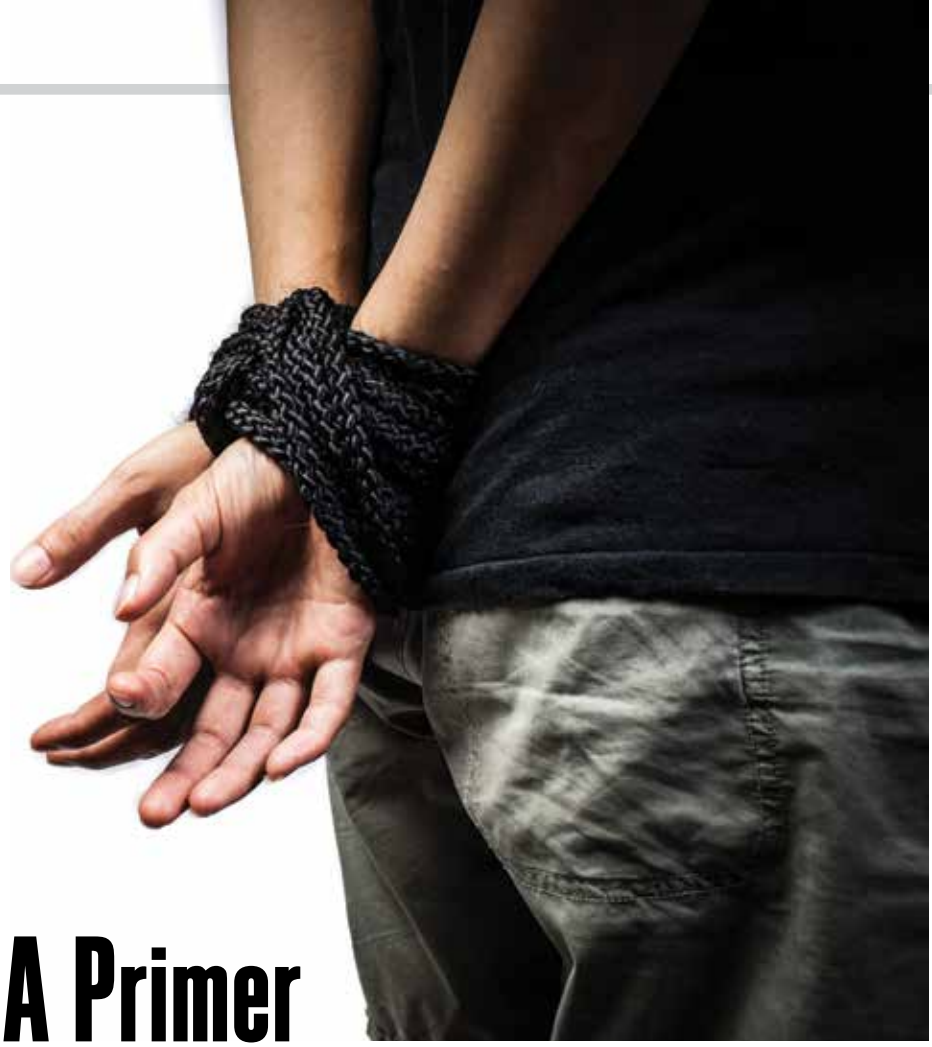
Contributions from Patricia Dailey Lewis on behalf of the Beau Biden Foundation



Human Trafficking: A Primer

An essential overview on "modern slavery"—victims, perpetrators, risk factors and the legislative remedies taking on this worldwide scourge.

Nothing was more important to former Delaware Attorney General Beau Biden than protecting those whose voices were marginalized — those who had lost their power or never had any power at all. Human trafficking was on Biden's radar throughout his eight-year tenure.

"Human trafficking takes place in the shadows, but the devastating effects on victims, families and communities are plain," said Biden. "Because these crimes occur without regard to local, state and even national boundaries, it is essential that we stand together across those borders to fight trafficking and help victims heal."[1]

When the federal Trafficking Victims Protection Reauthorization Act of 2008 lapsed in 2011, Biden and attorneys general from 46 states and American territories urged Congress to reauthorize the federal legislation. They argued that it was essential to adequately fund programs to help curtail the human trafficking industry and provide the resources necessary to rehabilitate survivors.

"Victims of trafficking include both U.S. citizens and foreign nationals, children and adults, trapped in forced labor and situations of sexual exploitation, with little hope of escape," the letter from attorneys general said. "Victims often experience severe trauma that requires intensive therapy and rehabilitation."[2]

What is Human Trafficking?

"Trafficking in persons," "human trafficking," and "modern slavery" have been used as umbrella terms for the act of recruiting, harboring, transporting, providing or obtaining a person for compelled labor or commercial sex acts through the

use of force, fraud or coercion.[3] Human trafficking is one of the fastest-growing criminal industries in the world, generating over $32 billion in profits to traffickers annually, according to some estimates.[4]

Human trafficking victims have been identified in cities, suburbs and rural areas in all 50 states, and in Washington, D.C. They are made to work or provide commercial sex against their will in legal and legitimate business settings, as well as underground markets. Sex trafficking has been found in a wide variety of venues within the sex industry, including residential brothels, escort services, fake massage businesses, strip clubs and street prostitution.

Labor trafficking has been found in diverse labor settings including domestic work, small businesses, large farms and factories. Some victims are hidden behind locked doors. In other cases, victims are in plain view and may interact with community members. However, the widespread lack of awareness and understanding of trafficking leads to low levels of victim identification by the people who most often encounter them.[5]

Trafficking vs. Smuggling: What's the Difference?

A common misconception about human trafficking is that it always involves the transportation of victims across international borders. Human trafficking and human smuggling are distinct criminal activities and the terms are not interchangeable.

Human trafficking centers on *exploitation* through sex trafficking, labor trafficking or both.[6] Human smuggling centers on *transportation* and is generally defined as the importation of people into the United States involving deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the country, as well as the unlawful transportation and harboring of aliens already in the United States.[7]

Domestic and International Trafficking

Domestic trafficking takes place entirely within the borders of one nation. International trafficking specifically involves the exploitation of a foreign national who has moved across international borders for the purpose of economic exploitation, most commonly in forced labor or sexual exploitation.

Victims of domestic trafficking can be citizens of the country where the crime occurs, permanent resident foreign nationals or immigrants, with or without documentation. The key difference is that the crime does not involve the crossing of international borders.[8]

In 2006, the U.S. State Department estimated that between 14,500 and 17,500 individuals were internationally trafficked into the U.S. While these victims came from all over the world, authorities indicate that a large portion come from Mexico, Central America and East Asia.[9]

The Victims: Risk Factors

In all forms of human trafficking, domestic or international, victims tend to be vulnerable, due to social factors like race, sex, gender identity, poverty or psychological factors like trauma or mental illness.

In the case of international trafficking into the United States, poverty, oppression or a war-torn home country is often a factor. Many victims choose to travel to the United States, either with or without legal documentation, and many solicit the help of a smuggler to help complete their voyage. At some point in their travels, they may be lured by a trafficker offering false promises, or kidnapped by a trafficker and transported against their will.[10]

There is no single profile for trafficking victims; trafficking occurs to adults and minors in rural, suburban or urban communities across the country. Victims of human trafficking have diverse socioeconomic backgrounds, varied levels of education and may be documented or undocumented.

Some individuals are at higher risk of exploitation. Runaway and homeless youth are extremely vulnerable to trafficking. A study in Chicago found that 56 percent of prostituted women were initially runaway youth and similar numbers have been identified for male populations.

Runaway youth are often approached by traffickers at transportation hubs, shelters or other public spaces.[11] These traffickers might pretend to be simply trying to help or use feigned affection and manipulation to elicit commercial sex or services from the victim. Unfortunately, for some victims, "the life" may be their first experience of "family" and belonging.[12] About one-third will be approached by a sex trafficker within 48 hours of ending up on the street.

"They'll offer them food, clothes and shelter in return for sex," says Nilda Castellanos from the Freedom Youth Project Foundation, an anti-trafficking group that was formed in 2010.[13] Of the more than 11,800 endangered runaways reported to the National Center for Missing and Exploited Children (NCMEC) in 2015, one in five were likely victims of child sex trafficking. Of those, 74 percent were in the care of social services when they went missing.[14]

Domestic violence often serves as a push or pull force. People at risk, usually women and girls, often fall under the control of traffickers while attempting to escape intimate-partner abuse. Conversely, they frequently inadvertently become ensnared in abusive intimate-partner relationships trying to escape sex or labor trafficking. Usually lacking economic resources and family support, victims are easy marks for intimate-partner predators. Desperate to leave intolerable conditions, they fail to see that the person offering refuge and protection is himself an abuser.[15]

Foreign nationals who find themselves in the United States face unique challenges that may leave them more susceptible to trafficking and exploitation. In 2013, 32 percent of calls to the National Human Trafficking Resource Center (NHTRC) with high indicators of human trafficking referenced foreign nationals.[16]

Once in the clutches of a trafficker, they may find it extremely difficult to escape their situation. Recruiters located in home countries frequently require such large recruitment and travel fees that victims become highly indebted to the recruiters and traffickers. These fees are inflated in order to create economic instability and dependency on the new employer or trafficker.

Traffickers leverage the inflexibility of work visas, as well as the lack of familiarity with surroundings, laws and rights, language fluency and cultural understanding in order to control and manipulate victims. Traffickers often instill fear in their victims by telling them that if they have police contact, they will be imprisoned. The fear created by this kind of deception

often prevents victims from reaching out for help.[17]

Traffickers frequently take away the victims' travel and identity documents, telling them that if they attempt to escape, the victims or their families back home will be harmed, or the victims' families will assume their debt.[18] International victims are commonly exploited by traffickers who share the victim's nationality. Often, the trafficker is a recently naturalized citizen, who brings victims over from his or her country of origin.[19]

How Traffickers Lure Victims

Traffickers target victims using tailored methods of recruitment and control they find to be effective in compelling that individual into forced labor or commercial sex. Tactics vary widely, but for the most part, the trafficker detects that the potential victim needs or wants something material, emotional or psychological and uses that as a way to reach out to him or her. If needed, traffickers will "groom" the victim to accept the sequential steps in their plan.

For example, several individuals in Delaware recently received a text message that read:

> Wow, I saw your picture on Facebook and you are so pretty, you could be a model! Call me so we can meet and talk about your bright future! ((((hugs))))

When detectives were given the cell number less than one hour later, they found that it was no longer a working number and had been sent from a disposable, pre-paid phone known as a "burner phone." Detectives speculated that this was a mass text that was sent to hundreds of random numbers. The sender was just casting a line, hoping that some naïve or dejected person would be pulled in by the message and open communications.

In the "grooming process," the next step might be days of phone conversations to build trust, requests for photos, more compliments and finally the in-person meeting. The trafficker only needed a working number for a short time because the immediate response tells the trafficker that there is some unmet need that might be exploited for his own financial gain.

Social media and other online resources present endless opportunities for traffickers. Some traffickers have contacted the potential victims on social networking sites such as Facebook and MySpace.[20]

Another type of trafficking effort starts with an online employment search and results in an unsuspecting victim relocating from her home on the promise of an unbelievably good job. After the victim has joined the offender, various techniques are used to restrict the victim's access to communication with home, such as imposing physical punishment unless the victim complies with the trafficker's demands and making threats of harm and even death to the victim and her family.[21]

Federal Efforts to Combat Human Trafficking

At the federal level, a number of important statutes exist to combat the problem of trafficking nationally and internationally. The most significant of these is the Victims of Trafficking and Violence Protection Act of 2000, generally known by its short title, the Trafficking Victims Protection Act (TVPA), and its subsequent reauthorizations.[22]

Trafficking Victims Protection Act of 2000 (TVPA)

The TVPA addresses prevention of human trafficking, prosecution of traffickers and protection for victims and survivors of trafficking. The TVPA defines trafficking as follows:

> Sex trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.
>
> Labor trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

This legislation created federal crimes that carry very significant penalties. Mandatory restitution to victims is also required and the statute created the Office to Monitor and Combat Trafficking in Persons, which annually produces a *Trafficking In Persons* (TIP) annual summary.[23]

Further, the statute created a form of immigration relief, known as the "T" visa, for victims of trafficking and their families in order to improve victim stability and encourage victim cooperation in prosecution of trafficking cases.[24]

The PROTECT Act (2003)

In 2003 Congress passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT Act).[25] The law criminalized travel abroad for the purpose of illicit sexual activity with children and established the *Amber Alert System* to alert the public to missing, exploited and abducted children.

Trafficking Victims Protection Reauthorization Acts (TVPRA 2003, 2005, 2008)

The TVPA was reauthorized in 2003, 2005 and 2008.[26] The 2003 reauthorization created a federal civil cause of action, along with immigration relief for victims and their families from deportation.[27] It also permitted the investigation/prosecution of human trafficking crimes under the Racketeering Influenced Corrupt Organizations (RICO) statute.[28] On the public education front, the Attorney General is required to file a report with Congress annually on the activities of the U.S. government in the fight against trafficking.[29]

The 2005 reauthorization recognized the impact of sex tourism on minors and their need for shelter when rescued, added persons convicted of sex tourism to the offender registry, raised the focus on labor trafficking, and established grant programs to assist states in their efforts to combat trafficking.[30]

The 2008 changes included requirements that the government provide information about workers' rights to all people applying for work and education-based visas. It also put in place new systems to gather and report human trafficking data and expanded the protections available with the "T" visa. Significantly, it re-

quired screening for all unaccompanied alien children as potential victims of human trafficking.[31]

Trafficking Victims Protection Reauthorization Act of 2013

In 2013, the TVPRA[32] was reauthorized as an amendment to the Violence Against Women Act.[33] It established emergency response provisions within the State Department allowing State to respond quickly to disaster areas and crises where trafficking is likely to occur. Collaboration between state and local law enforcement also was strengthened to allow more effective prosecution of traffickers.

The National Human Trafficking Resource Center

The National Human Trafficking Resource Center (NHTRC), a government-funded entity administered by the non-profit Polaris Project, maintains a hotline. Its statistics show that calls have steadily increased since its inception.[34] Comprehensive federal and state legislation providing resources and requiring coordination with this hotline allows law enforcement to better investigate and prosecute cases of human trafficking and provide expanded victim services.[35]

Delaware Efforts to Combat Human Trafficking

During Beau Biden's tenure as Attorney General, enormous strides were made to better protect vulnerable trafficking victims and improve victim services in Delaware.

The Delaware Human Trafficking Law

In 2014, one of the most important statutes was enacted, the Delaware Human Trafficking Law.[36] The Delaware bill was based in part on the *Uniform Act on the Prevention of and Remedies for Human Trafficking*, drafted and approved by the Uniform Law Commission (ULC) in 2013 and endorsed by the American Bar Association's House of Delegates in August 2013.[37]

Delaware attorney Michael Houghton, president of the Uniform Law Commission at the time, described the process as "a unique project for the Conference. Rather than being within its traditional 'wheelhouse' of commercial, regulatory or family law acts, the Human Trafficking law mixed civil and criminal enforcement and remedies in protecting victims and punishing perpetrators of the most heinous crime — human slavery in a modern world."

Mr. Houghton recently reflected on the significant achievement of enacting the Delaware statute: "In this final initiative which I shared with Beau [Biden] he was, as he always was, my valued friend and stalwart ally, fighting for the most vulnerable of victims — that same constituency he always championed throughout his career. The Act's successful and prompt passage in Delaware relied on the same partnerships — the Delaware Bar, advocacy groups, agencies and Delaware law enforcement. It only moved quickly and successfully due to the dedicated leadership of Beau Biden and the team at the AG's office, who worked on drafting and enactment, along with the Delaware Uniform Law Commissioners."

The Delaware legislation improved the existing trafficking statute by increasing the criminal penalties, expanding victim protections and implementing a plan of prevention. The new statute enlarged the definition of coercion to include use of force, abuse of or threat of abuse of legal process, manipulating a victim's access to controlled substances, taking or destroying a victim's identification documents, and using debt to control a victim. It expanded the definition of "sexually explicit performance" and defined the conduct of trafficker to include sexual servitude and forced labor.

The law sharpened Delaware's existing provisions penalizing the criminal conduct at the core of human trafficking by heightening the penalties for those who patronize the victims and the businesses that operate the trade. It increased the penalties when a trafficker obtains or recruits his victim at a shelter or foster home and requires restitution even if the victim is unavailable. The law empowers courts to order that traffickers forfeit property used in or gained by trafficking.[38]

The Delaware law protects the victims by making status as a subject of human trafficking an affirmative defense for a victim charged with prostitution or loitering. It provides a basis for a pardon application, expungement petition, or motion to vacate a conviction. It creates a safe harbor provision for minors engaged in commercial sexual activity and generally prohibits testimony at trial about the victim's past sexual conduct. The law also gives the victim standing to bring a civil cause of action against the trafficker.[39]

In order to prevent the expansion of trafficking and promote the elimination of its evils, the law creates a Human Trafficking Coordinating Council, which is tasked with developing a comprehensive anti-human-trafficking plan, evaluating data and effectuating interagency cooperation. The Polaris Project rated Delaware as one of the three states in the country with a perfect score for its human-trafficking law.[40]

The Delaware Victims' Compensation Assistance Program

The Victims' Compensation Assistance Program (VCAP) was created in 2013 during Attorney General Biden's final term in order to better protect vulnerable victims and improve victim services.[41] Administrative authority for the program was placed in the Delaware Department of Justice. VCAP is funded by income derived from an 18% surcharge levied on all criminal offenses, including motor vehicle offenses.[42] The program is also funded through restitution paid by offenders, probation fund interest and subrogation reimbursements.[43]

VCAP provides the ability to make immediate financial assistance to crime victims, including those of human trafficking, such as funds for temporary housing, moving and relocation. Payment for mental health counseling and medical bills enables those services to be swiftly implemented. VCAP gives advocates the ability to look at a case individually and determine what benefits are needed by each victim.

The Beau Biden Foundation for the Protection of Children

During his eight-year tenure as Delaware's Attorney General, Biden created a legacy of protection in Delaware law that continues through the Beau Biden Foundation for the Protection of Children.[44] The Foundation was created to address some of the issues involving child abuse raised by human trafficking.[45]

It will continue efforts Biden began through the Attorney General's office when he partnered with the non-profit Darkness to Light's *Stewards of Children* program to

educate 35,000 Delawareans about steps they can take to prevent, recognize and react responsibly to child sexual abuse.

The Foundation also hopes to partner with the National Center for Mission and Exploited Children to bring its online safety program, NetSmartz, to Delaware schools.[46]

Plans are also underway to offer a fellowship opportunity to address policy, legislative and legal issues for state attorneys working in the area of child protection.[47]

Public Education

More work is needed to educate the public on what human trafficking involves and what to do when trafficking is suspected. In 2016, the Walk Free Foundation, Gallup and Polaris undertook survey research to better understand the general awareness of the NHTRC's hotline number among the American public.

The results suggest that a relatively small proportion of the American public is informed about it — only 6.7% knew the NHTRC specifically and 12% were aware that there is a hotline focused on human trafficking. This indicates that the 5,544 cases reported in 2015 is likely a small proportion of the actual prevalence of human trafficking in the United States.[48]

Legislative enactments are just the beginning. Private and public efforts are needed to uncover and bring to justice those who traffic. Only then will we be able to eliminate the misery inflicted on the children and adults who are caught in their web. ◆

NOTES

1. *Biden Calls on Congress to Provide Critical Funding to Combat Human Trafficking.* (Nov. 02, 2012) available at http://news.delaware.gov/2012/11/02/biden-calls-on-congress-to-provide-critical-funding-to-combat-human-trafficking/

2. *Id*.

3. US Department of State, Office to Monitor and Combat Trafficking in Persons Annual Report (2015); http://www.state.gov/j/tip/rls/tiprpt/2015/243359.htm.

4. United Nations Office on Drugs and Crime. *Human Trafficking: Organized Crime and the Multi-billion Dollar Sale of People* (July 19, 2012) Available at http://www.unodc.org/unodc/en/frontpage/2012/July/human-trafficking_-organized-crime-and-the-multibillion-dollar-sale-of-people.html.

5. National Human Trafficking Resource Center (NHTRC), What is Human Trafficking? *The Victims.* Available at http://traffickingresource center.org/what-human-trafficking/human-trafficking/victims.

6. US Homeland Security, US Customs and Immigration Enforcement, *Human Trafficking Fact Sheet* available at https://www.ice.gov/factsheets/human-trafficking, (January 16, 2013). Last accessed 06/12/2016.

7. *Id.*

8. Human Smuggling and Trafficking Center, *Domestic Trafficking — An Internal Issue* (December, 2008) available at http://spokenfornm.com/domestic-human-trafficking-vs-international-human-trafficking-in-the-united-states/.

9. *Id.*

10. Sobolick, Christy, SpokenFor.com. Confronting Human Trafficking in New Mexico, *Domestic Human Trafficking vs. International Human Trafficking in the U.S.* Available at http://spokenfornm.com/domestic-human-trafficking-vs-international-human-trafficking-in-the-united-states/.

11. Sawyer, Diane. ABC News. *Lured Off the Streets: A Look at How Young Women Become Sex Trafficking Victims* (January 23, 2015). Available at http://abcnews.go.com/US/lured-off-streets-young-women-sex-trafficking-victims/story?id=28428792.

12. http://www.impactresearch.org/documents/sistersspeakout.pdf.

13. Fletcher, Melissa. MySanAntonio.com, *Sex Traffickers Use Charm to Lure Victims* (April 20, 2013) available at http://www.mysanantonio.com/news/local_news/article/Sex-traffickers-rely-on-charm-to-lure-victims-4449182.php. Last visited 06/12/16.

14. National Center for Missing and Exploited Children, *Key Facts About Missing Children* (2015). Available at http://www.missingkids.org/KeyFacts.

15. Leidholdt, Dorchen A., American Bar Association, Judges Journal, *Human Trafficking and Domestic Violence A Primer for Judges*, Vol. 52, No.1 (2013). http://www.americanbar.org/publications/judges_journal/2013/winter/human_trafficking_and_domestic_violence_a_primer_for_judges.html.

16. National Human Trafficking Resource Center, 2013 Statistical Overview 1/1/2013-12/31/2013, at p. 7. Available at http://traffickingresourcecenter.org/sites/default/files/NHTRC%202013%20Statistical%20Overview.pdf.

17. *Id.*

18. US Homeland Security, US Customs and Immigration Enforcement, *Human Trafficking Fact Sheet* available at https://www.ice.gov/factsheets/human-trafficking, (January 16, 2013). Last accessed 06/12/2013.

19. Polaris Project, *Victims and Traffickers* available at https://polarisproject.org/victims-traffickers.

20. Dixon, Herbert B., Jr., American Bar Association, *Human Trafficking and the Internet* (*and Other Technologies, too)*, Judge's Journal, Vol. 52, No. 1 (2013).

21. *Id.*

22. Victims of Trafficking and Violence Protection Act of 2000, P.L. 106–386, Oct. 28, 2000; 114 Stat. 1464 (2000).

23. US Department of State, Office to Monitor and Combat Trafficking in Persons Annual Report (2015), available at http://www.state.gov/j/tip/rls/tiprpt/2015/243359.htm.

24. Department of Homeland Security, US Citizenship and Immigration Services, *Victims of Human Trafficking: T Nonimmigrant Status.* Available at https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

25. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today, P.L 108-21, Apr. 30, 2003, 108 Stat. 1925 (2003); available at http://www.state.gov/j/tip/laws/120170.htm.

26. Victims of Trafficking and Violence Protection Reauthorization Act of 2003, P.L. 108-193, Dec. 19, 2003; 117 Stat. 2875 (2003); Victims of Trafficking and Violence Protection Reauthorization Act of 2005, P.L. 109-164, Jan. 10, 2006: 119 Stat. 3558 (2006); Victims of Trafficking and Violence Protection Reauthorization Act of 2008, P.L. 110-457, Dec. 23, 2008; 122 Stat. 5044 (2008).

27. Victims of Trafficking and Violence Protection Reauthorization Act of 2003, P.L. 108-193, Dec. 19, 2003; 117 Stat. 2875 (2003).

28.–29. *Id*.

30. Victims of Trafficking and Violence Protection Reauthorization Act of 2005, P.L. 109-164, Jan. 10, 2006: 119 Stat. 3558 (2006).

31. Victims of Trafficking and Violence Protection Reauthorization Act of 2008, P.L 110-457, Dec. 23, 2008; 122 Stat. 5044 (2008).

32. Victims of Trafficking and Violence Protection Reauthorization Act of 2013, P. L. 113–4, Mar. 7, 2013; 127 Stat. 136 (2013).

33. Violence Against Women Reauthorization Act, P.L.113-4, Mar. 7 2013; 127 Stat. 56 (2013).

34. The National Human Trafficking Resource Center is the U.S. government sponsored site for information on trafficking, including state by state analysis, statistics and legal protections for victims. *See*, https://polarisproject.org/national-human-trafficking-resource-center.

35. Available at http://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf.

36. 11 *Del.C* .§787; 80 Del. Laws, c. 26, § 3.

37. The bill was introduced April 10, 2014. News. Delaware.Gov. Bill to Fight Human Trafficking Introduced in Delaware (April 10, 2014), *see*, www.news.delaware.gov/2014/04/10/bill-to-fight-human-trafficking-introduced-in-delaware.

38. 11 *Del.C.*§787, et seq.

39. *Id.*

40. The other states are New Jersey and Washington. The Polaris Project is a national non-profit which has as its purpose the elimination of human trafficking. *See*, www.polarisproject.org.

41. 11 Del.C. §9001 et seq.

42. *Id.* at §9016.

43. *Id.*

44. Beau Biden served as Delaware's Attorney General from 2007-2015.The Biden Foundation was created in 2015 after his death.

45. Available at https://www.beaubidenfoundation.org.

46. Available at www.netsmartz.org.

47. Parra, Esteban. The New Journal, *Beau Biden Foundation Unveils Mission to Fight Abuse* (April 7, 2016). Available at http://www.delawareonline.com/story/news/local/2016/04/06/beau-biden-foundation-unveils-mission-fight-abuse/82667238/.

48. The Global Slavery Index, Country Index, United States. P.1, para. 6. Available at http://www.globalslaveryindex.org/country/united-states/.

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A roundtable discussion with Ayn Ducao, Abigail Rodgers Layton and Kristen R. Schultz, conducted by New Castle County Family Court Commissioner Loretta Young

The Battle Against Human Trafficking

BOB CRAIG

Three prosecutors share their insights on the challenges of detecting violations, protecting victims and holding perpetrators accountable.

Human trafficking is receiving a lot of media attention on the local and federal level every day as arrests continue. Although Delaware enacted a new Human Trafficking criminal statute in 2014, there have been no prosecutions specifically under that statute and the topic remains somewhat unfamiliar to many Delaware lawyers. However, two cases that began in Delaware in 2015 are being prosecuted federally and a dozen other arrests have been made on related charges.

As Delaware looks to the future, the neighboring state of Maryland could serve as an example. Maryland passed anti-human trafficking legislation in 2006 and thereafter formed the Maryland Human Trafficking Task Force (MHTTF). There have been numerous prosecutions, statutory amendments, collaboration with non-governmental agencies, and ongoing multi-disciplinary training.

Three top prosecutors were asked to step out of the trenches to compare notes on the obstacles they face in human trafficking cases. Abigail Layton is a Deputy Attorney General in Delaware and Chair of the Delaware Human Trafficking Council; Kristen Schultz is a Maryland State Prosecutor; and Ayn Ducao is an Assistant United States Attorney for the District of Maryland and the Chair of the Maryland Human Trafficking Taskforce.

Ms. Young: *What makes you think Delaware has a human trafficking problem?*

Ms. Layton

States across the country have been wrestling with human trafficking.[1] East coast states have been reporting and prosecuting trafficking cases for years now.[2] Delaware is a convenient area to live and work. However, that also makes it convenient for traffickers: quick and easy access by bus, train and car to major east coast hubs like New York, Philadelphia, Washington and Baltimore via I-95, which also connects the entire east coast.

The route is peppered with "opportunistic public locations" such as truck stops, strip clubs and massage parlors. Our neighboring states of Pennsylvania, Maryland and New Jersey rank in the top 12 for reports of human trafficking cases.[3] It is not logical to think that Delaware would be immune to trafficking.

Delaware also has agricultural and seasonal resort worker demands and we host several large, consecutive-day events such as NASCAR, Big Barrel and Firefly that are considered big business opportunities for traffickers.[4]

Delaware police agencies and the National Trafficking Hotline have been receiving documented complaints since 2012 about suspected trafficking in Delaware.[5]

Delaware also has gang activity. The FBI has long suspected revenues are derived from trafficking.[6] The Family Court has reported at least one incident of suspected trafficking by gang members and several other incidences of juvenile sex trafficking that remain under investigation.

And, we've actually had a good number of cases in which we just could not get enough evidence or victim cooperation to charge Trafficking, but we did charge felony Promoting Prostitution and other related crimes.[7] Two other cases that started here in Delaware are being federally prosecuted, and two Sussex County Delaware residents were indicted in a "just over the line" Maryland case.

Since 2014, I have seen at least 25 suspected trafficking cases and that does not account for all the less obvious cases that flew under the radar in the absence of state-wide training.

Ms. Schultz

Maryland has had many trafficking prosecutions and convictions, but prior to that we also self-identified as a "pass-through" state. Central location, accessibility and trafficker opportunities are definitely factors. In addition, we have BWI Airport as a means of transporting victims.[8] Just to give you some idea of the breadth and scope, the National Trafficking Hotline reports over 2,600 calls since 2012 and 640 cases in Maryland.[9]

Ms. Young: *Maryland enacted anti-Human Trafficking legislation in 2006 and Delaware in 2014. Now that you have had a chance to apply the statutes, what do you think is helpful about your state legislation and what would you amend if you had the choice?*

Ms. Layton

SB 197[10] significantly altered the existing statute in three ways with heightened criminal penalties,[11] better protection for victims and a plan for prevention. The legislation is comprehensive and addresses sex and labor trafficking, adults and minors. Victims can receive restitution from the trafficker and have other important protections at trial and post trial. The statute also created the Human Trafficking Coordinating Council, which is tasked with developing a comprehensive state-wide victim identification and prevention plan.

One area that requires some review is the expungement provision. When we look at states with successful anti-trafficking programs and laws, we see that many have a more expansive list of crimes subject to expungement. The HTCC is currently reviewing this issue and exploring options for change.

Ms. Schultz

I find the venue section of the Maryland statute, which reads "a person who violates this section may be charged, tried, and sentenced in any county in or through which the person transported or attempted to transport the victim," particularly helpful when the trafficking occurs in more than one county within the state, as it allows us to try the trafficking offense, as well as any other related crimes, all in one location.

Trafficking of adults is only a misdemeanor. It can be charged as a felony if you can prove force, fraud, coercion or forced marriage, but this has been challenged throughout the state due to the vague wording of the statute. I would like to see more perpetrator accountability and higher penalties. Trafficking of a minor (under 18) is a felony offense.

Ms. Young: *Maryland created a Human Trafficking Taskforce and Delaware created a Human Trafficking Council. Can you describe the role of the Task Force and Council?*

Ms. Layton

The Delaware Human Trafficking Coordinating Council is tasked with developing a plan to identify and service victims, as well as prevent trafficking. The Council is comprised of major stakeholder heads and an at-large member from each of our three counties.

Subcommittees focus on specific issues such as increasing public awareness, law enforcement and juvenile concerns. One of the Council's recommendations could be for the formation of a Task Force.

Ms. Ducao

The MHTTF is a multidisciplinary team of agencies and organizations that voluntarily collaborate to address human trafficking in Maryland.

Through joint efforts, victim service providers increase the identification of victims and provide a more comprehensive, specialized and coordinated response to victims' complex long-term needs.

Multiple state agencies aim to raise awareness at the local level to expose traffickers and develop polices to respond to victims with a unified protocol across state systems.

The MHTTF also trains law enforcement and prosecutors to ensure that traffickers are held accountable for their crimes.

Ms. Young: *Are most of your cases fairly clear trafficking cases from the onset or do the facts tend to develop?*

Ms. Layton

Delaware is just beginning to identify trafficking cases. The Council is reviewing various screening tools and conducting awareness trainings. About half of the cases come from referrals through the court system, attorneys or police agencies. The second half have arisen as a result of proactive police investigations. Training is definitely key. Cases are surely slipping through.

Ms. Schultz

Many cases will present as assault, drug or prostitution cases. Teaching first responders to ask follow-up questions has unearthed more trafficking cases. The goal is to scratch the surface on every case.

We generally look for some initial red flags such as whether the victim is in control of their identification or immigration documents, their ability to make decisions, and who controls the money they earn or the hours they work.

Ms. Ducao

When cases come to the USAO-MD, there has usually been sufficient investigation to conclude that human trafficking is present, or at least indicated. But something as simple as a runaway child may, upon further investigation or questioning, reveal that he or she was trafficked. Training is crucial for all stakeholders.

Ms. Young: *What are the most common victim avenues of entry into trafficking in state cases?*

Ms. Schultz

The heroin epidemic, at least on the Eastern Shore of Maryland, has been a segue into human trafficking for some drug dealers. This highly addictive drug allows vulnerable victims to be so completely controlled; drug dealers will use the drugs as a pawn, giving them just enough to get them feeling better, but not so much that they are too high to work, and then hold their next hit of heroin over their head until they meet their money quota.

In cases where the trafficker and victim are in close proximity, victims who attempt to maintain sobriety would be threatened with forcible injection of drugs in order to get them to work. In other cases, traffickers threatened to harm their family members if they did not meet quotas.

Ms. Layton

The truth is there is no one avenue of entry or one face that represents a victim of trafficking. Traffickers are skilled in manipulation. They find an individual's vulnerability and exploit it.

We know that, as with drug addiction, prior sexual and/or physical abuse makes an individual that much more vulnerable and susceptible to traffickers. This is magnified when combined with lack of family or system support where an individual is not able to meet their daily basic needs.

Ms. Young: *Do your agencies or states maintain statistical data on actual or suspected trafficking cases?*

Ms. Layton

Currently, we do track trafficking arrests. The HTCC is developing a plan for keeping track of suspected cases. Data collection is essential going forward for government and collaborative non-profits for purposes of planning and grants applications.

Ms. Ducao

The MHTTF collects data for the entire state of Maryland and this will be an area where we continue to improve. In 2014, the MHTTF identified that services were provided to 396 survivors of human trafficking. Of these, 381 were survivors of sex trafficking: 373 were U.S. citizens and eight were foreign nationals. Fifteen of that 396 were survivors of labor trafficking: 13 were foreign nationals and two were U.S. citizens.

Law enforcement and victim services try to track data. It is very difficult to get accurate numbers because a variety of agencies interact with victims. Victims may find the courage or safe opportunity to report to one or more agencies or to none. Data collection has to be a statewide, multi-agency commitment.

Ms. Young: *What are the factors in determining whether it will be state or federal prosecution?*

Ms. Layton

We assess who has the stronger case. If there are multiple victims in various states, one federal prosecution is better than multiple state prosecutions. We work very closely with our federal partners from investigation to arrest to conviction. The mutual goal is justice for the victims and to hold the traffickers criminally responsible.

Ms. Schultz

I agree with Ms. Layton. Penalties are a consideration for me. I compare the state sentence against the Federal time, including any diminution credits. In Maryland, human trafficking is often a misdemeanor and not considered a "crime of violence" for purposes of parole. Defendants do *not* have to serve half of their sentence before being eligible for parole on misdemeanors. Defendants can also get significant good time credits. Some end up serving only one-third of their sentence.

I will also look at what resources are needed to successfully prosecute. Often, small jurisdictions will not be in a position to do this and need federal assistance.

Ms. Ducao

The decision is very case specific. I agree with both Ms. Layton and Ms. Schultz. Federal statutes can provide significantly greater penalties such as mandatory minimums and mandatory restitution for the victims. The USAO-MD is particularly interested in cases involving children, multiple jurisdictions or multiple victims.

Ms. Young: *People often read the papers and wonder why the massage/prostitution cases are not prosecuted as trafficking cases. How difficult are these cases to make?*

Ms. Layton

To prosecute a trafficking case, the State must show the adult victim was coerced or deceived into the forced labor or sexual servitude. Victim cooperation is critical. It is difficult to develop prostitution cases into trafficking cases as many of these individuals do not identify as victims and report that they are acting independently and willingly.

Some of the challenges in working with trafficking victims include: determining who was a victim from the onset, language and cultural barriers, ability to obtain "truthful" testimony from the victims given their fear of the trafficker, lack of trust of law enforcement, and safety concerns for the victims' family members.

Traffickers are skilled manipulators and have deep psychological holds on many of their victims. In the digital era, many traffickers have captured compromising images and videos of their victims, which they threaten to share to the world so as to further alienate and isolate the victim by severing any last strands of connection with family or supportive outsiders.

We must continue to develop better relationships between the victims and law enforcement by providing more support to trafficking victims, beginning at the investigation stage. In particular, housing is crucial to stabilize victims if we hope to gain their cooperation.

We also must be able to cross the language and cultural barrier; languages with an array of different dialects have proven to be an issue.

Ms. Schultz

Trafficking cases are difficult and take a significant amount of time to investigate and develop. Often investigators are working backward, from the major precipitating event to identifying victims. Due to this backward investigation, evidence may be destroyed, might be missing, or is not timely.

As Ms. Layton noted, victims are scarred on many levels and need psychological, medical and social services. Prosecutors must consider the significant trauma bonding victims have with their traffickers. The trafficker may be the only provider; separating from him could mean being completely alone with no home, food, phone, money.

Ms. Ducao

The successful prosecution of human trafficking cases, more than any other kinds of cases in my experience, "takes a village," including our law enforcement and victim services partners.

The issues surrounding getting a victim to trust law enforcement and prosecutors can be magnified with foreign national victims as you add cultural and language barriers into the mix. In addition, the victim may have concerns about immigration status, which must be addressed.[12]

Ms. Young: *Is it possible to prosecute without a victim?*

Ms. Layton

The answer is usually no but depending on the factual circumstances it could be possible.

Ms. Schultz

It could be done with excellent video surveillance in which people are identified and the video authenticated. It could also be done when there is significant phone or social media records. It's possible, but very difficult.

Ms.Ducao

Again, it will depend on the facts of the case. You need internet ads for prostitution, other witnesses and other forensic evidence. Those cases are rare.

Ms. Young: *Do you make use of other civil or financial deterrents in your trafficking and suspected trafficking cases?*

Ms. Layton

The Delaware Trafficking statute[13] provides for the forfeiture of any real or personal property used to facilitate the crime. Additionally, the statute provides for restitution to the victims.[14]

Finally, business entities found to be criminally liable can be fined up to $25,000 per offense, disgorged of the profits gained from the illegal activity, and suffer debarment from state and local government contracts[15].

Delaware also has an Organized Crime and Racketeering (RICO) Statute at 11 *Del. C.* §1502(9) (b) (12) which specifically includes human trafficking. A conviction of criminal racketeering subjects a defendant to a class B felony (two-to-25 years) and a fine of not less than $25,000. Delaware just filed a $700,000 civil RICO forfeiture action against a Delaware massage parlor owner pursuant to 11 *Del. C.* §1506.[16]

Ms. Ducao

The USAO-MD certainly looks at other crimes with which a trafficker can be charged, if possible, as well as remedies under the forfeiture laws. In addition, restitution for a victim is mandatory under federal human trafficking laws.

Ms. Young: *What about prosecuting demand under state laws? How often does Delaware prosecute the consumer?*

Ms. Layton

11 Del. C. § 787(b) (4) and (c) (4) punishes demand by providing for penalties for those who patronize and penalties for organizations that knowingly permit exploitation. Paying a fee for sexual services is a misdemeanor under 11 *Del. C.* §1343 and a patron's vehicle may be subject to seizure under subsection (d).

While there have historically been patron prosecutions they happen less frequently. As we continue to increase awareness of human trafficking and hold the demand side more accountable, I anticipate that we will see an increase in these prosecutions.

Summary and Conclusions

The responses by these seasoned prosecutors make it clear. Predatory criminals in every state, including Delaware, are making profits by selling vulnerable human beings for labor and sex trafficking.

A successful anti-trafficking campaign for Delaware would require state-wide data collection for purposes of studies and grants, comprehensive victim services, multi-disciplinary state-wide training opportunities, and the development of collaborative protocols for major stakeholder agencies.

Delaware has taken a giant step forward and is on the heels of traffickers with new legislation, training and investigations and arrests. But there is still much work to be done. ◆

NOTES

1. https://traffickingresourcecenter.org/sites/default/files/2014%20NHTRC%20Annual%20Report_Final.pdf.

2. https://polarisproject.org/sites/default/files/us-citizen-sex-trafficking.pdf See Figure 1 Location of Sex Trafficking Cases.

3. https://traffickingresourcecenter.org/sites/default/files/2014%20NHTRC%20Annual%20Report_Final.pdf.

4. http://www.unanima-international.org/wp-content/uploads/11_13HTMajorSporting-Events-FINAL.pdf. See also https://www.scribd.com/doc/256655029/Exploring-the-Impact-of-the-Super-Bowl-on-Sex-Trafficking-2015.

5. Steel, Kelli, Delaware 105.9 News talk, *Prostitution Ring Busted Up in Seaford; 6 Arrested (April 22, 2016)* available at http://www.delaware1059.com/story/23806-prostitution-ring-busted-up-in-seaford-6-arrested; Sanginiti, Terri, The News Journal, *Massage Parlor Owner Arrested* (December 19, 2014) available at http://www.delawareonline.com/story/news/crime/2014/12/19/massage-parlor-owner-arrested/20638451/.

6. https://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/2011-national-gang-threat-assessment#GangsandAlien.

7. 13 *Del. C.* §1351 -1353 are all felonies based on promoting prostitution by a third party by managing, supervising, controlling or deriving a benefit of value from prostitution. Additionally, §1354-1355 are other options to consider, although misdemeanors.

8. http://www.mdhumantrafficking.org/maryland/.

9. https://traffickingresourcecenter.org/state/maryland.

10. http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/SB+197.

11. Penalties range from Class D felony (up to eight years in prison) to Class A felony (minimum of 15 years to life). http://cjc.delaware.gov/sentac/2016_BenchbookRevision_1_80615_OrigRevised_011416_SDH_FINAL_FINAL_FINAL.pdf.

12. Nonimmigrant Status (T visa) was authorized under the TVPA and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking. https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status.

13. 11 *Del C.* §787.

14. 11 *Del C.* §787(c)(1).

15. 11 *Del C.* §787(c)(2).

16. Reyes, Jessica Masulli, Delawareonline.com, *Delaware Sues Massage Parlor Owner in Prostitution Sting*, (May 17, 2016). http://www.delawareonline.com/story/news/crime/2016/05/16/delaware-sues-massage-parlors-owner-prostitution-sting/84453314/.

Shea M. Rhodes
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Trauma and the Trafficking Victim: A Barrier to Assistance

The impacts and symptoms of trauma may make it much more difficult to win victim cooperation.

It is important that attorneys recognize that victims of sex trafficking can be uncooperative witnesses or clients. The trauma that victims have experienced can drastically alter the brain, causing victims to shift their sense of normal, become attached to their traffickers, and encode memories in sensory fragments rather than sequential order.

As a result, victims may not trust attorneys trying to help them and instead appear stubborn — refusing to testify against their traffickers, absconding before trial, or appearing incredible on the stand as they struggle to recall memories.

If unaddressed, this mistrust can lead to unsuccessful legal proceedings against traffickers. However, through the use of victim-centered approaches, attorneys can build trust and rapport with victims of sex trafficking, which can help secure successful outcomes in legal proceedings.

This article explains why victims of sex trafficking often resist the legal system and struggle to recall memories, and explores various victim-centered approaches to develop connections with victims that will ultimately ensure success in criminal and civil cases.

Why Victims of Sex Trafficking May Resist the Legal System

Victims of sex trafficking often have counterintuitive reactions to the crimes that have been committed against them — such as running away from authorities. Consequently, victims of sex trafficking may not trust attorneys, whom they view as an extension of law enforcement. This lack of trust is precisely because of the traumatic experiences inherent to their victimization.

Sex trafficking yields traumatic responses in victims and trauma can drastically alter a victim's perception of reality.[1] Traffickers exercise coercive control over their victims through violence, threats of brutality, torture and harm to loved ones, and controlling access to food, substances and life necessities.[2]

Moreover, traffickers typically convince victims that they are their protectors, boyfriends and father-figures, and refer to "the stable"[3] of victims they personally control as a family.[4]

As a result, victims become isolated from society, exist in a world where a daily fight for survival is normal, and develop an attachment to their traffickers known as Trauma Bonding.[5]

Trauma Bonding can cause a victim to

blame herself for her victimization, rather than her trafficker.[6] Victims use self-blame and self-punishment as coping mechanisms that allow them to re-frame their situation as if they are in control — believing they are bad, stupid, undeserving of a better life, or that they caused their situation.[7]

As Becca C. Johnson, Ph.D., described in her article, *Aftercare for Survivors of Human Trafficking*, "Victims are scared, in survival mode, and/or filled with immobilizing shame."[8]

Child victims of sex trafficking are at a stage where forming trust and identity are crucial for successful adulthood. Because of this traumatic interruption in development, they often misconstrue relationships and develop an aversion to professional adults trying to help them, including attorneys.

As a result, victims are often unwilling to cooperate with attorneys, and will exercise their voice through anger, lashing out and rejecting assistance until healthy relationships and trust can be built.

Finally, victims of sex trafficking tend to resist cooperating with attorneys due to their lack of impulse control. As Sandra L. Bloom, M.D., explains in her article, *The Mental Health Aspects of IPV: Survivors, Professionals, and System*, in Intimate Partner Violence, Domestic Violence, and Spousal Abuse: A Resource for Professionals Working with Children and Families, "Dissociative defenses that may have been life-saving at the time of the traumatic events may become chronically utilized, even under less stressful conditions so that other, more positive forms of stress management are not learned."[9]

Essentially, victims' tendencies to shut down, run, or refuse assistance are symptoms of the very trauma they have suffered.

Why Victims May Resist Prosecutors and Law Enforcement Specifically

Victims of sex trafficking may specifically not want to cooperate with attorneys who they view as "law enforcement." One of the means traffickers use to keep their victims compliant and isolated from society is to convince the victims that law enforcement want to arrest them because the victim is "bad" or a "criminal."

Traffickers deliberately instill fear of law enforcement in their victims in several ways. First, traffickers force their victims to commit crimes with them. Victims of sex trafficking frequently accumulate arrests and convictions for the crimes of "prostitution, loitering or obscenity […] as a direct result of being a victim of human trafficking."[10] Traffickers will then tell victims that if they are not compliant with the trafficker's demands, the trafficker will report them to law enforcement and law enforcement will prosecute them. As a result, victims fear law enforcement.

Delaware policymakers recognized traffickers' use of fear of law enforcement as a means of "coercion" when codifying its trafficking law and enumerating "the abuse or threatened abuse of law or the legal process."[11] If the victim has feared law enforcement for a long enough time, it will be difficult for them to suddenly trust law enforcement — especially when law enforcement is in pursuit of her trafficker, who she may still remain loyal to for the reasons discussed.

Victims of sex trafficking need time to heal and process the trauma they have encountered before they can trust law enforcement.

Why Trafficking Victims May Struggle to Recall Memories

Once victims are ready to participate in cases against their traffickers, they may appear to be incredible clients or witnesses because they may struggle to recall memories. According to David Lisak, Ph.D., "When a human being experiences an intensely threatening, terrifying event, there are really dramatic changes to the brain and how the brain functions."[12]

When the brain functions normally, it enables us to encode experiences sequentially and contextually — "how most people think of memory."[13] As someone undergoes a traumatizing experience, their brain releases neurotransmitters that begin to "handicap" the frontal lobes of the brain, which "fundamentally alters how the brain processes what is going on so we no longer encode experience in the same way."[14] Instead "experience is encoded as intense […] sensory fragments" — sights, feelings, sounds, smells, and tastes — "the kernels of […] flashbacks and nightmares."[15]

For example, during an evaluation with a victim of a sexual assault, Lisak noticed the victim continually gripped her wrists.[16] When he asked her what she feels when she does that, she replied that for weeks she had felt as though someone was holding her wrists.[17] This led to "crucial, forensic information," — the rapist had held her down by her wrists.[18] The sensation of the gripping she still experienced was the way her brain encoded the experience — "she had no conscious access" to this memory.[19] All she could do is "report the sensation."[20]

This could be even more drastic in child victims because "the frontal lobes [of the brain] are the last part of the brain to develop" — not fully forming until an individual's early to mid-twenties.[21] Furthermore, in victims who have been repeatedly victimized, their brains enter terror mode much quicker.[22] As soon as they become scared, "all of the memories, the prior traumatic experiences" are triggered "so their brain simply goes much more quickly into this terror mode."[23]

Consequently, trauma victims may be unable to accurately answer questions related to context and sequence.[24] Lisak says, "When you ask somebody who has been traumatized, whose brain has encoded the experience as these sensory fragments like this — they have very accurate information they can give you, if you ask them questions about those sensory fragments. But the moment you start asking them questions that have to do with context and sequence, […] you run the risk of getting information […] that may be inaccurate."[25]

For example, when asked, "What happened first?" a victim may not be able to recall the sequence of events. The victim, however, may try to logically place the encoded sensory fragment "memories" they have in sequential order.[26]

This could be problematic during legal proceedings. If the victim's statement is an inference and not a memory, the victim may make an inconsistent statement when asked the same question again.[27] Traffickers' defense attorneys will see this as an opportunity to make the victim look as though they are lying or incredible. In reality, the victim is unable to recall the sequential order because their brain did not encode the event that way.[28]

Victim-Centered Approaches for Successful Legal Proceedings

At the outset, the most important thing attorneys can do to ensure success

in legal proceedings against traffickers is respect the time victims need to heal and process the trauma they have experienced. Victims should be referred to trauma-informed services, but leave the choices of if, when and how to engage those services to the victim.

Shared Hope International reported in their publication, *Demanding Justice Arizona: A Field Assessment of Demand Deterrence and Justice for Victims*, "Prosecutors reported that giving victims time to access services and become more stable can extend the trial process substantially, but also benefits the prosecution because victims who received services and established rapport with prosecutors are better witnesses."[29]

Attorneys must begin to build trust and rapport with victims through use of several victim-centered approaches. First, attorneys should ensure victim services remain accessible to victims during the course of legal proceedings.

Prosecutors further noted that through focusing on building rapport, prosecutions were more successful.[32] For example, "a victim who ran away during an investigation eventually returned and contacted the prosecutor, ultimately leading to a successful prosecution."[33]

Attorneys should also tailor questions to accommodate the victim's uniquely-encoded memory. Attorneys should avoid consistently questioning victims in terms of sequence and context.[34] Instead, attorneys should opt for "sensory-based questions" such as: Can you describe physical sensations you felt? What did you hear? Describe what you smelled.[35]

The victim will likely be able to vividly describe sensory fragments, and this can lead to the discovery of crucial forensic evidence.[36] Attorneys should also be cognizant of any subtle behavior a victim displays similar to the above example of the woman gripping her wrists.[37]

Attorneys should also be respectful of victims' property.[38] By simply respecting that certain items may make victims feel safe — and in some cases, these may be the only physical items victims have in their possession — attorneys can further gain the trust of their witnesses or clients and build critical rapport.

Attorneys should also acknowledge that testifying/interviewing can be re-traumatizing and seek out alternative mechanisms or environments to obtain information. For example, law enforcement could "conduct interviews at the station in a 'soft interview room' that would feel less intimidating for the victim" or provide options for victims such as "testifying via closed-circuit televisions."[39] Attorneys should also consider the use of expert witness testimony where appropriate.

Finally, it is important attorneys make victims aware of their rights during legal proceedings. For example, the Delaware Victims' Bill of Rights grants certain protections to victims during criminal proceedings.[40] Some of these rights include: keeping certain information about the victim confidential, providing a separate waiting area from the defendant, ensuring victims are aware of their rights with respect to employers, etc.[41] Additionally,

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victims should be made aware of all protections included under Delaware Rape Shield Law.[42]

It is also important that attorneys not risk damaging the fragile relationship they have developed with a victim. If something from their past is inadmissible, the attorney should not tell a victim that the instance "won't come up" but rather that it "might come up during a motions hearing, but the jury will not hear this evidence." Candor will nurture trust between the victim and the attorney.

Conclusion

Victims of sex trafficking may be reluctant to trust the legal system because of the traumatic experiences they have suffered. Victims may also struggle to recall memories of their traumatic experiences, making them appear incredible on the stand.

For these reasons, it may seem difficult to obtain successful results in trafficking cases. However, using victim-centered approaches to develop trust and rapport with the victim of sex trafficking is the best practice in successful legal proceedings against traffickers. ◆

NOTES

1. Becca C. Johnson, *Aftercare for Survivors of Human Trafficking*, 39, Journal of the North American Association of Christians in Social Work, 370, 376 (2012).

2. Id.

3. Stable refers to "a group of people under the control of a single trafficker. The choice of a farming word is not accidental. Traffickers consider their victims to be no better than animals." Joe Parker, *Prostitution Terminology & Slang*, Gandberg.com (June 7, 2015, 11:49 AM), http://genderberg.com/boards/viewtopic.php?f=10&t=1244.

4. Johnson, *supra* at p. 377.

5.–8. *Id.*

9. Sandra L. Bloom, M.D., *Mental Health Aspects of IPV/DV: Survivors, Professionals, and System*, in Intimate Partner Violence, Domestic Violence, and Spousal Abuse: A Resource for Professionals Working with Children and Families 1, 6 (Giardino, A.P. & Giardino, E.R. eds., 2010).

10. Delaware recognized this when enacting its vacatur statute, 11 Del. C. § 787(j) (1)-(4) which includes, prostitution, loitering and obscenity committed as a direct result of being a victim of human trafficking. Furthermore, under § 787(h), being a victim of human trafficking is an affirmative defense for the crime of prostitution and loitering committed as a direct result of being a victim of human trafficking.

11. 11 *Del. C.* § 787(a) (2).

12. Dr. David Lisak, *Neurobiology of Trauma, Arkansas Coalition Against Sexual Assault* YouTube Channel (May 25, 2016, 6:22 PM) https://www.youtube.com/watch?v=py0mVt2Z7nc.

13.–28. *Id.*

29. Shared Hope International, *Demanding Justice Arizona: A Field Assessment of Demand Deterrence and Justice for Victims*, 49 (2015). http://sharedhope.org/wp-content/uploads/2015/05/Arizona-Field-Assessment-Report-ONLINE.pdf .

30.–33. *Id.*

34. Dr. David Lisak, *Neurobiology of Trauma*, Arkansas Coalition Against Sexual Assault YouTube Channel (May 25, 2016, 6:22 PM) https://www.youtube.com/watch?v=py0mVt2Z7nc.

35.–37. *Id.*

38. Shared Hope International, Demanding Justice Arizona: *A Field Assessment of Demand Deterrence and Justice for Victims*, 48 (2015). http://sharedhope.org/wp-content/uploads/2015/05/Arizona-Field-Assessment-Report-ONLINE.pdf.

39. *Id.* at 48-49.

40. 11 *Del. C.* § 9401.

41. 11 *Del. C.* §§ 9403, et seq.

42. 11 *Del. C.* §§ 3508-3509.

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Mary McDonough
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Human Trafficking Court: Lessons Learned, Much More to Do

Identifying victims and then focusing on treatment, support and aftercare are essential to start the healing process.

Prostitution is the form of human trafficking with which we are most familiar. Rachel Moran, a woman in Ireland who had been prostituted from the ages of 15 to 22, wrote a profoundly compelling account of her experience and her insights:[1]

> The overriding feeling when reflecting on the experience of prostitution is simply this: loss. Loss of innocence, loss of time, of opportunity, of credibility, respectability, and the spiritually ruinous loss of connectedness to self. . . . My summation of my experience of prostitution was simply this: I lost myself. . . . The belief that prostitutes are in control has no basis in reality, but has two practicable functions, related but distinct: to sanitise [sic] and excuse the economic and sexual abuse of women by men, and to obscure the core of prostitution's true nature: the commercialization of sexual abuse.

Ms. Moran said her reason for writing her book was that she "wanted to do my part by drawing attention to the true nature of prostitution, to give a face and a shape to the hideous nature of being molested for money."[2]

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The young woman stood at the courtroom podium with her head down, but a fresh black eye was evident. "How are you doing?" "Fine," was the quiet reply. "So, what's been going on lately?" "Nothing," was the mumbled answer.

Once at sidebar, however, on the record but with some measure of privacy, her words tumbled out. The young woman said she had been beaten up and raped on the street. She further explained that she had been carrying a bag with all of her clothes, which her assailant had stolen, so she had only the clothes she was wearing.

"Have you reported these crimes to the police?" "No — and I don't plan to," she

answered with a facial expression that said, "What a naive question." This defendant, on probation for a non-violent misdemeanor, did not believe she had access to justice, at least not to report that she was the victim of violent crimes.

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Two women, arrested in a massage parlor sting, are asked, "Where do you live?" Through a Mandarin interpreter, they explain that they had stayed in hotels in Delaware and now live in hotels in Flushing, New York, but they don't know any addresses. These women, standing at a courtroom podium, kept their heads down, too, most of the time, but when they did look up, the fear in their eyes was palpable.

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At a regular capias calendar, a woman, probably in her 40's (but looking much older), owed money on a traffic fine for a no insurance charge. She asked to be sent to prison for the fine she owed. There had to be much more to her story; so, she was asked to wait until the end of the calendar in order to avoid a packed courtroom.

When it was finally her turn, this weary looking woman explained that her father had put her into prostitution when she was a teenager. She then turned to drugs to numb the pain, and for decades had been involved in street-level prostitution for survival.

She was sick of that awful existence, and wanted a safe place to stay. She wanted to go to prison to get off the streets and find a way out of the so-called "Life."

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These stories are not dramatized. Unfortunately, they are all true. The first three unnamed women were participants in Delaware's Human Trafficking Court (HTC) program, and the fourth was one of the catalysts for starting it.

Human Trafficking Court (HTC)

The Court of Common Pleas (CCP) started the treatment court for trafficked/prostituted adults in 2012. While there are no gender restrictions, all but two of the participants have been women.[3] The program started with no new CCP resources, but now has a contractual employee who works two days a week for the Court, serving as the coordinator for the program. The HTC calendar is held one afternoon per month, and represents 2.5% of the judicial officer's court calendars each month.

The HTC program operates in New Castle County only. It has had 104 participants, 26 of whom have successfully graduated. For many of these women, this was the first graduation in their lives. The HTC has operated primarily as a post-adjudication program, that is, cases involving a conviction with related probation sentence.

In 2012, the year this program started, the Chicago Coalition of the Homeless prepared a comprehensive report (Chicago Report) which identified 12 post-adjudication courts in the United States, including Delaware's effort.[4]

We have learned that the "best practices" model for prostituted/trafficked persons is that of a pre-plea diversion approach rather than a post-adjudication model.[5] CCP, in conjunction with State and nonprofit agencies, is working on developing a diversion component for those individuals for whom it is appropriate.

The HTC program has generally involved women with backgrounds in street-level prostitution. Following massage parlor stings, however, we also have seen women from other countries who do not speak English and cannot give a home address, saying that they move from hotel to hotel. In those cases, the State has agreed to a *de facto* diversion approach to avoid a criminal conviction for women arrested in the sting. Conviction for a "crime of moral turpitude" may risk deportation for the women and only serves to punish victims of commercial sexual exploitation.

Prostitution/Trafficking: Incidence and Enforcement

It is difficult to quantify the incidence of prostitution/human trafficking involving defendants in the Delaware court system. Unlike a DUI or Drug Treatment Court in which the type of criminal charges signify the type of need, it is generally *not* a prostitution charge that brings these women into the criminal justice system. Typically, charges for the HTC participants include loitering, possession of drugs/paraphernalia and shoplifting. When a law enforcement sting operation is conducted at a massage parlor or on the streets, the court sees cases involving prostitution charges.

While Delaware's HTC program is small, the incidence of trafficked/prostituted women in Delaware is likely much larger. A full-time employee in the KEY drug treatment program at Baylor Women's Correctional Institution estimated that about 90% of the women prisoners in the program had exchanged sex for money or drugs. While this is an estimate only, even if it were halved, it is troubling.

The number of women defendants who have been commercially sexually exploited is a problem that is likely "invisible in plain view" in the Delaware criminal justice system. Training in identifying the "red flags" of trafficking is needed for court personnel, including members of the judiciary, as well as prosecutors and defense attorneys, probation officers and law enforcement officers.

"Prostitution/trafficking enforcement in Delaware has focused more on the supply side (generally involving women defendants) than on the demand side (generally involving men defendants). From January 2012 to April 2016, arrests for prostitution and loitering for sex in Delaware totaled 419; arrests for patronizing a prostitute ("johns") were 145. Arrests for promoting and permitting prostitution ("pimps") totaled only 27.[6]

Thus, over the past 4⅓ years, 71% of the arrests were of prostituted persons, 24% were of their customers, and only 5% were of the pimps/traffickers. In 2014, Delaware passed a Human Trafficking law.[7] There have not yet been any prosecutions under this statute.[8]

The Role of Trauma

The HTC participants have experienced extensive trauma in their lives. Many of the women involved in street-level prostitution were the victims of neglect and abuse as children, and, in particular, sexual abuse. According to the National Center for Youth Law, those with a history of childhood sexual abuse have a 28 times higher risk of becoming victims of commercial sexual exploitation.[9]

Most women in our HTC program first became involved in prostitution as teenagers, sometimes victimized by their own family members. Others ran away from dysfunctional families or foster care, and into the arms of the pimp/trafficker who

held himself out as their "boyfriend." The women's stories are told in a powerful video at https://vimeo.com/44731338.

A former foster-care youth described the parallels between foster care and sex trafficking in the following way:

> …being in foster care was the perfect training for commercial sexual exploitation. I was used to being moved without warning, without any say, not knowing where I was going or whether I was allowed to pack my clothes. After years in foster care, I didn't think anyone would want to take care of me unless they were paid. So, when my pimp expected me to make money to support 'the family,' it made sense to me.[10]

Drug addiction and mental health issues are common characteristics of the HTC participants. At least to some extent, these treatment needs are related to the trauma these women have survived. The State Division of Substance Abuse and Mental Health's TASC program, Brandywine Counseling and Community Services, Gaudenzia and other agencies are dedicated partners in addressing the behavioral health needs of the women. Pimps, however, often try to keep the women on drugs.

Stigma regarding prostitution/trafficking is experienced by the women. As Ms. Moran wrote:

> The truth of the matter was that I desperately wanted a 'real job.' I wanted the social validation of a job. I wanted the authentic place in society I felt such a position would afford me. I desperately craved that sense of normalcy and legitimacy. In fact, I felt absolutely starved of it, but I could not tell anyone that, because to do so would have been to lay bare a lack I could only just admit to myself. It is a silently devastating understanding, to know yourself as an outcast.[11]

Part of our program's focus is to emphasize to the women that they deserve to be treated with respect and dignity. These trauma and abuse survivors need to be reminded, over and over again, of their self-worth. Regrettably, when the program is referred to in derogatory terms or when some in the criminal justice system treat these women with smirking contempt and disdain, this message of self-respect and encouragement needs to be continually reinforced.

Aftercare for Adult Survivors

A trauma-informed approach is central to the HTC program. Along with drug and mental health treatment, trauma counseling helps victims start to heal from the layers of trauma in their lives.

Housing is also key to the recovery process. Research finds housing to be the greatest need for sex trafficking victims.[12] The first step is providing effective services and advocacy programs to assist survivors to successfully transition to their new communities. For this population, emphasis should be placed on long-term support that complements the more common and

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shorter intervention of emergency shelter and crisis counseling.

Providing victims with basic safe shelter is only the beginning of assisting them in rebuilding their lives as they reenter society. Richard Estes, a professor of social policy at the University of Pennsylvania, states that the "best fighting chance" for victims of sexual exploitation is "24/7 residential care for a long period of time. … This is not a quick-fix situation." [13]

In our neighboring state of Pennsylvania, a nonprofit agency has operated a residential program for the past seven years, called Dawn's Place, which is specifically designed for survivors of human trafficking. Delaware currently has no such specially designed program. However, two nonprofit agencies in Delaware hope to change that situation.

Once a survivor is removed from the trafficking context, comprehensive aftercare includes practical assistance, which may include the following: housing, food, clothing, medical and dental care, physical safety, health education, legal (including immigration) services, protection by law enforcement or through the justice system, English language learning and interpretation, independent living skills, educational opportunities, vocational training, job placement, transportation, human rights education and economic assistance.

Many of the women we serve tell us that our program becomes their "family" because they do not have any family support system. After the women leave the program, successfully or not, a mentor-type program is needed in the future to help provide ongoing support to these vulnerable individuals.

An anti-trafficking organization, the Coalition to Abolish Slavery and Trafficking, which provides comprehensive aftercare, states:

> . . . victims cannot become survivors without . . . a social service advocate to ensure access to benefits and services and to provide supportive counseling, validation, and normalization; a shelter or housing program to ensure basic necessities are provided; and finally, critical legal services that assist victims in navigating complex criminal, civil, immigration, and other legal proceedings that ultimately deliver the person to full status and work authorization.[14]

The identification of service needs from the victim's perspective is crucial when collaborating with other agencies. Gathering information from the survivors would provide a complementary perspective to best practices. Aftercare workers are encouraged to respond by advocating for greater inter-agency communication and for more housing options for these survivors. Trafficking victims will be served more effectively and organizations will become more effective when collaboration is an integral part of aftercare.

Conclusion

Lessons from the past four years of Delaware's Human Trafficking Court include, among others, the following:

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• Most of the women involved in street-level prostitution are survivors of childhood neglect and/or abuse, often sexual abuse. Until they heal from that trauma, along with the ongoing trauma they experience as adults on the streets, drug addiction is hard to attack, as it numbs the pain.

• Stigma against this particular group of people is often greater than for many other types of criminal defendants, and the women feel that stigma.

• The State of Delaware needs to develop trauma-informed aftercare services, including housing, for both juvenile and adult survivors of sex trafficking.

A paradigm shift is needed whereby we begin to see adult prostituted women as survivors of trauma and engage them in the treatment that is long overdue. As kids, they often did not have an adult in their lives to protect them from abuse and/or neglect. The "system" failed them and it is time for it to try to help them heal. For juvenile victims of trafficking, it is essential to intervene as soon as possible to stop the sexual exploitation and to start the healing much earlier in their lives.

Those of us involved in Delaware's Human Trafficking Court will be relieved if and when the day comes when there is no longer a need for this type of treatment court; when there are no longer women like those described at the beginning of this article who are standing at the podiums in Delaware courtrooms as criminal defendants. Unfortunately, that time is not now. ◆

NOTES

1. Moran, Rachel, *Paid For, My Journey Through Prostitution*, 171-172, 180-186, W.W. Norton & Co. (2015)
2. *Id.* at 294.
3. For the sake of this article, the term "women" will be used to describe the HTC participants.
4. Muellar, Daria, Chicago Coalition of the Homeless, *Treatment Courts and Court-Affiliated Diversion Projects for Prostitution in the United States*, (2012) available at http://www.chicagohomeless.org/report-release-treatment-courts-and-court-affiliated-diversion-projects-for-prostitution-in-the-u-s/.
5. *Id.* at 7.
6. Data received from Peggy Bell, Executive Director of the Delaware Criminal Justice Information System (DELJIS), at special request for this article.
7. 11 *Del. C.* §787
8. Data received from DELJS at special request.
9. Walker, Kate and Fiza, Quraishi, National Center for Youth Law, *From Abused and Neglected to Abused and Exploited: The Intersection of the Child Welfare System with the Commercial Sexual Exploitation of Children*, (2014), available at http://youthlaw.org/publication/from-abused-and-neglected-to-abused-and-exploited/.
10. California Child Welfare Council, *Ending the Commercial Exploitation of Children: A Call for Multi-System Collaboration in California*, at 6; available at https://traffickingresourcecenter.org/sites/default/files/Ending%20CSEC%20-%20Multidisciplinary%20Respones%20in%20CA%20-%20CCWC.pdf.
11. Moran, *supra* at 199.
12. Elliott, D., Fallot, D., Markoff, L., & Reed, B.J., (2005). *Trauma-informed or trauma-denied: Principles and implementation of trauma-informed services for women.* Journal of Community Psychology, 33(4): 461-477.
13. Markman, J., *Rescued child prostitutes not receiving help*, Los Angeles Times, Dec. 8, 2009. Last accessed 6/10/16. http://articles.latimes.com/2009/dec/08/nation/la-na-child-prostitution8-2009dec08
14. Coalition to Abolish Slavery and Trafficking, *Client Services Program*, retrieved from http://www.castla.org/client-services-program.

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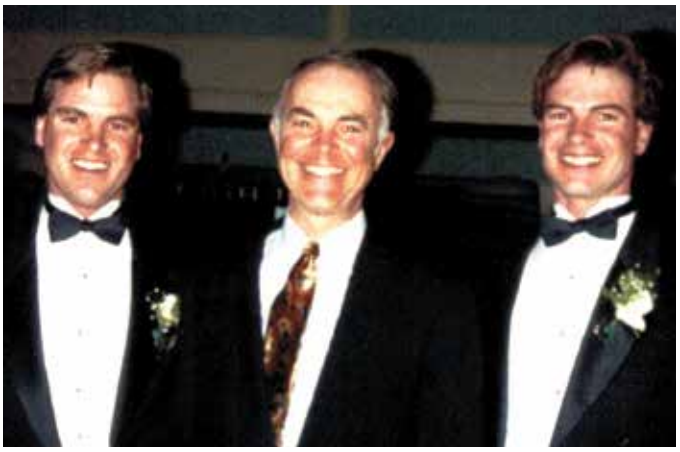

It is an honor to write about the Honorable Jay H. Conner, our dad, someone who, in our view, achieved "a perfect balance" in his career.

After graduating from P.S. DuPont High School in 1956, dad forfeited a chance at professional baseball and instead attended the University of Delaware. Amazingly, he never purchased a book for college but simply wrote down everything the professor said. During his time at Delaware, dad continued his relationship with our mom, Janice Hurlock Conner, whom he met on the boardwalk in Rehoboth Beach. They are still married after 55 years.

Mom and dad moved to Pennsylvania so he could attend Dickinson School of Law on scholarship. He served as the Associate Editor of the *Dickinson Law Review* while mom taught school in Carlisle to support him and our sister Kim.

After graduating and passing the bar in 1963, he was hired as an associate with Keith & Koffenberger. In 1964, dad began his six-year career with the Delaware Attorney General's Office. This period included one of his proudest legal moments when, at the age of 29, he made a successful argument before the United States Supreme Court.

According to former Superior Court Judge Jerome Herlihy, his co-counsel in the retrial of the case, the defendant asked dad during a recess, "Why are you so intent on gaining a conviction against me?" Dad's response was classic: "I heard the prison team needs a good shortstop."

In 1966, dad started a firm with Bob Dailey and was a true general practitioner. He litigated criminal and civil cases, conducted real estate transactions, prepared wills, served as Special Counsel to the Department of Labor and acted as City Solicitor for Middletown. The firm grew with the additions of Jim Erisman, David Erisman and Piet Van Ogtrop.

During his early years in private practice, dad recognized the need to achieve a balance between his professional career, family and friends. His focus on family included coaching our sports teams, ski trips and many boating adventures fishing, crabbing and clamming.

As many know, dad's true passion is golf. Piet Van Ogtrop recalls "being stranded on a sandbar at 2:30 a.m., wondering if they would make their tee time for a tournament a mere five hours later." That passion never diminished even as he guided us around the golf course as young players, a true testament to his patience.

Spending time with family, which now includes six grandchildren, always brings a smile to his face.

In 1982, 34 years ago, dad joined the Family Court Bench. Upon retirement, he was the longest-serving Family Court judge. As a judge, dad employed the same hard work, command of the law and use of logic and common sense that made him a successful practitioner. Family Court Chief Judge Michael Newell remarked that "his ability to promptly issue decisions on complicated cases was astounding."

Dad's success on the bench also included mentoring many of the current and former judges of Family Court. Judge Arlene Coppadge remembered, "When I joined the Court in the fall of 2003, Judge Conner readily provided guidance, support and shared his legal expertise." She stated that "he is known to many in Family Court as being a triple threat — a man of style, substance and plain smarts." Surely his fedoras provide the style!

Dad truly enjoyed mentoring his law clerks. Lauren McCrery, his clerk in 2012–2013, described their first trip together through the New Castle County courthouse: "Everyone perked up as he walked by because they knew it was an opportunity to catch up with him or hear a funny story." His clerks always were treated to a trip to Delaware Park for lunch and to watch the ponies.

Dad will tell anyone that his success and longevity in practice and on the bench is due in large part to his staff. Longtime secretary and friend Dee Howard muses, "If I ever went back to work it would only be with Jay." His Family Court staff, Virginia Reed, Debbi Cammock, Kevin Tucker and Ashley Christopher, expressed their fondness: "It has been an honor and pleasure. We want to thank him for creating a wonderful working environment, filled with respect, kindness, enjoyment, friendship and most importantly, treating us as family."

Dad's mantra in life has always been, "Some people live to work, but I work to live." Certainly his family and friends are quite happy he chose the latter. At the close of his 50-year career, he achieved a perfect balance. ◆

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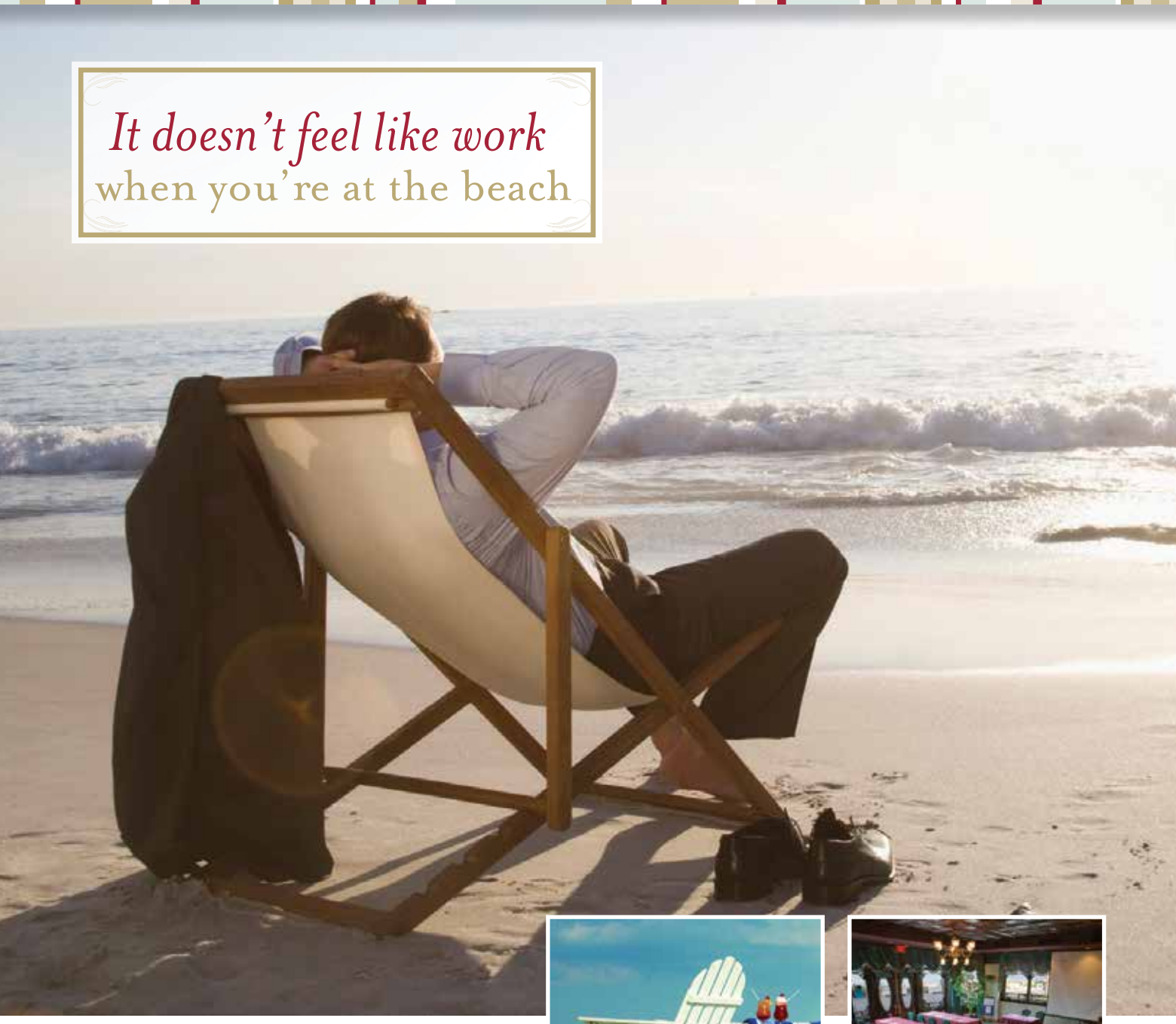

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