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**Trafficking in Meaning: Law, Victims, and the State**

**Alicia W. Peters**

**Submitted in partial fulfillment of the requirements for  
the degree of Doctor of Philosophy  
Under the Executive Committee of the Graduate School of  
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## **ABSTRACT**

### **Trafficking in Meaning: Law, Victims, and the State**

**Alicia W. Peters**

This dissertation examines the ways in which US anti-trafficking law (and related policies) incorporates the social and political context in which it was created and examines the ways in which deep-seated beliefs about sex intersect the drafting, interpretation, and implementation of anti-trafficking law and policy. Specifically, this dissertation focuses on the diverse meanings and consequences of a recent US law, the Trafficking Victims Protection Act (TVPA) of 2000, for criminal justice authorities, nongovernmental organizations (NGOs), and victims of trafficking in the New York metro area. While all laws are subject to interpretation regarding meaning and application, the TVPA contains an especially complicated and layered definition of trafficking, reflecting the diverse constituencies (anti-prostitution feminists, evangelical Christians, and human rights advocates) that lobbied for radically different versions of anti-trafficking bills. This complexity in the law invites considerable flexibility in interpretation and application. This research examines distinctions between the “law on the books,” the “law in their minds,” and the “law in action” (Schuck, 2000) by looking at ruptures between the TVPA as written, as understood by the various actors for whom it has relevance, and as actually implemented. Correspondingly, this project analyzes how beliefs about trafficking and sex intersect with these three angles of inquiry.

I argue that the TVPA is a rich cultural text, reflecting the social and political anxieties over prostitution, immigration, and victimization, among others, that surfaced during its drafting and that are replicated as various implementers interpret the law and

reinforced through its application. Cultural norms and assumptions, regarding sex in particular, continually resurface through the everyday implementation of the law. As a result, a particular vision of trafficking (forced prostitution) and a specific type of victim (women forced into prostitution) is privileged in complicated ways that divert attention from trafficking into other labor sectors (domestic work, agriculture, factory labor, nude dancing, etc.) and from men altogether.

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## **Dedication**

*For my grandmother, Mamie Wood*

*and in memory of my grandparents, Albert Merle Wood and Dorothy & Edward Peters*

## *Preface*

The inspiration for this research came to me as I was traveling around Italy during the summer of 2003, researching what I thought would become the subject of my dissertation: the movement and migration of Albanian women into sex-related labor in Italy. As it turned out, the migration of Albanian women to Italy, which had been increasing throughout the late 1990's and early 2000's, dramatically dropped off in the year leading up to my fieldwork there. A number of factors were responsible for this shift, including a recently signed bilateral agreement between the two nations, increasing awareness by Albanian women of Italy as a destination site for "trafficking," and growing opportunities for cheap labor in other parts of Europe. However, the point that struck me most as I spoke to service providers and government bureaucrats about their work with these women (particularly those that qualified for social services as trafficking victims) was the prominence of Italy's new anti-trafficking law, known as Article 18, in forming their understandings of "trafficking" and responses to it. I quickly realized that while my originally-planned study was not going to evolve as I intended it to, a more interesting question had formed in my mind: how does the formation, interpretation, and application of law and policy contribute to the social construction of a socially, morally, and legally loaded issue such as trafficking, and vice versa?

The United States Congress had recently passed anti-trafficking legislation of its own, the Trafficking Victims Protection Act of 2000, and similar issues were arising here in cities throughout the US as service providers, prosecutors, law enforcement agents, and government bureaucrats struggled to understand the significance of the law. My research quickly changed course, as I set out to learn all I could about the law itself and

those involved in its implementation, as well as advocacy efforts around the issue of “trafficking.” As a result, I developed the questions driving this dissertation and conducted fieldwork between May 2006 and November 2008.

This issue of trafficking is an ideological minefield, and my intention is not to engage in the ideological debates around it. Rather, my goal is to illustrate the ways in which ideology and other cultural and symbolic frameworks are incorporated into the cultural text of the law, through its drafting, interpretation, and implementation. It would be easy to take an ideological stand on the issue, but I believe the more important insights that I offer are highlighting how the various actors involved conceptualize and talk about the issue, the factors that contribute to their understandings, and the affects on implementation of US anti-trafficking law and policy. My goal from the beginning of this research has been to fairly represent *all* of my informants, not to say which of them is *right*.

## Chapter 1: Introduction

*Everyone up here [on Capitol Hill] knows that trafficking is something that is bad and that trafficking is modern-day slavery and therefore horrible, but [they] don't really know what trafficking is, and so you can totally mischaracterize it in so many different ways if you're inclined to do so (Victor, Congressional staffer).*

*A lot of it has to do with how we define trafficking and even though we have a federal definition I don't think there's true agreement as to what trafficking is, as can be seen between all the advocates and all the law enforcement agents (Audra, immigration attorney).*

Human trafficking is an area of charged values, taboos, and morals, particularly with regard to “sex trafficking,” and the issue of what constitutes “trafficking” is highly contested. Given the socially and politically charged nature of trafficking, it is essential to uncover the cultural assumptions embedded within the implementation of anti-trafficking law and policy. Social anxieties are incorporated not only into film and journalism, but also into activism, law enforcement, and the language of the law itself. Laws against human trafficking aim to prevent the forced or deceptive movement of people into exploitative conditions of labor, and there has been a recent rush to implement such laws at the national and international level. Shore and Wright have observed that laws and policies aim to address “crowded spaces already filled with moral values and preconceptions” (1997: 21). This dissertation builds on this notion by examining the ways in which US anti-trafficking law (and related policies) incorporates the social and political context in which it was created.

As Gayle Rubin notes, “It is imperative to understand what is going on and what is at stake” in new state actions about sexuality (Rubin, 1984). Accordingly, this dissertation utilizes multi-sited ethnographic fieldwork, including participant observation, in-depth and life history interviews, archival research, and policy analysis

to examine the ways in which deep-seated beliefs about sex intersect the drafting, interpretation, and implementation of anti-trafficking law and policy, as well as the significance of *sex* in situating trafficking for forced prostitution and trafficking in general as significant policy issues..

This study analyzes the implementation of anti-trafficking law and policy in the New York metro area, recognizing that state policy is enacted by officials with diverse “folk knowledges” and interpretive systems about sexuality, gender, and victimization. The project focuses on the United States, given the federal government’s intense focus on anti-trafficking policy, both nationally and internationally.<sup>1</sup> Specifically, this dissertation focuses on the diverse meanings and consequences of a recent US law, the Trafficking Victims Protection Act (TVPA) of 2000,<sup>2</sup> for criminal justice authorities, nongovernmental organizations (NGOs), and victims of trafficking.<sup>3</sup> While all laws are subject to interpretation regarding meaning and application, the TVPA contains an especially complicated and layered definition of trafficking, reflecting the diverse constituencies (anti-prostitution feminists, evangelical Christians, and human rights advocates) that lobbied for radically different versions of anti-trafficking bills. This complexity in the law invites considerable flexibility in interpretation and application.

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<sup>1</sup> Since 2001, the US government, under the aegis of the State Department, has issued the Trafficking in Persons (TIP) Report, which ranks foreign governments on their efforts to combat trafficking; the President has the option to apply non-humanitarian aid sanctions to those countries not making improvements. Additionally, under the 2003 reauthorization of the Trafficking Victims Protection Act (TVPA), any organization receiving US anti-trafficking or AIDS funds is required to sign an explicit anti-prostitution statement.

<sup>2</sup> The TVPA was amended and reauthorized in 2003, 2005, and 2008, and the amended version is referred to as the Trafficking Victims Protection Reauthorization Act (TVPRA). I use the acronym “TVPA” throughout this dissertation to refer to the law as enacted and its subsequent reauthorizations.

<sup>3</sup> For the purpose of this dissertation, I use the terms “victim of trafficking” and “survivor of trafficking” somewhat interchangeably. The former is favored in legal discourse, while the latter is primarily used by service providers to assert that their clients are more than their victim status. The concept of “survivor” will be further discussed in Chapter 5.



This project explores a series of simultaneous narratives and discourses on trafficking – the official and dominant discourse produced via federal policy, reports, and speeches; the interpretations of federal and local officials, including Congressional staffers, prosecutors, federal law enforcement agents, and local police officers; the accounts produced by NGO service providers serving as interpreters, advocates, mediators, and liaisons between trafficked persons and the state; and the experiential narratives of trafficking survivors. Incorporating these four levels of experience, this research examines distinctions between the “law on the books,” the “law in their minds,” and the “law in action” (Schuck, 2000) by looking at ruptures between the TVPA as written, as understood by the various actors for whom it has relevance, and as actually implemented. Correspondingly, this project analyzes how beliefs about trafficking and sex intersect with these three angles of inquiry.

As I will argue in the chapters that follow, the TVPA is a rich cultural text, reflecting the social and political anxieties over prostitution, immigration, and victimization, among others, that surfaced during its drafting and that are replicated as various implementers interpret the law and reinforced through its application. Cultural norms and assumptions, regarding sex in particular, continually resurface through the everyday implementation of the law. As a result, a particular vision of trafficking (forced prostitution) and a specific type of victim (women forced into prostitution) is privileged in complicated ways that divert attention from trafficking into other labor sectors (domestic work, agriculture, factory labor, nude dancing, etc.) and from men altogether.

This introduction provides background information, describes the goals of the study, and presents the relevant literature and theory. The first section gives a brief background of the development of trafficking as a legal and policy issue in the US and the domestic response to trafficking. Then, I discuss the goals of the ethnography and the specific questions driving my research. The next section describes the relevant literature and theoretical underpinnings of my research. I conclude by summarizing the remaining chapters of the dissertation.

## **Background**

The issue of human trafficking has gained mounting international attention since the late 1990s<sup>4</sup> as evidenced by increased NGO advocacy, investigative journalism, documentary filmmaking, and governmental and UN responses. In 2000 the UN reacted to growing reports of trafficking worldwide and pressure from governments and NGOs by drafting a supplement to the UN Convention Against Transnational Organized Crime, entitled the *International Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*. At the same time, pressure for action was mounting in the US. On International Women's Day in 1998, President Bill Clinton highlighted the issue of "trafficking in women and girls" and called on an interagency group to investigate the problem (Clinton, 1998). A year later the CIA released a report estimating that between 45,000 and 50,000 women and children were trafficked into the US per year (O'Neill Richard, 1999).<sup>5</sup> While this estimate included individuals

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<sup>4</sup> Trafficking emerged in the 1990s in conjunction with the UN Fourth World Conference on Women in Beijing, China. As will be discussed in Chapter 3, concerns over "trafficking" first arose at the turn of the 20<sup>th</sup> century when the term "trafficking" was used to describe prostitution, also known as "white slavery."

<sup>5</sup> The US government has consistently downgraded its estimates over time. The latest figures estimate that between 14,500 and 17,500 people are trafficked into the US yearly; however, the government's estimation techniques have been widely criticized (US GAO, 2006).

trafficked for all forms of labor (including in agriculture, factories, restaurants, domestic work, etc.), anti-prostitution feminists allied with evangelical Christians to lobby for a law specifically addressing what they termed “sex trafficking.” Concurrently, human rights advocates were pushing for a law that included protections for migrants trafficked into all labor sectors. Following bipartisan interest and intense debate on Capitol Hill, the US Congress passed the Victims of Trafficking and Violence Protection Act of 2000 (TVPA).<sup>6</sup> As will be discussed in future chapters, the TVPA covered trafficking into all sectors but highlighted “sex trafficking” in several ways. Given its complicated history and ensuing legislative compromises, the TVPA contains multiple and layered definitions of trafficking. The intricacy of the law’s language results in multiple interpretations of what constitutes trafficking, complicated applications of the law in practice, and ultimately uneven outcomes for survivors, depending on the sector into which they were trafficked. The drafting, interpretation, and implementation of the law will be discussed in chapters 3, 4, and 6.

As a result of the law’s passage, a number of professionals, many of them previously unfamiliar with the issue of trafficking, are now investigating the crime, providing services to victims, and assuming various roles in implementing anti-trafficking law and policy. The government is overseeing funding streams, developing policies and regulations, expanding bureaucracy, and forming task forces to address human trafficking. Multiple actors inside and outside government, with a variety of world views and beliefs about trafficking, are now working on the issue with varying degrees of influence in the US anti-trafficking apparatus (see figure 1). The newness of

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<sup>6</sup> The TVPA combined aspects of two bills – one sponsored by the late Senator Paul Wellstone (D, Minnesota), and the other by Senator Chris Smith (R, New Jersey). The TVPA was reauthorized in 2003, 2005, and 2008 (TVPA 2005; TVPA 2003; William Wilberforce TVPA, 2008).

the issue, the vastness of the bureaucracy, and the diversity of institutions and individuals involved with implementation result in numerous possibilities for interpretation and re-interpretation of the law.

The structure of the US domestic response to trafficking includes high-level policy development and oversight, multiple layers of bureaucracy, investigation and prosecution, and service provision. At the highest policy level, the Senior Policy Operating Group (SPOG), composed of Cabinet-level officials, sets the tone of policy implementation, taking input and advising the President on key issues related to trafficking. In addition, Congress continues to address trafficking, holding hearings on implementation and reauthorizing the TVPA every three years.<sup>7</sup>

Moving further down the ladder, multiple federal departments and agencies, including the Departments of Justice (DOJ), State (DOS), Labor (DOL), Health and Human Services (HHS), and Homeland Security (DHS), have created numerous layers of bureaucracy to address the problem. Within these departments, manifold programs and offices are now devoted to trafficking policy, program implementation, grants administration, investigation, prosecution, and victim services, among others. Within the Justice Department, the Human Trafficking Prosecution Unit (HTPU) in the Civil Rights Division shares responsibility with the Child Exploitation and Obscenity Section (CEOS) in prosecuting human trafficking crimes, with the cooperation of US Attorneys in Districts around the country.<sup>8</sup>

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<sup>7</sup> Previously the TVPA was reauthorized every two years; however, the 2008 reauthorization extended appropriations for three years (William Wilberforce TVPRA, 2008).

<sup>8</sup> The HTPU is responsible for human trafficking crimes; however, CEOS oversees prosecution of cases involving sex trafficking of minors.

On the investigative side, the Federal Bureau of Investigation (FBI) along with Immigration and Customs Enforcement (ICE) have human trafficking programs at headquarters in Washington DC, as well as regional investigative units. Federal law enforcement agents often work in conjunction with state and local police departments, in many cases serving together on Bureau of Justice Assistance (BJA)-funded task forces along with federal prosecutors and local service providers.

The US Department of Health and Human Services (HHS) via a contract to the United States Conference of Catholic Bishops (USCCB) funds comprehensive services to victims of trafficking through subcontracts to a number of NGOs. The Justice Department's Office for Victims of Crime (OVC) provides additional funding for services. The grantees include organizations devoted to human trafficking, victim services, refugee resettlement, immigrant issues, violence against women, and the commercial sexual exploitation of children (CSEC), as well as faith-based groups. These NGOs provide direct services and comprehensive case management to survivors and coordinate access to shelter, general health and mental health care, legal services, job skills training, educational services, and cultural support.

For all of these individuals, working in these diverse capacities, defining trafficking and establishing "what counts" is crucial to implementing their piece of the TVPA. Yet "what counts" may vary based on who is making the interpretation and for what purpose they are using the law. As Yanow notes, "All language, objects, and acts are potential carriers of meaning, open to interpretation by legislators, implementers, clients or policy 'targets,' concerned publics, and other stakeholders. At the same time,

they are tools for the recreation of those meanings and for the creation of new meanings” (1997: 10).

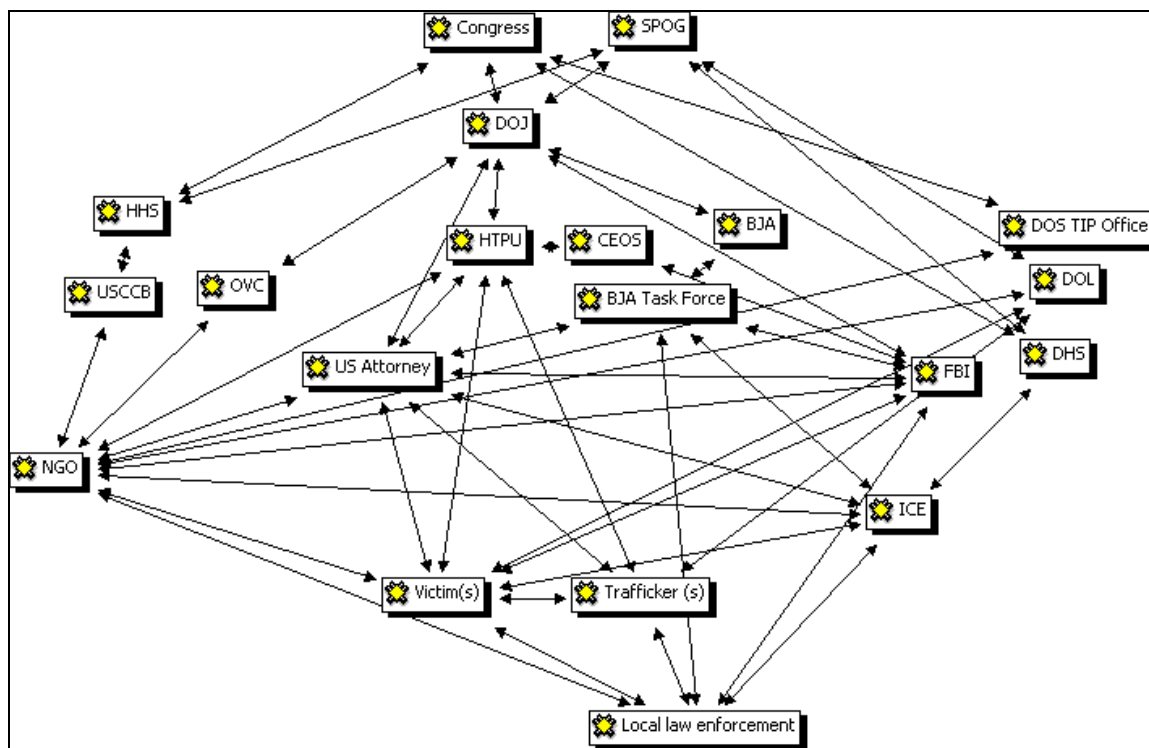


Figure 1: US Anti-Trafficking Apparatus (arrows represent a relationship between agencies/actors)

### Goals of the Study

This dissertation explores how diverse understandings of trafficking, along with underlying contextual and cultural influences, are embedded within the law and its implementation. That is, how do the complex social, cultural, and political concerns, anxieties, and norms held by various professionals interact and combine with legal definitions of trafficking and get translated into practice? And, how do the different priorities and institutional cultures of federal agencies and NGOs influence diverse understandings of trafficking and the law?

While the law statutorily defines trafficking, it is administered through policies and implemented through practices and behavior. Government officials, criminal justice authorities, and service providers approach the issue of trafficking differently, depending on the objectives of their work, while complex interpretive frameworks shape the ways in which they understand and use the law and define trafficking. As Audra, an immigration attorney, put it, “[Trafficking] is seen as a non-controversial idea. It’s not like abortion or something. Everyone agrees no one should be trafficked, but it comes down to what trafficking is. That’s where it all falls apart.”

Cultural norms regarding sexuality and gender are entwined with conceptions of trafficking and implementation of the law. Sexual harm is a key component of current anti-trafficking campaigns and serves to add emotional intensity to both policy and advocacy efforts. I will argue that norms regarding sex and gender influence the implementation of law and policy and have significant effects for trafficked persons. Additionally, I analyze how the various actors involved talk about trafficking and sex and the value they attribute to different categories of “victims.” At stake are not only differing conceptions of “trafficking,” but also which victims are recognized as authentic (and which are overlooked) and which cases deemed worthy of prosecution (and which are disregarded).

In a related vein, I analyze the construction of narratives around trafficking by local and federal criminal justice authorities, government officials and administrators, NGO service providers, and trafficking survivors themselves. Due to their varying roles, priorities, and interaction with victims, diverse implementers often conceive of trafficking differently. Their conceptions significantly affect how victims are identified

and how they access the protections granted to them under the law. These narratives illuminate the gulfs in meaning between these varied groups of individuals, but also highlight the diversity of beliefs and meanings held by individuals within groups. Individual interpretations of the TVPA, conceptions of trafficking, and application of the law are highly nuanced and not easily characterized based on professional role. In particular, survivor narratives add a voice that is often absent from policy debates; they highlight the diversity of trafficking experiences that are not easily characterized by the narrative portrait of the “typical” trafficking victim. I argue that victim narratives contest the notion of sexual harm as the most severe form of suffering and that victims often attribute their suffering to an entirely different set of circumstances (e.g., isolation, deceit, and threats to their families) than those imagined by various implementers.

In addition, this research explores the relationship between trafficked persons, NGOs, and the state. Implementation of the TVPA is carried out by various state actors (law enforcement agents, prosecutors, and government bureaucrats) and members of voluntary, private-sector groups (NGOs) to which increasing amounts of state duties are delegated. In many ways state actors serve as gatekeepers to benefits, while NGOs act as buffers, advocates, and mediators between trafficked persons and the state. Serving as what Lipsky terms “street-level bureaucrats” because of their role in delivering state-funded services, NGO service providers “implicitly mediate aspects of the constitutional relationship of citizens to the state” (1980: 4). In this capacity, NGOs offer a unique vantage point from which to explore the experiences of the victims they serve and assist in accessing state resources. This study details the ways in which the law complicates interactions between trafficking survivors, NGO providers, and various



criminal justice authorities. In particular, I argue that the law has created the conditions for law enforcement to become arbiters of victim benefits, while service providers and victims are compelled to plead their cases and present evidence of their “victimhood.”

This research has pertinence to other fields and literatures, including anthropological and sociological literature on law and culture, medical anthropology and public health, as well as gender and sexuality studies.

### *Research Questions*

There are three central and interrelated research questions that frame this dissertation:

1. How do cultural norms regarding sexuality and gender influence the implementation of anti-trafficking law and policy?
2. Who counts as a “victim of trafficking” from the perspective of federal and local officials, NGOs service providers, and trafficked persons themselves?
3. What is the relationship between trafficked persons, NGOs, and the state?

### **Literature Review and Theoretical Overview**

The issue of human trafficking intersects with issues of globalization, sexuality, gender, multiculturalism, population growth, immigration, labor, and transnational crime (Kyle & Koslowski, 2001). It has been approached as a migration issue (Agustín, 2002, 2003; Macklin, 2003; Wijers & Lap-Chew, 1997), a law enforcement issue (Cooper, 2002; Corrigan, 2001; Goodey, 2004; Mameli, 2002), a human rights issue (Gallagher, 2001; Jordan, 2002; Ling, 2002; A. M. Miller, 2004; Pearson, 2002; Wijers & van Doorninck, 2002), and a public health issue (Beyrer & Stachowiak, 2003; Busza, Castle, & Diarra, 2004; Gushulak & MacPherson, 2000; Zimmerman, 2003). All of these perspectives contribute to the way that trafficking is framed as a legal and policy

issue. Scholars may write about trafficking from one angle; however, the space in which trafficking (and responses to it) occurs is multidimensional.

Drawing on Sanghera (2005), Gozdzia and Bump note that existing literature on trafficking “suggests that the dominant anti-trafficking discourse is not evidence-based but grounded in the construction of a particular mythology of trafficking,” which among other things constructs the issue as solely involving prostitution (2008: 9). A growing number of social scientists have begun to challenge this mythology through analysis of the legislative history of the TVPA (Chacon, 2006; Hyland, 2001; B. Stolz, 2005; B. A. Stolz, 2007), the impact of abolitionism (Berman, 2006; Bernstein, 2007; Soderlund, 2005), the intersection of US anti-trafficking and migration policies (Chacon, 2006; Chapkis, 2003), the US government’s disproportionate focus on trafficking for forced commercial sex (Huckerby, 2007), and law enforcement and prosecutorial responses to trafficking (Clawson, Dutch, & Cummings, 2006; Clawson, Dutch, Lopez, & Tiapula, 2008; Farrell, McDevitt, & Fahy, 2008; Newton, Mulcahy, & Martin, 2008; Wilson & Dalton, 2008).

Gozdzia and Bump have called for more research grounded in participant observation and rigorous ethnographic studies of trafficking survivors and NGOs (Gozdzia & Bump, 2008). Ethnography is a particularly strong tool for capturing the complexity of trafficking (and responses to it), and a number of scholars have begun to explore trafficking through an ethnographic lens (Agustín, 2007; Dewey, 2008, see also forthcoming work by Brennan and Vance). In particular, Kelly notes that “how service providers and state agents define trafficking, especially the extent to which they introduce additional requirements which do not appear in the [law] in order to construct

a category of ‘deserving’ victims or ration scarce resources, is seldom studied in any depth” (Kelly, 2005: 238). This dissertation aims to fill that gap and provide an in-depth, holistic, empirical, and ethnographically complicated analysis of the implementation of the TVPA domestically.

Several theoretical frameworks structure my dissertation, and I review them here. I begin with a discussion of law and policy as ‘cultural texts,’ followed by a review of relevant literature on NGOs, and then discuss the ways in which notions of victimization and sex as a special category contribute to the social construction of trafficking as a social and legal issue.

#### *Law and Policy as ‘Cultural Texts’*

This dissertation examines law and policy as cultural forms. Legal and policy institutions order social life, constructing cultural meaning and shaping group and individual identities. Given the contested political nature of trafficking, it is necessary to uncover the cultural assumptions embedded within anti-trafficking law and policy. Shore and Wright suggest that policies should be analyzed as “cultural texts.” They argue that this process “entails multi-site ethnographies which trace policy connections between different organizational and everyday worlds, even where actors in different sites do not know each other or share a moral universe” (Shore & Wright, 1997: 13). Policies are “political” in that they put forward particular agendas for action. As Shore and Wright suggest, the spaces around social problems that policies aim to address “are crowded spaces already filled with moral values and preconceptions” (1997: 21). Policy serves as a major instrument of governance (Shore & Wright, 1997). Schneider and Ingram contend that policymakers manipulate cultural images of certain target

populations (i.e., trafficking victims) and enact policies reflecting these social constructions (Schneider & Ingram, 1993). Foucault recognized ‘political technologies’ as a method with which modern power conceals itself. Politics is not confined to institutions of power but pervades all aspects of life, including activism, service delivery and the language of the Trafficking Victims Protection Act itself.

Schuck offers a useful framework for studying the law, which builds on the work of Roscoe Pound (Pound, 1910). Schuck makes a distinction between the “law on the books,” the “law in action,” and the “law in their minds” (Schuck, 2000). As Schuck points out, this trichotomy reflects that the law as formally enacted differs from the way in which the law is actually implemented (Schuck, 2000). The law “on the books” refers to the letter and spirit of the doctrine as formally prescribed. The law “in the mind” is the law as it is imagined. Finally, the law “in action” is a result of the deviations and convergences between the first two versions and of other situational constraints – the law as actually practiced. The key is to explicate how precisely these two versions of the law work together to generate the law as it is applied “in action” by various actors. As Schuck points out, there are numerous versions of the law in action (Schuck, 1994).

In the case of the TVPA, the “law on the books” is gender-neutral and encompasses all forms of labor. However, the public imagination perceives the law as covering the trafficking of women and children for sexual exploitation. The way in which the TVPA is implemented reproduces this particular “gender regime” (Connell, 1990). As Ewick and Silbey suggest, the law applied “in action,” “reproduces norms, activities, and relationships that exist independent of the law” (Ewick & Silbey, 1992) such as the belief that certain victims of trafficking are more “worthy” than others. This

research also builds on studies of “legal consciousness” (Ewick & Silbey, 1992). For example, Rollins’ study of AIDS-related litigation looks at judicial constructions of AIDS as a “gay disease” and highlights the importance of analyzing what the law “in action” reveals about legal and sexual consciousness (2002). Juxtaposing the narratives of local and federal officials, trafficked persons, and NGO service providers is key to analyzing these varying levels of legal consciousness. As Marshall and Barclay illustrate, “by having individuals speak about their lives ‘in their own words’ [we] can discern ...[their] varied motives for action and the comprehensive meanings attributed to law and legal practices” (2003: 623; see also Hoffman, 2003 and A. Marshall, 2005).

*NGOs*

NGOs have traditionally stepped in where governments fail to or are unable to take initiative and are well suited to work with trafficked persons who may fear and distrust state-based organizations due to their undocumented or illegal status (Tzvetkova, 2002). In the case of NGOs providing service to trafficking victims, these organizations act as mediators between the state on the one hand and trafficking victims on the other. Martens pinpoints the dual status of NGOs as both legal and societal actors, separate from the government but seeking to influence governmental action (Martens, 2002). Tzvetkova notes that many NGOs are active in lobbying for legislative and policy change and are active participants in political forums (Tzvetkova, 2002). Not all NGOs operate in the same political context, however, and it is necessary to examine the micropolitics and power relations within and across these groups (W. F. Fisher, 1997). Fisher’s work focuses on the role of NGOs in politics, as well as the politics operating within NGOs. He suggests that NGOs are often idealized as

disinterested, apolitical participants in a field of otherwise implicated players. He contends that politics in a Foucaultian sense is not something confined to institutions such as the state, but rather pervades all aspects of life, including NGOs. NGOs combine flows of funding, knowledge, ideas, and people; they are not a set of organizations, but represent a fluid web of relationships (W. F. Fisher, 1997).

Markowitz presents a series of methodological complications encountered in ethnographic research on NGOs regarding the researcher's position within the NGO sector. She calls for the use of multilocal research strategies that look at NGOs in the context of a series of interconnecting systems (Markowitz, 2001). This includes navigating the complicated tensions amongst NGOs as well as the relationships with their funders. Musto notes that anti-trafficking NGO service providers "are in the difficult position of balancing the needs of clients with those of their funders, where the former are inextricably bound to the mainstream mores of the latter"(Musto, 2008: 13). In her work on institutional responses to sex trafficking in three countries, Dewey notes that many NGOs enter anti-trafficking work because of competition for donor funding, rather than a commitment to assist trafficking survivors (2008).

The small anthropological literature on NGOs focuses primarily on international development NGOs in the Global South and little is theorized on the role of NGOs in providing social services in post-industrial societies. Within the trafficking literature, analysis of NGO work has been limited to advocacy organizations, reflecting the split between anti-prostitution and sex workers' rights groups. Dewey notes arguments about whether prostitution is inherently dehumanizing or a voluntary choice hold little meaning for women forced to sell sex (Dewey, 2008: 9). Within the US anti-trafficking

sphere, NGOs providing services to victims generally do not identify with either of these positions and may incorporate parts of one or both philosophies into their work (i.e., viewing prostitution as degrading but recognizing a woman's right to choose it as a form of work). Dewey notes that policy debates among representatives of international organizations, governments, and NGOs often do not reflect the voices or realities of the survivors they affect (Dewey, 2008: 29). However, as mediators between trafficking victims and the state, NGO service providers in New York often become the surrogate voice of survivors, conveying their experiences to agents of the state. Ebrahim suggests that NGOs are not passive recipients of their funders' discourses, but are actively involved in contesting and reshaping them (Ebrahim, 2005).

### *Victimization*

While the stereotypical trafficking victim is most often portrayed as an innocent young girl who has been lured into the sex industry against her will,<sup>9</sup> few trafficking victims fit this description. First, trafficking survivors include both men and women who have been trafficked into countless types of labor including work in agriculture, factories, restaurants, nail salons, topless bars, domestic situations, and for forced peddling on subways. Even in cases of forced commercial sex, the majority of women are aware that they will be working in prostitution, but are deceived about the conditions or are later exploited (Doezema, 2000). The association of trafficking only with the most extreme cases of victimization and with prostitution sustains the view that there is only one type of trafficking victim. State-sponsored policies and reports, as well as media coverage, and documentaries often rely on uncritical representations of

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<sup>9</sup> See for example, the Lifetime Television movie, "Human Trafficking" (2005), which features an American teenager kidnapped off the street while visiting Manila with her parents.

victims, as these images promote political support, encourage public sympathy, and appeal to socially concerned audiences. The construction of a victim who appeals to the public and policymakers must be sexually blameless, and anti-trafficking policies continue to be based on the notion of the "innocent," unwilling victim. Kleinman and Kleinman describe how victim's stories become a type of currency, or the symbolic capital needed in exchange for material resources (1997). This process reduces complicated stories, based in real events, to "a core cultural image of *victimization*" (Kleinman & Kleinman, 1997: 10, emphasis in original). In contrast, Goodey argues that a distinction needs to be drawn between a woman's legal status as "victim" and her own identity as more than just a "victim" (2004), that is, her existence as a human being with experiences and aspirations beyond the role of the "victim."

Terry and Urla contend that the somatization of deviance since the 19th-century has been part of a larger effort to organize social relations according to categories denoting normality versus aberration, health versus pathology, and national security versus social danger. They suggest that scientific and popular modes of representing bodies are never purely objective, but always tied to larger systems of knowledge production and to social and material inequality (Terry & Urla, 1995). As Rubin notes, sexuality is a vector of oppression (1984). The state and its institutions define appropriate and inappropriate forms of sexuality and enforce such boundaries through norms and representations in addition to the power of law (Rubin, 1984). By attaching notions of crime and violation onto trafficked female bodies, the state establishes which "victims" are worthy of sympathy and assistance.



The cultural meaning of women's sexuality is central to any interpretation of how criminal justice authorities, and societies in general, respond to the problem of trafficking whether for forced prostitution or other forms of labor (Goodey, 2004). Focusing on trafficking of women specifically into forced prostitution privileges one gender-specific group of victims and conflates trafficking and movement into prostitution. Within the trafficking paradigm, normative representations of gender and sexuality are used to frame the problem and its solution, discounting other ways of approaching the issue.

### *Sex as a Special Category*

In *The History of Sexuality: An Introduction*, Foucault raises the question of why sexuality has come to be so widely discussed. He notes that the central issue is “to account for the fact that it is spoken about, to discover who does the speaking, the positions and viewpoints from which they speak, the institutions which prompt people to speak about it and which store and distribute the things that are said. What is at issue, briefly, is the over-all ‘discursive fact,’ the way in which sex is ‘put into discourse’” (Foucault, 1980: 11). Foucault cites criminal justice as one area which has intensified people’s awareness of and created the impetus to talk about sex as a site of constant danger (1980: 31). As such, the creation of the crime of “sex trafficking” has incorporated “trafficking” into the broader discourse of sex. Gayle Rubin emphasizes that contemporary conflicts over sexual values acquire immense symbolic weight, and trafficking is no exception. “Disputes over sexual behavior often become the vehicles for displacing social anxieties, and discharging their attendant emotional intensity.

Consequently, sexuality should be treated with special respect in times of great social stress” (Rubin, 1984: 267).

Indeed, current concerns over trafficking, which incorporate narratives of criminality and sexual victimization, have transformed into a full-fledged moral panic (Cohen, 1972) in which anxieties about female sexuality are displaced onto “trafficking victims.” Stanley Cohen defines a moral panic as:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible (Cohen, 1972: 9).

The notion of a moral panic does not imply that a phenomenon is not real, but rather that it is a collective belief that simplifies and distorts reality (Cohen, 1972). In the case of trafficking, the moral panic over “sex trafficking” distorts the notion of trafficking as an issue of forced or coerced labor or service by framing it purely as an issue of *sexual* violation. As Alice Miller has suggested, a hyper-attention to sex has effectively excluded attention to other types of harm, including other forms of labor trafficking (A. M. Miller, 2004).

Weeks notes, “The political moment – that period when moral attitudes are transformed into formally political action – can be of key importance in nuancing the regulation of sexuality, and at crucial times a moral schema has been of prime significance in political propaganda” (Weeks, 1981). In the case of trafficking, policy becomes a means for promoting a particular form of morality. The policy focus on *sex* trafficking becomes a means for the state to maintain the social relations of sexuality

and uphold structures of power and codes of behavior (Rubin, 1984). Luibheid contends that in describing certain identities (e.g. “lesbian” or “prostitute”), the state contributes to constructing the very sexual categories and identities through which policies are then applied and implemented (2002). In the same way, US anti-trafficking law and policy, when combined with normative conceptions of gender and sexuality, influence the construction of “trafficking victims” as women trafficked into forced prostitution.

### **Structure of the Dissertation**

Chapter 2 describes the details of my methodology. Chapter 3 examines the Trafficking Victims Protection Act (TVPA) as a “cultural text” and “law on the books.” The chapter explores the significance of the drafting process and the various actors involved in that process. It also details how the contestation surrounding trafficking was incorporated into the language of the law itself. Chapter 4, the “law in their minds” chapter, explores the multiple ways in which various actors – NGO service providers, immigration attorneys, law enforcement agents, prosecutors, and survivors of trafficking – interpret the law and attribute meaning to trafficking. Chapter 5 serves as an “interlude” and looks at the diversity of “survival stories” that victims tell and how these stories complicate portrayals of the “typical” trafficking victim. Chapter 6 focuses on how the definitions in the TVPA and the meanings individuals assign to trafficking intersect with the work they do, including providing services, identifying victims, prosecuting traffickers, and accessing resources – the “law in action.” Chapter 7 concludes the dissertation.

## Chapter 2: Methodology

*The sheer complexity of the various meanings and sites of policy suggests they cannot be studied by participant observation in one face-to-face locality. The key is to grasp the interactions (and disjunctions) between different sites or levels in policy processes. Thus, 'studying through' entails multi-site ethnographies which trace policy connections between different organizational and everyday worlds, even where actors in different sites do not know each other or share a moral universe (Shore & Wright 1997: 14).*

*An interpretive approach to policy analysis...is one that focuses on the meanings of policies, on the values, feelings, and/or beliefs which they express, and on the processes by which those meanings are communicated to and 'read' by various audiences...In analyzing public policies or the actions of organizational implementers, such an approach focuses on policy and/or organizational artifacts as the concrete symbols representing policy and organizational values, beliefs, and feelings (Yanow, 1997: 9).*

### Introduction

Since the late 1980s, anthropologists have problematized the notion of “the field,” the isolated, bounded Third World village of traditional anthropological research, and proposed broadening the sites of anthropological inquiry (Clifford & Marcus, 1986; Gupta & Ferguson, 1997). George Marcus, for instance, advocates multi-sited ethnography, suggesting that the anthropologist can say more “by juxtaposing multiple levels and styles of analysis” (Marcus, 1988: 37). As such, this ethnography relies on multiple narratives and sources of information to provide a complex and holistic view of the implementation of US anti-trafficking law and policy. While I spent a year observing one NGO, which easily could have been the subject of the ethnography, my “field site” went far beyond that locale, as my true focus was on the process of implementation and the social and political space surrounding it. Shore and Wright note,

Policy provides a powerful conceptual tool for analyzing the processes and agencies of government. ... It also offers the potential for a radical

reconceptualization of ‘the field’; not as a discrete local community or bounded geographical area, but as a social and political space articulated through relations of power and systems of governance...By focusing on policy, the field of study changes. It is no longer a question of studying a local community or ‘a people’; rather, the anthropologist is seeking a method for analyzing connections between levels and forms of social process and action, and exploring how those processes work in different sites – local, national and global (1997: 14).

This approach was key to identifying contradictions and inconsistencies between the “law on the books,” the “law in their minds,” and the “law in action” (Schuck, 2000).

This chapter describes my methodology in detail. I describe the fieldwork methods I employed, sampling strategy, and data collection and analysis techniques. I also detail methods for protecting confidentiality and special issues that arose in conducting fieldwork on a politically sensitive topic. I conclude with a description of my approach to writing.

### **Overview of Research Design**

This dissertation is based on two-and-a-half years of ethnographic fieldwork. Between May 2006 and November 2008, I immersed myself in the anti-trafficking world through participant observation in New York City and Washington DC – at conferences, trainings, court hearings, meetings, and an NGO trafficking services program. I also conducted in-depth interviews with service providers, criminal justice authorities, government bureaucrats, Congressional staffers, and survivors of trafficking, as well as archival and policy research. The research occurred in two phases. I spent the first year of fieldwork attending events, following key legislative and policy developments, and monitoring the trafficking situation in New York City in terms of cases, NGO activities, and broader advocacy efforts. I spent the second year and a half doing intensive participant observation at an NGO service providing agency

for trafficking survivors, as well as at trainings, conferences, and court proceedings, while conducting interviews, and performing archival and policy research.

### **Research Site**

The implementation of the TVPA occurs at many levels in multiple locations across the country. For the purpose of this dissertation, my fieldwork focused on New York City. The New York metro area is a major entry point for migrant workers from around the globe and home to multiple organizations providing services to trafficked persons. New York has one of the largest concentrations of individuals receiving certification as victims of severe forms of trafficking in the country, and during my fieldwork there were at least six NGOs providing legal and case management services to trafficked persons. In addition, there are often connections between anti-trafficking efforts on Long Island and in New Jersey to those in New York City. This makes it an ideal setting for exploring the implications of US trafficking law and policy. Additionally, to provide a more holistic portrait of implementation, I explored the connections between trafficking work on the ground in New York and macro-level processes at the federal level in Washington DC.

While many of my findings could easily apply to the implementation of anti-trafficking law and policy in cities across the US, others are uniquely tied to New York as the particular site for this research. One factor that stands out is the level of experience held by NGO service providers and prosecutors. Several of the organizations I observed had worked on trafficking cases prior to the passage of the law and consequent appropriation of funds for services. As a result, their dedication to the issue was driven by their organizations' long-standing values as opposed to a desire to follow

government funding streams. In a related vein, because of the volume and history of cases in New York, criminal justice officials there often held very fine-tuned understandings of the issue that might not be expected in other geographic areas.

### **Participant Observation**

The goal of participant observation was to observe the implementation of the TVPA and the ways in which various professionals understood trafficking and the law. During my first year of fieldwork, I attended local trafficking events and meetings and familiarized myself with the organizations and agencies active in anti-trafficking work in New York City. During the second year, I spent approximately 3 ½ days per week, over the course of 12 months, conducting participant observation at a large NGO providing services to trafficking survivors in New York City. Over time I was incorporated as an honorary member of the “Trafficking Services Program” (TSP) team. Program staff assigned me a cubicle in an area with two TSP case managers. I attended weekly staff meetings, observed trainings, sat in on client meetings and workshops (with consent), helped organize files, reviewed documents, and chatted casually with staff regarding case updates. I was included as a member of the team on group emails and attended social events with program staff. When my scheduled one year of fieldwork with TSP came to an end, I continued to attend weekly staff meetings for several months to maintain a link to the anti-trafficking world. My connection with TSP allowed me to directly observe implementation of the law from the service provision side, as well as the ways in which service provision intersected with criminal justice activities. Speaking with and observing service providers and their clients on an almost daily basis gave a unique vantage point from which to examine the details of

implementation. Through my relationship with TSP, I was able to observe the impact of law and policy on providers and their clients, interactions with law enforcement, collaborations with other NGOs, and the process of securing funding for the organization and its clients. I also became a regular attendee at city-wide trafficking service provider network meetings and national conferences. I attended trafficking-related events, including law enforcement trainings, Congressional hearings, and court proceedings, where I spoke to attendees with varying ties to the anti-trafficking community (shelter advocates, court employees, state trafficking specialists, and others).

### **In-depth Interviews**

I conducted in-depth interviews with service providers, trafficking survivors, government officials, and law enforcement agents. Over the course of my fieldwork, I conducted formal semi-structured interviews with 18 service providers (including case managers, social workers, immigration attorneys, and client advocates, including five key informants interviewed multiple times) and 24 law enforcement or government officials (including federal prosecutors, federal and local law enforcement agents, current and former government employees, Congressional staffers, and staff at organizations contracted by the government to administer funding programs for trafficking – both in New York and Washington DC). I also conducted a number of informal interviews with other individuals working on trafficking in some capacity, including advocates, academics, and local law enforcement. Finally, I conducted life history interviews with six survivors of trafficking and spoke informally with a number of additional survivors.



### *Interviews with NGO Service Providers*

Interviews with NGO professionals allowed me to examine how service providers interpret and utilize the TVPA, as well as how their understandings of gender, sexuality, and politics inform the ways in which they make sense of the law. These interviews captured how service providers' experiences with clients and understandings of law and policy converge with or deviate from the law as it is written. I asked NGO professionals about how they defined trafficking, their experiences working with victims, the types of cases they had worked on, collaboration with law enforcement, their roles as advocates, perceptions of the success and failures of the TVPA, funding structures, and the role of politics in the implementation of the law. I formally interviewed each informant between one and three times, with interviews lasting between 45 minutes and two hours. I saw many of my informants subsequently at events around the city and state and would conduct informal follow-up interviews with them, but did not record these informal interactions on tape.

### *Interviews with Law Enforcement and Government Officials*

Interviews with law enforcement and government officials were designed to capture how agents of the state understand and implement the law. Interviews include former and current representatives from government agencies (the Departments of Health and Human Services, Homeland Security, and Justice), law enforcement (Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), and local police departments), and federal prosecutors. I also interviewed former and current Congressional staffers and government employees who were active in the drafting or reauthorization of the TVPA. Interview questions for law enforcement and

government officials depended on the particular roles and experiences of the interviewee, but covered their role in drafting or implementation of the law, how they defined trafficking, the successes and limitations of the law, the types of cases they had encountered, and collaborations with NGOs and other agencies. I interviewed each individual once, for approximately one hour, although some interviews lasted up to three hours. I also conducted informal follow-up interviews with individuals who I saw on an ongoing basis at conferences, meetings, and court proceedings.

### *Interviews with Trafficking Survivors*

I conducted a series of open-ended life history interviews with trafficking survivors concerning their experiences – not only with trafficking, but also more generally – as a means to uncover the meanings they assigned to their own lives. I used a combination of semi-structured and life history interviewing techniques. I specifically avoided asking questions about survivors’ trafficking experiences, instead asking about growing up in their home countries, their career aspirations, how they left the trafficking situation, and their experiences working with NGOs and law enforcement. However, given the open-ended structure of the interviews, most survivors chose to elaborate on their trafficking situations, citing a hope to assist in research on trafficking and “help other people” in similar situations. This type of interview allowed informants to talk about their experiences in their own words and get at information without the researcher specifically having to ask for it. Interviews ranged in length from a one-time, one hour interview to a series of three two-hour interviews conducted over a six month period. I kept in touch with several of the survivors, speaking by phone, email, and in person at NGO-sponsored events. Most survivors also gave me permission to review

their case management charts, which provided contextual information about their trafficking experience, any criminal prosecutions related to their cases, and access to federal benefits. I formally interviewed six survivors, all of whom had received or were currently receiving services from TSP. Two survivors chose to use interpreters for the interview. I conducted the remaining interviews in English.

As with all ethnography, this dissertation is a product of the historical moment in which it was conducted. As a result, this ethnography focuses primarily on the implementation of the TVPA as it relates to *women*. While almost all of the NGOs that I worked with and most law enforcement agents had encountered (sometimes many) male trafficking victims in the past, during the time of my fieldwork there were very few active cases involving men. While I did encounter male survivors from time to time, my interaction with them was quite limited due to language barriers, age of the victims (under 18), or their stage of recovery. All of the survivors I interviewed were women in their 20s and 30s. I interviewed women from three continents with a range of backgrounds. One woman had a fourth grade education, while another had completed college prior to being trafficked and is now attending law school. The women had been trafficked into various sectors, including domestic labor, sex work, nude dancing, and retail work. In addition, I spoke to a number of survivors informally at empowerment groups and other events, as well as joining several survivors and their case managers in meetings, going to doctors appointments, making shopping trips to Target, or making calls to law enforcement and other agencies.

### *Sampling*

Given the relatively small size of the anti-trafficking community in New York, and the sensitive nature of the topic, I used a combination of targeted and acquaintance (snowball) sampling methods. I began with a list of trafficking service providers in New York City, as well as attending quarterly meetings of a network of anti-trafficking service providers. I contacted organizations receiving federal trafficking funds and reached out to individuals at network meetings. Through this combination of methods, I interviewed 21 service providers from 12 different organizations. These included case managers, social workers, advocates, administrators, and immigration attorneys at organizations devoted to immigrant rights, victim services, refugee resettlement, sex workers' rights, and the commercial sexual exploitation of children.

Through my ties to TSP, I gained credibility and referrals to other professionals in other sectors. Providers at TSP referred me to their law enforcement and government contacts in both New York and Washington DC. I made further contacts through conferences and events I attended, as well as through research on government websites. For the research in Washington DC, I began with three key informant interviews with academics and advocates who were active in anti-trafficking law and policy. Through these interviews, I compiled a preliminary list of individuals from both political parties who actively participated in the drafting of the TVPA. At the conclusion of every interview, I asked for recommendations of other professionals to interview. I interviewed 26 former or current government employees, including those involved with the drafting, federal policy and administrative staffers, prosecutors, and law enforcement agents.

Case managers at TSP referred me to survivors with whom I conducted life history interviews.

### **Policy Analysis and Archival Research**

As Shore and Wright note, the ethnography of policy involves not only working in various sites but also with new kinds of materials. They advocate treating policy documents as valuable sources of ethnographic data and analyzing policy documents as “cultural texts.” “They can be treated as classificatory devices, as narratives that serve to justify or condemn the present, or as rhetorical devices and discursive formations that function to empower some and silence others” (Shore & Wright, 1997: 15). Throughout the course of my fieldwork, I did archival research on the drafting of the TVPA and followed and reviewed key legislative and policy developments related to trafficking in the US. This included studying the Congressional record and legislative history of the TVPA and its reauthorizations, reviewing government and non-government websites and reports, and tracking media accounts of trafficking. I also followed prosecutions in the New York area, using the Federal Judiciary’s online system, PACER, to track indictments, trial briefs, and other documents. Additionally, I attended a hearing of the House Judiciary Committee on the reauthorization of the Trafficking Victims Protection Act and followed developments around the 2008 reauthorization, as well as following the passage and implementation the New York State anti-trafficking law.

### **Data Collection**

I collected data in the form of fieldnotes and observational records, audio recordings and transcripts of interviews, and archival and policy documents. I collected data from participant observation using descriptive and thematic field notes (Emerson,

Fretz, & Shaw, 1995).<sup>10</sup> When possible, I recorded fieldnotes by hand and recorded them in word processing software at the end of each day. When interacting with survivors or attending events where extensive note-taking would seem out of place, I recorded quick “jottings” and memory notes (Emerson, et al., 1995), which I used to assist in recording activities at the end of the day. Field notes included both direct observations and analytical comments. I kept all fieldnotes on my personal, password-protected laptop computer. Upon obtaining informed consent from informants, I recorded in-depth interviews on a digital recorder. I transcribed all audio recordings using Dragon Naturally Speaking software. I collected electronic and hard copies of archival material and policy documents, including articles, books, court documents, government and non-government reports, legislative documents, and federal policy declarations and regulations. I organized and stored these materials in a filing cabinet or on my password-protected computer.

### **Data Analysis**

Data analysis was ongoing throughout the data collection process and continued after completion of the fieldwork phase. Over the course of fieldwork, I examined and analyzed fieldnotes and interview transcripts to refine research questions and interview themes. Given the thousands of pages of fieldnotes and interview transcripts produced, I began by reading all of the materials and generating codes and categories for analysis.<sup>11</sup> Using this process, I developed a coding scheme to organize the data by conceptual themes and ideas (Strauss & Corbin, 1998), as well as by settings, perspectives, processes, events, strategies, and relationships (Minichello, Aroni, Timewell, &

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<sup>10</sup> Descriptive fieldnotes describe events and settings while thematic notes focus on emerging themes.

<sup>11</sup> Category generation is the “process of inductive analysis where the salient categories emerge from the data” (C. Marshall & Rossman, 1999: 114).

Alexander, 1995).<sup>12</sup> I coded data by hand and using ATLAS.ti software. These coding strategies facilitated easy retrieval of thematic data. Once data were coded, I used interpretive methods, including narrative and discourse analysis<sup>13</sup>.

### **Protecting Privacy and Confidentiality**

I conducted all research with the safety and privacy of my informants in mind, and made every effort to maintain confidentiality in terms of the identities of my informants. Identifying information (name, address, phone number) for all interviewees was stored separately from fieldnotes or other recordings. To provide increased protection of confidentiality for trafficking survivors, I did not ask for a full name or address from these individuals. I assigned all interviewees an ID number which was used to label fieldnotes and recordings. No identifying information or names were attached to field notes, tapes, or transcripts. All fieldnotes, digital audio recordings, and interview transcripts were stored on my password-protected computer.

#### *Data Archiving Requirements and Threats to Confidentiality*

I was awarded a research grant from the National Institute of Justice, an agency which does not often fund ethnographic research. After receiving the grant, I learned of the condition that I must deposit my data at the National Archive of Criminal Justice Data (NACJD)<sup>14</sup> at the completion of my project. I panicked. How could I deposit thousands of pages of sensitive interviews, including those with federal crime victims, in a publicly-accessible archive when people were already hesitant to even talk to me, much less have their thoughts archived for all time and accessible to researchers from

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<sup>12</sup> Coding is the analytic process through which data are fractured, conceptualized, and integrated (Strauss & Corbin, 1998).

<sup>13</sup> The goal of narrative analysis is “to discover regularities in how people tell stories” (Bernard, 1998).

<sup>14</sup> NACJD is part of the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan.

around the world? The idea of data archiving was well meaning – to enable other researchers to reproduce and verify results of studies funded with tax payer dollars. Aside from the obvious problems with trying to use someone else’s ethnographic data, I was distraught that my study would not move forward and no one would agree to participate because of the threats to their confidentiality. While all identifying information (name, address, phone number) would be stripped from the data, huge amounts of indirectly identifying information (country and city of origin, organization names, prosecution details, locations of trafficking, etc.) would remain, to be used at the discretion of future researchers (who had never met my informants). Given the small number of trafficking victims in New York City (and the country), such details could easily be pieced together to identify victims and potentially put them at risk of retaliation by their traffickers. Further, NACJD officials told me they could not confirm the level of security that would be applied to my data until after I submitted it to the archive.<sup>15</sup> Human subjects officials at NACJD also assured me that I was not obligated to inform research subjects that my data would be archived; they told me it was no longer considered “data” once stripped of direct identifiers. However, I had no intention of misleading my informants in this way. After a full year of negotiating with officials from Columbia University’s Institutional Review Board, Office of Research, General Counsel’s Office and representatives from NIJ and NACJD, I made the difficult decision to turn down the funding. Ironically, after refusing to budge for an entire year, NIJ agreed to lift the archiving requirement one day after I declined the funding, citing

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<sup>15</sup> NACJD offers three levels of security: restricted use (users must sign a “data use agreement” and may download data from the Web), restricted access (users sign a “restricted data use agreement” and submit a letter from their institution’s IRB; data is mailed on a CD to the requestor), and enclave restricted access (data is accessible only onsite at NACJD’s University of Michigan offices).



“inconsistencies” in application of the policy to previous grantees. As a result, I was not required to archive my data and was able to make a good faith commitment to the confidentiality of my informants.

### **Human Subjects and Informed Consent**

I received approval for this study from the Columbia University Institutional Review Board.<sup>16</sup> As part of the protocol, I prepared informed consent forms for service providers, government officials, and trafficking survivors. All interviewees signed a consent form or gave oral consent prior to the start of an interview. For interviews with trafficking survivors, I requested oral rather than written consent to protect their identities and avoid any written record of their names.

### **Researching a Sensitive Subject**

The sensitive political nature of trafficking raised several methodological challenges. Given the relatively small size of the anti-trafficking community, almost everyone is familiar with the other professionals working in the field. Some informants were hesitant to be interviewed because of the volatile political climate. Fran, who oversees a federal grant program, initially expressed concern when I asked if I could tape her interview. “Well, you’ve seen the headlines” she remarked in regard to why she was worried about being quoted and potentially saying something not in line with the Bush administration’s focus on sex trafficking. She added, “The current administration doesn’t want us to tell the truth.” During an interview I conducted with representatives from a federal agency, not one but two public affairs representatives sat in to monitor the interview. Others asked to review any of their quotes that I used and be assured they would not be identified by name or job title – even those no longer working in the

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<sup>16</sup> IRB-AAAB3553, approved on 9/15/2005.

trafficking field. Some informants asked me to turn the tape recorder off when answering certain questions.

Despite concerns that people would not be open about their experiences, I found most anti-trafficking professionals to be extremely supportive of my research. When I showed up at one annual conference for the second year in a row, I was astounded at how many people from other regions of the country approached me to give updates on their work, have lunch, or participate in casual discussions. Some long-term informants expressed genuine disappointment when I could not attend the third year due to financial constraints and writing commitments. Similarly, as I made contacts with law enforcement and government professionals, I began to receive phone calls and emails inviting me to upcoming trainings and events. Survivors with whom I became acquainted through my time at TSP would chat with me in the hall or stop and give me a hug when coming to meet with their case managers. Over and over, people commented about the dearth of research on trafficking in the US and their enthusiasm to read my findings.

### **Writing It Up**

Because of the sensitive and politically charged nature of my research, I have tried to obscure the identities of my informants as much as possible, while still providing useful information to contextualize their perspectives. All names are pseudonyms, with the exception of those individuals speaking at public events. The descriptions of informants' job titles are purposely vague. I do not identify any interviewees by agency, even at the most generic level, e.g., Department of Justice. To preserve confidentiality, I changed the job titles of certain individuals or gave people

more than one pseudonym. While I interviewed federal prosecutors from both the DOJ Human Trafficking Prosecution Unit in Washington DC and at the district level in New York, I do not specify this information. In particular, I have provided limited biographical information on survivors, usually withholding country of origin. Any case details I have disclosed are available in publicly available court documents.

My aim is to illuminate the diversity of viewpoints and meanings which contribute to the way in which the law is implemented. As such, I have embraced George Marcus' notion that the anthropologist can say more by letting others say it and have written a text composed of multiple voices and perspectives (Marcus, 1988). In addition to describing the implementation, I include the voices of the people putting the law into action as a way to emphasize the meanings that interact with law and policy.

## **Conclusion**

The combination of methods described allowed me to observe implementation in action, give voice to those doing anti-trafficking work, and treat law and policy as “cultural texts.” As Shore and Wright note, policy fragments and can be found in the language, rhetoric and concepts of political speeches; in the texts of government documents; embedded in institutional mechanisms of decision-making and service delivery; and interactions with street-level bureaucrats (Lipsky, 1980; Shore & Wright, 1997). “The sheer complexity of the various meanings and sites of policy suggests they cannot be studied by participant observation in one face-to-face locality. The key is to grasp the interactions (and disjunctions) between different site or levels in policy processes... [This] entails multi-site ethnographies which trace policy connections

between different organizational and everyday worlds, even where actors in different sites do not know each other or share a moral universe” (Shore & Wright, 1997: 14).

### **Chapter 3: Trafficking on the Books: The Trafficking Victims Protection Act as Cultural Text**

*There is no single, correct solution to a policy problem any more than there is a single correct perception of what that problem is (Yanow, 1997: 3).*

*The evil we address in the Freedom from Sexual Trafficking Act is uniquely vile, uniquely brutal, and cries out for its own comprehensive solution (Rep. Chris Smith (R, NJ), 8/4/1999).*

*The problem with ‘trafficking,’ the term, of course, is that trafficking is understood by most people since 1880 to mean moving women for prostitution (Mark, federal prosecutor).*

#### **Introduction**

Angela, a former federal policy advisor, reflected during her interview on the ease with which I used the language of the TVPA. “It’s interesting to hear you talk about ‘force, fraud and coercion’ ... that phrase might not necessarily have rolled off the tongue 10 years ago, because we were still trying to figure out what words [to use] .... You’re just like ‘force, fraud and coercion,’ but ... when you think about it... how do you identify what the harm is and then reduce that to words in a statute? And a lot of thought went into that.” Angela had been actively involved in discussions regarding how to define and address trafficking in persons during the drafting and early implementation of the TVPA, and she spoke about the careful deliberations about definition. Much of the way trafficking is conceptualized and talked about today is grounded in the painstaking negotiations of language that occurred during the drafting of the law. The intricacy of the definition is due largely to the fact that the TVPA was a carefully negotiated compromise emerging out of extensive debates regarding the goals of the law and the meaning of trafficking. As I will argue in this chapter and throughout the dissertation, the TVPA definition of trafficking gives the illusion of fairness by

covering male and female victims trafficked into any labor sector; however, three dichotomous elements of the definition skew interpretation and application of the law toward trafficking of women into forced prostitution: 1) the inclusion of operative and non-operative definitions of trafficking; 2) the marking of sex trafficking as a special category within the operative definition of trafficking; and 3) discrepant criteria for establishing a victim of trafficking versus the crime of trafficking.

The definition being used today is a dichotomous one, as was the effort to draft the law. As a result of the diverse constituencies involved in the negotiations – anti-prostitution feminists, evangelical Christians, and human rights practitioners, among others – the resulting law embodies the wide range of values, beliefs, and anxieties held by the parties active in the drafting effort. The result is a convoluted and layered definition of trafficking that can be interpreted in numerous ways, allowing for varying conceptions of “trafficking.” The definition is ambiguous (in that some activities with no legal consequences, i.e, movement into prostitution, are labeled “trafficking”) and overly specific (in that trafficking into forced prostitution is marked as a special category) at the same time. This definitional complexity contributes to extensive confusion and mystification in the realm of trafficking policy, as well as in the implementation of the law in terms of who counts as a “victim of trafficking.”

No law can be understood outside of its social and political context (Nader, 1965). In this chapter I examine the TVPA as a “law on the books.” By excavating the cultural text of the TVPA to uncover the social and political context in which the drafting occurred, it becomes possible to understand the complex ways in which

trafficking is understood by those implementing the law. The cacophonous history of the TVPA drafting continues to reverberate in the implementation of the law today.

### **The Roots of the Law – Towards a Definition of Trafficking**

While notions of “trafficking” first arose nearly a century prior and cases of forced labor and forced prostitution had surfaced in the US throughout the 1980s and 90s, renewed interest in “trafficking” emerged in the late 1990s as anxieties over globalization, migration, organized crime, and women’s sexuality hovered in the global consciousness. As a result of the emphasis on “violence against women” at the Fourth World Conference on Women in Beijing, China, “trafficking” entered the global political spotlight framed as a gendered issue and a violation of women’s human rights (see Locher, 2007 for a thorough discussion). The first step toward an official US policy on trafficking occurred in March 1998 when President William Jefferson Clinton issued an executive memo on trafficking in which he referred to “the problem of trafficking in women and girls” as “an insidious form of violence” (Clinton, 1998). The President declared, “Here in the United States, we have seen cases of trafficking for the purposes of forced prostitution, sweatshop labor, and exploitative domestic servitude. The victims in these cases often believe they will be entering our country to secure a decent job. Instead, they are virtual prisoners, with no resources, little recourse, and no protection against violations of their human rights” (Clinton, 1998). The memo continued by laying out what would become the administration’s anti-trafficking strategy of prevention, protection, and prosecution – “The Three P’s” – and went on to charge the President’s Interagency Council on Women (PICW) with coordinating the US government’s domestic and international policy on trafficking. Along with PICW,

Clinton tasked the Secretary of State and Attorney General with examining current treatment of victims, reviewing existing criminal laws, developing strategies to protect and assist victims, aiding the international community, raising awareness, and generating strategies to combat trafficking (Clinton, 1998).

From the beginning, the Clinton administration's stance on trafficking was multi-dimensional in that it addressed trafficking into all labor sectors, and it quickly grew to include not only "women and girls" but also men and boys. Following the issuance of the Executive Memo, interagency working groups quickly formed to assess the situation of trafficking both domestically and internationally. Angela, a former federal policy advisor, told me about the approach. "We made a really concerted effort to think about the problem holistically and to involve all the parts of [government] that would be affected by it or could contribute to it." From the administration's point of view there was a crime to be addressed (forced and coerced prostitution or labor) and victims to protect (through prevention and the provision of services). Angela described their approach as problem-centered. "There's a problem out there that needs to be addressed; there's criminal activity that we want to make sure we can cover in all its forms. And then once you get the law, your job is to enforce that law in a fair and evenhanded way, but one that addresses it [trafficking] in all of its manifestations." She then went on to talk about the importance of defining the problem of trafficking. "People really hoped that if we just keep working hard at trying to define what trafficking is in a way that we think is fair and honest and reflects what the problem is, it will give us the tools we need to address trafficking in all its forms." From Angela's perspective, it was imperative to come up with a "fair" and broad definition of



trafficking and not to define it too narrowly. This issue of definition was key, because in 1998 there was no agreed upon definition of trafficking. Governments and organizations were still trying to understand and document the problem. Within the US government the phenomenon was being conceptualized as “modern day slavery,” and existing laws were viewed as insufficient to address the ways in which it was occurring.

Angela recalled the government slowly moved toward the idea of developing a US anti-trafficking law and criminal justice response. “Within the government we looked for a little while, and we said, we have a bunch of statutes we can use, but then when we really started to look at it harder ... slowly there became an understanding that there were some gaps that we could address with some new legislation.” She added, “We said, well let's start to look at some real priorities for legislation that would make sense, that would give us new tools ... to go after traffickers, to investigate, prosecute, punish traffickers and to give us many more ways to protect and assist victims.” Victim protections also became paramount as cases emerged of men and women being lured to the US with promises of well-paying jobs, forced into servitude, threatened and mistreated, eventually freed by law enforcement, and then deported to their home countries because of their undocumented status. As a result, the idea of formulating a new law to address these inadequacies grew.

Concurrent with the government’s inter-agency effort, Congress started acting on the trafficking issue. While a number of Congressmen and women were active in drafting anti-trafficking legislation, two men led the effort – Democratic Senator Paul Wellstone of Minnesota and Republican Representative Chris Smith of New Jersey. Senator Wellstone became interested in the issue when he encountered trafficking

victims while traveling overseas with his wife Sheila. He and his colleague, Senator Sam Brownback (R, Kansas), who came to understand trafficking through the lens of slavery in the Sudan, both viewed the issue as encompassing trafficking into any forced or coercive labor (B. Stolz, 2005). In 1998, Senator Wellstone introduced a resolution of concern on the worldwide trafficking of persons (S. Con. Res. 82--Relative to a Violation of Fundamental Human Rights, 1998; B. Stolz, 2005).<sup>17</sup> Wellstone followed up in March of the following year by introducing the International Trafficking of Women and Children Victim Protection Act of 1999 (S.600).<sup>18</sup> While the bill's title emphasized trafficking of women and children, its definition of trafficking was gender-neutral and covered trafficking into all labor sectors.

TRAFFICKING.—The term ‘trafficking’ means the use of deception, coercion, debt bondage, the threat of force, or the abuse of authority to recruit, transport within or across borders, purchase, sell, transfer, receive, or harbor a person for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude, or slavery or slavery-like conditions, or in forced, bonded, or coerced labor (S.600, 1999).

Republican Representative Chris Smith of New Jersey meanwhile introduced The Freedom from Sexual Trafficking Act of 1999 to the House in March of that same year (H.R.1356). Prior to the trafficking issue, Smith was best known for championing the rights of religious minorities and as co-chair of the House's Pro-Life Caucus (Chapkis, 2003). Chuck Colson, the evangelical activist, and Michael Horowitz, Senior Fellow at conservative think tank the Hudson Institute, introduced Smith to the issue of sex trafficking (Skinner, 2008). As a result, Smith's initial bill was limited to trafficking into forced commercial sex acts.

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<sup>17</sup> Congresswoman Louise Slaughter (D, New York) introduced the same resolution in the House (H. Con. Res. 82--Relative to a Violation of Fundamental Human Rights, 1998)

<sup>18</sup> Congresswoman Louise Slaughter (D, New York) introduced the companion bill in the House (H.R. 1238).

**SEXUAL TRAFFICKING-** The term `sexual trafficking' means the taking of a person across an international border for the purpose of a commercial sexual act, if either such taking or such sexual act is effected by fraud, force, or coercion, or if the person has not attained the age of 18 years (H.R.1356, 1999).

Neither of these bills made it out of committee, but both Wellstone and Smith were committed to the issue, introducing new bills in November 1999. Wellstone introduced the Comprehensive Antitrafficking in Persons Act of 1999 (S.1842); Sam Gejdenson (D, Connecticut) sponsored the companion bill in the House (H.R.3154). The bill maintained a definition of trafficking that was broad in scope.

The term `trafficking' means recruiting or abducting, facilitating, transferring, harboring or transporting a person, by the threat or use of force, coercion, fraud or deception, or by the purchase, sale, trade, transfer or receipt of a person, for the purpose of subjecting that person to involuntary servitude, peonage, slavery, slavery-like practices, or forced or bonded labor or services (S.1842, 1999).

Chris Smith introduced the Trafficking Victims Protection Act of 1999 (H.R. 3244), a compromise bill combining his and Sam Gejdenson's (and thereby Senator Wellstone's) earlier bills. The bill ultimately became the template for the Trafficking Victims Protection Act of 2000 and reflected the divergent views held by its odd-bedfellow sponsors, Smith and Wellstone. This bill was broader than Smith's previously introduced legislation in that it covered both sexual and non-sexual forms of trafficking, but it specifically named trafficking into forced prostitution, clearly delineated as separate from trafficking into other sectors. Additionally, the bill included a definition of "sex trafficking" that did not require any elements of force, fraud, and coercion, and therefore covered any movement into prostitution. Both Paul Wellstone and Sam Brownback introduced similar bills in the Senate (S.2449, 1999; S.2414, 1999). While an agreement was ultimately reached, the path to compromise was a long one with its twists and turns reflected in the final law.

As these bills made their way through the House and Senate, negotiations took place on many interconnecting fronts – several Congressional committees addressed trafficking in hearings, the government formed working groups, and various nongovernmental organizations and think tanks initiated lobbying efforts (B. Stolz, 2005). On the government side, the Departments of Justice, State, Labor, and Health and Human Services, as well as the President’s Interagency Council on Women were all actively involved in discussions of what the bills should include. A diverse array of nongovernmental groups also advised the drafters of the legislation. Representatives from the Florida Immigrant Advocacy Center, the Global Survival Network, Human Rights Watch (HRW), the International Justice Mission (IJM), the Protection Project, the Southern Baptist Convention, and the Women’s Commission for Refugee Women and Children, among others, testified at Congressional hearings (*International Trafficking in Women and Children*, 1999; *The Sex Trade: Trafficking of Women and Children in Europe and the United States*, 1999; *Trafficking of Women and Children in the International Sex Trade*, 1999). Congressman Chris Smith acknowledged receiving guidance from an unlikely coalition of Conservatives, Evangelicals, and feminists, including Charles Colson, Gloria Steinem, the Family Research Council, Equality Now, the Religious Action Center of Reform Judaism, the National Association of Evangelicals, and Michael Horowitz of the Hudson Institute (Congressional Record, 2000; B. Stolz, 2005). All of these parties conveyed their varied perspectives to those drafting the legislation.

While a number of contentious points were debated, including sanctions against countries not making significant efforts to address trafficking, labor protections, and

victim benefits and immigration remedies, one of the most controversial was that of “sex trafficking.” Core concerns revolved around whether the new law should focus solely on trafficking into forced prostitution or trafficking into all work sectors and whether consent was relevant to trafficking into prostitution (that is, could someone voluntarily choose to work in prostitution or was all prostitution inherently coercive and therefore all prostitution should be considered trafficking?). While one group of supporters viewed the specific marking of “sex trafficking” a distraction to the overall purpose of the legislation, the other believed it should be the centerpiece of the law.

Representative Chris Smith adamantly believed that a US anti-trafficking law should solely address trafficking into forced prostitution as a uniquely horrific act. During review of the Freedom from Sexual Trafficking Act of 1999 in the Subcommittee on International Operations and Human Rights of the House International Relations Committee, Representative Cynthia McKinney (D, Georgia) remarked that Smith’s focus was too narrow. “As important as sexual trafficking is, it is only one reason why people sell other people. People are also sold into bonded sweatshop labor and into domestic servitude and this is not just a labor issue. These are all slavery-like conditions often involving sexual exploitation by the employer as well. We ought to look for a way to deal with all of these conditions at once” (*Markup of the Freedom from Sexual Trafficking Act, 1999*: 5). She noted common elements to all forms of trafficking and endorsed the approach taken by the Senator Wellstone and Representative Gejdenson in their companion trafficking bills. In response to such criticism, Chris Smith proclaimed “sexual trafficking” a singularly abhorrent act. “The evil we address in the Freedom from Sexual Trafficking Act is uniquely vile, uniquely

brutal, and cries out for its own comprehensive solution” (*Markup of the Freedom from Sexual Trafficking Act*, 1999: 38). The next month, at another hearing on Trafficking of Women and Children in the International Sex Trade, Smith acknowledged that trafficking was far-reaching in scope but reemphasized his commitment to sex trafficking as a unique harm.

Our bill explicitly recognizes that international sexual trafficking is not the only form of traffic in persons. Innocent people are lured, pressured, and lied to every day all over the world in all kinds of situations, and I take second place to no one in my commitment to ending all labor practices that are coercive, deceptive, or otherwise improper, or even when they involve labor that is not in and of itself inherently degrading. The problem with addressing all of these evils in one bill, the idea that one size fits all, is that they involve wide range of different situations which may call for an equally broad range of solutions. So we decided to start by attacking the most brutal form of trafficking, I believe, the use of force and deception in the systematic degradation of millions of women and children, and singling it out for swift and certain punishment (*Trafficking of Women and Children in the International Sex Trade*, 1999: 3).

Smith’s comments about “the most brutal form of trafficking” reveal deep-seated beliefs about the “inherently degrading” nature of prostitution and highlight a discomfort with the exchange of sex for money. Indeed, the sexual component of trafficking, rather than its coercive nature, was what attracted Smith and other conservatives to the issue. The notion of *women* being coerced into *commercial sex*, was viewed as indisputably more horrific than any abuse (including non-commercial sexual abuse) experienced by women coerced into other labor sectors (e.g. domestic work or agriculture) and more appalling than any harm potentially experienced by men.

Witnesses with varied perspectives on trafficking testified at the hearing, mirroring the two competing notions of trafficking – one in which force, fraud, and coercion were central to the trafficking of individuals into any sector, and the other in which commercial sex (forced or not) was separated out as a unique kind of

exploitation. Theresa Loar, Director of the President's Interagency Council on Women at the Department of State noted during her comments, "Although this hearing focuses on the sex industry, it is clear that this is merely one component of trafficking. Traffickers themselves are often engaged in more than one kind of trade because they follow the profits" (*Trafficking of Women and Children in the International Sex Trade*, 1999: 14). Others, including Laura Lederer of the Protection Project, echoed Chris Smith's belief. "I think I can speak safely for many women's organizations when I say that they would believe that sex and labor aren't the same and can't be equated. They need to be separated, and if we deal with sexual trafficking and deal with labor trafficking, I think that is the right approach" (*Trafficking of Women and Children in the International Sex Trade*, 1999: 43). From this perspective, there was no common element between the two.

Within the US Congress the disagreement regarding trafficking into forced commercial sex versus trafficking into all sectors was split primarily along party lines, with Republicans favoring a bill focused solely on "sex trafficking" and Democrats pushing for a law covering trafficking into all labor sectors.<sup>19</sup> Outside of Congress, views crossed traditional right/left boundaries in complicated ways. Since the drafting of the TVPA was happening simultaneously with the drafting of the optional UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, discussions regarding definitions for the two instruments became intertwined (UN Protocol, 2000). Much of the public debate on the issue occurred around the drafting of the UN Protocol, while most lobbying around the TVPA took

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<sup>19</sup> Republican Senator Sam Brownback (KS) was an exception and introduced legislation addressing trafficking into all sectors (S.2449, 2000).

place behind the scenes. The Protocol defined trafficking broadly to encompass all forms of labor and services, but the drafters endlessly debated the role that force, fraud, and coercion would play within that definition when it came to commercial sex. These questions were quickly incorporated into the TVPA negotiations, and in this context, the subject of the debate and lobbying efforts on the issue shifted to how “sex trafficking” would be defined.

As Barbara Stolz notes, the enactment of the TVPA “is, at least in part, a story of interest groups educating policymakers about a shocking and heinous social problem and defining a ‘new crime’ with global dimensions and corresponding societal responses. In so doing, the groups set the criminal justice policy agenda” (B. Stolz, 2005: 408). Interest groups included religious conservatives, anti-prostitution feminists, and human rights advocates among others. Stolz proposes that the groups comprised two spheres of interest – what she refers to as the “antiprostitution sphere” and the “human trafficking sphere,” each comprised of diverse clusters of organizations and individuals (B. A. Stolz, 2007). The “antiprostitution sphere” (sometimes referred to as “the abolitionists”) focuses primarily on trafficking into prostitution and includes conservative, faith-based, and some radical feminist organizations (B. A. Stolz, 2007). The groups in this sphere generally believe that sex trafficking is more serious than other forms of trafficking, conflate prostitution and trafficking, and seek to end the demand for prostitution (B. A. Stolz, 2007). Alternatively, various human rights, public health, labor, and migration organizations constitute the “human trafficking sphere.” These groups and individuals advocate defining “human trafficking” to include trafficking into all sectors, including forced prostitution and forced labor. They take the



position that trafficking can happen to anyone in any sector as long as force, coercion, or deception is present or the individual is under 18 years of age (B. A. Stolz, 2007).

These two opposing spheres symbolized the disjunction and lack of agreement regarding the meaning of trafficking and how “it” should best be addressed.

During negotiations for both the TVPA and UN Protocol, discussions became particularly tense regarding the relevance of “consent” and the presence of force, fraud, and coercion in trafficking for prostitution. During hearings of the Senate Foreign Relations Committee, several witnesses emphasized that the *conditions* of work or services, as opposed to the *type* of work or service performed, were the core of any trafficking offense. Regan Ralph, Executive Director of the Women’s Rights Division of Human Rights Watch, testified on a human rights approach to defining trafficking which placed force and coercion at its core. “While our research has focused on the trafficking of women and children into the sex industry, it is worth noting that there are numerous credible sources that are increasingly reporting similar patterns to those I will discuss in the trafficking of men, women, and children into forced marriage, bonded sweat shop labor, and other kinds of work.” She added, “In all cases...the coercive tactics of traffickers, including deception, fraud, intimidation, isolation, threat, and the use of physical force and/or debt bondage are at the core of the problem, and must be at the center of any effort to address it (*International Trafficking in Women and Children*, 1999: 44).

Clinton administration officials echoed this sentiment. Harold Koh, Assistant Secretary of State for Democracy, Human Rights, and Labor, testified, “The key in trafficking is not the act itself of sexual exploitation. It is the act of the use of force, or

fraud, and artifice, to get people across borders... And the goal is to try to cast the net as broadly as possible, and to criminalize as many different kinds of acts which are the end goal for that kind of activity” (*International Trafficking in Women and Children*, 1999: 22). While both witnesses noted the many iterations trafficking could take and made clear the need for force, fraud, and coercion as defining elements of the crime of trafficking, Senator Wellstone asked Koh to specifically address the prostitution issue that rested at the heart of the debate. “Can I just ask you to speak to what is certainly a thorny question for me, and that has to do with whether or not we are talking about voluntary prostitution versus forced prostitution, this whole key question ... I see more division around this question than any other, and I would like to get your testimony on this” (*International Trafficking in Women and Children*, 1999). Koh responded by referring to the UN Protocol definition and making a clear delineation between prostitution and trafficking. “Our position is very clear that prostitution is a practice we would like to eliminate. We abhor it, and we certainly do not want in any way to endorse it, or to help it. The issue arises in important part in the [UN] Protocol that is being negotiated ... and trafficking is described therein as basically trafficking across borders by reason of force or deception or coercion, and does not include voluntary acts” (*International Trafficking in Women and Children*, 1999: 20-21).

The Clinton administration took a position generally in line with the “human trafficking sphere” groups, that including force and deception in the definition was necessary in order to distinguish between trafficking and prostitution and to recognize variations in the legal status of prostitution across nations (Jordan, 2002; B. A. Stolz, 2007). Lobbying groups such as the Human Rights Caucus (a coalition of human rights

organizations advocating for a broad definition of trafficking) argued, “Obviously, no one consents to abduction or forced labour, but an adult woman is able to consent to engage in an illicit activity (such as prostitution, where this is illegal or illegal for migrants)” (Human Rights Caucus 1999: 5 in Doezema, 2002: 3). Other groups agreed. For example, a roundtable made up of human rights activists, scholars, and professionals, devoted to the “Meaning of ‘Trafficking in Persons’” concluded, “With respect to the *definition* of trafficking, the nature of the work or relationship is not the key. The crucial elements of trafficking are the exploitative or servile conditions of the work or relationship and whether or not those conditions are consented to through the exercise of free will” (A. Miller, 1998: 15, emphasis in original).

In contrast, abolitionist groups argued that trafficking should include all forms of recruitment and transportation for prostitution, regardless of the presence of force or deception (Doezema, 2002; Raymond, 2001). A diverse range of groups supported this argument, but the language was generated by the feminist abolitionist movement, which equates all prostitution with sex trafficking (or sexual slavery) and sees sex-trafficking victims as in need of being rescued (Barry, 1979, 1995; see also Leidholdt, 2003; Raymond, 1998). Adherents to this position view all prostitution as sexual violence and exploitation, which victimizes all women, reducing them to sexual objects. Supporters argue that there can be no distinction between forced and voluntary prostitution. That is, prostitution cannot truly be consented to, because it “reduces women to commodities for market exchange” (Barry, 1979; 1995: 1).

In response to the Clinton administration’s position, conservative Christians and anti-prostitution feminist groups – two poles of the “antiprostitution sphere” – launched

a barrage of attacks. For conservative Christians and evangelicals, the issue of trafficking, and sex trafficking in particular, was an example of depraved moral behavior which violated the principle that sex be reserved for marriage between a man and a woman (Shapiro, 2004). As Jacqueline Berman notes, “The mere existence of prostitution is antithetical to their moral system. Thus, constructing human trafficking as sex trafficking allows the Christian right to reiterate and reinvigorate their other ideological positions, ultimately equating loose sexuality with criminality” (Berman, 2006: 278). Trafficking became a way for conservatives to engage in “human rights” work and put a moral spin on it that reinforced a particular conception of sexuality. Conservatives William Bennett and Chuck Colson wrote an opinion piece in the *Wall Street Journal*, “The Clintons Shrug at Sex Trafficking,” decrying the administration’s efforts to distinguish between forced and voluntary prostitution in both the TVPA and the UN Protocol (Bennett & Colson, 2000). “In defining the term sexual exploitation, the administration has supported using the phrase forced prostitution rather than simply prostitution. In this instance the adjective forced makes all the difference. If the administration's position is accepted, the focus of attention would shift from the profiteers who traffic in women to the supposed state of mind of the victimized women.” They continued, “Even if it were practical to distinguish between consent and force in such cases, the administration's position would still contradict common sense and decency. Prostitution and pornography inevitably exploit women, whether they consent to it or not” (Bennett & Colson, January 10, 2000). Not only do words such as “decency” highlight the moral tone of the article, but the title of the piece itself raises another issue – due to the lack of agreement on a definition of trafficking, groups and

individuals on either side of the debate could ascribe meaning to it in any way they wished. While it may have been more accurate to title the piece “The Clintons Shrug at Prostitution” (although this would be itself an over-simplified claim), Bennett and Colson exploited the ambiguity of language so that the reader might surmise from the headline that the Clintons shrug at forced prostitution. While Bennett and Colson argued there was no difference between prostitution and forced prostitution, their choice of language helped normalize this hotly debated claim.

Berman explores the seemingly perplexing alliance between Christian groups and radical feminists around the issue of “sex trafficking” and suggests that,

Shared views of sexuality, prostitution, the role of morality in public life, and universalist constructions of women have combined to produce a conflation of trafficking in women and prostitution that has made possible the alliance between conservative Christians and radical feminists in the fight against human trafficking. This conflation reduces all human trafficking to sex trafficking, which in turn is reduced to prostitution. However, their particular vision of prostitution is one in which all women in the sex industry are seen as exploited victims without any specific agency of their own. For both of these groups, there is no debate about whether this is the correct view or understanding of prostitution. Rather, it is this shared view of, and focus on, prostitution that creates the bond between two such seemingly disparate groups (Berman, 2006: 272).<sup>20</sup>

As such, anti-prostitution feminists responded with similar views to those of conservative Christians on defining human trafficking in US anti-trafficking legislation. A coalition of feminist organizations sent a letter to Senator Wellstone regarding his International Trafficking of Women and Children Protection Act (S.600, 1999), which defined trafficking broadly. The letter (signed by Jessica Neuwirth of Equality Now, Gloria Feldt of Planned Parenthood Federation of America, Patricia Ireland of the National Organization of Women, Dorchen Leidholdt of the Coalition Against

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<sup>20</sup> See Bernstein (in press) for further analysis of the Evangelical engagement with the trafficking issue.

Trafficking in Women, Eleanor Smeal of the Feminist Majority, Gloria Steinem, and others) urged altering the definition of trafficking “to reflect the international consensus that the transport of human beings for the purpose of sexual exploitation constitutes trafficking, regardless of whether or not such persons have ‘consented’ to their exploitation” (Letter to Senator Wellstone, 1999). The letter requested dividing the definition into two parts – sex trafficking and labor trafficking, with the requirement of force, fraud, and coercion limited solely to labor trafficking. Citing a rarely used 1949 UN Convention concept of trafficking, the signatories argued, “Exploitation, rather than coercion, is the operative concept” (Letter to Senator Wellstone, 1999). However, their application of this concept was limited to commercial sex. The definition they proposed encompassed an uneven conception of trafficking that left the language of “force, fraud, and coercion” attached to labor exploitation only but categorized all movement into prostitution as trafficking.

Their rejection of the distinction between forced and voluntary prostitution and the reference to an “international consensus” alluded to a half-century-old international treaty with roots back another half century to the “white slavery” campaigns taking place at the turn of the 20<sup>th</sup> century (1949 Convention). The term “trafficking in women” first emerged as part of the white slavery campaigns of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries that depicted young and naïve, innocent women lured by evil traffickers into horrendous and inescapable circumstances (Doezema, 2000; Pheterson, 1989). Much like “trafficking,” “white slavery” meant different things to different people, ranging from all prostitution, to crossing international borders for the purpose of prostitution, to the forceful abduction and transport of women for prostitution

(Doezema, 2000). Not unlike current concerns about “sexual slavery” and “sex trafficking,” evangelicals and abolitionist feminists were at the center of the white slavery campaigns. A necessary objective of these anti-white slavery abolitionists was to gain public sympathy for prostitute victims. Thus, the white slave image broke down the separation between voluntary and involuntary prostitutes, constructing all prostitutes as “victims,” appealing to the sympathies of the middle-class reformers. Doezema argues that so-called “white slavery” was largely mythical and very few actual cases were reported; rather, stories of “white slavery” were triggered by actual increases of women, including prostitutes, migrating from Europe to find work in the US (1949 Convention; Doezema, 2000). Doezema suggests that white slavery and trafficking in women narratives express deeper fears and anxieties about women's sexuality and independence, the breakdown of the family, migration, and racial and national purity (Doezema, 2000). As Gayle Rubin has noted, anxieties over social questions are often transformed into sexual ones (Rubin, 1984).

In response to the issue of white slavery, a series of international treaties and federal statutes emerged to address the “traffic in women.” A 1904 international agreement required signatories to collect information regarding the procurement of women abroad for “immoral purposes” (Chuang, 1998; Corrigan, 2001). The 1910 International Convention for the Suppression of the White Slave Traffic went further by criminalizing anyone who “in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or a girl under age, for immoral purposes” across borders (Chuang, 1998; Demleitner, 2001). As the term “traffic” implies, these early conventions were limited to the process of recruitment and

transportation and did not require nations to criminalize prostitution, forced or otherwise (Chuang, 1998). In 1910 the US Congress also passed the White-Slave Traffic Act (more commonly known as the Mann Act), which prohibited interstate transportation of women for “immoral purposes” (White Slave Traffic Act of 1910, Ch. 395, 36 Stat. 825 (Codified as Amended at 18 U.S.C. §§ 2421–2424)). Following several decades and the passage of several other international conventions, the United Nations passed the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (the “1949 Convention”) to consolidate the earlier treaties on trafficking. While the 1949 Convention does not explicitly define trafficking, it penalizes procurement, irregardless of consent, in international and domestic trafficking for prostitution (Chuang, 1998). While few member states signed on to the 1949 Convention (the US did not ratify it) because of its extension into domestic policies on prostitution, it is this notion of “trafficking” that anti-prostitution feminists and conservative Christian groups supported during the drafting of the UN Protocol and the TVPA. It is widely believed that the 1949 Convention defines prostitution as trafficking. However, Janie Chuang suggests that a UN report issued pursuant to the Convention reveals that the drafters did not intend to regulate or prohibit prostitution, but rather to work toward the abolition of the “exploitation of prostitution” (Chuang, 1998: 76-77). While abolitionist groups advocated keeping the spirit of the 1949 definition (which applied regardless of consent), others argued that it was precisely because of this limited and inadequate definition that it was necessary to establish a broader, updated definition of trafficking (A. Miller, 1998).



Over the course of the 1990s, the term “trafficking” took on increasingly greater legal significance. The US government had been tackling a number of crimes falling under the umbrella of “trafficking” (including peonage and involuntary servitude) since the ratification of the 13<sup>th</sup> Amendment (1865), so the issue was not entirely new. However, as various interest groups adopted the term “trafficking” to describe particular issues, the term absorbed manifold meanings. As Mark, a federal prosecutor, told me, incorporating the term “trafficking” was not a straightforward process.

The story of slavery and trafficking ... over the last 15 years can ... be described as people come in with whatever their pet issue is, try to say that that's what this is, and then [we have] to push back and force people to look at the thing more broadly with the focus being on the underlying denial of freedom as opposed to the type of work, or the type of slave, or type of services that are involved. Because first it's ... let's have a sweatshop working group. Well no, it's gotta be bigger than that. Then, of course, everybody's like, let's do something about trafficking of women and children as a result of the First Lady's participation in the Beijing conference, and kind of suddenly you get this importation of the term trafficking into what had been a perfectly good involuntary servitude and slavery program.

Mark continued by discussing the repercussions of this change in terminology.

“Eventually then it starts being called trafficking as opposed to involuntary servitude and slavery. ... So you know the 90s were kind of a grudgingly accepting the term ‘trafficking’ to be imposed upon [our] pre-existing work.” For Mark and other members of the federal government, “trafficking” became a new way to describe crimes previously conceptualized as involuntary servitude, peonage, and slavery; however, the change of terminology had broader consequences than merely renaming the US government’s involuntary servitude program. The new attention to prostitution and the reclaiming of the term, “trafficking,” redefined the issue. “The problem with ‘trafficking’ the term, of course, is that trafficking is understood by most people since

1880 to mean moving women for prostitution,” Mark emphasized. As a result, taking on “trafficking” meant taking on all of the thorniness and complexity tied to any issue involving sex.

Prior to the passage of the TVPA, cases that today are classified as “trafficking” were prosecuted under a variety of federal laws, and the government’s approach to trafficking emerged out of this experience. As Dean, a federal prosecutor told me, “We’ve been doing trafficking cases since before the enactment of the TVPA; we just called them something different – involuntary servitude cases or peonage cases.” In fact, the Justice Department had encountered and prosecuted a number of cases in the years leading up to the passage of the TVPA. “It wasn’t purely theoretical,” Angela, a former federal policy advisor, told me. “Even before people started talking in a much more concerted way on the global scene about ‘trafficking in persons’ or ‘trafficking in women ... we had seen cases and we had responded to them and ... we knew they covered a range of different types of trafficking – farms, factories, the sex industry.” While Angela and other federal employees emphasized their extensive experience and knowledge of the range of forced and coercive labor, they also acknowledged that existing tools were not adequate to address these crimes.

A number of my informants who were involved with the drafting talked about what it meant to create a federal crime of trafficking. Paul noted, “Just about everything that has been prosecuted under the TVPA probably could have been prosecuted under other statutes ... maybe not for as severe a penalty, although the penalties for involuntary servitude and the Mann Act are quite severe. ... But even though we could have prosecuted those things under the existing law, I think it was very

important from the United States perspective to be seen as a leader in the area and pass a statute that had a crime called ‘trafficking,’ because we were encouraging everybody else in the world to do it, and other countries did not have the tools that we already had.” Indeed, part of the role of the TVPA was transformational in nature – an old crime was taking on new meaning and significance.

While the government had a variety of criminal statutes to prosecute cases, the types of cases that emerged over the 1990s indicated that criminal law was not a sufficient solution to the problem. Over the second half of the twentieth century prosecutors utilized Civil War-era peonage and involuntary servitude statutes (see 18 USC 1581 and 18 USC 1584), combined with extortion, kidnapping, and alien smuggling statutes, as well as Mann Act charges to address trafficking-like crimes; in the 1990s it became clear that a new approach was needed, which included service provision for immigrant victims. Mark, a federal prosecutor, described two cases that created what he referred to as a “perfect storm” effect, resulting in the development of the Worker Exploitation Working Group by the Clinton administration – the El Monte sweatshop case and the Miguel Flores case. In 1995 police discovered 72 Thai garment workers being held in a guarded factory in El Monte, California. The owner of the factory had lured the workers to the US with promises of employment, but upon arrival forced them to work up to 22 hours a day under threats and physical violence and paid them less than a dollar an hour. The Los Angeles US Attorney’s office charged the factory operators with involuntary servitude, criminal conspiracy, kidnapping, and smuggling and harboring aliens (USDOJ, 1995). For the second case, in 1997, Miguel Flores and Sebastian Gomez were charged with involuntary servitude, extortion, and

firearms violations as well as harboring aliens, amongst other charges. “Flores and Gomez had a workforce of over 400 men and women in Florida and South Carolina, harvesting vegetables and citrus. The workers, mostly indigenous Mexicans and Guatemalans, were forced to work 10-12 hour days, 6 [sic] days per week, for as little as \$20 per week, under the watch of armed guards. Those who attempted escape were assaulted, pistol-whipped, and even shot” (Coalition of Immokalee Workers, 2009). Mark described the Flores case in particular as creating a blueprint for tackling trafficking cases. Due to the large number of victims, federal authorities were forced to collaborate with service organizations to meet victim needs. “From the Flores case, of course, that gives us the way to work with NGOs and law enforcement across organizational lines, within law enforcement, and with the locals.” This model of working with NGOs to provide services to victims was incorporated into the law, along with the provision of federal benefits and immigration relief. While some members of Congress believed undocumented immigrants would falsely claim they were trafficking victims in order to gain immigration status, it was ultimately decided that these benefits were needed to gain victim cooperation in trafficking prosecutions. As I will describe in Chapter 6, the process of obtaining victim benefits and immigration relief is so cumbersome and complex that even authentic victims are often unable to successfully access these entitlements; concerns over others cheating the system have proven to be misplaced.

Megan, a former Congressional staffer active in drafting the TVPA, mentioned two other cases that she viewed as informing the bill – the Paoletti case in New York and the Cadena case in Florida. These cases revealed the rise in large-scale forced labor

involving undocumented immigrants, the need for a legal conception of psychological coercion, and necessity of specialized social services for victims. The 1997 Paoletti case, also known as the “Deaf Mexican” case, involved 56 deaf-mute Mexicans who were lured to the US with promises of jobs. The victims were forced to work under conditions of servitude, selling trinkets on the streets and subways of New York City 18 hours a day, seven days a week. The victims were beaten and threatened if they did not meet the daily quota of selling \$100 worth of trinkets. The defendants ultimately plead guilty to conspiracy to commit extortion and alien smuggling charges (I. Fisher, 1997; USDOJ, 2007). The second case, *United States v. Cadena*, involved “Mexican women and girls as young as 14 years of age [who] were brought to the United States with promises of good jobs as waitresses and landscapers, only to be held as slaves in a high-volume prostitution operation. The Cadena family would hold the women in their service by shooting into the ground at their feet, threatening their families, beating them, and raping them as punishment if they tried to run away. The ringleader and six other men were convicted in 1999 of involuntary servitude” (USDOJ, 2006: 2-3).

All of these cases were discussed during hearings of the Senate Foreign Relations Committee and influenced the broad conception of trafficking codified in the TVPA. Paul, who holds a policy position in the federal government, told me, “In the US a very significant part of the trafficking is not for sex; it's for forced work in sweatshops and so forth. And we knew that from the start. We already had cases where there were 50 or 75 people working inside barbed wire fences and never allowed to leave. ... So from the start those of us who understood the problem always favored covering other types of labor, not just prostitution.” Angela reflected on the decision to define

trafficking broadly, “I think that ... people obviously understood that this was a charged issue and there were people on different sides of it and people who cared too. ... We were trying to say ... if we all proceed from an informed understanding of what trafficking is than we ought to be able to write a law, hard though it is, that captures all of the elements.” She continued, “I think people wanted to get it right and wanted to cover all forms of trafficking and we wanted people, outsiders out there who were concerned about this problem, to feel that that's what we were going to do, and that there wasn't any ... effort to prioritize one form of trafficking over another.” Individuals working in government had seen cases – some involving prostitution and others involving factory work or agriculture – but the common thread was foreign victims being forced, coerced, and deceived into servitude, and this was the crime in the eyes of various government practitioners.

In addition to increased penalties and attention to the issue, government officials involved with the drafting concluded that additional tools could be introduced to fill gaps in the existing criminal law, especially in the area of psychological coercion. Arturo, a Congressional staffer, noted that DOJ wanted to broaden the scope covered by the existing involuntary servitude statute. “They wanted the words ‘psychological harm’ in there for climate of fear.” A number of my informants perceived this as a defining element of trafficking and something they had observed in cases over the years – that a multitude of methods could be used (beyond physical violence) to hold someone in servitude and create a climate of fear, including threats to the person’s family in their home country or threatening to report the victim to immigration officials.

The notion of including psychological coercion in the statute emerged in response to a series of somewhat schizophrenic interpretations of involuntary servitude in the courts (see Chacon, 2006 for a thorough analysis). Most recently in the 1984 *Mussry* case, the 9<sup>th</sup> Circuit Court of Appeals offered a broad interpretation of the statute, recognizing that forms of coercion beyond the physical could result in involuntary servitude. Nonetheless, in 1988 the Supreme Court's decision in *United States v. Kozminski* interpreted the existing involuntary servitude statute (18 USC 1584) to require the use of physical or legal coercion. The case involved a defendant charged for holding two mentally retarded men in involuntary servitude. The government provided evidence that the two men worked on the defendant's farm seven days a week, often 17 hours a day, at first for \$15 per week and eventually for no pay. In addition to actual or threatened physical abuse and a threat to reinstitutionalize one of the men if he did not do as he was told, the defendant used various forms of psychological coercion to keep the men on the farm (*United States V. Kozminski*, 487 U.S. 931, 1988). The Supreme Court ruled that "For purposes of criminal prosecution under 241 or 1584, the term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury or by the use or threat of coercion through law or the legal process. This definition encompasses cases in which the defendant holds the victim in servitude by placing him or her in fear of such physical restraint or injury or legal coercion" (*United States V. Kozminski*, 487 U.S. 931, 1988). Mark, a federal prosecutor, told me that one of the primary goals from the government's perspective of drafting new trafficking legislation was a return to the pre-Kozminski standard of

involuntary servitude. “It was a kind of a restoration, as it were.” According to Mark, adding a new statute that fixed what Kozminski had taken away was long in the making. “Congress people like Chris Smith and others were convinced that they had invented trafficking, that they had invented ... the legal standards and all this other stuff. You know, that's fine, we can let them continue to believe that, but really what it was was ... a return to ... the 9<sup>th</sup> Circuit standard in the Mussry case and others that the Supreme Court had overturned.”

My government informants noted that the initial bill introduced by Representative Chris Smith, and backed by abolitionist feminists and conservatives, effectively restated the Mann Act and did not provide additional tools other than perhaps more focused attention on the issue of sex trafficking. Max, a Congressional staffer, recalled, “His bill didn't have very much in the way of trafficking into forced labor. I'm not sure if there was anything at all.” “It became a kind of war of the bills,” Megan, a former Congressional staffer, declared as she recalled her experience of drafting anti-trafficking legislation. Speaking of the original Chris Smith bill, she told me, “It had no labor component and that was a huge concern to us, not only because of the proportionality of labor concerns that were so immense, but also, honestly, it was a time when the kind of conservative and evangelical movements were becoming much more successful in human rights issues. ... And there was a real concern that they were capturing this major issue, and not just as a kind of ‘oh, it's ours,’ but also that they were going to redefine it.” Indeed, “trafficking” presented an opportunity for conservatives and evangelicals to claim a stake in human rights and redefine the issue to reflect a particular set of sexual and moral values.



The Clinton administration, the Departments of State and Justice, Senators Paul Wellstone and Sam Gejdenson, and diverse members of the “human trafficking sphere” believed that trafficking should be broadly defined to include all sectors. The notion that a bill, focusing solely on trafficking into forced prostitution, would set the US anti-trafficking agenda was troubling to many who perceived Smith’s bill as a misguided attempt to redefine the government’s approach to trafficking and slavery. Victor, a Congressional staffer, told me. “[Smith’s bill] had nothing to do with slavery.” He continued, “Senator Wellstone and Congressman Gejdenson, they understood what the [Justice Department] approach was on it and that it was much more focused on 13th amendment slavery ... as opposed to being just a rehashing of the Mann Act.” In contrast to the sex trafficking-only statute introduced by Chris Smith, which Victor described as naïve – “I mean naïve in the way that like folk art is naïve, so an untrained eye,” – he described the federal government favoring a more field-oriented approach, grounded in the experience of previous cases.

**“From the beginning we accepted a certain degree of ambiguity”: A Compromise in Vagueness and Utility**

Ultimately the parties involved reached a compromise that reflected both their positions. Lesley, a Congressional staffer recalled,

Mr. Smith of New Jersey had a bill that was really focused on sex trafficking and that really dealt with anyone who assisted or facilitated or in any way coerced commercial sex acts, as the definition goes, would be considered a person who is trafficked. And the Clinton administration was in the process of working on the [UN] Protocol and they had a broader perspective that included both “sex trafficking,” as it's called, and the trafficking into forced labor. ... Mr. Gejdenson who was the ranking Democratic member at that time introduced his own bill that covered both sex trafficking and trafficking into forced labor. ... Mr. Gilman, who was chairman of the [House International Relations] committee at the time, asked Mr. Gejdenson and Mr. Smith to try to come up with a compromise text.

Paul, a federal policy advisor, noted that one of the main controversies during the compromise negotiations centered on the relationship between prostitution and trafficking and whether individuals participating in a criminalized act could be considered victims.

There were a lot of tensions between conflicting interests in the drafting of the legislation. There are certain NGOs that wanted to focus only on prostitution, and they have a viewpoint that all prostitution is trafficking, and that was very difficult under US law, because the prostitutes in every state except for seven counties in Nevada are committing a crime, which by definition means that they are doing it knowingly and voluntarily. It doesn't mean they like the choice, but they are engaging in what states have decided is a crime. So there is a conflict between calling ... all prostitutes victims of trafficking and what the US law is saying. So we had some difficulty. We also did not want to give migration benefits and other benefits to people who were voluntarily violating state laws.

Paul described the difficulty of reaching a definition that pleased all those involved.

“We could not adopt a definition that, for example, would take people who clearly violated a state law, and a good example is these high priced call girls like in the [Elliott] Spitzer case. There's not going to be a lot of sympathy for those women in the states who have criminalized that behavior to call them victims of anything. So because the states have chosen to criminalize prostitution, we couldn't just declare all of these people victims. We just can't do that, as the federal government you have to be sensitive to what states have decided to do.” Paul and others pushed to grant victim status only to those individuals forced or coerced into prostitution. As a result the negotiations became very heated as anti-prostitution feminists and evangelicals maintained that all prostitutes were victims. “It was tough. It was very political, and it was very bitter on both sides. There were a lot of bad feelings. We were accused of all kinds of things, being pro-prostitution. It was ridiculous.”

Megan, a former Congressional staffer, emphasized the contentious tone of the negotiations and described the ways in which abolitionist interest groups manipulated the narrative of those seeking a broader definition of trafficking by claiming the Clinton administration supported legalizing prostitution.

They really hyped this ‘you are looking for OSHA [occupational safety] requirements ... for prostitutes.’ ... It was this incredible, you know, ‘Hillary has a whorehouse’ [in reference to Hillary Clinton’s role as head of PICW]. Now you kind of forget, but in that period ... the right wing rhetoric was really ramping up and it was extreme. ... It was about sex, and it was about rape, and it was about ... women's virtue, and if you had the labor definition then you were ... complicit in the rape of thousands of young girls. ... I mean, it was like Clinton in the White House screwing interns [sighs and laughs]. It was gross.

Tensions over this issue overshadowed any common interest that brought the two sides to the issue and ultimately were solidified in the law itself. Megan sighed again and added, “One of the really sad things about this whole thing is that I was really involved, and I really cared, and I knew something about the issue, but the process was so unpleasant and so ugly and so nasty.”

In the end, the compromise included three dichotomous elements that significantly influenced the way in which trafficking would be conceived from that point forward, and which will be introduced in the sections that follow: 1) operative and non-operative definitions of trafficking, which purposely conflated prostitution with trafficking; 2) a bifurcated operational definition of trafficking in which trafficking for forced commercial sex was marked as a special category; and 3) separate criminal statutes for sex trafficking and forced labor, which in turn created inconsistencies between who could be considered a victim of trafficking and what could be prosecuted as the crime of trafficking.

*The Law's Appendix*

In the post- Monica Lewinsky years of the Clinton administration, Democrats had little ability to neutralize the sexual frenzy in which the TVPA drafting occurred. Sex trafficking was privileged in several subtle and not so subtle ways. The joint Smith-Gejdenson bill, introduced in November 1999, did conceive of trafficking broadly into all labor sectors, but also addressed some of the concerns of feminist and religious advocates regarding the definition of “sex trafficking.” Max, a Congressional staffer on the Democratic side, recalled, “We worked out an agreement where we would have those concepts included in trafficking, and there were two basic pieces that we had difficulty with. One was whether to have a definition of sex trafficking in which there was no force, fraud or coercion, and the second issue was the scope of the conduct that would be considered under trafficking into forced labor.” Max explained that the view of Democrats and the Clinton administration, “which Mr. Smith agreed with in general, was that the real focus of our activities should be on activities where force, fraud or coercion were extant. ... However, for presentation [to conservative constituents], Mr. Smith wanted to have a definition of sex trafficking that was without force, fraud or coercion, and after a lot of debate we agreed to that even though in general the bill did not have criminal penalties or immigration benefits attached to sex trafficking.” Paul explained how the law incorporated two definitions, one operational (in that it had legal consequences attached) and the other not. “What we ended up with was this ‘victims of severe forms of trafficking [definition]’ ... We ended up with two tiers in the definition, and it's only the victims of severe forms of trafficking that are eligible for migration relief, and I think the benefits that HHS can provide.”

The new compromise bill [H.R.3244] introduced what many have referred to as a doubly “two-tiered” definition of trafficking that embodied the social, moral, and political contestation surrounding the late 1990s conception of trafficking. While operationally the final bill took on the approach favored by practitioners and the Clinton administration (all forms of labor were included and force, fraud, and coercion were required), it also contained symbolic definitional concessions to abolitionist advocates. In response to abolitionist feminist and conservative calls to define all prostitution as trafficking, the drafters settled on an operational definition of “severe forms of trafficking” and non-operational definition of (non-severe forms of) “sex trafficking.” Severe forms of trafficking (the core of the law) included “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” or “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” (*TVPA*, 2000b). *Force, fraud, and coercion* therefore became core requirements of the trafficking definition unless an individual involved in sex trafficking was under 18 years of age. “Victims of severe forms of trafficking” would qualify for a range of assistance administered through NGOs, and criminal statutes were established to prosecute perpetrators of the crime. Sex trafficking was defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” (*TVPA*, 2000b). Thus, the TVPA defined movement into prostitution (no force required) as “trafficking” but in name only.

This definition serves as a red herring of sorts, incorporated as part of the legislative compromise to assuage the concerns of feminist abolitionists hoping to diminish the boundary between forced and voluntary prostitution. The definition is distracting because it is not an operative definition – “sex trafficking” as defined here is not a prosecutable crime, and it carries no special benefits. In this way there are two definitions of “trafficking” but only one is operational (see figure 1). Max told me, “If you look at the bill, we did blur the distinction in certain places by not using the defined terms and by saying ‘victims of trafficking’ or ‘assistance to prevent trafficking’ ... and therefore it was a little unclear what we were talking about. And that was purposeful under Mr. Smith's part. ... So from the beginning we accepted a certain degree of ambiguity.”

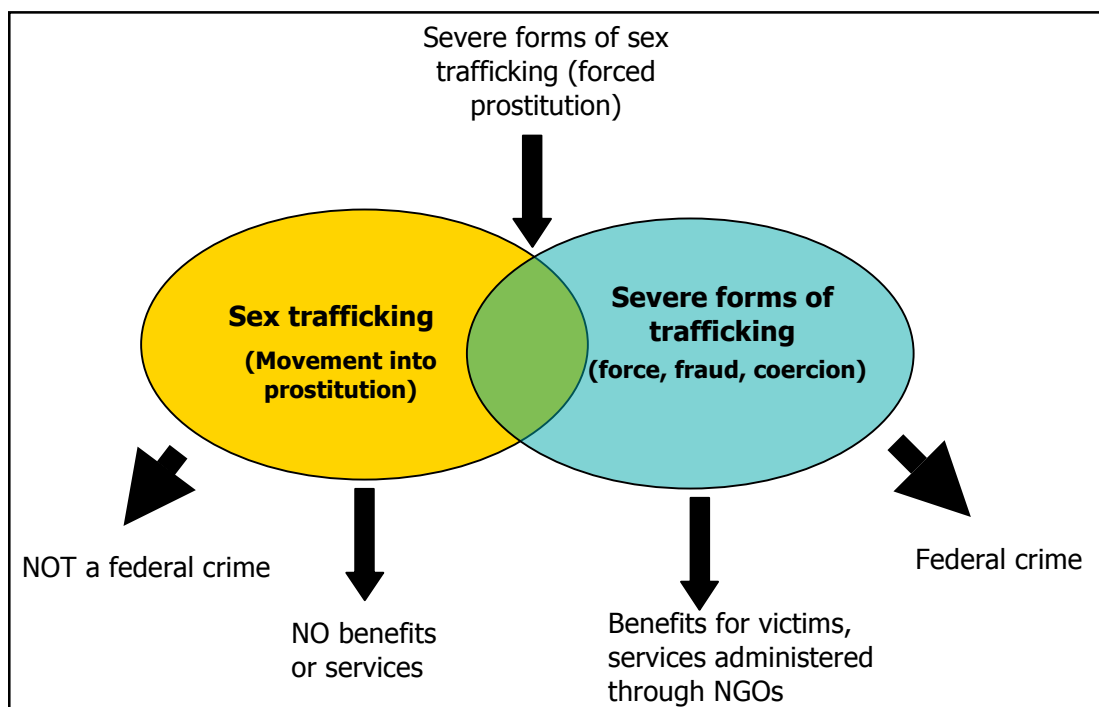


Figure 2: “Severe Forms of Trafficking” and “Sex Trafficking” (adults only)

This ambiguity of language was a symbolic triumph for abolitionists. Mark, a federal prosecutor, reacted to the compromise with frustration. “The two-tiered system in the TVPA was bullshit. To me it's complete bullshit, but it's what we have, because that's kind of what you have to do to get things done up here.” He nonetheless perceived the results as mostly innocuous. “Oh, it was basically a bone to Chris Smith. I mean that's exactly what it was. ... The notion of having sex trafficking stay in the bill... it's like an appendix, or what's that thing we have that used to be our tail? The coccyx? So, it's like a coccyx or an appendix, although that's probably inflammatory to call it a coccyx. So it is kind of stayed in there without much to do.”

### *Separate But Equal?*

The other symbolic achievement for abolitionists was the bifurcation of the “severe forms of trafficking” definition with sex trafficking as a marked category. While the definition was gender-neutral, the two-prongs implicitly limited and shifted attention toward *women* trafficked for *sexual* labor by making a distinction in the law between severe forms of “sex trafficking” and other severe forms of unmarked trafficking – into agricultural, factory, or domestic work to name a few. Trafficking for forced prostitution was separated as a special case and the one most commonly associated with severe forms of trafficking, with the focus on the *type* of work. Kyle, a federal prosecutor, explained that legally commercial sex is considered “services” rather than labor because the activity occurs in a criminalized market sector. “My sense is that the reason that there are two separate statutes is a policy reason – just that sex is not labor.” But focusing on trafficking specifically into forced prostitution privileged one group of victims, conflating trafficking and movement into prostitution. Max reflected

on the complex circumstances in which this decision was rooted. “I think it's difficult to ... explain the full dimensions of the conflict in this area. I guess I would say that the reason that there is a bifurcation between the two is that ... for the most part commercial sex acts are illegal and labor is not, so the notion that there are two categories and these are two different types of problems is inherent in terms of the type of conduct that you're talking about.” On top of that, he noted the political complexity of the negotiations.

It probably would have been possible to come up with some sort of definition that would have brought the two together, and we wouldn't have had to have had the definition, but I think that in the political environment in which we were operating in 1999 and 2000 ... certain provisions of the law and certain benefits that never would have gotten into law were carried because people could talk about sexual slavery. ... The idea that people [legislators] would not want to try to free and help people who had been enslaved for sexual services was such an anathema politically that you were able to bring in additional things into it. So by having a separate definition for trafficking into ... services involving commercial sex acts created a framework that allowed the other things to be covered.

According to Max, the emphasis on sex in the TVPA created the momentum to pass the law. As will be discussed in chapters 4 and 6, the symbolic focus on sex trafficking, both forced and not, significantly affects the way in which those implementing the law envision the crime.

In addition to defining trafficking, the TVPA included several new criminal statutes to supplement the existing involuntary servitude and peonage statutes contained in Chapter 77 of the US Criminal Code. These included Forced Labor (18 USC 1589), Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor (18 USC 1590), Sex Trafficking of Children or by force, Fraud, or Coercion (18 USC 1591), and Unlawful Conduct with Respect to Documents in Furtherance of



Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor (18 USC 1592) (USDOJ; TVPA, 2000a). Here again, sex trafficking by force, fraud, and coercion was separated from forced labor. When I asked about the rationale for the separation, Mark responded, “The entire notion of having 1589 (Forced Labor) and 1591 (Sex Trafficking of Children or by Force, Fraud, or Coercion) separate instead of being the same crime is again one of those bullshit compromises from 2000. What's funny is that 1591 itself isn't different from 1589 because it defines coercion as the three prongs of [coercion in] 1589. So the only reason to have 1591 was a political one to have sex trafficking be separate from labor trafficking.” Lynn, a federal prosecutor, told me that despite the split between labor and sex trafficking, there is nothing in the law to prevent sex trafficking from being considered a form of labor trafficking. Her office generally considers sex trafficking a subset of labor trafficking and charges sex traffickers with both sex trafficking and forced labor. “Legally you can charge sex trafficking always as forced labor ... and we do. We usually charge them in tandem.”<sup>21</sup>

As Mark explained, the types of coercion described in the two statutes are identical; however, the sex trafficking statute is broader in that it includes fraud as a means of trafficking. The drafters narrowed the labor trafficking statute based on concerns that American corporations could be charged with trafficking if they misrepresented working conditions (fraud). Max recalled how the decision was made.

Mr. Smith made a very strong request, which was very difficult for us to accommodate, that would narrow the definition of trafficking into forced labor so that it couldn't be interpreted as criminalizing labor law, that it was one thing to criminalize new forms of slavery, but ... labor relations and inappropriate labor practices are governed by an entire statutory frame which is essentially non-punitive. It's regulated by the Labor Relations Board, and criminalization

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<sup>21</sup> Lynn explained that she and other prosecutors initially charge defendants with a litany of offenses. During plea negotiations, one or more charges may be dropped.

of these provisions were of concern to Mr. Smith, not so much ... from his own political perspective, because he's a fairly strong labor member, but because of how that would be received by others in the Republican conference. So we had an elaborate discussion at like 2 a.m. ... where we finally came up with the text which basically stayed unchanged in the process.

Dean, a federal prosecutor, explained what these statutory discrepancies between sex and labor trafficking meant in practice. “For purposes of prosecution, the definition of sex trafficking is actually quite different than the forced labor definition. One big element is that [in cases of] sex trafficking, a method of coercion includes fraud, so if you are defrauded into commercial sex that is a prosecutable sex trafficking crime. If you are defrauded into a different form of labor, that's not a crime. So the sex trafficking statute is broader in that it reaches fraudulent means of exploitation and the forced labor statute does not.” In this way, the crime of sex trafficking was an easier standard to meet during my fieldwork. The 2008 William Wilberforce Reauthorization Act (enacted after the completion of my fieldwork) attempted to fix this discrepancy not by adding fraud to the forced labor statute, but rather by creating a new federal crime (18 USC 1351) forbidding misrepresentations designed to induce foreign nationals to come to the US to work. The new statute does not apply to misrepresentations to US citizens. However, prior to this reauthorization, misleading an individual regarding the type or terms of employment was grounds for prosecution when it involved commercial sex, but the same was not true for other forms of labor. Additionally, the forced labor statute applies only to those who “provide or obtain” a person for forced labor, while the sex trafficking statutes covered anyone who “recruits, entices, harbors, transports, provides, or obtains” [“or maintains” was added to the 2008 reauthorization] or “benefits” from sex trafficking of children or by force, fraud, or coercion (William

Wilberforce TVPRA, 2008).<sup>22</sup> Dean continued reading from the US Criminal Code book, pointing out subtle but important differences between the forced labor and sex trafficking statutes.

And then also if you just look at the language ... the forced labor talks about obtaining the labor of a person by coercion, so it's really focused on the labor. The sex trafficking statute, however, is focused on obtaining the person for commercial sex, so the sex trafficking statute is also broader because you don't have to have any commercial sex happen [intent is sufficient]. All you have to do is obtain the person for ... the purpose of the commercial sex. So the statutes are actually written differently. They do have ... some different effect. The two most significant being the fraud issue and the benefiting provisions that are both in the sex trafficking statute.

One significant consequence of these differing definitions for sex and non-sex “trafficking” was that an individual defrauded into forced labor could meet the definition as a victim of a severe form of trafficking and receive victim benefits and apply for the special trafficking visa, yet there was no prosecutable crime, because the victim definitions differed from the statutory definitions. The TVPA defined these people as victims but did not define what they experienced a crime. I asked Dean how this was possible.

You could meet that definition, but there's no prosecutable crime. So for us, we don't have any involvement in those cases. There is nothing for us to do. There is no crime for us to prosecute. So where people are in labor by fraud ... that's ... not criminalized specifically, unless it rises to serious harm. So ... if victims presented to us with those sets of facts, in our view we would not be giving CP [continued presence, a temporary form of immigration relief] to them, we would not be investigating or presenting for indictment, because ... the criminal statutes don't reach those conducts, so we'd have no jurisdiction or authority to pursue those matters.

As will be seen in future chapters, these distinctions between the victim definitions and the criminal statutes played a significant role in how service providers and law enforcement officials understood and assigned meaning to trafficking.

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<sup>22</sup> The 2008 reauthorization of the TVPA also added a benefiting provision to the forced labor statute.

## Conclusion

For Angela, a former federal policy advisor involved with the drafting, assigning meaning to the term “trafficking” meant transforming a complicated concept into a namable and therefore manageable crime.

When people started talking about trafficking in persons ... roughly 10 years ago ... we had to explain to people what that meant ... so sort of helping to attach some meaning to those words. ... We needed people to understand, well trafficking in persons, what is that? Is it alien smuggling? No. Here's why it's different. ... Here's what this is about. It's bringing in an understanding to the terminology of what this problem is so people understand it, know it, recognize it, can talk about it. You have to be able to name a problem to be able to address it.

Yet rather than resulting in a straightforward, agreed-upon definition, putting “trafficking” on the books meant codifying all of the contestation surrounding the issue. As Mark told me, “Unfortunately by adopting ‘trafficking as the operative term instead of ‘slavery’ or ‘involuntary servitude,’ continuing that as the basis, it basically brought that fight. And we've continued to have that fight ever since.” Indeed, compromise over diverse notions of “trafficking” resulted in incorporating messiness and ambiguity into the law, as opposed to clarity. While the TVPA provided a legal framework for addressing trafficking, and one by which those implementing the law are tied, it also left space to envision trafficking in varying ways. While focusing on these definitions may seem overly technical, it is this precise and subtle language of the law which is reverberating today in discussions of US anti-trafficking law and policy.

As a cultural text, the TVPA illuminates the struggles and anxieties about prostitution, victimization, and women’s sexuality that permeated its drafting.

Ultimately the TVPA definition of trafficking is dichotomous because the effort to draft the law was dichotomous. The polarization around the issue of “sex trafficking”

resulted in a compromise that is functional yet value-laden, prescriptive yet ambiguous, comprehensive yet bifurcated, and gender-neutral yet gendered and sexually-marked. The end-product is a convoluted and layered definition that can be interpreted in numerous ways, allowing for varying conceptions of “trafficking.” Forms of “sex trafficking” that involve force, fraud, or coercion qualify as “severe forms of trafficking,” while other forms of sex trafficking, absent any force, fraud, or coercion, are the law’s appendix, present, but not performing any function (prosecutions or benefits). The overlap of terms contributes to extensive confusion and mystification in the realm of trafficking policy, as well as the implementation of the law in terms of who counts as a “victim of trafficking.” By incorporating a definition of “sex trafficking” minus any force, fraud, or coercion, the law (and its concept of “trafficking”) remain ambiguous both legally and practically. These and other compromise elements in the law create the possibility to manipulate operational and non-operational definitions, to frame trafficking selectively as either “sex trafficking” or “labor trafficking,” and to distinguish between the trafficking that triggers victim benefits and the trafficking that constitutes a prosecutable crime. Each of the three bifurcated elements of the law contributes to complicated social and legal constructions of trafficking. As I argue in the following chapters, the convoluted nature of the multi-layered law on the books leads to complexities in how the law is envisioned in the minds of those implementing the law, as well as the consequences, as those individuals put the law into action.

## **Chapter 4: Thinking, Envisioning, and Interpreting Trafficking: Assigning Meaning to Victims and Crimes**

*Just as mystery writers use the pursuit of particular truths as a vehicle to propound general truths about the nature of evil, sex, or our “mean streets,” so, too, do law’s personnel, from police officers to high court judges, often make explicit and implicit assumptions about truth as such while going about their daily business (Valverde, 2003: 1).*

### **Introduction**

This chapter explores the multiple ways in which various actors – NGO service providers, immigration attorneys, law enforcement agents, and prosecutors – define trafficking and attribute meaning to the law, that is, how they envision trafficking “in their minds.” As a result of the passage of the TVPA, a number of professionals, many with little or no experience with the issue and holding a variety of world views and beliefs about trafficking, are now investigating the crime, providing services to victims, and implementing anti-trafficking law and policy. As various individuals implement “their” piece of the law, they translate the “law on the books” into a version of the law that has meaning in their own minds, utilizing all or part of the bifurcated operational definition and drawing on either criminal or victim definitions depending on their professional role. This chapter describes how these individuals conceptualize trafficking and how interpretive frameworks about sex contribute to their understandings of the issue. I argue that the heated negotiations over the meaning of trafficking and the goals of the law continually resurface in the conceptions of trafficking held by those implementing the TVPA today and reflect not only the dichotomy of the drafting itself, but also the three dichotomous elements included in the law to achieve compromise. Examining how diverse implementers understand trafficking and the law further illuminates the cultural text of the TVPA. Correspondingly, I contend that the

compromise elements in the law created the space for implementers to incorporate additional factors (e.g., cultural and moral frameworks about sex, professional biases, and past experiences with trafficking) into their understandings as they translate the legal definition into a version of trafficking that has meaning in their own minds. In particular, as I will argue in the second half of the chapter, the specific marking of “sex trafficking” in the law has led to conceptions of this form of trafficking as the most severe.

**“It comes down to what trafficking is. That’s where it all falls apart”**

I asked every person I interviewed, “How do you define trafficking?” While a seemingly simple question, I received complex and layered responses. My informants, whether service providers, government bureaucrats, law enforcement agents, or prosecutors, generally responded initially by emphasizing key elements of the severe forms of trafficking definition, but then followed up with responses to the effect of, “now that being said, you have to consider x, y, and z” or “that’s how we define it as an agency, but I personally believe x” or “I define it by the TVPA definition but have a hard time getting recognition for my clients.”

In talking with and observing professionals doing trafficking work under the TVPA – whether providing federally-funded services, investigating cases, or prosecuting traffickers – it was evident that, in practice, people relied on the operational severe forms of trafficking definition (and related statutes) and ignored the extraneous and non-operational portions of the definition. NGO service providers need to show grant monitors that their clients meet the victim of a severe form of trafficking (VSFT) definition in order to receive funds for case management, rent reimbursement, and other

qualified expenses. Nancy, a case manager, told me, “I ... really go by the TVPA ... basically somebody who has been forced to do things against their will ... so that is trafficking for me.” For Nancy, the TVPA definition of severe forms of trafficking dictated the type of client with whom she could work. Similarly, in law enforcement, the TVPA’s criminal statutes prescribe what is prosecutable as a trafficking crime. When asked how she defines trafficking, Gwen, who works in federal law enforcement, responded, “It’s really easy for us – the statutory definition. That’s it.” She went on, “We actually use the absolutes. We are a law enforcement agency. We have to use the definition in the law. That is what we have to hang our hats on. It’s what provides our services under continued presence. ... It’s what our agents are required to swear to if they are going to do a certification under a T-Visa. So everything we do is statutory. We don’t wiggle an inch.”

While the operational definitions generally directed how criminal justice authorities and service providers did their work, they also provided space for discretionary decision-making and flexibility in case identification. A complicated feedback loop, incorporating case evaluation procedures, media and advocacy messages, top-level policy, and personal moral frameworks, among other factors, also influenced implementers’ conceptions of trafficking and consequent implementation of the law. Further, the fact that criminal justice authorities and NGO service providers relied on two separate definitions of trafficking from the TVPA – the former on the criminal statutes and the latter on the victim definitions – meant that their conceptions of trafficking were sometimes widely divergent.



*Force, Fraud, Coercion*

Ultimately, what distinguishes trafficking from other forms of worker exploitation is the presence of force, fraud, or coercion – the means used to hold someone in exploitative conditions of labor.<sup>23</sup> My informants used a variety of words to express this concept, but their point was always the same. As Sara, a grant monitor for a federal funding program, told me, “I think there is a lot of gray area where labor exploitation ... sometimes it can look like trafficking, and there is a lot of gray, but ... the elements are the force, fraud and coercion.” Kyle, a federal prosecutor, put it this way: “We have a number of tools in the TVPA and the rest of the slavery statutes that we can use to prosecute crimes that fall under the human trafficking umbrella, but I think the common element to all of those crimes is that ... somebody is compelled to provide work or services against their will.” Max, a Congressional staffer, told me, “I think that my own view is that trafficking is modern day slavery, and ... there has to be some sort of coercive elements or some other element that deprives an individual of free will, so in that context I ... say that anyone who is forced into any kind of conduct, whether it is legal or illegal, by force, fraud or coercion or through some other means of deception that would take away the free will is a trafficking victim.” Max described the factors that distinguish trafficking, sometimes termed “modern day slavery,” from earlier definitions of slavery and involuntary servitude, specifically the incorporation of the elements of psychological coercion and deception, rather than physical restraint, to keep individuals in situations of servitude.

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<sup>23</sup> Force, fraud, or coercion is not required (but implied) in cases of sex trafficking when the individual is under 18 years of age.

Jarrah, an immigration attorney, after thinking for a minute about how she defines trafficking responded, “It’s easy but hard. We hardly ever think back to what we define as trafficking. But we say that anyone who is coerced to do something that they wouldn’t normally do and is unable to leave the situation and that there is sort of a psychological climate of fear. So they may not be locked up, they may not be stuck in the house all day, they could possibly be able to walk down to the street corner, but for some reason they cannot separate themselves from a certain group of people or a certain person.” The notion of a “climate of fear” is central to trafficking and one of the key features that distinguishes trafficking from traditional notions of slavery and involuntary servitude. “Climate of fear” describes the kinds of coercion and control that traffickers use to keep individuals in involuntary servitude, including holding the victim’s documents, threats to family and children in the home country, observed beatings of other victims (and thus the implicit idea that the same could happen to the victim), threats to report victims to immigration officials, and advising the victim not talk to anyone outside the situation or by phone because “the police are always listening.” Fran told me, “To me, the bottom line is if the person ... either has a fear of what would happen to him or her or their family if they left the situation, or if there is some thing that someone else is doing to prevent them from leaving, then they are probably being trafficked.” Audra agreed when talking about what she viewed as the heart of the definition.

The conditions under which they are working ... for me, that’s always been the emphasis of the analysis. Whether or not someone is working under conditions where they cannot leave, and they’re not being paid, and as one colleague said ... ‘operating in a climate of fear.’ I really like that definition because it, it encompasses ... all of the evils that can be involved. It could be someone who is verbally abusing you, someone physically abusing you, sexual abuse, threats

to your family abroad, so many different situations. The key component is that exploitation of labor and preventing the person from being able to leave from that situation.

Audra highlights what actually constitutes force, fraud, or coercion, and what lies at the heart of the offense. The significance that these three words – force, fraud, and coercion – have come to hold since the passage of the TVPA is remarkable. Angela, a former federal policy advisor, told me, “It is interesting when you think about ... how do you identify what the harm is and then reduce that to words in a statute, acknowledging that there are degrees of coercion along a continuum?” Many of my informants noted that uncovering force, fraud, and coercion was not always straightforward. Roxanne, a former immigration attorney, noted how difficult it could be to identify the force, fraud, or coercion that a victim experienced.

I think force, fraud or coercion obviously can be manifested in different ways, and ... definitely ... there have been times when ... I had to work very hard with my clients to ... help them articulate what it was. ... I just over time ... honed in on how to make them articulate that, like what questions to ask them ... because ... I've had clients who could go in and out ... it was a different type of coercion, so it might have been debt bondage or it might have been subtle threats to their family members or whatever, but basically there was something that prevented them from being able to leave, and so that's the way that I look at it.

### *Flexibility and Discretion*

When asked how she defined trafficking, Molly, a federal prosecutor, expressed the complexity involved. “I really don't like those questions [laughs]. ... I suppose the right answer for me would have to be the way it's defined by the statute, because things can sort of ... look and sound and smell like trafficking, but if they don't have those elements I can't say that it's trafficking in the charging document.” The idea of meeting the required elements of the definition is critical. Professionals from all sectors agreed

that many situations that at first seem like trafficking often do not fit the definition in the end. Gwen, who works in federal law enforcement, explained that the process for deciding if a case meets the definition can be quite involved; it may include multiple conversations between agents, coordinators, and supervisors, weighing the circumstances of a case and comparing it to past cases to determine if it meets the statutory criteria. Having worked on numerous cases, Gwen often received phone calls from agents from around the country who had never seen a trafficking case and would reach out to her to determine if what they were seeing constituted trafficking. I observed many similar discussions in which service providers talked through potential cases and weighed the facts of a case to decide whether it rose to the level of trafficking.

Charlotte, the director of an NGO trafficking services program, described the required elements of the trafficking definition. “I like to use the three elements, and I think that it's a useful way to go about defining trafficking. ... You have to look at the process – how is somebody recruited and moved and how is a person brought into their situation? And then the means – by force, fraud, coercion, abduction, threats – how did the person get control over their trafficking clients? And then for the end, there has to be some sort of economic exploitation; the second person is gaining economically from the work that the trafficked person is doing.”

While all three of these elements are required for any case to qualify as trafficking, determining what circumstances and conditions constitute each of these elements is complicated; determining what exactly fits the statutory definition is discretionary and somewhat flexible.<sup>24</sup> Lynn, a federal prosecutor, articulated the

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<sup>24</sup> I use the term “discretion” in two ways throughout the dissertation. In most cases I am referring to the subjectivity and interpretive scope of the individual making a “discretionary” assessment of a trafficking

tension between being constrained by the statute and the flexibility of what might actually meet the definition. “We define trafficking by the way the statute does. . . . Now that being said, definitions obviously could be more expansive or less expansive. We've actually pushed the definition. . . . We do define it under the statute, but we obviously have . . . pushed the statute as far as possible, you know, expanding the coverage.” Conversely, others used narrower interpretations of the definitions.

Lynn followed up, noting that each US Attorney’s Office has discretion over which cases they choose to prosecute. “A lot of what we do is discretionary. We obviously have systems in place to ensure that our office is being consistent within our office, but each office does decide things differently, and remarkably each prosecutor has a certain amount of discretion.” Discussing one case she and a colleague worked on that pushed the limits of the statutory definition of trafficking in that the trafficker exerted control over the victim from another state, she said, “The two of us looked at the statute and decided, you know what, this really does technically fit. This is an appropriate case to go forward. It's a totality thing; you weigh all the different equities. This was an egregious situation – we started out in our minds with how badly this woman had been victimized by him [the trafficker]. It fit within the definition . . . and we decided ultimately it was a case worth bringing.” Discussing the process of evaluating which circumstances meet the law’s standard of force, fraud, and coercion, she told me, “It’s very hard to . . . put that down into . . . a systematic, we don’t weigh it,

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case. The term also takes on legal significance in cases of “prosecutorial discretion.” The Encyclopedia of the American Constitution describes prosecutorial discretion as follows: “The prosecutor may choose which crimes and which persons to prosecute. She is entitled to prosecute whenever she has probable cause to believe a certain person committed a certain crime. She need not be certain that she can prove guilt beyond a reasonable doubt. In the twentieth century, there have always been many more legitimately prosecutable people than resources allow for prosecution, in addition to laws that the public has not wanted prosecutors to rigorously enforce” (2000: 2058).

we don't come up with a score, but it's sort of everything – the evidence, the equities, the sort of justice aspect. ... Would we be doing justice? The degree of harm and whether or not we think legally it's correct. And, we decided to do it based on all of those factors. ... It was a really tough case, and quite frankly we could have easily lost, given all those factors.” The fact that they could have easily lost the case, as she puts it, highlights the fine line between what does and does not count as trafficking, but also the elasticity of what constitutes force, fraud, and coercion.

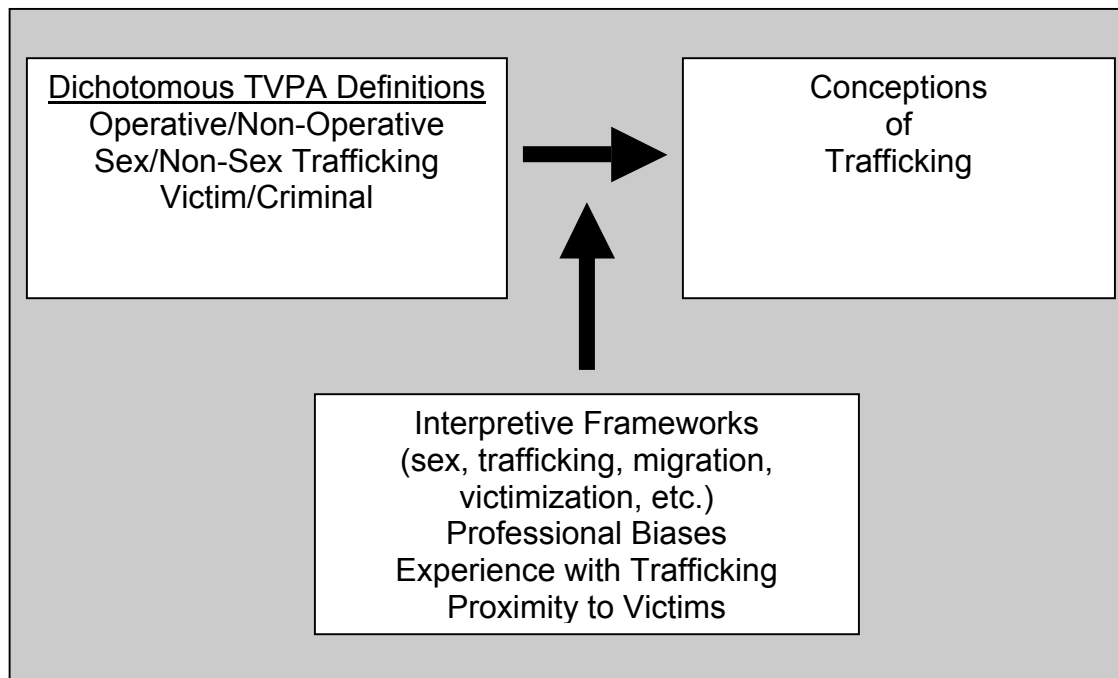
One critical element to recognizing trafficking is the narrative of the victim – that is, does the victim have a coherent story about what took place? Is it possible to get that person to articulate all of the elements of their story that make it trafficking, or are there even a few elements that suggest that he or she *might* have been trafficked, leading to further investigation? Molly, a federal prosecutor, explained how discretion and subjectivity influenced not only whether to go forward with a prosecution, but also how carefully a case is looked at to determine if it might be trafficking. “It's so discretionary. Interviewing a person is so dependent on the mood and the skill of the interviewer and the skill of the interpreter if there's ... another language involved. There are so many variables in place; it's very hard to have ... absolute guidelines for these things, I think.” She went on to talk about the process of uncovering the whole story, and how often agents and prosecutors may not know right away if a case constitutes trafficking or not.

Most trafficking victims cannot tell you what has happened to them when you first intercept them, because they are too traumatized. They are too freaked out by being in touch with all these government agencies. If they're international [the victims], in their home countries they [law enforcement] are the enemy. They've been told repeatedly by the traffickers that these people are going to get them in trouble, that they're going to mistreat them and all these other things. So there are a lot of things that just have to be addressed before the person can actually talk.

Yet having this kind of time to devote to one potential victim was uncommon and criminal justice authorities often swiftly rejected potential cases as trafficking due to a number of factors, including personal interpretive frameworks about trafficking, availability of evidence, and intuition. Often whether someone was recognized and counted as a trafficking victim depended on how a victim's circumstances and story fit into the investigating agent or officer's own narrative of trafficking.

For many of the NGO service providers with whom I talked, these brief and discretionary assessments by law enforcement led to inconsistencies in victim identification. A victim in the eyes of a service provider may be a victim in the eyes of one law enforcement agent but not in the eyes of another. Many providers struggled with what they viewed as subjectivity driving law enforcement decision-making. During a meeting of local providers, Bridget expressed frustration at the mixed responses service providers received when bringing cases to law enforcement. "The problem with federal law enforcement is that we never know what we're going to get in terms of cooperation. One ICE agent will have a totally different understanding of what trafficking is from an FBI agent. ... We need to have a checklist!" Bridget and other providers believed that law enforcement should use consistent criteria for establishing trafficking cases, but there were no apparent standards beyond the law itself that left considerable room for interpretation. These differences in law enforcement response did not manifest at the agency level, but often at the level of individual agents due to their knowledge of the issue and discretion involved in identifying trafficking and its components. As described in Chapter 3, the dichotomous elements in the TVPA definition of trafficking create space for those implementing the law to incorporate

flexibility, discretion, and subjectivity into their assessments of what constitutes trafficking (see figure 3).



**Figure 3: Trafficking "in their minds": How Subjectivity Mediates Legal Definitions of Trafficking**

Additionally, the standards for what constitutes trafficking differ for criminal justice authorities and service providers. While law enforcement officials rely on the criminal statutes to determine if they can prove the crime, NGOs look to the VSFT definition to establish if an individual qualifies for services and benefits. A victim for one did not always correspond to a victim for the other. I heard consistently from service providers in New York and at national conferences, as well as from individuals in Washington overseeing social service grantees throughout the country, that NGOs see large numbers of victims that are never adjudicated as victims by law enforcement. Fran, who oversees a federal grant program, told me about a case from the Southwest United States. “[The victims] are from Mexico. The ICE agent, based on what he's



heard, said, yes I think they are victims, but the trafficker has already left the country. There is nothing to investigate. There's nobody to prosecute. So ICE is not going to go out on a limb and say these women are trafficking victims. The women want to be repatriated, [so] they will never be counted officially as trafficking victims, but they are trafficking victims. And there's a lot of that.” While *victims* of trafficking and the *crime* of trafficking are two separate categories under the law, there is an uneven but symbiotic relationship between the two: a crime necessitates a victim, but a victim does not always necessitate a crime. Further complicating the situation, while an individual may meet the VSFT definition, if no corresponding crime exists (i.e., the individual was defrauded into forced labor) or the crime is not recognized or considered prosecutable by law enforcement, then the victim may not even be considered a victim.

For law enforcement, having a trafficker to prosecute was vital to their vision of trafficking. A victim without a trafficker was viewed with disinterest. Part of who “counts” as a trafficking victim is based on which cases are meaningful to law enforcement. Despite whether trafficking occurred or not, if a case was not prosecutable, criminal justice authorities usually viewed it as not worth their time. Jim, a federal agent, told me, “A lot of girls the NGOs have were trafficked 10 years ago, and we can’t do anything. There are no records, we can’t find the guy, and there’s a statute of limitations with the law. Out of 100 NGO victims that I interview, maybe four are viable.” A case not being viable did not necessarily mean the victim was not a true victim. I heard from service providers of numerous cases in which the trafficker fled the country or simply was not a high priority for law enforcement, but the victims were still in need of services.

If there was no active investigation, law enforcement personnel were reluctant to sign off on paperwork that would provide victims with immediate assistance. While any individual who meets the definition of a victim of a severe form of trafficking is immediately eligible for services, including case management and legal assistance, the timing of federal victim federal benefits (such as Medicaid, Food Stamps, and cash assistance) and immigration relief varies widely depending on whether law enforcement takes an interest in a case or not. As will be discussed in Chapter 6, how various law enforcement officials envision trafficking significantly affects which victims they recognize as “true victims” and therefore, which victims receive immediate benefits. Those victims whose traffickers fled the country, evidence from their case was destroyed, or law enforcement simply did not take an interest in the case often experienced long delays.

Criminal justice authorities cited several factors that influenced which cases to move forward, including which will stand up in court, the severity and size of the case, and the credibility of the victims. When asked how her office decides which cases to prosecute, Lynn responded, “Most often it’s what case do we have enough evidence to go forward on. ... How bad was the conduct? How good is the evidence? Sometimes how many victims, like is it a big enough case or is it just really a one on one situation where now the state could handle it [under the state anti-trafficking law]? It’s mostly driven by do we have the evidence to prove that this actually happened? Do we believe it actually happened, and can we prove it actually happened?”

This idea of believing that trafficking really occurred came up during several interviews with criminal justice authorities. Jim, a federal agent, told me he believed

that NGOs helped victims rehearse what to say to law enforcement so that they would be recognized as trafficking victims. “I think they coach the victims because the stories don’t add up,” he told me. Kyle, a federal prosecutor, agreed that potential victims sometimes lied, and he relied on intuition to assess the truthfulness of their claims. He told me about one woman he encountered during a brothel raid who alerted him to some witnesses attempting to strategically misrepresent themselves. “She said, ‘Look, I knew what I was doing, I wanted the money and those women did too, and they are back there talking that if they say x, y, and z they’ll get benefits and that they don’t have to be deported and they don’t have to go back to Korea.’” While the immigration benefits for trafficking victims are highly desirable, the process of claiming them is so lengthy and complex (see Chapter 6) that the notion of non-trafficked individuals successfully gaining them without the truth emerging is highly unlikely. Kyle noted that in many cases actual victims may not tell agents or prosecutors the whole story of what happened to them. “They could be afraid of the trafficker, or they might not trust you, or all of those kinds of reasons that make them vulnerable. But, on the other hand these women are subject to be dishonest to you because they know they can get money and they can get freedom. They could not be deported and they could have permanent [immigration] status.” He continued, “The truth is like the golden mean in between those two extremes, and finding that can present a real challenge. ... Basically the prosecutor has to believe based on his interview and any other evidence that exists, which [it] oftentimes doesn’t, that this person is telling the truth. It’s often times a gut check.” This notion of relying on a “gut check” to determine if an individual is an

authentic victim of trafficking underscores the subjectivity inherent in identifying both trafficking victims and crimes despite the apparent clarity of the law.

NGO service providers complained that law enforcement agents, in particular, often accused victims of lying because their stories were incoherent or the agent had a *feeling* the victim was lying. For many providers, this kind of attitude on the part of law enforcement failed to recognize the trauma experienced by many victims. Molly, a federal prosecutor, who took this notion into account, told me that she never gets the full truth in the first interview. The trauma of an arrest combined with instructions from the trafficker (never tell law enforcement the truth) result in initially incoherent stories. These differences in approach illustrate the significance of subjectivity and persistence in identifying trafficking. Besides whether a particular agent or prosecutor believed trafficking actually occurred, another factor was where to draw the line between labor exploitation and trafficking.

### **A Continuum of Exploitation**

Many informants highlighted the notion of trafficking “along a continuum,” the fine line between trafficking and other forms of exploitation, and the difficulty in determining when the line was crossed. A number of informants referenced the “gray areas” and gradations surrounding trafficking. Some individuals viewed trafficking at one end of a spectrum of exploitation with those meeting the severe forms of trafficking definition being a small subset of a much larger pool of (mostly undocumented) exploited laborers (the majority of whom were not trafficked). Fran, a federal grants administrator, noted, “The problem with the definition ... is that it's like everything in life, it's a continuum, and where do you cross the line from economic exploitation to

severe exploitation to trafficking?” She continued, “You see it right here in Washington, DC. You see laborers that are working in construction and so forth, and maybe some of them are trafficked, but I don't think most of them are, but they are certainly being exploited. They certainly aren't being paid anywhere near what a citizen would be paid.” She described another situation involving teachers from the Pacific Rim who were exploited but not trafficked. They were underpaid and promised things that weren't delivered once they were arrived in the US. “It's not trafficking. ... The women could have left at any time.” And while these women were not forced or coerced into these positions, their economic situation made them vulnerable to a type of exploitation that many of my informants found troubling and one for which there was little legal recourse.

While much labor exploitation does not rise to the level of trafficking, many migrants have similar motivations for leaving home whether trafficked or not. Audra, an immigration attorney, told me, “From my perspective there is a very large gray area between workers' rights and trafficking.” As an attorney, she was well versed in the distinction between forced labor and exploitation where the workers were free to leave; however, she perceived a need to contextualize trafficking within the larger framework of undocumented migration and labor exploitation. While several scholars have critiqued the role of NGOs in what Laura Agustín has termed the “Rescue Industry” for their complicity in reproducing the “trafficking” framework, and with it disciplinary responses of the state (see Agustín, 2007; Soderlund, 2005), I found these assessments to be inappropriate for the majority of anti-trafficking NGO programs in New York. Indeed, by framing trafficking within these larger structures, many providers contested

a trafficking framework that reinforced a restrictionist approach to immigration and that deemed a small few of those exploited in the process of seeking a better life in the US as worthy of assistance. As Chacon writes, “legislative revisions brought the crime of ‘trafficking’ into the prosecutorial mainstream, but did nothing to address the ways in which the preexisting legal regime upon which the TVPA is built actually facilitates trafficking” (Chacon, 2006: 2). Many of the service providers I spoke to noted the paradox between strict immigration restrictions and the demand for cheap labor in the US. Ella, an immigration attorney told me, “It’s really often about someone wanting better economic opportunities for themselves, and ... US immigration law is so limiting on who can migrate here and work legally, when any opportunity comes up for better economic opportunity or sometimes love ... it’s sort of a hope for a better life.” She noted how easily that situation can slip into trafficking. “And then it’s all about someone trying to assert power and control over someone who has less power and ... offering them a job and then tricking them into what the terms and conditions are.”

For a number of the professionals I interviewed, their “metric” for determining what “counted” as trafficking often involved a comparison to what did not “count” (or what fell just short of counting) as trafficking. Lynn, a federal prosecutor, talked about evaluating the level of harm involved in a case. “The tricky thing ... in the forced labor context is that very many situations are sort of on the line, in my opinion.” She gave the example of a case involving a couple who recruited a large number of migrant workers from South America, promised them jobs, and brought them to the US. The couple helped the individuals find jobs and threatened to turn them over to immigration authorities if they did not pay back the money spent bringing them here. The couple

housed the workers with 30 to 40 people living in a house, sleeping on mats, and with insufficient food. The workers turned over the money they earned to the couple to manage. The couple applied the money towards the workers' debts and deducted funds to pay for their food and housing, inadequate as it was. "So it ended up being sort of debt bondage, but it wasn't forced labor *per se* because [the couple] didn't actually make them work anywhere." The case ended in a plea deal.<sup>25</sup> "In fact, if we went to trial in that case, it'd be difficult, because it didn't seem as egregious, you know what I mean? We took the case, but it was definitely what I would call, if you will, 'trafficking lite,' and ... sort of on the border, at the cusp of alien smuggling ... and maybe extortion to some extent ... and trafficking." She added that the large number of victims in this case was a key factor in pursuing it as trafficking. The case was treated as a trafficking case, and the victims were entitled to and received services, but Lynn's statement illustrates how mediating factors such as the number of victims influence assessments of trafficking and can push a case over the line.

Other factors, such as the nature of the relationship between trafficker and victim, sometimes influenced determinations of trafficking in the other direction. Criminal justice authorities often questioned whether situations involving family members or romantic relationships were really trafficking, even when force or coercion were involved. Several service providers mentioned clients who were involved in servile marriage situations (they were brought to the US through marriage and forced to perform household or other labor for the spouse). Nora spoke about a client who was deceived into marrying her trafficker and had great difficulty getting law enforcement

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<sup>25</sup> The main defendant plead guilty to conspiracy to commit forced labor and document servitude, conspiracy to harbor aliens within the United States, extortionate extensions of credit, and possession of false alien registration cards.

interested in her case. While the case fit the trafficking definition, certain characteristics were contradictory to law enforcement conceptions of trafficking. “I think a lot of times people are trafficked and then it becomes very difficult for outsiders to see it as trafficking, because the two may be related, or as has been the case in many of the cases I’ve worked on, there’s ... a relationship that’s romantic, where I think investigators can be sort of skeptical about what was forced and what wasn’t.” There have been multiple cases in which the traffickers recruited young women by romancing them and then forced them into prostitution, but because of the relationship it was difficult to evaluate the level of force that was used. Cases that involve fewer victims are much harder to corroborate and therefore more difficult for law enforcement to prove, sometimes resulting in what appears to the NGOs and victims as lack of interest in the case or refusal to view it as trafficking. Conversely, some of these cases were prosecuted because investigators found clear financial evidence and multiple victims corroborated the story.

Another gray area occurs when individuals who were originally trafficked transition into roles in which they assist the traffickers or become enforcers over other victims. Ella, an immigration attorney, noted, “Where it gets tricky ... is sometimes when people have sort of a management position in the operation, like they were doing it for a little while, and then they're called in to either recruit other women or ... manage some of the newer women. That's ... a tricky situation.” Nora echoed this sentiment. “It’s very gray – not black and white at all – in terms of who is the good guy and who is the bad guy in the minds of the people we work with.” She said her clients may conceive of certain people in the trafficking operation as bad and others who are



connected to it as not deserving any blame. “But even some people are only bad some of the time.” Many survivors didn’t view their traffickers as bad all of the time, because the trafficker was the one on whom they relied for food, shelter, and basic necessities. In some cases the trafficker had fathered their children. For law enforcement agents, however, any acceptance of the trafficker on the part of the victim was sometimes viewed as complicity. Will, a federal agent, told me, “Not all victims are victims.” He described an ongoing case involving a pimp and underage girls in prostitution, and one girl in particular who he adamantly believed was not a victim because she posted ads for the other girls on Craigslist. He told me, “The pimp will probably get 15 years, and she should too.” Legally, since this girl was under 18 and in the service of a pimp, she fits the definition of trafficking. Despite her age, Will viewed her as a co-conspirator because of her role in the operation.

### **Conceptualizing “Trafficking” for Non-Experts**

Given the complexity involved in articulating the elements that constitute trafficking and force, fraud, and coercion for these individuals working on trafficking cases on a regular basis, there are even greater challenges posed by the definition for those who are less intimately familiar with trafficking and the law. For inexperienced law enforcement personnel or those not directly responsible for implementation, confusion about what constitutes trafficking is far greater. As Dean, a federal prosecutor, described to me,

Our biggest obstacle is it’s a new statute. You have literally hundreds of thousands of law enforcement in this country that have to be trained and educated about this statute and millions of citizens who are going to see and be able to also help identify this crime, so conducting the outreach and training in a consistent way and meaningful way is very difficult, because ... many people have different definitions of trafficking, and every time people with different

definitions start talking it creates confusion, and what that confusion does is it ... either causes people to report lots of things as trafficking or think things are trafficking that aren't, at least from our perspective, prosecutable. ... Or it's so narrow that they think somebody has to be chained to a desk or something, that they overlook cases that could be prosecuted.

Dean's statement gets to the heart of the various ways in which trafficking is envisioned. For some, all prostitution or all worker exploitation is mischaracterized as trafficking. For others, trafficking includes only the most obvious cases involving physical violence, to the exclusion of cases involving more subtle forms of coercion and control.

Even in Congress, the details of the definition were often lost on those who were not intimately involved with trafficking work. Victor, a Congressional staffer, told me about the difficulty of maintaining a clear vision of trafficking within the Democratic Party with two of the staunchest advocates of the initial 2000 legislation gone.

Now of course, eight years on, Sam Gejdenson is not in Congress anymore, because he got beat, and Paul Wellstone is dead. ... So, there's the constant need to re-educate folks up here [on the Hill] ... and not really all that many folks on the Democratic side who truly understand the trafficking situation and truly understand what trafficking is, which leaves a vacuum for miseducation. ... And so ... there is always this kind of rearguard action to just try to explain to people what the entire point of the TVPA was to begin with. Everyone up here knows that trafficking is something that is bad and that trafficking is modern-day slavery, and therefore horrible, but they don't really know what trafficking is, and so you can totally mischaracterize it in so many different ways if you're inclined to do so.

### **“Things that involve sex are just different” – Sex in Their Minds**

Many of the most common misunderstandings and oversimplifications about trafficking (inside and outside of implementation) revolve around the special status assigned to sex and sex trafficking. As described in Chapter 3, the TVPA definition of trafficking is two-tiered and includes three bifurcated elements, meaning that

individuals can focus on the part of the definition that best suits their personal or organizational values. This complexity affects both what counts as trafficking for various actors and also who gets counted as a trafficking victim. The value placed on sex trafficking entered into conversations with my informants and their implementation of the law in varied ways; some reinforced the notion of sex trafficking as unique, while others challenged this belief. Here I offer excerpts of conversations with four of my informants to illustrate how they engaged with the subject of sex as it relates to trafficking. I include these profiles to highlight how diverse interpretive frameworks about sex entered into conversations and conceptions of trafficking over the course of my fieldwork, and then lay out some of the specific ways in which sexual norms and values frame conceptions of trafficking.

*Molly*

Molly is a federal prosecutor who I got to know over the course of my fieldwork. She had been working as a government attorney on trafficking cases for four years. Like many prosecutors, Molly viewed trafficking for forced commercial sex and forced labor as equally important. However, she told me that she viewed them *differently*.

Things that involve sex are just different. I think because sex in every part of life is a unique and powerful thing. I think the kind of degradation that the victims of sex trafficking deal with is different. I'm not saying it's worse, but I think it's different than victims of labor trafficking, and obviously every case is different, and ... it may not be that victim's perspective, like ... that 16-year-old prostitute might be like, 'Yeah I'm chilling, I'm cool ... I've got my new outfit, I'm good.' And your person forced to work in a factory and get beaten every day ... they may have a different personal perception of what's going on. But I think there is a difference there, and I think it is appropriate to have different ideas of how to deal with them. But ... both are part of the Trafficking Victims Protection Act, so I think they have more in common than they do different, but I do think there is a difference there.

Molly was unable to articulate how exactly trafficking into forced prostitution differed from trafficking into other labor sectors, but she viewed sex trafficking as distinct, even when the victims did not view themselves as being victimized. She went on to say, that despite this difference, labor trafficking cases could be equally brutal. “For example, the Sabhnani case that was out in Long Island ... what those victims dealt with on a daily basis was really awful too. ... There was nothing sexual about it, and those are incredibly vulnerable victims.<sup>26</sup> And so I think there are ... different kinds of forced labor cases too.” In this way, Molly suggests that trafficking occurs along a continuum and some cases are worse than others. She added, “I think the domestic [worker] cases, to me, are sort of the saddest, maybe just because the victims feel like they're alone. A lot of times they're single victims who are serving a family, and I think part of the reason we don't see as many of them is that they're just completely invisible, you know?” She added that this was a factor in identifying victims as well.

Part of the reason I think that sex cases get a lot of attention is that there is a lot more contact both with the public, because of the customers, and with law enforcement, not on the we're making a trafficking case kind of level, but, your cops on the beat who know who the prostitutes are, they can tell where there's a brothel, there are raids that happen, and ... virtually all of your sex trafficking victims have had prostitution arrests if they've been in the States for any kind of time. So there is contact there, and there's a visibility there that doesn't happen with a lot of the labor cases, I think.

Molly's remark that sex trafficking is more visible and more frequently encountered by law enforcement also highlights the way in which the identification of vice crimes is prioritized over identifying labor exploitation.

Molly also noted that the kinds of trauma that victims experience are both subjective and dependant on the victim's particular circumstances. She described the

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<sup>26</sup> See Konigsberg for an overview of the case (2008).

degradation experienced by victims of forced prostitution as distinctive. During this same conversation, she talked about being able to recognize trafficking victims by the expressions on their faces, noting that there is something unique about the experience of women who have been forced into prostitution in particular.

Sometimes if you interview enough of these people, you can see it in their face almost. ... Maybe I'm looking for it, but I've seen how from ... the first meeting to ... when they actually ... tell you the truth, what a victim's ... eyes look like especially. They look dead when you meet them at first. I mean, especially sex work is so dehumanizing, and they are so distrustful and they've been so mistreated by the trafficker, both because they're being forced to be a prostitute, but also because they come home and they haven't made enough money. They're beaten, they get strip-searched, they've been forced to have abortions, they've lost their children that they have had.

For Molly, there was something so distinctive about the violation associated with sex trafficking that she believed it had a physical manifestation that could be observed in the victim's eyes. In her mind, being forced to participate in commercial sex compounded the other aspects of the trafficking experience.

### *Sheila*

While the view of sex as somehow different was common among people working in the criminal justice field who interacted with victims sporadically, many of the service providers who I talked to, who engaged with survivors daily, were reluctant to draw a distinction. Sheila was a longtime service provider and one of the first people I met while doing my research. We communicated regularly over the course of my fieldwork, and one afternoon I asked her if she saw any differences between trafficking for forced labor and trafficking for forced commercial sex. She responded, "Of course the nature of what people are doing, but I think all the other elements are the same." She went on, "To me it's not an either or on the two groups. It's like both need a lot of

attention.” In contrast to Molly, Sheila did not view the sector into which an individual was trafficked to be a distinguishing factor in the experience of victims. In reference to recent increasing concerns over the issue of trafficking of US citizen youth for commercial sex,<sup>27</sup> she added, “We really need to look at this youth problem – these young girls – it's devastating. It's devastating to read about them and hear about them and so is the other worker exploitation. I think that somebody said that teen prostitution is America's dirty little secret. ... I think all exploited labor is America's dirty little secret, but people don't have any idea that we're all complicit in it ... in the clothing we buy, everything. So I think that that split, the argument, the dichotomy is really harmful to the whole field and it has really set everybody back.” Sheila notes the inherent harm in drawing a distinction between forced prostitution and other forms of forced labor, one consequence of which is the invisibility of labor trafficking and the fact that the public is oblivious to its ramifications (e.g., clothing produced in sweatshops or produce cultivated by forced labor).

Sheila noted that the focus on sex trafficking was something that divided the anti-trafficking movement, but she saw little evidence of how victims of commercial sex differed from victims of labor trafficking. During negotiations for a New York State anti-trafficking law, Sheila advocated for a single definition of trafficking rather than separate definitions for sex and labor.

The state thing really came down to the [abolitionist coalition] had been the loudest voice, and they convinced the lawmakers that sex trafficking was oh so much worse, and ... we kept saying, sex trafficking is horrendous; it's horrible. Don't forget that in a lot of labor trafficking, domestic servitude, other kinds of labor, sexual assault is used as control or punishment. ‘Oh I didn't know that,’

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<sup>27</sup> Movement into commercial sex of anyone under the age of 18 constitutes a severe form of trafficking; no force, fraud, or coercion is required. Since movement across borders is not necessary under the TVPA, a number of US citizen youth involved in prostitution meet the definition of trafficking.

would be some lawmaker's response. 'We've always been told that this is so much worse.' You know? So I don't think they should be separated. And people that were making that argument, sometimes in discussions we would find out that they did not even know the nuances of sex trafficking, like strip clubs - that's not sex trafficking, it's labor; bargirls, that was labor. But they thought it was sex trafficking. ... So again ... it feels like it's just a way to get at prostitution.

By contesting the dichotomy between sex and labor trafficking, Sheila learned that those supporting the distinction did not fully understand its consequences. Indeed, by bracketing out sex trafficking as unique, the sexual abuse experienced by victims of labor trafficking was completely overlooked. Her experience underscored that concerns over trafficking were being driven by anxieties about sex and prostitution, not by concerns over the removal of free will, even when sexual abuse was the means used to establish control over another human being. Sheila was frustrated by advocates who had no experience working with victims portraying themselves as experts and pitching trafficking as solely an issue of sex trafficking. "I'm a firm believer that I cannot go out and give a speech if it's not backed up by something I really know, and what I found out was that the 14-year-old girl working in a sleazy bar in New Jersey and the 35-year-old man from India had the same feelings about climate of fear, the same reasons for not leaving, the same feeling of helplessness and hopelessness." Sheila felt confident challenging normative assumptions about trafficking, because her beliefs were grounded in her experience working with victims.

#### *Charlotte*

Charlotte was the director of a social services program and echoed many of Sheila's beliefs. She noted that service providers are well positioned to serve as advocates because of their extensive contact with victims. "I think it's a really important

role because we are the ... closest thing that comes to the survivor's voice. ... So I see our role as really taking what we've seen in the implementation of what's going on, how it works and how it doesn't work and being able to inform future programming. And I would like to think that we're doing it in a way that best serves the interest of clients.” Based on her experience working with survivors of both forced prostitution and forced labor, Charlotte adamantly disagreed with the abolitionist focus on sex trafficking, which she viewed as running counter to reality. We discussed an advocate who had provided testimony at a Congressional hearing and spoke about sex trafficking as though it were the only form of trafficking and also conflated it with prostitution. “I have no idea why that voice is not being challenged. ... We need to shift the debate ... or nobody is going to ever understand our position.” Indeed, the notion that sex trafficking equaled trafficking was so dominant in the media and the public imagination that service providers were among a small minority who had the experience and knowledge to challenge this belief, based on their interactions with survivors.

Charlotte noted that part of the reason she had not spoken out publicly and challenged the abolitionist perspective herself was because of organizational limitations. As one program within a larger NGO, taking a political position on trafficking meant the entire organization had to take on the issue. “It's really hard for our upper management to understand, not who cares about prostitution, but prostitution is not our issue. Why are we talking about this? What does that have to do with us? And it's really slow going to get them to understand that ... unfortunately they [the abolitionists] are making it our business ... and even if our only response is trying to shift the debate or reframe the discussion a little bit, we do have to respond somehow.” But responding



meant engaging with a dichotomy that Charlotte viewed as false. “I don't like talking about sex trafficking versus labor trafficking, because to me it's all trafficking. ... I think it's detrimental to the trafficking movement to be so focused on sex trafficking. And they try to act like we are so focused on labor trafficking, but I don't think we're focused on labor trafficking. I think we're focused on trafficking. And it's not productive to be pitting sex trafficking with labor trafficking ... saying whose experience is worse. I think it's about how to serve the best interests of clients.” According to Charlotte, spending time debating the split took valuable time and resources away from victims of all forms of trafficking.

Charlotte also struggled with getting people to understand how focusing solely on sex trafficking was detrimental to labor trafficking victims. From the perspective of outsiders, forced prostitution always superseded any other form of forced labor, because the notion of sexual harm was so foregrounded that it overshadowed even those forms of sexual harm that accompanied forced labor. “We get a lot of pushback and resistance even from within [our organization] of people not working on the issue, of how can you compare people who have to service five or ten men a day to somebody ... working in a field or working at home? And I think that's really unfair to the labor trafficking person. No one can say whose experience is worse, and to pit victims' experiences against each other and to say one is more atrocious than the other, I think it's counterproductive to what we're trying to do.” Charlotte addressed the issue in terms of victims' service needs.

As far as needs when they come in, I don't think that it's necessarily the type of trafficking that they experience but their life skills and where they are. So somebody who was isolated in a home [doing domestic work] and doesn't have any experience in New York City could have much more intensive needs than a

person who was sex trafficked and was out and about in society and living and having some limited freedom of movement and choice in their trafficking experience. So for me ... it's the needs of the client; the trauma of the client isn't defined by their labor trafficking or their sex trafficking, but by their life skills that they bring to their experience.

She viewed the defining feature of a victim's trafficking experience not as the sector into which they were trafficked, but as the effect it had on their life and the types of assistance they required to move on and achieve independence.

Following a meeting Charlotte had attended on promoting trafficking awareness in New York City, she told me about a conversation she had with the head of an abolitionist-oriented organization. "She said, 'Well, you guys are the experts on labor trafficking.' And I said, 'No, our focus is on trafficking in general, and when we train we don't talk about sex trafficking or labor trafficking, we talk about both, and it's how to identify both ... and people have the same signs even if they're coming from a very different setting.'" To this abolitionist advocate it was assumed that Charlotte's organization must be "experts on labor trafficking" and that a clear demarcation was necessary in order to properly address what she viewed as two different types of trafficking. Charlotte continued, "I made a comment about a lot of our labor trafficking cases having been sexually assaulted as well, and she was very taken aback by that and had no idea that in labor trafficking cases that there were sexual assaults. So I think that there is just a lot of misinformation out there. ... I definitely think that they get a lot of misinformation about us and our philosophies." She added, "I get so upset with the anti-prostitution people sometimes, because they act like labor trafficking is not a violation against women's rights, and it certainly is and even just as horrible as some of the sex trafficking cases that you hear about. But then again, that's leading into their

saying one is more horrible than the other.” Charlotte viewed trafficking into forced prostitution and forced labor both as issues of women’s rights, but the sex/labor division was deeply embedded within anti-trafficking discourse and encompassed gendered constructions of harm, work, and victimhood. Consequently, any effort to contest this framework resulted in ideological clashes rather than positive outcomes for victims. Charlotte sighed, and added, “It’s just so counterproductive, and I’ve never worked in a field where there so much infighting about how to help people.”

*Jim*

Jim was a federal law enforcement agent whose work centered primarily on investigating human trafficking crimes, and he had worked on cases involving both forced prostitution and forced labor over the years. When I asked him how he defined trafficking, he quickly responded, “By the statute.” Yet it became clear that only the sex trafficking portion of the definition held any meaning for him. “I don’t see it [trafficking] so much as forced labor. The cases I believe are more important are women coming and working as prostitutes.” When I pressed him to talk about why he viewed them differently, he told me, “I think there’s a huge difference between sex and labor trafficking. What happens in sex trafficking is horrendous. It takes everything away from a person.” Indeed, Jim not only viewed sex trafficking and labor trafficking differently, but his normative assumptions about sexuality also led him to make value judgments in his work about which types of trafficking were more repugnant and which victims more severely harmed. He mentioned one labor trafficking case that had occurred in a neighboring district. Two women had been forced to perform domestic labor 17 hours a day, seven days a week for \$100 a month. The traffickers verbally and

physically abused the women, including beating and burning them. They restricted the women's movement and food intake, and provided them with thin mats on which to sleep on the floor. Jim told me, "The women were locked up, but they still have some of their dignity." Jim perceived forced prostitution as more degrading and a more serious offense. "People ask whether the penalties should be more severe. The penalties should be more severe for sex trafficking. In my opinion it's worse than murdering someone, to continuously degrade someone like that. I think about my sisters, my wife, my daughters, what I would do...?" Jim based his judgment on what he viewed as the motivation of the victims, conceiving of survivors of forced prostitution as more authentic victims. "This whole thing, sex trafficking, sickens me. Most of the labor trafficking victims they wanted to come here in the first place." In Jim's mind, sex trafficking was such a serious and heinous crime, that the female victims could have no culpability in even wanting to enter the US illegally. The notion that women were being forced into commercial sex was totally repugnant to him, but the thought of men and women being forced into other types of labor and mistreated much less so. The undercurrent in his comments was that victims of labor trafficking wanted to come here, and therefore knew what they were getting into. Interestingly, Jim's views on how to eliminate sex trafficking were more in line with those of human rights activists than abolitionist advocates. "I think prostitution should almost be legalized if there's a way to monitor it, all the violence and drugs it generates."

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These profiles highlight the complex ways in which interpretive frameworks about sex intersect implementation of the TVPA and the ways in which various

professionals integrate these frameworks into their conceptions of trafficking and their anti-trafficking work. Just as with the drafters of the TVPA, some professionals single out sex trafficking as a unique harm, while others contest this notion. In the sections that follow, I describe how sex is key to discussing and framing trafficking in three important and interconnected ways. First, there is a tendency to conflate prostitution with trafficking (i.e., all prostitutes are trafficked or all migrant prostitutes are trafficked), and this conflation is codified in the TVPA via the non-operational sex trafficking definition. Second, there is a reductive trend to imply that sex trafficking equals trafficking and to view labor trafficking as nonexistent or an afterthought. Finally, there is an implicit undercurrent in the media, government policy, certain advocacy efforts, and even implementation of the TVPA that sex trafficking is the most important kind of trafficking. By keeping the attention on sex, each of these tropes transforms the meaning of trafficking and redirects the focus from trafficking in general to something that is both much more specific (sex trafficking is only one part of trafficking) and much broader (prostitution occurs in a number of iterations) than the legally operative definition.

### **The Conflation of Trafficking and Prostitution**

Conflation of prostitution with trafficking occurs in several ways. As discussed in Chapter 3, the non-operational definition of “sex trafficking” is one example. While none of my informants conflated prostitution and trafficking, many of them spoke about the impact of conflation on anti-trafficking efforts in terms of resources being diverted from severe forms of trafficking, the need for training on how to accurately identify victims, and a misunderstanding of trafficking among the general public. Conflation

occurs on two levels – accidental and intentional. A lot of accidental conflation occurs in the media, either because journalists are not fully thinking through the issue and are making false assumptions (i.e., all migrant sex workers are trafficking victims) or they are relying on sources that intentionally conflate prostitution and trafficking. As others have described, several feminist groups with roots in the anti-pornography movement intentionally conflate trafficking with prostitution (Weitzer, 2007). These “abolitionist feminists” argue that *all* commercial sex objectifies and oppresses *all* women. They contend that no prostitution is voluntary and therefore it is impossible to distinguish between forced and voluntary prostitution. Over the course of the 1990s, abolitionist feminists became active voices in the trafficking dialog and have remained so ever since. As described in Chapter 3, these feminists were part of coalition that fought hard to maintain a definition of “sex trafficking” without any requirement of force, fraud, or coercion in the TVPA.

On a national level, what some of my informants referred to as the “Abolitionist Coalition” consists of a loosely affiliated group of feminist advocates and religious conservatives who have collaborated on key legislative issues such as the drafting and reauthorizations of the TVPA. Nationally and internationally, many types of organizations and individuals, driven by various motivations, identify as “abolitionists” in that they seek to end trafficking and slavery, and often prostitution too (for a detailed discussion see Bernstein, 2007). While I did interview a small number of individuals who I would characterize as members of the larger abolitionist movement, I want to be careful not to characterize the movement as monolithic or its members as having a single view of abolitionism. From talking to various people involved with the

abolitionist movement it became clear that their views were highly individualized and nuanced. In New York City and State, the dominant voices in the Coalition are a small group of feminists who have been long-time anti-prostitution advocates, and for the most part this is the specific groups of abolitionists to which I refer. I did not interview any of the feminist advocates who were the most vocal abolitionist spokeswomen in New York, because they were not actively *implementing* the TVPA (the one individual I attempted to interview because her work straddled the line between advocacy and service delivery declined my request for an interview).<sup>28</sup> While most anti-prostitution advocates do not prosecute traffickers or provide services to victims, it is important to include some of their voices here, because so many of my informants saw themselves acting in direct opposition to these advocates.<sup>29</sup> I attended a number of events where abolitionist feminists spoke, and I include some of their public remarks to illustrate the types of rhetoric to which many of my informants responded. My goal is not to further this debate. Rather, I want to point to how the debate informs and enters into anti-trafficking work on the ground.

When my informants told me things such as, “We are a law enforcement agency. We have to use the definition in the law” or, “I define trafficking by the statute,” they implied using the operational severe forms of trafficking definition in the TVPA, because that was the only definition that had legal power in terms of prosecuting traffickers. On the other hand, the effort of anti-prostitution feminists to conflate

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<sup>28</sup> I did interview a small number of service providers and other professionals who espoused abolitionist philosophies but were not part of this most vocal group of anti-prostitution *advocates*.

<sup>29</sup> A small number of anti-prostitution advocates provided legal services to victims but did not provide comprehensive services. Additionally, one organization provided services to girls and young women who experienced commercial sexual exploitation and domestic trafficking and advocated against youth prostitution in particular.

prostitution and trafficking is primarily a symbolic and ideological one, but nonetheless one that was codified in law and has material effects. Despite the fact that the non-operational definition of “sex trafficking” has no legal *consequences*, it does have collective resonance. Since this subset of advocates use this terminology of “sex trafficking” to describe prostitution, this conflation permeates the media, the public consciousness, and even individual law enforcement agents’ conceptions of trafficking. So, who counts as a victim of trafficking? It depends on in whose mind the trafficking is being envisioned. When they refer to “sex trafficking,” abolitionist advocates on the one hand and service providers and law enforcement on the other, are talking about two different things – the former referring to prostitution and the latter to forced prostitution. In providing services funded under the TVPA, NGOs must rely on the operative definition – only a victim of a “severe form of trafficking” is entitled to services and benefits. Since only severe forms of trafficking hold legal significance for law enforcement and service providers, the terms “sex trafficking,” “labor trafficking,” or “human trafficking” always imply force.<sup>30</sup> In sharp contrast, abolitionist advocates continue to argue that all women moved into prostitution, e.g., those working for a pimp or in a brothel, are victims of “sex trafficking” and use that terminology. As one abolitionist feminist stated in a 2004 speech, “The truth is that what we call sex trafficking is nothing more or less than globalized prostitution” (Leidholdt, 2003). Many abolitionist advocates use the terms “sex traffickers” and “pimps” interchangeably. They describe some of the most dismal aspects of prostitution as a means of equating it with trafficking.

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<sup>30</sup> “Sex trafficking” may also imply that the individual is under the age of 18, in which case force is still implied.



At a conference I attended on trafficking from a violence-against-women perspective, the head of a prominent feminist organization in New York City advocated conducting a block to block campaign to identify “sex traffickers.” She proclaimed, “Trafficking is *the* issue. It’s happening in our neighborhoods. It’s like Starbucks. There is not a block in the city without a brothel.” This statement is emblematic of the definitional difficulties of the TVPA and an example of how advocates utilize the non-operational “sex trafficking” definition to mystify what counts as trafficking. In this case, the advocate suggested that occurrences of trafficking were found at the same geographic density as Starbucks. She argued that this was the case, since presumably brothels could be found at roughly the same rate as Starbucks in Manhattan, although I came across no data to support this claim. Her statement also suggests that trafficking is occurring in *every* brothel, thereby conflating prostitution and trafficking. She argues that all prostitution is inherently exploitative, and therefore all prostitution is trafficking, and furthermore declares that it is happening *everywhere*. Technically, most prostitution taking place in brothels may fit the non-operative definition of “sex trafficking” in the TVPA, in that someone else is involved in helping, paying, or giving a room to a woman working in prostitution. Since the TVPA neither criminalizes this “help” nor provides services to the women receiving this “help” unless force, fraud, or coercion is also present means that this definition is nothing more than a legal mirage.

Many informants alluded either implicitly or explicitly to the rift between abolitionist advocates and themselves, whom they described as victim-centered service providers. Both groups identified as members of broad coalitions of feminists and providers, but they held differing ideological views regarding trafficking and

prostitution. Over the course of my research, New York became a kind of microcosm of the larger trafficking debates taking place at the national level. In this context, proponents from either side of the ideological divide contested each other's notions of trafficking. Debates over the definition of trafficking were heightened during my fieldwork because of efforts to pass a New York State anti-trafficking law and lobbying around the 2008 reauthorization of the TVPA.<sup>31</sup>

At a rally in support of New York State anti-trafficking legislation, Sonia Ossorio, President of the NYC chapter of the National Organization for Women (NOW), talked about the vulnerability of victims of human trafficking. To emphasize her point, she read a quote posted on a blog by a John. "I asked her [the sex worker] if she minds doing this to men. After much pantomime and language barrier breakthrough, she said, 'Oh, for first six months I cry every night; now not so bad'" (Youtube Video, Sonia Ossorio, Now Nyc, March 1, 2007). The use of this quote is problematic on several levels, the most important being that since it came from a website where Johns rate *sex workers*, there is no way to know whether the quoted woman was trafficked or not. While the quote suggests that the woman was deeply unhappy in her work, there is no evidence that she was forced or coerced into prostitution. Yet, this was the quote the advocate chose to illustrate the need for anti-*trafficking* legislation. From her perspective all prostitutes are victims.

At a conference on trafficking as a form of violence against women, the director of an organization dealing with commercial sexual exploitation of children stated, "Everyone knows a man who has paid for sex. We have to take responsibility for allowing human beings to buy and sell other human beings." At the same conference, a

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<sup>31</sup> The TVPA was scheduled to be reauthorized in 2007, however, it was not reauthorized until 2008.

feminist advocate and attorney defined trafficking as “the buying and selling of human beings as a commodity.” Both of the speakers were referring to men buying sexual *services* from women, but framed it in the language of “buying human beings” as though there were no distinction between paying a woman to provide sexual services for an hour or a night and buying or selling her as a piece of property to be owned for a lifetime. Many of the service providers I came to know objected to using the language of trafficking to talk about prostitution. At the annual meeting of a national trafficking network, Jarrah, an immigration attorney, noted “[the abolitionist coalition] is using anti-trafficking as a platform for anti-prostitution.” Ella, another immigration attorney, viewed the conflation as driven by a need for funding. “It’s like any concept of branding; it’s, like, aim where the money is. If we can talk about an old problem in a new way and there’s funding to go along with that, then let’s do our best to put a spin on it.” She continued, “I mean, do I think there should be services for people who no longer want to work in sex work or no longer want to work in prostitution? Definitely. ... Should there be shelters or housing or job training opportunities? Definitely. But I think ... when you’re talking about a smaller pool of people [trafficked persons] and then all of a sudden it’s a larger pool of people [women in prostitution], then who pays for what? I don’t know, it just gets ... confusing and overwhelming.”

Many of the providers I spoke with were sympathetic to the lack of services available to women wanting to leave prostitution and agreed that sex workers should not be treated as criminals. They acknowledged the exploitation that many women experience in prostitution, but they drew the line at calling it trafficking. They perceived conflating the two as diminishing the experience of their clients and diverting attention

from prostitution involving force, fraud, and coercion as well as labor trafficking.

Roxanne, an immigration attorney, noted,

There are literally people who are pushing for ... the conflation of prostitution and trafficking, and that makes it much harder for those who have been struggling to access these protections and makes it even harder for them. It also helps ... continue to frame the media message that prostitution is the same thing as trafficking. And ... the media ... yeah, it's just everyday people, but it's also like local law enforcement. ... We had to train so many cops at different times, and I still don't think when we were done talking that they really understood that trafficking included labor trafficking. To them it's just prostitution and that's part of the messaging they are receiving, and so it's hard you, know?

According to the service providers I met, there was a real disconnect between the image of trafficking presented by abolitionist advocates and the experience of trafficking victims who made up their client base. The idea that abolitionist advocates were propagating a contradictory notion of trafficking at trainings, conferences, and in the media was frustrating to providers who observed law enforcement developing preconceptions about trafficking as a direct consequence.

### **Trafficking as One End of the Spectrum of Sex Work**

Most of my informants viewed trafficking into forced prostitution as one extreme along a continuum of sex work. Jarrah, an immigration attorney told me,

I usually ... talk about a spectrum of sex work, so on one end we have persons who are trafficked who were forced into it and don't really want to do it, and then you've got the majority of sex workers in the middle who are doing it for circumstance, who would rather be doing other things, but because of lack of livable wages etc., they cannot function economically without going into sex work. ... And then we've got a minority of sex workers on the very other end that ... have alternative means of financial stability, yet they choose sex work for whatever reason, you know, sexual autonomy, they find it convenient as a job opportunity, whatever. So then along that spectrum the needs of sex workers are extremely different.

For Jarrah, and other providers I spoke with, separating forced prostitution from other types of prostitution along this spectrum was an essential distinction. During a meeting I

attended at an anti-trafficking services organization, the staff discussed a referral they had received for a potential trafficking client. She was a South American woman involved in prostitution who had paid her own way to the US. She had been injured by a client and was unhappy working in prostitution, but she had not been threatened or forced into it by anyone. The case managers agreed that the referral suggested a conflation between prostitution and trafficking, and it was unlikely to be a trafficking case. In the end, they decided to refer the woman to another program better suited to address her needs. This woman had entered prostitution by circumstance and wanted to find other means of employment, but never experienced any force, fraud, or coercion.

Unfortunately, there were few services for a woman in these circumstances. As Jarrah told me, “Well, okay, they want to get out of the sex work. It's one thing to morally chastise them like some organizations do, but how do we actually get them out of the sex work? They can't work at McDonald's; it doesn't provide a livable wage. So what opportunities do they have? They don't have resumes; they don't have past job experience or someone that can give them a recommendation. So we need services that provide for that, getting them typing skills getting them ... GED's or vocational skills, things like that that are actually going to get them into jobs that pay a livable wage.” However, rather than lobbying for funding for services for this population, abolitionist advocates sought to conflate this “prostitution by circumstance” with trafficking.

Mark, a federal prosecutor, told me, “I think that there is an understanding on the part of policymakers that there is a difference between a pimping case where someone gets hit and a case in which someone is enslaved, and figuring that difference out, obviously in some cases it's going to be difficult, but in other cases it's pretty clear.

And in law enforcement we make those distinctions all the time.” He elaborated.

“There’s a reason why there is a murder first and second degree murder, manslaughter, and involuntary manslaughter, and part of our job in the law enforcement community is to figure out which one of those it is.” He explained that a similar spectrum exists between sex work and forced prostitution. “[It’s not just] the Mann Act, which assumes that the woman is a prostitute . . . and slavery, which assumes that the woman is being flat-out enslaved, with absolutely nothing in between the two. You know, [the law] attempts to actually fill in some of those in-between things much like you have murder all the way down to simple assault.” He continued by describing how the abolitionist coalition of feminist advocates and evangelical Christians has been reluctant to recognize this spectrum.

The attempts to fill in those things have been misunderstood by that coalition, because they think that it means that we are somehow saying that all cases should be done in one of those particular ways. It’s almost like they don’t understand the menu approach that we have to take, and . . . whether they do understand it and they’re being disingenuous so they can fight a cleaner political battle, or whether they just don’t understand it, and after eight or ten years you start to think maybe that’s a willful non-understanding, because anybody that’s been to law school should understand this concept of how you set up an entire criminal law regime. And it’s not a normative statement to say that something is manslaughter versus something being murder. You’re not saying, I value that person’s life more than I value this other person’s life. They’re both dead and that’s a tragedy. The difference is that there are other things that society has to take into account when setting up the criminal laws. And it’s not that their life is worth less, it’s that their death is more punishable based on the . . . evil intent of the murderer, as opposed to the ‘oops’ of the manslaughter.

Mark’s explanation raises two important issues. First, he suggests that the conflation of trafficking and prostitution is both purposeful and political. The second point is that just as there is a range of crimes between manslaughter and first degree murder, there is also a range of activities between voluntary sex work and severe forms of trafficking. A sex

worker could be exploited by her pimp in various ways, such that he could be prosecuted for pimping or pandering and various Mann Act charges, but she is still free to leave.

Several of my informants gave specific examples of how they determined whether a case met the criteria of a severe form of sex trafficking versus falling somewhere else along the spectrum of sex work. Larry, a law enforcement agent, told me, “We are getting a lot of phone calls [referrals], but a lot of them might be just straight up prostitution cases. . . . So we go out there and actually break it down – how were you forced? Where was your coercion in this? And you know, we break ‘em down, and they pretty much say, ‘No I want to do this, I like doing this, I do this strictly for the money, ya know, I work for a pimp’ – but that doesn’t meet the human trafficking [definition], so that’s just a straight up prostitution arrest.” He added that they close out those cases right away, and if anything, a detective from the vice team might pursue it. “But we wouldn’t take it as a human trafficking case.”

Being bound by the law, law enforcement agents clearly made these distinctions between forced and voluntary prostitution. Multiple informants also told me different variations of encounters they had with women involved in sex work who adamantly rejected the idea that they had been trafficked or victimized. Kyle, a federal prosecutor, is someone who on many fronts I would describe as an abolitionist. He had volunteered for an international evangelical abolitionist organization at one point and spoke about that experience as deeply significant. Yet, he spoke about trafficking as solely consisting of conditions of force, fraud, and coercion. He told me about a case involving a raid on a Korean brothel. “I remember one woman; I can remember her face

so well. She was not a victim; she was a voluntary prostitute. ... And she said, ‘Look, I knew what I was doing, I wanted the money and those women did too.’” Kyle went on to discuss the differences he sees between someone who has been forced into prostitution and someone who chooses it as the best of all of her available options.

As someone who is deeply moved by the abuse of power and who ... has seen firsthand the suffering that victims of trafficking can endure, I just have talked to lots of women ... who have been through difficult circumstances but human beings who were in control of their faculties who told me, ‘I had other options, but I want to do this because I want the money. None of my other options allow me to make \$10,000 a month and I want to make \$10,000 a month, because I want these clothes, and I want to eat at these places, and I want to live in this place, and it's not that bad.’ And I think it's hard for some people to accept that reality, because they may not have those same choices, but I've talked to plenty of people who do. And I've talked to people who have become victims and then rejected that and gone back [to working in sex work]. And of course it's certainly true that ... it could still be against their will – they could have been so messed up mentally that they go back – and you can sort of debate that, but there are people who would rather prostitute themselves for the amount of money they can receive for doing that than face the alternatives that they have and sort of live with a lot less.

Kyle’s point that it is difficult for many people to understand how any woman could *choose* sex work over another kind of employment is one of the central points of contention amongst trafficking advocates and providers. He added that he views the distinction between forced and voluntary prostitution as key to understanding trafficking. “I think that's sort of the central misunderstanding behind all that.”

Many providers and prosecutors told me that trafficking survivors do not self-identify, that is they do not know the language of trafficking and sometimes even that what has happened to them is a crime. Sheila, the director of a trafficking services program, had helped many survivors understand what had happened to them through the framework of trafficking. She reacted vehemently, however, to the assertion by



some advocates that service providers need to convince sex workers that they are victims.

People say very glibly, ‘Well, trafficked persons don't identify as victims.’ Well no, none of them do, because they don't know that vocabulary, but I don't think it's a service provider's job to convince someone that they are a victim. I mean teaching someone the language [of trafficking] is one thing. ‘Is this what happened to you? Did you have a choice? Were you forced? Were you coerced?’ Whatever, however you get the information out, and it either fits [the trafficking definition] or it doesn't. But ... I've interviewed women who have said ... ‘I know that it would help me if I told you that somebody forced me to do this, but I'll tell you, I paid money, I paid a lot of money to get to this country and this is what I did to pay it back. And then I saw how much money I could make. I should've stopped then, but I told myself okay I'll make \$5,000 more and I'll stop, and I made a \$5,000 more and nobody made me do it, nobody told me to do it, and then I wanted five thousand more, and I have my own place and I'm treated well. Yes, people drive me from place to place and find the work for me, but I get money and I do this because I am addicted to the money.’ Now there are certain providers who say that those are victims of human trafficking. I can't say that because they are telling me that they are not, and I don't think it's my job to tell them that they are. And I'm a very good interviewer. I've interviewed thousands of people in my life, clinical interviews. If I've asked that a lot of different ways, and I don't think that they were coerced or that their freedom was restricted, then I am not going to say that they are a victim.

In Sheila's mind, these women had made a choice to come to the United States and enter sex work. During interviews with her they asserted their agency and underscored their free will by emphasizing their decisions to deliberately come to the US and enter sex work as a way to make a lot of money quickly. The women adamantly denied being victims, and while Sheila was well aware of the time required to draw out details of coercion from trafficked persons, these women's agentive acts and assertive demeanor convinced her of their autonomy.

The particular case Sheila referenced was one that both law enforcement agents and service providers described to me as illustrative of the distinction between what was referred to by some advocates as “sex trafficking” and “severe forms of trafficking.”

The case involved a large, resource-intensive, multi-state investigation into Korean massage parlors and brothels, but resulted in finding almost no trafficking victims by the severe forms of trafficking standard. Hundreds of sex workers were discovered, but the number of identified victims of severe forms of trafficking numbered in the single digits. Despite this and the fact that there were many other local cases that did meet the severe forms of trafficking standard, anti-prostitution advocates continually referenced the case as one of “trafficking” at events I attended, including at a Congressional hearing. In this way, they drew attention to a case that was mistakenly designated as “trafficking” in an attempt to shrink the gap between “sex trafficking” and severe forms of trafficking. While the majority of women working in the massage parlors under investigation fit the non-operational “sex trafficking” definition in the TVPA, in that they were moved into prostitution, they were never forced, defrauded, or coerced so they were not victims in any practical sense.

Lynn, a federal prosecutor, described the case in detail at an event on trafficking in the Korean community. She explained that during the investigation, prosecutors wire-tapped the phone of a man who transported the women from state to state to work in various brothels and massage parlors. Based on these taped conversations, it emerged that the women were paying approximately \$15,000 to come to the US. They knowingly arranged to pay off the money by agreeing to work in brothels. Based on the taped phone conversations and interviews with the women, it was evident that they would request to go to the location where they could make the most money and pay off their debts, so that they could then make more money and return home. They were free to come and go and had possession of their passports. Lynn referred to it as a mass

alien smuggling ring, and she did not view it as a trafficking case or a high priority for prosecution. She said that during interviews with women in cases such as this one, the women sometimes said that they felt they had to work in prostitution to support their family back home. “I consider this coercion in the bigger sense of the word, but it is not trafficking.”

This idea of coercion is another fundamental difference between abolitionists and other trafficking advocates and service providers. While many providers I spoke to talked about coercion in terms of concrete examples such as holding the victim’s passport, threats to the family, etc., anti-prostitution advocate speaking about “sex trafficking” often cited coercion in a much broader sense. At a conference I attended on the intersection of trafficking and violence against women, one feminist scholar asked, “How can you presume that people under conditions of inequality are able to consent?” Questions such as this one are key to the abolitionist platform and run counter to what many service providers consider a human rights approach that recognizes the ability of individuals to make their own choices, no matter how constrained their circumstances. An advocate at this same conference defined coercion as “the build up of control that is gradual, subtle, and controlled over time.” Despite being an attorney, the definition she provided was vague compared to the types of coercion required under the TVPA. Her definition of coercion could be applied to almost any scenario along the spectrum of sex work, but she did not describe any specific types of coercion that would fit the severe forms of trafficking definition. The TVPA defines coercion as: “(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in

serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process”(TVPA, 2000a). Lack of economic opportunity, in and of itself, does not meet the TVPA definition of coercion.

Cases such as the one (involving the Korean woman) described above became platforms for definitional debates among providers and advocates. Ella, an immigration attorney, described to me her interactions with clients involved in a similar Korean brothel case.

With a lot of the Korean women I spoke with it was like, ‘I have a lot of credit card debt’ or ‘Someone told me that ... I could work for two weeks and make five grand, and ... I did it once and it wasn't so bad. I made a lot of money, so every couple of months I would just go work for a few weeks.’ And they were making like ... three to five thousand for ... a week or two of work, getting money. ... Generally ... there is this whole East Coast ... I-95 corridor, and so a lot of times the women would go work in Virginia, but they live in Flushing. They said they would go down for ... a couple weeks and come back. ... It was like, ‘When I was done, I went home and I had my money.’

She continued speaking about the reactions of some abolitionist-minded attorneys who were also involved in the case.

Working with the lawyers that picked up these cases, I did intakes with them [the women], but ... I called back the agency that referred it and I was like, this person wasn't forced to do anything. To me that person is a sex worker, and a lot of people are uncomfortable with that term. ... In these women's minds, or at least the way they articulated it, was just to make really good money in this short stint. That's not someone who's raped and beaten and whatever. ... Talking to the other attorneys, they would be like, ‘Okay well, [whispering] she was forced to work but she had her period. They forced her to work.’ It's like well, did she ask not to work? Was she only down there for a week? I mean, it sounded like there was a lot more autonomy in the situation. And then, ‘She had to work because she had so much debt, and people were chasing her.’ And, you know, started getting at the larger issues about ... women and the economy and having access to better paying jobs.

Ella's account of this gap in meaning of what constitutes trafficking raises several issues. The first is what constitutes coercion? Based on Ella's account of this

conversation with another attorney, it seems the other provider believed that lack of economic opportunity constituted coercion in that it motivated this woman to enter prostitution. Many of the providers I came to know believed unequal economic opportunities contributed to the phenomenon of trafficking and felt that addressing the issue was vital to reducing trafficking. They did not, however, view it as a coercive element by itself. As Denise Brennan has noted, women rely on sex work (and migration) not only as a survival strategy, but also as an advancement strategy, a means to get ahead in the world (Brennan, 2004). When women's options are constrained by both global and local forces, sex work and migration become creative responses for women with limited options. The exchange between Ella and the other attorney also suggests that at issue is not so much the woman's debt and economic standing, but the fact that she was engaged in *commercial sex* to pay off her debts.

Some service providers believed the efforts of abolitionists to conflate prostitution and trafficking influenced law enforcement. At a national conference I attended, Laura, an attorney, noted, "It's fine that they are advocating for prostitution, but it should be in a separate bill. It's just not our issue, and it's very confusing for law enforcement." In fact, conflation of prostitution with trafficking is evident in the way the law is being implemented. Since the passage of the TVPA, there have been multiple instances of law enforcement investigating prostitution in search of trafficking. While federal law enforcement has devoted a great deal of resources to raiding brothels across the country in search of trafficking victims, this strategy has been largely ineffective—many brothel raids do not find any victims of severe forms of trafficking. When there are no victims, there are no TVPA prosecutions and certainly no benefits or protections

for those undocumented sex workers identified during the raid. At a national conference I attended, a federal prosecutor said that the US government was identifying more *potential* sex trafficking cases than labor trafficking cases. He said, [sex trafficking investigations] “are often extremely expensive and resource intensive, but do not often yield the results we had hoped for. We know if people are immigrants and they are working in prostitution, but we don’t know if they are trafficking victims.” He said more often than not they find voluntary prostitutes rather than trafficking victims. “I struggle with whether we should be executing these large-scale raids.”

All of the federal prosecutors that I spoke to clearly articulated the requirement of force, fraud, or coercion to meet the statutory definition of trafficking and were quick to assert that prosecution was not possible without these elements. This speaks partially to the fact that all of the prosecutors I interviewed were located in New York City or the Human Trafficking Prosecution Unit at DOJ headquarters in Washington, DC. As such, they all had dealt with a large volume of cases and were some of the most experienced prosecutors, with regard to trafficking, in the country. However, a few provided examples of conflation that they had observed in which prosecutors (with less experience) in other districts attempted to portray movement into prostitution (absent force, fraud, and coercion) as trafficking. One prosecutor, Lynn, told me that in the large Korean massage parlor case mentioned above, despite no evidence of trafficking from the wiretaps, federal agents still raided the brothels. The attorneys prosecuting the case in another district [Lynn was not among them] charged the defendants with trafficking and on several other counts. Despite only having evidence of and getting a conviction for alien smuggling, the prosecutors advertised the case as one of trafficking.

Lynn told me, this “mis-advertises the issue and overstates the problem.” I attended one of the sentencing hearings related to this case. I had already spoken with a number of people who had been involved with the case (including service providers and law enforcement agents) who had told me that it was clearly not trafficking. I was somewhat surprised during the sentencing when the prosecutor told the jurors, “Sex trafficking is a term that perfectly describes the evidence you've heard about in this trial, because it's all about movement – moving women from Korea, across state lines, taxi drivers delivering women. The wiretaps indicate, ‘bring me a skinny girl.’” None of these conditions fit the operational definition of severe forms of sex trafficking. The prosecutor was referring to the *non-operational* definition of “sex trafficking.” She said whether the women consented to work as prostitutes was irrelevant to the charges.<sup>32</sup> She added that even when the women agreed to work in prostitution, all of the conditions were stacked in favor of the entrepreneurs. They knowingly used undocumented labor, the women didn't speak the language, they were hidden away, taken to unknown destinations, worked 18-hour days, and had to pay people all the way down the line. While these factors do not paint a rosy picture, they also do not constitute severe forms of trafficking. The prosecutor, despite being an attorney for the government, used the term “sex trafficking” in a way that is highly confusing, because it is not operative legally and replicates many of the arguments made by abolitionist advocates that are not based on a legally tenable definition of trafficking. Movement is not a key element of the trafficking definition. The women worked long hours and may have been exploited, but there was no evidence of force, fraud, or coercion. They came to the US aware of the

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<sup>32</sup> Consent is relevant in all cases except those involving minors. While a person can initially consent to sex work and then be forced or coerced such that it becomes trafficking, these women consented throughout the entire process. The prosecutor’s point was legally irrelevant.

type of work they would be doing and the conditions under which they would do it.

They were free to leave and bring any additional earnings home with them when they returned to Korea. The defendants did not “traffic” the women involved in any prosecutable way, yet the term “trafficking” added intensity to the prosecutor’s argument.

Dean, a federal prosecutor, told me “A lot of it is part of the difference in definition, all the confusion about the word trafficking. ... Police are spending hours and months and millions of dollars focusing on every massage parlor that appears to have Korean women working in it, and the truth is they can't do them all. They pick one, you know, there's a hundred of them out there right? Four have trafficking in them. ... If they're just going to pick one, they're probably not going to find one of the four. They're going to find one that's not. They're going to find one of the 96.” By conflating prostitution and trafficking, law enforcement all over the country devoted resources to investigating prostitution but produced few cases of severe forms of trafficking. More often than not, resources to identify trafficking victims contributed to identifying large numbers of voluntary sex workers. Law enforcement assumed that if they targeted brothels they would find victims. While agent after agent told me that force, fraud, and coercion were the key elements of trafficking, these raids focused on a specific type of work rather than on detecting exploitative conditions.

### **The Privileged Position of Sex Trafficking**

In addition to erasing the boundary between trafficking and forced prostitution, another common misunderstanding is that trafficking for forced prostitution is the only kind of trafficking or that it is inherently more important and serious than trafficking



into other labor sectors. This assumption reflects a deep unease over commercial sex as a site of trafficking, but also assigns sex a sacred quality – suggesting that the act of sex for money breeches a boundary beyond the force and coercion that compel it. NGO service providers disputed these claims and perceived them as contradicting their experiences of working with victims. Nonetheless, they regularly encountered these assumptions being made by the media, abolitionist advocates, those at the highest levels of US government policy-making, as well as law enforcement agents working on the ground.

I cannot count how many events devoted to “human trafficking” that I attended where the speaker would launch into talking about sex trafficking of women and girls for forced prostitution without ever referencing any other types of trafficking, as though “sex trafficking” and “human trafficking” were synonymous. At an NYU-sponsored trafficking forum I attended, Ambassador John Miller, Director of the State Department’s Office to Monitor and Combat Trafficking in Persons, remarked, “Coming here tonight inspired me to fire off a letter to the President of the United States requesting that in his upcoming speech on the state of the union he highlight sex trafficking” (*Human Trafficking -- a Global Challenge in Our Own Backyard*, November 30, 2006). Ambassador Miller, whose responsibilities included overseeing work on trafficking in all its forms, chose this occasion and many others to specifically speak out on the plight of women trafficked into forced prostitution. This privileging of sex trafficking was not surprising in the context of federal anti-trafficking policy, and President (George W.) Bush hardly needed a reminder to focus his efforts on sex trafficking in particular. Over the course of eight years, the Bush administration skewed

enforcement of the TVPA toward eliminating severe forms of “sex trafficking,” as well as prostitution. Policy often reflects the interests of powerful constituent groups (Schneider & Ingram, 1993), and Bush-era anti-trafficking policies replicated some of the most deeply-held positions of abolitionists and evangelicals. A 2003 National Security Presidential Directive referred to “prostitution and related activities” as “inherently harmful and dehumanizing” adding that they “contribute to the phenomenon of trafficking in persons” (The White House, February 25, 2003). As a result, the administration promoted the prevention of prostitution as a strategy to prevent trafficking. In this way, ending prostitution and ending trafficking became one and the same. This high-level policy directive set the stage for a single-minded and exclusive focus on prostitution (forced or not) to the exclusion of forced labor. Shortly following the issuance of this directive, the State Department posted a document prominently on its website entitled, “The Link Between Prostitution and Sex Trafficking” (USDOS, November 24, 2004). The document cites research conducted by well-known abolitionists, which has been widely critiqued for its methodology (Weitzer, 2005, 2007), yet remained on the website until the end of the Bush presidency.

Schneider and Ingram note, “A great deal of the political maneuvering in the establishment of policy agendas and in the design of policy pertains to the specification of the target populations and the type of image that can be created for them” (Schneider & Ingram, 1993). The dominant discourse of sex trafficking found in Bush-era policies emphasizes a particular way of conceptualizing trafficking and framing the issue. As Shore and Wright suggest, normative claims are used “to present a particular way of defining a problem and its solution, as if they were the only ones possible, while

enforcing closure or silence on other ways of thinking or talking” (Shore and Wright 1997: 3). One of my informants, Fran, a federal grants administrator, initially expressed concern when I asked if I could tape her interview. “The current administration doesn’t want us to tell the truth,” she told me as explanation, indicating her anxiety about being quoted and potentially saying something not in line with the administration’s focus on sex trafficking. The dominant discourse of sex trafficking shapes the way the problem of trafficking is defined and how victims are classified from the highest level of government to the most practical level of implementation.

Ronald Weitzer discusses the social construction of sex trafficking as a moral crusade spearheaded by anti-prostitution feminists and institutionalized by the second Bush administration into government policy, legislation, and law enforcement practices (Weitzer, 2007). Throughout its tenure, the Bush administration actively consulted with Christian and feminist abolitionist activists on policy questions, posted links to abolitionist articles (to the exclusion of others) on federal agency websites, and limited anti-trafficking funds to organizations with a formal anti-prostitution policy. The Bush administration was so committed to this particular political and moral agenda that it not only ignored other viewpoints, but members of the administration, along with abolitionist advocates, accused service providing agencies that held alternate views (even if they took no stand on prostitution at all) of being “pro-prostitution,” sometimes excluding well-respected organizations from events and trainings. Sheila, the director of a trafficking services program, told me that despite having one of the most well-respected programs in the country, State Department officials routinely questioned her program’s approach because of its emphasis on trafficking into all labor sectors. “They

wanted to criticize us for our philosophy, but how can you criticize an agency that's got a constant flow of clients, that's well thought of by their law enforcement partners, by the community, by the clients ... [and is] modeling best practices?" She added, "They sort of punished us. ... I got blackballed from some Department of State trips." NGO providers who I spoke to were hesitant to directly counter abolitionist claims (even those with no empirical base), often out of fear of losing funding. Sheila noted, "There's always the problem of, do you want to bite the hand that feeds you?" As a result, the abolitionist vision was continually touted as representative of trafficking. Charlotte, the director of one service providing agency noted, "I do think that [service providers] get scared of the name-calling and give in [to it]. ... It's absurd to think that there's people out there that think that we're pro-prostitution." Yet the term "pro-prostitution" was used as a tool to silence providers and others advocating for a broader vision of trafficking, covered by the law and based on their experiences delivering services to victims.

Just as Bush era policies led to uneven framing of the issue in many settings, their practical impact was varied, too. Providers, investigators, government bureaucrats, and prosecutors all made discretionary interpretations of law and policy, some challenging and others reinforcing normative assumptions about prostitution and sex trafficking. Maynard-Moody and Musheno note, "With regard to what government actually does, as opposed to what it says it does, street-level workers are important decision makers. They deliver the services; they actualize policy, in this sense they are policy makers, at least metaphorically. Their decisions and actions are, however, localized and particularistic" (2000: 341). While abolitionist discourses were deeply

embedded in US government policy and practice, the voices of service providers illustrate the ways in which these assumptions were contested and fractured. Jarrah, an immigration attorney, noted that the Bush administration's focus on sex trafficking was influencing conceptions of trafficking among all levels of government. She reacted in an exasperated tone, "With the federal government screaming and shouting about sex trafficking, it's providing impetus for every level below them [to also focus solely on sex trafficking] until you get to the ground." She went on, "It's only the direct service providers who are saying whoa, stop, this is not accurate. Let's say there's ten layers in between [the top level of government and the ground]; you get all nine layers who are buying into that trafficking is only for sex work."

According to service providers, the image of trafficking presented by Bush administration officials and abolitionist advocates did not coincide with the experience of trafficking victims with whom they regularly interacted. Many service providers perceived policy-makers, because of their assumptions about sex trafficking, as overlooking the lived experience of actual victims. Bridget, the director of a trafficking services program, spoke about the ways that politics invaded implementation of the TVPA and conceptions of what constitutes trafficking. "I mean [local law enforcement agency] has... said that they are not even investigating domestic worker cases, or they only have task forces set up that are working with sex trafficking cases and stuff like that. Like, they haven't even tried to hide that. I think sex trafficking is assumed to be worse." She continued, noting the lack of evidence behind the abolitionist claims guiding implementation. "Wasn't Melissa Farley [an abolitionist researcher] subcontracted by the government to provide guidance on the TVPA reauthorization?

And it's clearly influenced by her. ... it's clear that that their [abolitionist] views were woven into the law ... that sex trafficking is worse, that the type of work is inherently somehow more dehumanizing, but actually I think it's not based on any evidence or data. So that's very dangerous when we are building an entire system of law based on assumptions or feelings.”<sup>33</sup> Indeed, over the course of the Bush presidency, government policies, reports, and proposed legislation ignored the empirical observations made by service providers’, instead incorporating abolitionist claims and ideology. Much like the anti-pornography crusaders of the 1980s, abolitionist feminists (some anti-pornography feminists before they were abolitionists) preferred anecdotes to data (Vance, 1990: 129; Weitzer, 2007). Bridget mimicked the voices of abolitionist advocates, highlighting the non-empirical nature of their arguments.

‘It sounds bad to me.’ ‘I would not want to be prostituted.’ ‘It must be terrible.’ That is not data! Or, ‘I'm scared of sex,’ or ‘I'm scared to like talk about it, so it must be really bad and scary.’ ‘Let's make the federal law based on my scary feelings.’ ... If the data shows that, that’s fine with me, but it's not enough to have the anecdotal stories that we don't even know where they come from. In my opinion, we really have to look at what are the factors that makes one trafficking worse than the other and base our laws on facts rather than this moral panic about sex.

The idea that abolitionists were promoting a limited notion of trafficking that was being incorporated into federal policy was clearly exasperating to many providers.

A number of providers I came to know talked about their differences with the abolitionists in terms of experience (or lack thereof) working with victims and their perceptions of how funding was handed out by the government. Jarrah, an immigration

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<sup>33</sup> During the 2007/2008 TVPA reauthorization, abolitionist advocates lobbied for and the House passed a bill which removed the force, fraud, and coercion requirements from the definition of sex trafficking, relocated the crimes of trafficking that involve commercial sex acts into the Mann Act, and made all intrastate prostitution a subject for federal investigation (H.R. 3887). The changes were dropped from the final compromise bill with the Senate.

attorney, told me, “Some of these organizations have no expertise in trafficking ... that are touting all this, ‘We believe that all prostitutes are trafficked,’ and those organizations are getting the funding.” She added, “That's a huge problem that organizations that have no expertise and have no idea what they're doing are getting money that could be going to organizations ... that are actually working with real clients and that these clients actually need the money.”

While professionals implementing the law on the ground generally avoided rhetoric and held more nuanced conceptions of trafficking, government policy definitely affected and influenced implementation. Jarrah, the immigration attorney, perceived law enforcement as increasingly concerned with sex trafficking over labor trafficking.

I think the majority of it's a political influence. I think people get very excited ... when we talk about sex and when we talk about prostitution, and just as a general population I think there's misconceptions about sex workers ... and then that permeates into NYPD or politicians or anyone that's making any sort of policy judgment or criminal justice decisions, that sort of general mindset is also the mindset of people who are supposed to be helping sex workers or trafficked persons who were trafficked for anything. So I think that's why there's a lot of excitement towards trafficking into sex work. I think it captures headlines, and so that's why people go in that direction.

Several law enforcement agents acknowledged that their investigative focus was primarily on sex trafficking, and they viewed trafficking into forced prostitution as a more heinous crime than other forms of forced labor. Will, a federal agent, told me, “I would argue sex trafficking is more brutal than murder because of the damage to the psyche that occurs over time.” Will perceived *forced* prostitution as one of the worst crimes he could imagine; however, the thought of any woman *choosing* prostitution was an anathema. In reference to the escort involved in the Elliott Spitzer case, he remarked, “She's a prostitute and a whore in every sense.”

Nora, a case manager, spoke about law enforcement's focus on trafficking for forced prostitution in terms of the law not living up to its potential of addressing all forms of trafficking. "I think a big problem ... is the politics around the TVPA and the current administration and its agenda, and so that's been really unfortunate for ... getting the full mileage out of the TVPA." For Nora, the vision of trafficking as solely sex trafficking meant that her labor trafficking clients effectively became a second tier of victims. She articulated how the bifurcation in the law implicitly favored trafficking into forced prostitution. "I feel like even though it's not perhaps clearly stated in the law, that there is ... a pecking order for these cases and there is ... a top tier, which is trafficking for forced commercial sex acts, and then the second tier for forced labor. And I think that a lot of people who created the law felt like that type of trafficking was inherently more degrading to the person." In fact, Nora's assessment was spot on, since the sex/labor split emerged as a compromise in response to abolitionists pushing for a sex trafficking- only law. Nora continued, "I think in a perfect world the TVPA would have been written to not have these different types of trafficking separated out."

While the sex/labor split was often referenced over the course of my fieldwork, it was also highly contested. The majority of service providers viewed the split as something imposed on them by abolitionists and others who framed trafficking as solely involving commercial sex. In response, service providers actively brought discussions of labor trafficking to the table as well, advocating for broader as opposed to more specific visions of trafficking. They were not promoting a focus on labor trafficking versus sex trafficking, but rather a focus on *all* trafficking as opposed to just sex trafficking, on male as well as female victims, and international and domestic victims.



Providers also suggested that the sex/labor split oversimplified the distinction between sex and labor trafficking. The way that case law around trafficking has emerged, “sex trafficking” only includes forced commercial sex; nude dancing and other forms of sexual labor are classified as labor trafficking. Audra, an immigration attorney, described how many cases that are sexual in nature do not legally fall under the sex trafficking definition, but rather are considered labor trafficking. She told me about one of her clients. “Technically she was a server at a bar, but the way the bar operated ... she had to do anything that she could to get the clients to buy more drinks. ... She revealed that ... there was touching ... underneath her clothes and there was some kissing as well, and she had to ... let them do that; that was part and parcel of the job. And so because it wasn't technically sex, but for me that's sexual and this is obviously part of the sex industry, I would have preferred it to have defined it as a sex trafficking case, but technically it wasn't.” She said in terms of applying for the client’s T-visa, she had to define what happened as labor trafficking. “The way that I wrote the application, I defined it as a labor trafficking case, and in that respect I had to be much more explicit and critical in my arguments ... and still kind of emphasize the sexual elements, but technically speaking it was a labor trafficking case and we managed to get approval.”

Since the distinction between “sex” and “labor” trafficking permeates nearly all discussions on the issue, I asked all of my informants if they saw any differences between trafficking for forced prostitution and other forms of labor. While many of them did not themselves see differences, they perceived other professionals making a sharp distinction. Bridget, the director of a trafficking services program, responded, “I

think the difference is who the police are interested in.” She added, “I think that the way law enforcement approaches these cases because of the separation, actually not even because of the separation of the law, but because their own preconceived notions of a domestic worker, somebody who is a sex worker, I think has an affect on their interest in investigating a case or not and what type of resources they are willing to put in.”

Larry, a law enforcement agent, confirmed this and told me that his unit did not generally deal with cases involving labor trafficking, although they had investigated a small number of labor cases. “Labor’s not one of our strong points. . . . Dealing with prostitution – that’s easier for us to get into.”

Very often service providers expressed that their own conceptions of trafficking and law enforcement conceptions of trafficking were widely divergent. Two related factors contribute to this incongruity, one based in the law and the other in the privileged position that many law enforcement agents assigned to trafficking for forced commercial sex. The first contributing factor is the discrepancy between the severe forms of trafficking definition (that covers victim identification) and the criminal statutory definitions (that apply to prosecution) described in Chapter 3. Criminal justice authorities and service providers alike frequently recited to me the mantra of force, fraud, and coercion as the defining characteristics of trafficking. In actuality, the criminal statutes governing law enforcement did not include fraud as a means of trafficking into forced labor; statutorily, fraud was only a means of trafficking for forced commercial sex.<sup>34</sup> This small difference in definitions created a large gap in

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<sup>34</sup> Prior to the 2008 reauthorization, the law covered fraud as a means of labor trafficking only when it rose to a level of “serious harm.” The 2008 reauthorization added a new statute (18 USC 1351) that criminalized fraud in foreign labor contracting (William Wilberforce TVPRA, 2008). The discrepancy remains between 1589 and 1591, as 1351 is a separate statute and only applies to *foreign* labor

meaning between service providers and law enforcement personnel. While an NGO service provider would consider someone defrauded into labor trafficking to clearly meet the VSFT definition (which includes fraud) and therefore eligible for benefits and services, this same individual would not meet law enforcement's statutory criteria for forced labor. As Gwen, who worked in federal law enforcement, explained, "It may be that the service provider believes they have a trafficking victim, but as the ICE or FBI investigator is looking at it, it doesn't meet the statutory threshold of a trafficking case. It could be ... huge labor violations, but they don't cross over into the trafficking threshold." What legally constitutes trafficking for service providers does not constitute trafficking for law enforcement. To my surprise, I rarely heard service providers or law enforcement acknowledge this distinction in the law. For the most part, they viewed each other as having an incomplete understanding of trafficking. Law enforcement agents believed service providers were ill-equipped to assess cases. For their part, providers viewed the disconnect as being based in law enforcement privileging sex trafficking cases, and in many ways the two were connected. The inconsistency in the definitions was just one symptom of the larger legal and policy slant toward sex trafficking.

I asked Sara, who works on a federal grant program that funds services to trafficking victims around the country, if the sex/labor split in the definition was an important distinction for the work she does. Her eyes widened as she answered with a long "Nooo" and then continued, "I think there is a lot of emphasis on sex trafficking; it is ... almost sensationalized, and I feel like it gets a lot more attention, which I'm glad

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*contracting*. It is unclear how this new statute will be applied and if it will apply to cases without formal labor contracts.

it's getting the attention, but we can't forget about the labor trafficking victims because ... actually, we have more victims of labor trafficking enrolled in our program than we do sex trafficking. She added, "It's not a group that we can just push to the side and just focus on the sex trafficking." Jarrah, an immigration attorney, told me, "We think that actually the majority of trafficking that happens in the United States is labor trafficking, and that's why we're not finding as many victims, also because the focus for law enforcement in this country or even the political government is not towards labor. ... That's one of the biggest problems is that there is too much excitement around sex trafficking, and the victims aren't there. There are a lot of sex workers that are doing it by circumstance, not by force. And we need to ... recognize that." Indeed, much of what drove the focus on sex trafficking was the social and political attention surrounding the issue, not an upsurge in actual cases. Annette, who worked in a federal trafficking office that collects information on victims from across the country, backed up Jarrah's statement. "By far the majority of our victims are labor trafficking victims." She continued, "A lot of labor trafficking victims are sexually exploited ... that's what causes the labor trafficking or the forced labor is the forced sex. ... And a lot of people get the definitions confused. I mean they [the traffickers] use rape as a tool of coercion to get a person to do the work they want them to do, but it's really labor trafficking; it's not sex trafficking. But as you know, sex trafficking is what ... really tugs at people's hearts. I mean, labor trafficking should as well."

Fran, a federal grants administrator, agreed. "What worries me is that a lot of the labor trafficking is being overlooked because the fight against trafficking is couched in such a moralistic terms. ... I think in some ways it makes people focus totally on

commercial sex trafficking, and they are probably overlooking the huge amount of labor trafficking I think is going on in the country.” For many of the service providers I knew, the notion of the typical trafficking victim as someone who had been forced into prostitution was not at all an accurate portrayal of their client base. Ella, an immigration attorney, told me that approximately 60 percent of her cases were labor trafficking while 40 percent were trafficking into forced prostitution.<sup>35</sup> Many of her clients were domestic workers who had been trafficked by UN diplomats. She had handled about 20 of these cases. Audra’s experience was similar. “The vast majority of my cases are definitely labor. ... I'd say maybe less than a third are sex trafficking cases and everything else is labor trafficking.” She added, “Part of the problem with that dichotomy is that ... sex trafficking obviously covers a wide range of industry, but labor ... covers so much more – domestic involuntary servitude or restaurant work or sweatshop labor or migrant labor, like tons and tons of, like everything else. Naturally, of course, that's why that category always has to be much larger than sex trafficking.” Other providers told me that 45 and 50 percent of their clients were trafficked for forced labor.

While many of the individuals I spoke to in law enforcement saw sex trafficking as somehow *special*, service providers, who worked much more closely with victims over the long-term, asserted that traffickers used the same methods, particularly sexual abuse, in all types of trafficking to assert control over victims. Nora, a case manager at an NGO, viewed the sexual assault that takes place in all forms of trafficking (for forced

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<sup>35</sup> These numbers coincide with other statistics. A 2004 report noted that over fifty percent of all trafficking cases documented between 1998 and 2003 involved labor trafficking (in domestic service, agriculture, sweatshop-factory, service-food-care, entertainment, and mail-order brides) (Free the Slaves & Human Rights Center at the University of California Berkeley, 2004).

prostitution and other forms of labor) as separate from the type of work being conducted.

Sexual assault is one thing. Now women who were ... providing commercial sex acts ... I really have not found this ... inherent difference in the kinds of feelings that they have about that versus another type of forced labor. ... Obviously clients are aware that there is a lot of social stigma around the work they are doing, but I think that what stands out for a lot of the cases involving sex trafficking is this initiation period where the trafficker ... exercised their will over the person, and usually that's sexual assault, and that's what's really traumatizing to the clients. ... Doing the work itself versus another form of forced labor ... I can't say that there is a real major difference that I know, because I think a lot of things like feeling they've been duped, feeling a sense of shame that they are not able to send money back home ... that they didn't see it coming, or that they are not a good judge of character or that they just feel the rage of being cheated.

Informants emphasized that sexual abuse is not limited to sex trafficking. Jarrah, an immigration attorney, said she does not see many differences based on the type of trafficking. "There is a little misconception that trafficking into sex work is a lot more emotionally troubling and a lot more serious versus trafficking into labor ... but I think that the persons who are trafficked for labor are just as traumatized and just as nervous and just as scared as those that have been trafficked into sex work." She continued,

Just because it's not trafficking into sex work, that doesn't mean there was no sexual assault involved in the trafficking for labor. So that's something that's really important. So we might not be able to claim that the sexual abuse is trafficking but that it was part of that whole climate of fear type thing, even though they weren't forced to do prostitution, but the traffickers were having sex with them on the side, you know? So that's just as important. So we think they're both identically important and ... we're not really seeing too many differences in terms of the emotional levels.

Kira, who works in federal law enforcement, reiterated this point,

One thing that's become patently obvious over time ... is to never make the assumption ... that because you have a labor trafficking case or a labor trafficking victim that they won't have been sexually victimized. ... The experience of trauma is so highly subjective that it's really impossible to generalize that a sex trafficking victim tends to have more issues related to

trauma and long-term mental health issues and stabilization issues than a labor trafficking victim. It really just depends on what the totality of those conditions in the slavery situation are.

Interviews with survivors of trafficking reinforced this point, as will be discussed in the following chapter.

Bridget, the director of a trafficking services program, addressed the notion that sex trafficking was somehow more horrific than other forms of forced labor.

The brutality exists all across trafficking – like beatings, sexual abuse, all of those things are elements of trafficking in every sector, so we are talking about the commercial interaction of having sex for money ...[people are] seeing that as inherently dehumanizing more than the other brutal situations that are happening across trafficking. But really that may or may not be true, but it depends on the perspective of the person – her own ideas about herself, her own resiliency, her own ideas about sex, where she's coming from sexually into that relationship. Also, is she getting support out of those interactions with the Johns or not?

For Bridget, victim subjectivity was far overshadowed cultural assumptions about the inherently horrific nature of commercial sex. She added that in many cases it was customers who had helped women leave the trafficking situation. The access to the outside world through prostitution provided opportunities for escape. “It gives her [the victim] access to other sex workers and to the venues where they form relationships and help each other with resiliency, which domestic workers don't have. And together, a lot of those women devise ways to survive as a group. ... What we see in our cases is that some of those women ... emerge with more resiliency than the woman who was completely isolated in a home and a victim of that kind of brutality for years without access to the outside world.” In this way, the unique conditions of each trafficking situation, as opposed to the *type* of labor performed, affected the level of trauma that survivors experienced.

Even in situations without a sexual assault component, providers constantly alluded to the subjective nature of the trafficking situation. Ella, an immigration attorney, ruminated on the purpose of the split in the law. “I agree [sex trafficking] is a terrible, terrible thing, but so is having a slave at home. So I don't really see what the difference is either way. I'm not trying to discount sexual assault or someone who's being forced into prostitution. I think that's really terrible, but I think it's terrible to force someone to sleep in a dog bed on the floor and not pay them and not feed them adequately and then expect that person to take care of your child.” She continued, “I see the same themes with people that are victimized in either situation. To me, trafficking is all about a modern infliction of slavery and asserting power and control over someone else.”

Bridget echoed this sentiment and emphasized that the kind of trafficking was not as important as the conditions under which the person was held.

The client that I have that has the hardest time in life is a domestic worker. She was trafficked when she was under 10 years old. She was in [the trafficking situation] until she was 23 or 24, never went to school, was totally isolated, and when she finally got out of the trafficking situation, we helped her leave, she got agoraphobia. She was illiterate; she had panic attacks, major depression, eating disorders. I mean the amount of obstacles that this girl had were just amazing, but her case was never, like nobody [law enforcement] went after them. Nothing happened. It was just ... brutal.

For many of my service provider informants, these types of cases, involving severe coercion, but which prompted no law enforcement action, reinforced their beliefs that the sex/labor split did more harm than good.

Radha, an immigration attorney, reflected on how on a practical level the distinction between sex and labor was irrelevant. “We write a brief with every application, and ... we have to argue that this person's experience is a severe form of



trafficking in persons. ... Generally when you're doing advocacy for somebody within the criminal justice system or the immigration system, the kind of trafficking that they were forced into or were coerced into isn't as relevant as all of the factors that created coercion." She added, "I just care if my client's experience fits into one or both of the prongs at the end of the day. As a practitioner ... I just need to be able to build a case; it doesn't matter under which one." Nancy, a case manager, responded quickly to my question about any differences she sees between her clients in terms of service needs.

I don't see a difference. They have all gone through difficult situations. They all have suffered ... horrendous human rights violations. They all have the same issues in a way. What is going to happen to me next? How am I going to survive? How am I going to talk to people about this? How am I going to move on with my life and be a productive member of society? ... I don't think there's a difference. I mean, the experience is different, but what comes after that, it's the same. What they worry about, what their hopes are, what their dreams are, you know, it's all the same. So I don't see any difference.

Fran, who oversees a federal grant program for trafficking services, took a somewhat differing view. "I think it makes a huge difference whether ... you are a 16-year-old girl who thought she was coming to be a maid and winds up being prostituted in a brothel versus a 20-year-old young man who is brutalized out in the fields or something, I'm not saying that one trauma is greater or less than the other, because to me, it is very individualistic, but I think the needs are going to be somewhat different."

The individualistic and varied nature of cases is astonishing. While I observed certain patterns in the types of cases that arose over my fieldwork. There was no typical case. As Gwen, who works in federal law enforcement, told me, "We've rescued victims who have been held for 25 years in labor trafficking cases, so you've got this whole continuum of trauma and abuse versus maybe someone that's been involved in sex trafficking for two weeks. Both are legal cases. So when we train, we train our

agents to not expect anything and to expect everything.” She said every case is different and there are no standard scenarios. When pressed, my informants would list certain patterns among clients but generally reiterated the uniqueness of each case. Ella, an immigration attorney, elaborated on the diversity of the clients themselves. “I have clients who can't read in their own language, and then I have clients who have college degrees or at least have attended some college. And I feel like I've had a really full spectrum of everything in between that, as well and from all different countries.”

Health needs were one area where providers did see differences based on the type of work a person was trafficked into. Audra, an immigration attorney, told me, “Certainly one of the primary differences that comes to mind is health and the immediacy of providing medical attention for someone who recently escaped from a sex trafficking situation. ... For my sex trafficking cases, the biggest obstacle is always trying to find some sort of health care provider that can conduct all of the necessary tests or address any other kind of issues that might come up.” Maribel, a service provider, talked about differences in several ways. “Obviously the gender piece for commercial sex is one immediate difference. In terms of the people engaged in the work, other than the gender piece, I think it's all very similar. She continued, “In terms of the service provision piece, I feel like the level of trauma is the same from what I can see. However, I feel that the need for medical care is a little bit different and very specific to the female survivors that have actually, regardless of the fact that they have been engaged in commercial sex, but those that have been sexually assaulted as a means of control over them in their involuntary servitude.” Sara, who works on a federal grant program, agreed that health needs were one area of difference based on the type of

work. “We see more back injuries, slipped discs, knee injuries with the labor trafficking victims, whereas with sex trafficking it’s more the women’s gynecological problems.

Not always, but it tends to be that way.”

## **Conclusion**

Katherine, a federal prosecutor, told me during an interview,

I’m acutely aware ... that there are lots of different definitions of trafficking, so as a criminal prosecutor I primarily look to the crimes of trafficking which are set forth in 18 USC Chapter 77, so I very much focus on the criminal elements of trafficking as a crime, but at the same time the victim definitions under the law are different and in some ways broader than the criminal definitions, so it depends the purpose for which I’m analyzing it. ... And I’m also acutely aware that that is all under US law and there are a lot of different definitions under international law in other countries. ... We are very focused under US law on labor, services, or commercial sex, but other people will say human trafficking to mean kind of any exploitation of humans. ... Finally, there is ... a media conception of human trafficking that’s just very general, and it’s pretty much akin to any smuggling or movement of people, so people will throw that around to further complicate [things].

She added, “I see a lot of comparing apples and oranges in terms of ... different definitions of trafficking ... so it’s a big mess with the definitions.”

While the TVPA created criminal statutes and victim definitions, trafficking continues to hold different meanings for different individuals, depending on their professional role, organizational mandate, moral agenda, or worldview. The TVPA not only created separate definitions for victims of trafficking and the crime of trafficking, thereby prescribing different standards for service providers and law enforcement, but also established dichotomy within those definitions, and thus emphasizing “sex trafficking” in particular. The bifurcation of the trafficking definition on the books created space for the individuals implementing the law to conceptualize the issue of trafficking in multiple ways. While all of the actors involved may be talking about

“trafficking,” they are not always talking about the same thing. As I will argue in Chapter 6, the law “on the books” intersects with the law “in their minds” to further complicate implementation of the law “in action.”

## Chapter 5: Incorporating Survivor Voices

*I tried to start a new life, but I would always remember things; everything came in my mind, and it was so hard. But I had no choice – you have to live or you have to die* (Simone, 21, trafficking survivor).

*It has taken me several years to become a survivor rather than a victim* (Malcolm, 20, trafficking survivor).

*“There isn’t one type of trafficking survivor”* (Nora, case manager).

### Introduction

This chapter explores the meanings that trafficking survivors assign to their experiences. While the ways in which criminal justice authorities and service providers conceptualize and define trafficking are key to better understanding the implementation of the TVPA, trafficking survivors’ own conceptions offer a unique point of comparison. Trafficked persons are rarely given the opportunity to voice their own experiences. They are often viewed at one end of an uncomplicated binary as either helpless victims with no control over their own circumstances, or criminals because of their status as undocumented immigrants or prostitutes. Interviews and observation with survivors and service providers, along with analysis of cases, illustrate that trafficking survivors and the situations they endure are not easily characterized. As many providers told me, there is no typical trafficking survivor; every case is unique.

While I found the three dichotomous elements in the TVPA to structure the ways in which implementers conceived of trafficking, the law’s construction of trafficking was irrelevant to survivors. In particular, the notion that trafficking can be bifurcated into “sex trafficking” and “labor trafficking” makes little sense in that one victim of forced prostitution may have more in common with a victim of labor trafficking than with another victim of forced prostitution, depending on the

circumstances of the case. While the categories of sex and labor describe the type of work or services a person was performing, they stop there. In either scenario the conditions of trafficking can take a plethora of forms. I argue that the experiences of trafficked persons challenge the ways in which trafficking is most commonly imagined in that trafficked individuals themselves attribute their suffering to an entirely different set of circumstances (e.g. isolation, deceit, threats to their families) than those emphasized by many of the implementers of the TVPA.

In the section that follows, I give five case summaries of trafficking survivors who had received or were receiving services at the NGO I observed, TSP. I use individual profiles to add context to these survivors' lives, rather than extracting bits and pieces to weave together a neat account. These portraits are not meant to be "typical" or comprehensive (they are only a sampling of the survivors I met and the cases I observed), but to give a sense of the issues that survivors encounter. This focus on "the particular" highlights the uniqueness of each trafficking case as opposed to the essentialized notion of "trafficked persons" as an entity (Brennan, 2005). While certain themes emerge in the stories these survivors tell, their experiences are far from formulaic. These profiles follow the issues the survivors themselves chose to emphasize, including their lives prior to trafficking, memories of trafficking, the meanings they ascribe to their experiences, how they escaped, interactions with law enforcement and service providers, and efforts to re-build their lives post-trafficking. In this way, I aim to highlight the experiences of those whom the TVPA was designed to protect and for whom the consequences of its implementation are most intimately felt.

The profiles are all of women, and this is a consequence of the client pool at TSP during my time as a participant observer there. While TSP had numerous male clients in the past and had several during the time of my fieldwork, I was unable to interview any of them due to their age (under 18), language skills, or stage of recovery. TSP also had significantly more women enrolled in its program than men, at least partially attributable to law enforcement primarily referring female victims of sex trafficking. While I was unable to interview any male survivors, I did meet and interact with several over the course of my fieldwork, and my observations reflect that. While interviews with male survivors would have strengthened my argument, I believe the profiles I include here make a strong case for the conditions of trafficking transcending the type of work conducted.

### **Survivor Profiles**

#### *Camille*

Camille was 32 when I met her. She had recently escaped her trafficking situation, and I got to know her over the course of several months. She allowed me to observe a number of meetings between her and her case manager, in addition to participating in an interview. She spoke fluent English.

Camille was from a southern African country. She moved around as a child, living with different family members over the course of her childhood. She eventually moved to her country's capital city and secured what she described as a good job. She was planning her wedding when she was approached by the friend of an acquaintance who was looking for someone to come to the US for two weeks to help with a catering event. Camille told me, "I never hoped to come here before," but the woman told her,

“Go to America, because they have very cheap wedding gowns ... plus you'll have a lot of money.” Despite not being much of a traveler, the notion of coming to the States for a short period of time to earn money for her wedding appealed to Camille. She explained, “I’m the type of person who’s not adventurous ... I don’t want to go away from home for a long time. I only came here because she was talking about two weeks. So I’m like, I can do two weeks; I won’t be that homesick.”

In reality, the two weeks Camille agreed to turned into three years of domestic servitude. She worked seven days a week, was rarely allowed to leave the house, and saw none of the earnings she was promised. Camille was the only survivor I spoke to who equated her trafficking experience with slavery. “I had been with these people for three years and worked like a slave. ... After being there ... you think everybody thinks of you like that. ... To be a slave, to work for someone and not allowed to see my friends, not allowed to do nothing, just be in the house every day with this person, and you cannot do nothing.” Camille felt as though her trafficker owned her. She worked long hours doing whatever her trafficker demanded and felt completely isolated.

Camille actually escaped one trafficking situation, only to be re-trafficked by the person who helped her leave. The woman then forced Camille to care for her child. Camille explained to me how both traffickers maintained control over her. “My second trafficker, she knew what happened to me before, so she kind of did the same thing. She knew this lady took my passport and my [return airline] ticket and hid it. When my ticket expired ... she said, ‘Now you are in this country, and you can’t do whatever you want, because you are illegal. You cannot afford to go nowhere; if you go out, they are going to take you to jail and keep you there for two years.’” This threat of being sent to



jail kept Camille from leaving the house, calling her family, or reaching out for help. “I was so afraid, I almost died out of fear. I was so afraid every day, like oh my God, like if I hear her come, maybe it’s the police.”

Camille finally reached a point with her second trafficker, four years after arriving in the US, when she could not take it any more. The isolation and emotional abuse she experienced was so intense that she considered taking her own life. “I was tired of the whole thing, I didn’t know what to do; I wanted to commit suicide,” she told me. She took a chance and made a phone call to a friend at the American embassy in her home country. Her friends and family had not heard from her since she left. When she explained the situation, her friend responded, “That’s a crime in the US; that’s called human trafficking.” Camille told me, “That was the first time I knew what it’s called.” Camille’s friend at the embassy reached out to a contact in the US, and eventually got connected to TSP. One of the case managers contacted Camille and made arrangements to pick her up at the trafficker’s home and bring her to a shelter.

When Camille told her trafficker she was leaving, the woman called the police. Camille explained, “She’s like, ‘I’m calling the police ... because I’m going to tell them you are here in this country illegally.’ ... And she called them for real. They came to the house. I was so scared though, because all the time I believed they were going to take me for two years and whatever. The police came to the house and ... I explained everything to them, how I came to this country, what happened.” Camille described her escape as a turning point in her understanding of what happened to her. “[The police], they said, ‘What happened to you is wrong; they should not have done this to you. You could have called us on them, not them calling us for you.’” She told me, “That was

great for me just to hear that, because you know all this time ... I believed I was really wrong for doing this, but my first trafficker she got me stuck in this country, she made me illegal so she could use it to torture me, to make me suffer.”

Camille told me that since leaving her traffickers, she finally felt cared for. “It’s been wonderful working with these people and just to see how people care about you ... the police and my lawyer, it’s been great.” She described a transformation from when she first escaped, crediting her therapist in particular.

It’s helpful working with my therapist. I’m better now, because when I first came ... my memory was messed up [from the trauma]; I was forgetting everything. .... I was about to lose my mind for real, so working with her, it helped me a lot ... just feeling good about yourself, not blaming myself about what happened, because I’ve been ... [thinking] I should have known these people were lying to me. You know, I felt so stupid. ... But my therapist ... she’s there for me ... just to tell you why you’re going through what you’re going through, why your memory is so messed up, she helped me a lot.

Camille told me she appreciated all the help she received, but she disliked feeling dependent on others. “Even though it was good help ... I’ve been safe, everyone has helped me a lot, but ... it’s not me. I have never been in that situation where I’m so dependent on people. I need food, I have to come to Sadie [her case manager]. I don’t have money; I need metrocards, that’s not me. I used to work and do things on my own and just live my life, and ... as soon as I finished school, I started working, and I was on my own doing my own thing. ... I appreciate what they do for me, but I still feel like that’s not me.” She told me, “When I get home, I’m going to get a job and go back to that normal life I used to live. When I need something, I can buy it.” Camille told me she planned to go back to her home country and study to be a secretary. “I want to do that and then get a job and be a secretary and maybe continue my education from there.” When I asked about her original marriage plans from before she was trafficked,

she laughed. “Oh yeah [laughs]. I was supposed to get married, so maybe in December we will.”

*Silvia*

When I met Silvia, she was in her early thirties. She described her life growing up in Mexico and how she had graduated from high school and attended three more years of school to study to be a secretary. She had worked for two years and really enjoyed the work. Similar to Camille, Silvia was deceived into her trafficking situation, but as I will describe the threats her trafficker used to keep her under his control took a different form.

Silvia initially met her trafficker when he romanced her and they began dating. After having a child together, the relationship changed. Silvia told me she never wanted to come to the US, but her trafficker, who she referred to as “the father of my children,” sent her to Queens, under the watch of some of his family members and associates, to work as a prostitute. She said she didn’t get to keep any of the money, but rather sent it back to her trafficker, who she described as only interested in “money money money.” While she had control over her own movement, Silvia felt that she had to continue working in prostitution because of her trafficker’s threats about the safety of her children. When I asked Silvia if she knew she was the victim of a crime at the time of her trafficking, she told me, “No, I thought life was as a robot. I did everything the father of my children told me without questioning it.” Silvia felt as though she had no control over her life or her actions. She added, “The people I have worked with since leaving have helped me to see that I was the one who could stop this, and that I had a voice and a choice of when to stop it.”

Silvia escaped after a friend referred her to a hospital psychologist. Silvia had never heard the term “trafficking” until the psychologist told her about the TSP program and referred her for services. Silvia said the program helped her “get out of the life and understand what I could accomplish.” She gave a long list of things with which her case manager and the program had helped her. “They helped me enroll in English classes, get my work permit and a social security number, helped me economically, helped me emotionally, and helped me see a doctor, because I was having headaches.” Being recognized as a victim was essential to Silvia accessing these basic social welfare services and benefits, but beyond meeting her basic needs, the assistance she received from social service providers helped her transform from a victim to a self-sustaining survivor.

When I asked about how her life has changed since she left the trafficking situation, Silvia responded, “My life has changed a lot. ... I see life in a different way now, and I am able to appreciate life and am in a place where I am able to deal with the suffering that I endured.” She smiled and added, “Before I was just very afraid. I felt like I was in prison, and I couldn’t do anything. With the help of [my therapist] and [my case manager] I saw that I could change things. I ask myself why I didn’t do it before, and the answer is because I was scared. [My trafficker] would say to me that the only thing I was worth was doing prostitution and nothing else.” For Silvia, though, the prostitution itself was not the heart of her suffering. She even noted that sex work was an attractive means to make money after escaping her trafficking situation. In fact, the elements of her trafficking that Silvia stressed to me were the beatings and emotional abuse that her trafficker used to control her and the threats about harming her children.

Silvia told me she would tell someone else going through a similar situation “that people don’t have the right to treat us the way this person has, and that if she wants to she can fight. It’s hard. It’s not easy. It can be difficult, but no one has the right to punish you. Even if you are illegal here, there is so much assistance. It can be hard to find, but if you want to, you can accomplish it [leaving, escaping].” Despite the suffering she endured, Silvia believed it was possible to move past what had happened and the victimization she experienced.

*Victoria*

Victoria was 26 when I met her and had come to the US from South America when she was 18. She was the youngest of ten children. She told me, “My life ... as a teenager and as a little girl, it was good. I came from a very humble family. My parents worked to give us the best they could. ... I was happy back there.” She told me that her trafficking started when she found a job as a babysitter in her home country. After several months of working for the family, the husband, a diplomat, was relocated to the US. “I was doing okay in school, and I was happy with my job and ... they asked me to come. [They said], ‘Oh, you’re a good girl. We really like you; we trust you.’ ... They always gave me good compliments about my job. ... I trusted them ... so I said yes.” She told me it was a hard decision to leave her family behind, but the woman she worked for made the opportunity sound very appealing. “She painted a beautiful picture ... like you are going to go to school, you’re going to have a better life, you’re going to make good money, many things.” For Victoria, it was a chance to move beyond her humble upbringing and move ahead in the world, gain an education, and help her family financially.

Victoria told me, “The first three months everything was good ... and then she [her employer] changed thoroughly. ... She became very rough ... and little by little she started treating me in a way that wasn't proper. .... I lived with them for three years.” The family paid Victoria so little, she told me she was embarrassed to say how much. They held her passport, and Victoria was rarely allowed outside. “When I asked her to let me go out, she said, ‘No, because there are bad people outside. They're going to kidnap you; they're going to kill you, think about that.’ Psychologically she [controlled me].” She added, “I wanted to leave, to go out, go to the mall, go to the movies, do something by myself like girls do, but I didn't have a chance to do. I hardly went to the supermarket to buy milk, and it was just three or four times.” The psychological coercion Victoria experienced was intense and led to her almost complete isolation from the outside world. The trafficker’s home was like a prison for her, and it was the woman’s threats and lies that kept her there.

Victoria escaped after an acquaintance of her trafficker observed how Victoria was being treated and reported the situation to authorities. The woman initially offered to help Victoria escape on her own, but Victoria told her, “I don't have my documents, I'm going to be illegal and I'm very very afraid.” Because of what she had been told by the trafficker, Victoria was terrified of what might happen if she tried to leave. The woman instead reported the situation to ICE. Victoria told me, “It was a very tough day. Immigration came to the house and they took me with them, because I was underage and in the conditions I was working. ... They asked me if I wanted to go with them or if I wanted to stay there. I said, ‘I want to go. ... This is my chance; I'm going to take it.’ ... I wanted to start a new life.”

Victoria told me that when ICE arrived, her trafficker became very angry. “She was saying ... ‘I gave you a home; I protected and you, and you repay me like this.’” Victoria responded, “No, I’m going away. My time finally came. ... I’m very tired of you; you treated me really bad. You said you really liked me, and you would treat me like family. That’s not true. You always treated me like a piece of shit.”

The hardest part of leaving for Victoria was saying goodbye to the child she had cared for for two years. She recalled, “Instead of calling her [his mother] mom, he called me mom, because since he was born I took care of him. In the middle of the night, when he was crying for the bottle, he cried for me.” Victoria said, “The only happiness I had in the house was the little boy, because every time that I was sad I took him in my arms and I squeezed him, I cuddled him, and I called him my baby, and he made me forget about what was happening ... and I always thought that we were going to be together like that.” She told me on the day she left the house with ICE, the little boy “saw all these things, and he was crying and ... he was grabbing me. ... He was running behind me, and I said, [crying] ‘It’s time for me to go.’ It’s hard for me, that part.” For Victoria, her bond with the child was the only positive aspect of an otherwise abusive and exploitative situation.

Victoria recalled how difficult it was talking to law enforcement. “They took me with them to downtown Brooklyn, to the immigration building. I was there almost the whole day. I was crying because I was very nervous, because it was a new lifetime. ... They asked me a lot of things.” She told me how difficult it was to tell the agents what had happened. “Now I’m ready, after five years, I think ... telling you this story, to me, is more comfortable, but back then it was very difficult for me.” Having to re-live her

experience through the law enforcement interview added to her trauma. Victoria agreed to cooperate with the law enforcement investigation, and they explained her options to her. “They asked me, ‘Do you want to stay here, or do you want to go to your country?’” Victoria told me, “I didn't think for a second... about going back to [my country]. Right away I said, ‘I want to stay here. ... I know that there are many tough times that are coming, but I can deal with it.’”

After spending three months in a shelter, Victoria made some friends and found an apartment. She told me, “I remember the first thing I did was I went to school for English, and I studied nine months, full-time.” When I complimented her on her impeccable English skills, Victoria told me, “I didn't even know when to say ‘yes’ and ‘no’... just ‘hello,’ that was the only thing. ... So I started going to school, and I learned English. I'm very proud of that.” She explained, “I learned English because there are people who are here for years and years, and they don't know it. ... I went to school, learned English, nine months later I was working ... because I got my work permit and I started working, so I was much happier.” The services she received from TSP, along with immigration status, helped Victoria transition from a victim who was the sum of her trafficking experience to a survivor who was flourishing in a new job with a new life. When I spoke to Victoria she emphasized her independence and told me she felt well-respected at work. “I've been working since 13 ... and I do not depend on anybody. I depend on myself. ... At the end of the week, when I received my check, I say to myself, I got this money because I worked hard and that's why. ... I'm proud about it.”



Like most of the other survivors I spoke to, Victoria told me she never heard the term “trafficking” until she started working with TSP. “Before I didn't know about it or even know that it existed, because in my country you don't hear those things. . . . We think that the United States is the country you go [to] and make a lot of money.” Victoria told me that the services she received from TSP and other organizations were essential. “I tell all these people that they are still helping me, because they gave me so many things. They gave me money, they gave me support, they gave me clothes.” She described all the things her case manager assisted her with, including counseling her, liaising with the attorneys involved in her case, and assisting with lengthy immigration applications. “She has an A in everything.”

Like many of the trafficking survivors certified since the passage of the TVPA in 2000, Victoria was waiting for the Department of Homeland Security to release regulations which would allow T-visa holders to adjust to permanent resident –status.<sup>36</sup> She told me, “Every time that people ask me, ‘When are you going to get your Green Card?’ I say, ‘Well I don't know when; I am waiting.’ I already waited five years; I think I can wait two years more.” Victoria told me how important it was to get her green card. “I have family back home, and I haven't seen them for like nine years, and that's one thing that I want to do. As soon as I get my Green Card, go back home and visit them. . . . I hope I have that chance.”

### *Nadia*

Nadia was in her early thirties when I met her. She was born and raised in the capital city of a former Soviet republic, which she remembered fondly. “We had a

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<sup>36</sup> After eight years, DHS released regulations on T- and U-visa adjustment of status on December 12, 2008.

central opera and ballet theatre which I lived right next to. We had a circus; we had all kinds of museums. It was very interesting culturally.” She was very bright and had excelled in school, studying English since the age of six. Her parents were both professionals and encouraged her participation in numerous extracurricular activities. Following graduation from secondary school, Nadia attended college and studied to be a teacher. Following the disintegration of the Soviet Union, the conditions of her city deteriorated. “They started bombing buildings and ... it became dangerous to even go out to attend college, to attend classes. ... We went through the winter with no electricity, no gas, almost no water.” Her parents moved the family to a small village in Russia, and Nadia re-enrolled in college in a nearby city. “I was living in the University Center, and they were living about 45 minutes away by local train, so I was not with my [mother and father] anymore, and I had to make it on my own.”

Following graduation from college, Nadia went to work as a teacher in a remote town. She recalled the tough economic times. “That's when inflation started taking over, and the ruble dropped down; it had no value really, and the salaries were so low that ... my teacher's salary was enough to just buy bread and milk for the whole month, that's it.” As her parents aged, Nadia also had to take on the responsibility of assisting them financially. “I'm now in this little town, I'm renting a room, but ... now I have to feed myself ... and I'm obligated to take care of my parents.” Nadia supplemented her salary by tutoring, but struggled financially.

She told me, “One day I bought the newspaper ... and I saw this ad ... that promised jobs in variety shows in New York and New Jersey.” Nadia thought the ad was potentially recruiting women for sexual services but said most ads of that nature

were upfront about the type of work. Unlike most of the other survivors I spoke to, Nadia had heard numerous trafficking stories. She told me, “At that time, everybody was talking about these deceiving ads ... and [how] ... once you get to the country, it's a completely different story.” Nadia was cautiously optimistic about the ad she read. “I said to myself, ‘Well let me give these people a call and see what they are about.’” She went for an interview with the woman who placed the ad. “She looked just like a lovely woman, very open. ... She presented it to me, she said it's fairly upscale, very beautiful, with an element of sexiness, pretty much like a variety cabaret show, and in my mind it was Vegas.” Nadia asked the woman if there was any sex involved, and she responded, “No, none whatsoever, absolutely no.”

The woman told Nadia she would be making \$2000 a week. “I was like, whoa. I thought I could never even dream of that kind of money.” Nadia saw the job as an opportunity to give her parents a better life. “I said well maybe I should give it a shot because this woman, I really don't know why, but she doesn't look like a crook ... she just seems reliable, trustworthy.” Nadia said one peculiar element was that she was not required to pay any of her travel expenses. “She [the woman] said, ‘You don't have to pre-pay anything.’ ... She said, ‘Don't worry, when you start making money once you're there, you will pay us back for the ticket.’”

Within a few months Nadia was on a plane to the US along with several other women who had been recruited for the “variety shows.” Once aboard the plane, a woman accompanying them to the US collected their documents. “They did take our passports from us, and they did take our tickets, explaining that they would be secure in their hands rather than us losing them or somebody stealing them.” Nadia said once

they arrived in the US everything was fine for a few days, but after she and the other women had time to rest, they were taken to a club for their first day of work. “We walked in and there were nude girls dancing on stage, and I see that it is not what I was expecting. There is no glamour to it, there is no costume, there is no group performance. It's like ... a regular strip club. Girls give lap dances, there are girls on the stage naked, and I'm like what's going on? This is like one of those nightmares that you didn't want to face, and immediately in our minds ... [we recalled] all the stories that we had heard and had read about.”

Nadia was told she would be dancing at the club and would have to pay the people who brought her to the US \$200 a day. When her traffickers realized she was not making as much money as they had hoped, they transferred her to another location and forced her into prostitution. She told me, “They called me and they said, ‘Well there are other alternatives since you're not making money dancing. You have to start paying us \$200 a day.’” They suggested she start working as a prostitute instead. “I said, ‘I don't think I can do it.’ They said ... ‘Whether you make money or not today, you have to give us \$200. Tomorrow you have to give us \$200, and the day after that you have to give us \$200, so make up your mind.’” The traffickers had collected phone numbers and addresses for Nadia's family back in Russia, and it was implied that if she did not pay the \$200 a day, her family would be in danger. In addition to the \$200, Nadia had to pay for housing, food, and clothing. Nadia was arrested twice over 2 ½ months, and both times told the court-appointed attorney what had happened. Both times she got off with a misdemeanor charge and returned to sex work the next day. Neither attorney recognized her as a crime victim.

The traffickers made clear that Nadia had to pay them each day, but she was allowed to come and go on her own for the most part. She did not experience the same isolation that Camille and Victoria did, but there were clear elements of psychological coercion that made her afraid to leave. Nadia expressed that she was at first shocked by the idea of doing sex work, and she did not like the work. However, the elements of the trafficking that she emphasized most were being deceived by the traffickers and feeling fearful for herself and her family.

After several months, Nadia decided to try to disappear, hoping that the traffickers would give up when they could not find her. She said everything was fine for about a week, until she received a phone call from her mother back in Russia. “When I got on the phone my mom was frantic. She was crying, she was screaming, she was absolutely in shock. She said, ‘Nadia, some people are calling us and threatening us. They are making particularly angry threats as to what they're going to do [to us].’” Nadia told me, “Of course, I couldn't hide anymore.” She called her traffickers, who threatened that if she did not pay them the money they claimed she owed them, they would kill her parents. While in the US, Nadia had made a friend. When she told him what was happening, he immediately came over and brought a tape recorder. Nadia told me, “So they [the traffickers] called, I picked up the phone, recording the whole conversation. ... He [one of the traffickers] starts making really severe threats to my family ... like, you know, killing everybody, burning the house down, kidnapping my brother and doing all kinds of things to my mother and father in particular.” At the end of the conversation, Nadia’s friend got on the phone and negotiated with the traffickers,

threatening them with legal action. Nadia said she did not know what was said or what happened after that, but she stopped receiving threats.

Two and half years later, Nadia had moved on with her life and gotten married. One day her husband brought home a newspaper with an article about two of her traffickers having been arrested by the FBI. Her husband asked if Nadia wanted to share what she knew with the authorities. “I said, ‘I don't want to stir it up. It's been two and half years and ... I've tried to forget it. I will never be able to forget it, but I'm trying to put in the back of my memory and not remember it.’ And we didn't stir it up until the FBI came and found me.” Ultimately, Nadia turned over the recordings and testified before a Grand Jury.

She reflected on how difficult testifying was. “You know, it's one thing sitting here and talking to you about this kind of thing one-on-one and another thing sitting there in front of ... 12 jurors.” In addition to having to re-tell her story, Nadia was very fearful of the legal process. She told me, “At the very beginning, I was very skeptical and I had no trust for the government and federal prosecutors. My attitude was they would only use you and when they are done with you, you're on your own.” She added, “I was afraid that somehow or other they could've turned this prosecution against me. They could have said, and they tried to do that, they tried to say that we all were a part of the immigration fraud.”

Ultimately, all of the traffickers pled guilty. Nadia was referred for services to TSP. While she was eligible to apply for a T-visa, she applied for a Green Card through her husband, and seven years after arriving in the US she received it. “One day the approval letter came in the mail and ... in big capital letters [it said] ‘Welcome to

America.”” About a year after Nadia and I first met, she started her first semester of law school.

### *Simone*

Simone was originally from a large city in Mexico. She described her family as “poor but happy.” As a teenager she attended school and worked in her family’s business on the weekends. One afternoon, a man approached her while she was working, complimented her work ethic, and asked her to come to the US to care for his children. The man spoke to her father, promising opportunities for Simone to attend school and make money in the US. “Now I understand, I am 21, my life is very very hard because I am alone here ... but I’ve learned a lot of things now, and I don’t want to say it’s my dad’s fault, but it’s the guy [the trafficker.] ... The guy had a bad heart.” Simone told me she had never thought about coming to the US. “I never thought in my life that I could be here. Now I think, oh my god, how it changed my life.”

Simone described many of the details of her trafficking to me, including how she almost died crossing the border into the US and how her trafficker emotionally and sexually abused her. She told me she did not like to talk about the experience but wanted me to know what happened so that it would not happen to anyone else. “I don’t like to talk about these kinds of things, but ... I want to help you, [and for] this kind of information to come to the other countries and not have the same thing that happened to me [happen to others].” This motivation of participating in my study to help other people in similar situations was a common thread among the survivors I interviewed.

While Simone’s trafficker seemed pleasant and trustworthy when she first met him in Mexico, he changed when she arrived in the US. Simone described working

constantly, even sleeping with the children, and gardening and cooking during any down time. “I was working, working, and I never saw even one penny.” She said the hardest part was not the endless work but rather not being able to talk to her family. “The problem is when I wanted to call my family, he always said the line is busy, tomorrow we call them. ... He always gave me some excuse. ... The job was nothing, I finished so so tired, but ... I [was] so depressed that I cannot talk to my family.” For Simone, not being able to speak to her family was emotionally difficult, but it was also meant she could not tell anyone what had happened to her. When Simone told her trafficker she wanted to go home, she said he responded saying, “You’re stupid. You think you can go like this? Who is going to pay my money? You have to stay here and work and pay my money. ... If you try to go, I will go to immigration; I’m going to tell them that you are here, and your dad can go to jail.” These threats, combined with sexual abuse, contributed to the trafficker’s control over Simone.

Simone eventually escaped with the help of a Good Samaritan, a friend of her trafficker’s family who had observed his mistreatment of Simone. With the help of this family acquaintance, Simone ran from the house and sought help from a local church. Simone told me that while she was initially relieved after escaping, her fears did not end there. She described being terrified for her family back in Mexico’s safety. “I am so scared because this guy had money, he had power, if he feels angry maybe he’ll do something, because he told me before, ‘If you try to do something, I’m going to [kill your family].’” For safety reasons, Simone moved to New York. She told me, “I tried to start a new life, but I would always remember things, everything came in my mind, and it was so hard. But I had no choice, you have to live or you have to die.” Making the



move to New York was a turning point for Simone, and she began to see herself in a stronger and more assertive light.

With the support of a friend from church, Simone decided to report her trafficker to law enforcement. She told me, “It was so so hard to do it.” The interview process was particularly difficult. “The hardest part was [talking with] ... the people from the government ... and these kind of people [law enforcement agents and prosecutors] they are nice but ... you have to answer, like exactly what happened, little by little, day for day, exactly what happened.” For Simone this brought back all the memories of her trafficking that she had tried to forget. “And oh my god, everything that comes in your mind, and if you try to forget everything comes again. ... I think I closed this part of my life by coming to New York. I said everything is dead, and I will start a new life, but it's not.”

Simone explained that she knew the man who trafficked her was bad and had done something wrong, but did not realize it was a crime at the time. When the law enforcement agents explained this to her, they also told her she was eligible for restitution of back wages. She said the money meant nothing to her, and the real reason she agreed to cooperate with law enforcement was that she wanted to prevent her trafficker from hurting anyone else. “I don't want the money, but I want him to understand and not to do this anymore.”

While in New York, Simone started working with a case manager at TSP. “Definitely that helped me a lot. Three years until now is a big difference.” Her case manager helped her get medical care and referred her to a psychologist, along with helping her through the law enforcement investigation. “People here helped me a lot.

They made me strong, because before I was a very nervous person [on account of the trafficking]. Now I'm almost normal.” She told me, “Life here in America is so hard. ... Definitely they helped, but the main thing is you have to help yourself here.” Simone had made the shift from being under someone’s control to being in control of her own destiny.

Simone said that her life had changed so much that she could not envision herself moving back to Mexico. “It's already passed five years, almost six, so I got older here. ... I don't have a life over there. ... Now I have other aspirations. I want to study; I want to do something for my family. Now everything has changed.” Under the Trafficking Victims Protection Act, Simone was able to petition to bring her parents to the US as derivative T-visa holders. “I am very happy right now, because I have my apartment, and I am just waiting for my family, and I am working very hard.”

Simone spoke English very well and told me she wanted to continue studying it. Something her trafficker said motivated her to continue her studies. “He told me many times, ‘Many people they stay here in the United States the past 20 years and they cannot speak English. ... The Spanish [speaking people], they have nothing; they just do the dishes.’” She added, “And now I think this is not right. The Spanish [speakers], they can go up. They can speak English, and they can do whatever they can do, because the Americans, they don't have three hands or three legs or something different, so that's what I have in my mind.” She told me she had just finished her GED. When I asked what she hoped to do in the future, she told me, “To be a lawyer.”

Simone reiterated her desire to help with my research. “More than anything, I feel so angry when I see this kind of thing [trafficking taking place], because I say how

come we don't have the information?" "It's very hard for me to talk about this kind of thing ... but I want this kind of information to come to other people ... so I really want to help you."

### **Implications**

These profiles open a small window on to the experience of trafficked persons, illustrating the diverse range of situations that survivors encountered. Camille, forced into domestic servitude, described her experience as "slavery." She was threatened, deceived, and forced to work 16-hour days, seven days a week. She was terrified to leave the house, or even make a phone call, out of fear of being arrested and thrown in jail. Nadia, on the other hand, forced into prostitution, had relative freedom of movement and was able to make friends, but was threatened that her family would be harmed if she stopped turning over earnings from prostitution. Similarly, Silvia was able to come and go, but her trafficker coerced her into prostitution through threats to her children. For neither of these survivors was the act of prostitution itself the most exceptional element of their experience: rather, they emphasized the threats and deceit used by their traffickers to control them. Victoria's trafficker did not threaten her or her family physically, but she was so psychologically controlling that Victoria left the house only three or four times in three years. Simone, while trafficked into domestic work, was sexually abused by her trafficker in addition to having her family threatened.

Each of these survivors endured unique types of force and control, yet it was the force, fraud, and coercion that each of them emphasized as the defining element of their experiences. While previous chapters have highlighted the emphasis given to "sex trafficking" by the drafters of the TVPA and certain implementers, neither of the

survivors I interviewed who had been trafficked into forced prostitution assigned the type of work they did special significance. The notion of “sex trafficking” being *special*, as imagined by some of my other informants, did not appear to be true for these women. What emerged instead were the commonalities all of these women shared in terms of the conditions under which they were working and the ways in which they moved on with their lives post-trafficking. Several themes emerge that are relevant to all of the survivors regardless of the type of work they performed.

First, the term “trafficking” had little meaning for any of the survivors prior to escaping their situations and receiving assistance. While those working in the field use the term “trafficking” as though its meaning were self-evident, most of the trafficking survivors I interviewed had never heard the term prior to escaping their traffickers. Indeed, the term “trafficking” brings with it multiple undertones and connotations (e.g., white slavery, movement of goods) that are completely irrelevant to these women’s experiences. As Audra, an immigration attorney, noted, “Trafficking is problematic because it’s a very ivory term, and people don’t use it in everyday parlance. [It] has its own historical connotations too, like that it was originally about the sex trade of white women, and that’s not necessarily applicable to the majority of trafficking survivors today. I ... tend to use terms like ‘exploited labor’, ‘abused labor’, that kind of thing, and I only really use ‘trafficking’ when I’m talking to other colleagues.” Based on the experiences and subjectivity of their clients, many service providers contested the “trafficking” framework in this way and questioned its usefulness.

Also striking is that in several cases, the survivors did not even know that a crime had been committed against them. Ella, an immigration attorney, noted that very

few people self-identify as being trafficked. “A lot of people think something bad happened to them or something wrong went on, but they're not going to say they were trafficked.” Radha, another immigration attorney agreed that almost none of her clients self-identified as trafficked, and added that many of them did not see themselves as crime victims. Ella noted, “I think some people don't like to believe that they were duped. And again still even after you get them a T-visa ... people still ... don't self identify as trafficking [victims].” The term simply was not descriptive of their experience. Kyle, a federal prosecutor told me, “I think that trafficking can be a misleading term, because it implies, the term makes it sound like movement is necessary, and of course that's not the case. ... It's the compelled service that is at the heart of it.” Audra, an immigration attorney told me she rarely used the term “trafficking” with clients because it held no meaning for most of them. “I start from the very beginning when I do an intake describing what trafficking is, and I don't necessarily throw out that term after that meeting. I'll say ‘the person who treated you badly’ or I'll say ‘the person who didn't pay you,’ as opposed to ‘the trafficker,’ because it's such a loaded term. And I find that that's a little bit easier ... to communicate.”

Another common theme that emerged among survivors was their strength. The women and men I encountered rarely conformed to visions of helpless victims portrayed in the media. Providers generally referred to their clients as “survivors,” rather than “victims,” to emphasize their agency and determination and to challenge the image put forth by abolitionists of trafficking as an insurmountable form of victimization. Some providers suggested that the term “victim” put their clients in a role of needing to be saved or rescued, while “survivor” implied empowerment. Sheila, the

director of a trafficking services program, told me, “The case management system can make it seem like something is wrong with clients because they have been trafficked. There is a list of problems funders require us to check off to prove that they are victims, but you can't assume that everyone who has been trafficked has PTSD and needs therapy. You also need to address strengths.” Many reports of trafficking effects on survivors read like a laundry list of abuses – broken bones, contusions, headaches, poor nutrition, dental problems, dermatological issues, HIV, STIs, unintended pregnancies and forced abortions, sexual abuse, Post Traumatic Stress Disorder, depression, sleep disturbances, substance abuse, and on and on (Zimmerman, 2003). In reality, no victim experiences all of these effects, and many emerge from their experiences resilient and motivated to move forward. As Charlotte, the director of a trafficking services program, noted, “Our ultimate goal is to make sure that the victim who walks through our door becomes a survivor.” Bridget, the director of a trafficking services program, told me how she viewed this transformation. “Success is ... watching the clients succeed and watching them relatively rapidly grow and change in such a short period of time as three years. The resilience is amazing. Their inner strength is completely inspiring.” What these individuals took away from this process was not so much a constructed identity of “trafficking survivor,” but rather the ability to move forward and shape their own lives.

Most of the survivors I spoke to alluded to how difficult it was to re-live their experience by telling law enforcement what had happened to them. Nadia told me that her first interviews with the federal prosecutor were difficult. “They were questioning me a lot, challenging me. ... She [the Assistant US Attorney] was ... like, ‘Why did you

agree to do that? ... Was it really forced labor or not? Why did you so easily agree to do this?' ... It was especially hard for me to communicate with them and to try to explain the mentality [of the traffickers] to them." She told me, though, that this relationship transformed over time. "Gradually ... over time our relationship turned from almost adversarial to cooperative, and even like a partnership. ... We started working with each other." While sharing information with law enforcement was initially difficult for Nadia, she considered herself a contributor to the prosecution of her trafficker and found the process satisfying.

One area that several informants described to me as transformative for victims was sharing their stories in court. Prosecutors told me that they made an effort to reach a plea deal in most cases so that victims would not have to testify, but acknowledged that it was sometimes necessary and could be transformative for victims in the rare cases that went to trial. Katrina, a federal prosecutor, told me, "It's the victim's day in court, their opportunity to tell their story. It can often be an extremely rewarding experience for them after it's said and done, but also the jury needs to understand what happened, the real human costs behind what the defendant did, and it puts a face and a consequence to his conduct in a way that nothing else can." She gave me the example of one victim's reaction following her trafficker's conviction. "I'll never forget ... one witness who ... we told her that the defendant was convicted, and she said, 'Do you mean that they believed me?' And that the jury validated her experience in that way was what she took out of it. [She] was like, 'I can't believe they listened to me. I was heard.' It was so valuable to her and she would never have gotten that if she hadn't come in and testified."

Sheila, the director of a trafficking services program, noted that when victims do not testify during a trial but produce victim impact statements for a sentencing hearing, it can be equally if not more rewarding. “It’s a very therapeutic tool for people to do that.” I heard one story repeated from several sources of a particularly empowering moment for one victim during the sentencing hearing of brothers, Josue Flores Carreto and Gerardo Flores Carreto.<sup>37</sup> Molly, a federal prosecutor, told me, “There was an awesome moment in the Carreto sentencing which has become sort of DOJ lore, sort of how a victim can transform into a survivor.” All of the victims had the opportunity to read victim impact statements. After the first of the two Carreto brothers was sentenced to 50 years in prison, the second brother’s attorney asked to address the judge. Molly recalled, “So his lawyer starts tap dancing and starts saying, ‘Your Honor ... I’ve been a defense attorney for 30 years, and I’ve even worked on murder cases where someone actually died, and it wasn’t that high of a sentence.’ ... And he’s like, ‘As bad as what these guys did ... at least nobody died here.’ Molly said at that point, one of the victims, who had already spoken, asked if she could address the court again. “She stands on her own two feet, in a room packed full of people, and says, ‘Your Honor ... that lawyer ... just said that nobody here died. Well, I don’t think that’s true.’ She turns and she faces the defendant, and she points and says, ‘That man forced me to have an abortion, so in my mind somebody did die, and I just wanted to tell you that’ ... So, it’s really exciting when something like that happens.” The second Carreto brother was consequently sentenced to 50 years as well.

Despite these banner moments, survivors and service providers emphasized the lengthy process of recovery and building a new life post-trafficking. Bridget, the

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<sup>37</sup> See Chapter 6 for a lengthier discussion of the Carreto case.



director of a trafficking services program, noted, “Most of the clients who stay with the program achieve their T-visa and end up working and stabilizing within about two years. It's definitely a long slow process.” A common theme among survivors was achieving independence. Nora, a case manager, told me, “I ... gauge success [on] the client not needing to be in touch with me as often because ... they have their own job, they have their own ... livelihood now and seem to be adjusting to ... this kind of new life ... where they're determining what they're going to do and the hours in which they're going to do it ... noticing that the client seems to be a little more sure of themselves and feeling like they're making decisions and they've really come about it on their own.”

I observed numerous survivors struggling through the recovery process – navigating the bureaucracy of federal benefits, trying to find jobs, and working to bring their families to the US – but also many who had successfully moved on to the next stage in their lives. Several had enrolled in college, one in a fashion program, two in law school; one woman owned her own cleaning business; and a number of survivors reunited with their children whom they had been separated from for years. Malcolm, a young survivor who spoke at a conference I attended, was enrolling in his first year of college. After describing his ordeal of being brought to the US as part of a children's choir, forced to work long hours, denied food, and kept from attending school, he proclaimed, “It has taken me several years to become a survivor rather than a victim.”

## **Conclusion**

Previous chapters highlight divergent understandings of trafficking held by various actors involved in anti-trafficking work. Those professionals who have more

extensive contact with trafficking survivors (i.e., service providers) hold more complex conceptions of victims, compared to those with more limited contact (i.e. law enforcement agents), who are more prone to incorporate ideological views and cultural assumptions (particularly about sex) into their beliefs about victims. Perceptions of victim characteristics in turn influence legal understandings of trafficking more generally and influence implementation of the law. The survivor portraits included here contextualize the narrative portrait of the typical “trafficking victim,” adding survivor voices to a discussion from which they have thus far been absent. These profiles challenge common assumptions about the types of suffering experienced by trafficking victims and call into question distinctions between “sex” and “labor” trafficking. In the chapter that follows, the overall impact of implementation practices on victims will be explored in more depth.

## **Chapter 6: Intersections on the Ground: Implementing Anti-Trafficking Law and Policy**

*Street-level decisions and actions are guided less by rules, training, or procedures and more by beliefs and norms. ...Beliefs and norms are more elusive and resistant to change than rules and procedures; they are shadowy, never fully articulated, and often inconsistent (Maynard-Moody & Musheno, 2000: 333).*

*The TVPA is a great idea ...but ...because it's somewhat a lofty idea, and people only...agree on the lofty ideas about it, rather than on the nitty-gritty details of what trafficking really entails, I think that's why we're having such a hard time at implementing and making sure that the law is as effective as it could or should be (Audra, immigration attorney).*

### **Introduction**

This chapter focuses on how the meanings various professionals assign to trafficking intersect with the work they do, including providing services, identifying victims, prosecuting traffickers, and accessing resources. The chapter explores how the law “on the books” and the law “in their minds” combine to form the law “in action” (Schuck, 2000). In particular, I examine the ways in which NGOs on the one hand, and criminal justice authorities on the other, integrate sometimes competing understandings of trafficking and the law with practices on the ground. I describe the implications for implementation and the impact on survivors of trafficking, including tensions over which cases move forward, criteria for identifying victims, determinations of which victims swiftly receive benefits, and which survivors are counted as victims. As I have argued in previous chapters, the three dichotomous elements of the TVPA definition combine with individual implementers’ interpretive frameworks of trafficking to shape their understandings of the issue and responses to it. While these factors partially explain the overarching focus on sex and trafficking, I argue that frameworks of sex also intersect with specific characteristics of those implementing the law, including their

professional goals, level of experience with trafficking, and proximity (i.e., type of contact and amount of time spent) to victims. Consequently, no one group of professionals can be neatly characterized as thinking about or responding to trafficking monolithically. While some general patterns emerged, the professionals implementing the law held highly nuanced views.

### **A New Law and a Multitude of Implementers**

Anti-trafficking professionals used several explanatory frameworks to account for tensions over implementation, one of which was the newness of the law. Over the course of my fieldwork, this newness was apparent as professionals gained experience and developed understandings of trafficking. One criminal justice administrator told me that while the TVPA was passed in October 2000, it took prosecutors until 2004 to understand precisely what the statutes covered. Dean, a federal prosecutor, commented on the learning curve and the unique issues involved with trafficking. “We ... saw that the cases were more complex and a little bit different from our other cases, because they happened over time, the victim trauma issues were a little different ... the nature of the offense and of the trials were different ... The cases were different in that they were often multi-jurisdictional, or they had organized criminal networks.” Speaking at a national anti-trafficking conference, Dean noted that trafficking encompasses complicated legal issues that require training and paradigm shifts among prosecutors and law enforcement agents. “It’s still a new area of law,” he noted. Annette, who held a policy position connected to a federal grant program, commented on how the novelty of the law affected service delivery. “It’s very hard to create procedures and policies and regs [regulations] for a new program when you just don’t know what’s going to work.

... We've had the flexibility of trying different things for the last six or seven years. We are nowhere near best practices or things like that.”

Informants suggested that the diverse combination of organizations and individuals involved made for a complex implementation process. Dale, a federal law enforcement administrator, noted how this amalgamation of actors contributed to shaping how trafficking is conceptualized. “From the government perspective, we've got a lot of different entities involved – State Department, Department of Justice, HHS [Health and Human Services], so everybody has had a little bit of a part in how we've come to look at trafficking, I think.” Consequently, a number of agencies and individuals, working at various levels are collaborating to implement the TVPA. Fran, a federal grants administrator, explained, “You've got all these different federal agencies, plus state and local law enforcement, plus victim service providers, so the collaboration challenge is even greater.” Katherine, a federal prosecutor, emphasized the particular complexity of anti-trafficking work. “I'm not aware of anything else so complicated and needing so many players to all work together quickly, and everybody has concerns that are hard for the others to appreciate. ... So there are things where it's just really hard to understand the institutional concerns and the substantive concerns of the other ... partners that you need to work with.”

The newness of the law sometimes resulted in a lack of consensus among the various agencies and professionals on how to interpret the statutes, who was responsible for what, which offices or agencies to report cases to, as well as a number of other issues. Annette, a federal policy advisor, suggested that despite the diversity of organizational cultures and agency-specific objectives, a common goal of combating

trafficking united the anti-trafficking movement. “This is the one issue that forces us to work together, and ... we don't really work together that well sometimes, but at the end of the day I think we all have the same interest, which is to make this work.” Sheila, the director of a trafficking services program, noted, “The common goal is to punish traffickers and help victims.”

### **“Personalities”**

While NGO service providers and criminal justice authorities often praised the other's abilities, relationships between service providers and law enforcement agents, in particular, could be tense and confusing. Molly, a federal prosecutor, spoke highly of her relationship with one NGO, but noted, “I think sometimes our purposes are different, and sometimes my role has ended up being kind of refereeing a difference they have with the investigating agents.” Informants often referred to the challenges of working across sectors and attributed many conflicts to the diversity of “personalities.” In reference to an unpredictable relationship with federal law enforcement, Nora, a case manager, noted, “They reach out to us sometimes, but it's unclear when ... and it's unclear who is calling the shots sometimes. It seems like a lot of it comes down to personalities.” Despite the difficulties of working with agents, Nora noted that she found ways to make it work with the ones she regularly encountered. “It really depends on the kind of individual skill set of the agent you're dealing with, and/or the compassion for your clients, or lack thereof.” Some professionals remedied tensions by reaching out to law enforcement agents with whom they worked well. Ella, an immigration attorney, told me, “There's different personalities, people rub each other the wrong way or whatever. ... It's just dealing with people who your experience has

been good, [who you've had] good relationships and good past experiences with." Even prosecutors, who shared a criminal justice framework with investigators, acknowledged that their relationships with agents were sometimes precarious. Molly, a federal prosecutor, noted, "It comes down to the agents themselves, because I have worked with brilliant ICE and FBI agents and detectives, and I've worked with knuckleheads. ... Some of it's a personality thing ... and some people are just naturally better at establishing a rapport with a victim." She added that the mentality of many agents was changing as they gained experience working on actual cases. "I think with training and sensitivity, and the more agents ... who have lived through a case with a victim; it's almost like a religious conversion. I've seen the roughest, grouchiest, gruffest guys become so sensitive to the needs of a young woman, because they've seen what's really going on." She described one federal agent with whom she worked closely. "I think it would be fair to say people would describe him as abrasive, but he really knows how to talk to these girls. He is a good investigator and ... he's talked to enough victims that he knows how to do it, so ... it really depends on the individual investigator."

Service providers and prosecutors alike stressed that building relationships with law enforcement was challenging due to the frequent turnover of agents. Audra, an immigration attorney, noted, "There are so many different federal officers or agencies you can talk to, and the ones I initially worked with are no longer the ones that are my primary contacts, and so I think that's definitely part of the challenge." A number of informants perceived turnover in agents as a major obstacle to efficiently identifying victims and moving cases forward. Lynn, a federal prosecutor, echoed the sentiments of the service providers. "Unfortunately, it [the type of collaboration] changes as the

personalities change. You can you have one particular person as head of the squad, and then things are great; cooperation is good. They're really robust and active. Then you have somebody else who comes in, or the squad complement changes, and then the bottom drops out, and you get zero response, and they won't work well with others. It's like everything. It's driven by a lot of personalities.”

Lynn emphasized the need for disparate agencies and individuals to work collaboratively in the interest of protecting victims and prosecuting traffickers. “The theory, at least, is that we should all be working collectively ... the NGOs, our offices, the DA's offices, the federal investigators. It works for the most part pretty well; it could work much better. ... There's too many turf wars in my opinion.” Despite the challenges of working with law enforcement, Nora took a positive view of collaboration. “I think that in New York it's been unique that there's been a major push from the beginning to encourage multi-sector collaboration, so I think whatever I might say about the difficulties of working with law enforcement ... there's this kind of culture already established of you should try to work with [NGOs] if you can, because it makes it a hell of a lot easier to keep up with [the victims].”

### **The Law “in action”**

Given the multiple professionals involved – prosecutors and law enforcement agents on the criminal justice side and immigration attorneys and case managers on the service provision side – each responsible for implementing “their” piece of the TVPA, gaps in meaning permeated anti-trafficking work on the ground. While some implementation conflicts could be attributed to the newness of the law and “personalities,” the larger obstacles stemmed from the law itself. In many ways, the



criminal justice and service provision aspects of the law were separate but parallel. In fact, different pieces of the law governed these two areas. The victim of a severe form of trafficking (VSFT) definition stipulates who is eligible to receive services and federal benefits – whom the NGOs can serve. In contrast, the criminal statutes govern the work of law enforcement agents and prosecutors and dictate what constitutes a prosecutable crime. As described in Chapters 3 and 4, the victim and criminal definitions do not fully correspond, particularly for “labor” trafficking.

While professionals in both sectors understood the importance of the other, they assigned different priorities to the dual objectives of the law – to protect victims and prosecute traffickers. NGO service providers strove to provide support for their clients and assist them with accessing necessary benefits and immigration status. Participating in an investigation was essential in that it helped achieve those goals for the client. Many providers said they worked hard to understand the law enforcement perspective but questioned whether criminal justice professionals understood the nuances of the services they provided. Charlotte, the director of a trafficking services program, noted, “I don't think that they get what the social service needs of clients are, and ... I think that NGOs do a really good job at understanding the law and trying to understand the perspective of law enforcement ... but that they don't really get what we do.”

In contrast to service providers, investigators and prosecutors prioritized identifying cases that could be successfully prosecuted and establishing adequate evidence to corroborate any trafficking charges. Ensuring that the victim was supported was important to the extent that he or she was able to provide information and testify if necessary. “The NGO is theoretically there to help, so it's important” Jim, a federal

agent, told me. “Their intentions are very good” Larry, a local law enforcement agent, told me, referring to the NGOs. “I can see they want to help. They’re at every one of our meetings, trainings, that sort of thing.” He added, “But I wish they had a little more resources over there, more control over the victims.” For law enforcement agents, like Larry, the victim was a means to an end – a source of evidence leading to conviction.

Since many victims are undocumented migrants, connecting them with services was vital to providing them with the support they needed to live independently in the US and assist law enforcement with prosecuting their traffickers. Kira, who works in federal law enforcement, told me, “No trafficking victim can have their needs met without NGO involvement, and so we ... make sure that our ... agents in the field ... have an ongoing relationship and partnership with them. Stable victims were valuable sources of information in law enforcement investigations into trafficking and key to a successful prosecution. Molly, a federal prosecutor echoed the importance of NGOs. “You can't do the case without a victim who is in shape to be a witness, and you can't have a victim that's in shape to be a witness without them having an inordinate amount of services, because these people have been harmed for so long, they need counseling, they need housing, they need shelter, they need medical care, they need to be able to work, they need all of this stuff.”

Service providers and case managers in particular, worked intensively with clients over an extended period of time. In addition to basic activities, such as referring clients to law enforcement and assisting them with shelter and food, case managers helped address complex medical needs (general screenings, plus gynecological, dental, oncology, and optometry needs), mental health issues (including counseling or getting

clients to a place where they would even consider counseling), and acculturation issues (learning to use the New York City subway, banking, enrolling children in school). They accompanied clients to appointments and advocated on their behalf on complex bureaucratic issues (accessing Medicaid, Social Security, and other relevant benefits), assisted clients in enrolling in GED, ESL, and job training programs, identified housing and negotiated with landlords when clients had no existing credit or job history. They liaised with law enforcement agents and prosecutors, and translated (sometimes literally) complex information so that survivors could understand matters as they arose. Service providers helped individuals emerging from extremely unstable situations become stable and secure.

Professionals working on all sides of the issue used the term “victim-centered approach.” Service providers used it to describe their approach to service delivery, the Department of Justice applied it to its prosecutorial model, and I heard it at nearly every training or conference I attended to describe efforts to put victim needs at the heart of any investigation. Radha, an immigration attorney noted, “I think there is ... recognition ... that victims are going to be more willing to cooperate ... if they have that support team, and if they feel like their rights are being protected.” Indeed, criminal justice authorities specifically prioritized victim recovery when it affected a prosecution. As Leila, a federal victim services liaison told me, “We are not going to have a successful prosecution unless we have a willing and stable victim.” While criminal justice authorities and service providers both supported victim assistance, their motivation differed. Dean, a federal prosecutor, emphasized, “Our job is to vindicate the interest of the United States, not just about any one victim that's in front of us, but all the victims

present, past, future ... but ... the NGO's job is to ... make sure that client gets what that client needs.”

Some questioned if these were competing goals. Max, a former Congressional staffer, noted, “There has always been a little bit of schizophrenia in the bill. ... Is it a human rights legislation ... or is it a law enforcement legislation? ... And those two appear to work against each other to some degree.” Many service providers viewed the law enforcement piece as dominating implementation, and in many ways it did. Rhada, an immigration attorney noted, “There is this talk of [the law] being victim-centered, but really it's criminal justice-centered in a lot of ways.” Since criminal justice authorities and NGOs had different but overlapping goals (prosecution versus service delivery) and criteria for identifying trafficking (criminal versus victim definitions), their goals were often at odds. These oppositions and overlaps in meaning and motivation led to complicated applications of the law in practice, significantly affecting victims.

### **Worthy Cases versus Worthy Victims**

#### *What Makes a Case?*

While the core objective for NGOs is to provide services and obtain immigration relief for every victim of trafficking, the main goal of criminal justice personnel is to identify those cases with adequate evidence to prove the crime of trafficking. Certain characteristics – availability of corroborating evidence, the number of victims, visibility of the crime, and perceived level of harm experienced by the victims – were all components of making a law enforcement case for trafficking and together combined to create a focus on sex trafficking. Dean, a federal prosecutor, emphasized that not every

trafficking case could be prosecuted. “It's identifying the cases and smartly allocating our limited resources to the merit cases, and not spending a lot of time and money investigating cases that aren't prosecutable.” If there was no way to corroborate a victim's claim, prosecution was not possible. Lynn noted, “The most difficult thing ... is [to] corroborate whatever the victim tells us, because invariably they're going to tell us about some relationship they had that was coercive, but we have to prove that. If it just happens in the confines of a room like this [gesturing to the office we're sitting in], it's going to be very difficult for us to prove that they were ... forced into it, unless you get something else to show that there was this coercive relationship.” A victim statement alone was insufficient. She gave the example of a domestic worker forced to work as a nanny under threats of violence. Lynn said it is impossible to prove “unless you get some hospital records, or you can prove the door was locked from the outside in rather than the inside out, the normal way.” Kyle, a federal prosecutor, emphasized, “The prosecutor's core job is to ... determine whether a crime was committed and if there was, to determine a way to prove that to a jury of twelve ordinary people beyond a reasonable doubt. ... You also have to have evidence. That person's story alone it is not sufficient to convince the jury that a crime was committed beyond a reasonable doubt.” Lynn noted that not every case is appropriate for prosecution, even if the victim is a genuine victim of trafficking. “You have to sort of pick and choose the cases that you think are really going to work.” Referring to the criteria required to certify a victim of a severe form of trafficking, she added, “There are people who I have even been willing to certify as victims for T-visa purposes, but I couldn't ever make a case [prosecute] for

that, because the trafficker is long gone, or ... the case is just too old, or the victim is very credible, but there is really no corroboration.”

Radha, an immigration attorney, expressed the contradiction between what a criminal prosecution required and the reality of how and when victims were identified. “There is a really inherent difference between what our clients need and what the criminal justice system needs, and it's not the fault of prosecutors or agents; it's that they need really solid evidence. They need cases that are worth their time in terms of leads and investigations, and it can take our clients a long time [to be ready to cooperate].” Referring to some of the factors that make trafficking cases difficult to prosecute, she added, “Our clients don't come packaged in these cases of 10 women at a time, [who] recently left, and there's a good trail of fresh evidence there, the traffickers are all here [in the US].” Often, victims would trickle into NGOs on their own, several years after escaping the trafficking situation, and their trafficker had returned to the home country. While these were authentic victims, there was not enough solid or corroborative evidence for a successful prosecution. Dean, a federal prosecutor, told me, “If we believe that someone is a trafficking victim by the VSFT definition and the defendant engaged in trafficking conduct, but we may not be able to prove that, we may still prosecute the case using other statutes. ... There could be a lot of reasons why you can't prove a case that had nothing to do with whether you believe the victim or not, you know? You've got to corroborate it.”

In many cases, service providers perceived law enforcement favoring sex trafficking cases or those involving multiple victims to the exclusion of forced labor or single-victim cases. Nancy, a case manager, noted, “I always get a different response

from law enforcement when it's sex trafficking versus labor or a domestic worker, or if it is sex trafficking with just one person involved in it without having a bunch of other people. ... They don't even respond at all many times." When I mentioned to Jim, a federal agent, that NGOs often say law enforcement is more concerned with multi-victim cases, he denied the claim. "Absolutely not. If there's one victim, it's too many." By contrast, Katrina, a federal prosecutor, when asked about how many victims were involved in the cases she had prosecuted, responded that the cases were "mostly multi-victim ... the most I had was 16 victims with a single defendant. The least I had, I think, was three or four." From a prosecutorial perspective multi-victim cases are easier to prove.<sup>38</sup> Lynn, a federal prosecutor, noted, "Usually the evidence, if you have a lot of victims, [is] much better, because then they sort of corroborate each other."

Federal prosecutors asserted that the government prosecutes all types of cases. Kyle emphasized, "We do the cases as we find them. ... We've prosecuted sweatshop cases. We've prosecuted brothel cases. We've prosecuted ... domestic cases ... where there's a servant living in somebody's home. ... There is no 'let's try to do more farm cases or let's try to do more brothel cases;' it's just here's the lead, this is what the FBI needs to do, prosecute the case." In fact, all the prosecutors I spoke to, both in the DOJ Human Trafficking Prosecution Unit and in the districts, reiterated that no preference should be given to any one form of trafficking over another. Angela, a former federal policy advisor, noted that while some government rhetoric was skewed toward sex trafficking, federal prosecutors were responsive to any case fitting the statute.

Some of the rhetoric that was coming out of the higher levels of [government] ... focused on sex trafficking and prostitution, but I really don't think that you

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<sup>38</sup> The federal government has successfully prosecuted some single-victim cases with strong evidence (see USDOJ, June 9, 2009).

see ... a link between that and the way that [prosecutors] ... approached the cases. ... We don't have a view about ... how many of those should be, to use the categories of some others, sex trafficking or labor trafficking; we just have a job to do. ... You may see slightly more rhetorical flourish on the sex trafficking side when you get the Bush administration as they're making statements or talking about it ... but it didn't change the way that people understood their jobs, how to enforce the statute and that our job was to cover trafficking in all its forms.

Criminal justice authorities have identified and prosecuted some major cases of forced labor since the passage of the law in 2000. However, over the course of my fieldwork, law enforcement identified only one labor trafficking case in New York City, in comparison to at least five times as many sex trafficking cases.<sup>39</sup>

While federal prosecutors have pursued a number of labor trafficking cases, many informants perceived law enforcement agents putting more resources into investigating trafficking into forced prostitution. While prosecutors were open to pursuing all types of trafficking cases and held nuanced understandings of the similarities between trafficking into forced prostitution and forced labor, they also had heavy case loads and relied on law enforcement investigators to bring them merit cases. Agents served a filtering role, and thus had some control over which cases ultimately moved forward – in many cases those involving forced prostitution. In this way, the actions of individual law enforcement agents mirrored the symbolic privileging of “sex trafficking” in the TVPA. Indeed, Lynn, a federal prosecutor, told me that while her office had dealt with more *victims* of labor trafficking, 90 percent of the *cases* they

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<sup>39</sup> These numbers refer only to cases in which a defendant was indicted in federal district court. Other cases may have been identified but not charged, charged with a lesser offense, or charged at the state level. Additional cases were also identified in neighboring areas, i.e., Long Island, New Jersey.



prosecuted were sex trafficking as a result of referrals she received from law enforcement.<sup>40</sup>

Law enforcement agents identified and referred more cases of sex trafficking to both prosecutors and NGOs. Ironically, many of the NGOs had more labor trafficking clients enrolled in their programs (identified through other sources), despite the preponderance of sex trafficking cases they received from law enforcement.<sup>41</sup>

According to the US Council for Catholic Bishops, 60 percent of their clients nationwide were trafficked into forced labor, but these numbers are not reflected in law enforcement referrals (Freedom Network Conference, April 23-24, 2008). Ella, an immigration attorney, noted that the cases law enforcement sent to her were primarily for sex trafficking. “Most of the labor trafficking referrals come from good Samaritans or other agencies. Most of the sex trafficking referrals come from law enforcement.” Service providers also reported that the response to their referrals to law enforcement was always far greater for cases involving forced prostitution. Roxanne, an immigration attorney, noted, “It was much harder for us to get law enforcement to investigate labor trafficking crimes. ... I don't think once in my practice did I get a local cop to look at a labor trafficking case. And on the federal level ... they would maybe interview our clients who we would refer to them, but I never had a case that was referred from law enforcement to us that wasn't sex trafficking.” Because of the overwhelming focus on sex trafficking cases by law enforcement, providers struggled to get attention for their

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<sup>40</sup> Referrals were skewed even higher in favor of sex trafficking because of referrals from local law enforcement for domestic minor sex trafficking.

<sup>41</sup> In their study of human trafficking in the US, Bales and Lize found that in two thirds of reviewed cases trafficking victims were *not identified by law enforcement*. Rather, they escaped of their own volition or were assisted by “good Samaritans” (2005). The investigators discovered that while trafficking victims often had contact with police, law enforcement failed to notice victims or bring them to safety due to lack of sufficient training (Bales & Lize, 2005).

labor trafficking cases. Audra, an immigration attorney, said that she believed law enforcement acted more aggressively on cases involving forced prostitution.

I've found that the response from law enforcement is always much more immediate for sex trafficking cases ... than for labor trafficking, particularly if it's an isolated case of like one domestic worker in one household. I struggled very much to get someone to follow up and to get someone to officially open an investigation into the case. I know they have different priorities than we as anti-trafficking advocates do, but from our perspective these are all victim witnesses that need to have their safety addressed. The perpetrators need to be kept away from the survivors, both here as well as abroad, and just some kind of sense of justice for the survivors so they can move on.

Providers told me over and over that law enforcement was consistently slower to respond (if they responded at all) to reports of labor trafficking than to reports of forced prostitution.

A number of factors contribute to law enforcement's fixation on sex trafficking, including ideology, case identification methods, and the definitional splits in the law. Nora perceived law enforcement's focus on investigating sex trafficking as mirroring the focus of the Bush administration. "I think that there is clearly an agenda with the current administration and a lot of people who have ... jumped on board with anti-trafficking, and so it's really ... very limiting, because the cases that you mostly see are this one type of case – trafficking for forced commercial sex acts. And as long as that's the political agenda, then it seems like a lot of the agents of the TVPA, mainly law enforcement, will mainly look for one kind of [victim]." Many service providers told me that despite NGO efforts to broaden the focus of NYC's DOJ-funded task force (meant to increase victim identification by bringing federal and local law enforcement and NGO service providers together), meetings focused almost entirely on adult and domestic youth sex trafficking with an almost willful avoidance of labor trafficking on

the part of law enforcement and task force coordinators. Several informants made the point that many local law enforcement agencies located their trafficking units in their vice divisions, which by default limits the type of trafficking agents investigate to forced prostitution (and conflates trafficking and prostitution). Sheila, the director of a trafficking services program, believed law enforcement approaches were tied to experience and the focus of the department. “Even the people that have worked a variety of cases, when I’ve heard law enforcement participate in a training or a presentation they almost always only talk about sex trafficking. And I think because they locate their law enforcement people within the vice squad ... that’s a problem.” By housing their human trafficking units within vice squads, these agencies’ views of trafficking became synonymous with sex trafficking. Pete, a federal criminal justice administrator, noted, “They say they will look at labor too, but what kind of expertise do they have?”

On a practical level, case identification techniques also shifted attention toward trafficking for forced prostitution, and criminal justice authorities acknowledged that it was more difficult to identify cases of forced labor. Lynn noted, “It’s harder to identify, for whatever reason, labor trafficking victims, because they tend not to ... self identify, and it’s harder for us to ... get into the situations or discover the situations that they’re in.” Lynn raised some of the contradictions inherent in law enforcement perceptions of trafficking which led to higher rates of identification for forced prostitution. “We really haven’t done as many forced labor cases. Part of it is ... just the volume we see, not the volume that exists, but the volume we see. There’s already mechanisms locally to find sex trafficking. You have vice squads out there all the time. So that’s where we get a lot

of our stuff.” She continued, noting lack of visibility as a barrier to identifying labor trafficking victims. “We certainly don’t get them through the normal law enforcement mechanisms, because they just don’t come up as much. Part of it is the nature of the crime, because when you have sex trafficking, it’s sort of a public crime. It requires other participants. Whereas when you have forced labor, like working in a sweatshop, you don’t see it as much [there is no public interaction]. It really is a much more hidden crime, domestics ... who are kept in people’s houses, you don’t see it.” Despite the volume of sex trafficking cases being identified, Lynn’s office had dealt with more labor trafficking victims. “We’ve had like three forced labor cases. ... If you’re talking about ones involving sex, it’s probably easily a four to one breakdown, so 20 percent of our cases are going to be forced labor. The other 80 percent will be sex trafficking. With the victims I would say almost exactly the opposite, because the volume we get with a forced labor case is usually much larger. ... If you count by victim, forced labor trumps because one case is thirty people. That’s more than our entire docket of sex trafficking.” These numbers were consistent with federal statistics. Three government informants, all with access to information on the national breakdown of victims, cited documentation for more victims of labor trafficking than sex trafficking.<sup>42</sup>

Some agents noted that they *responded* to labor cases, but did not *look* for them. At a national conference I attended, one federal agent noted, “I target brothels, because it would be offensive if I knocked on doors looking for domestics. I’m willing to support agents working on worksite investigations. It is important, but I don’t want to

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<sup>42</sup> The majority of certified victims are foreign-born, adult victims. US citizen victims have little incentive to submit paperwork to HHS, since they do not have the same incentive of immigration relief that foreign-born victims do.

go into a worksite without a specific lead.” While law enforcement conducted brothel raids under the assumption that where there is prostitution there may be trafficking, they did not use the same approach in labor cases (for example looking for trafficking in nail salons or factories). As Ella, an immigration attorney, put it, “Law enforcement isn't waiting ... at Upper West Side homes looking for nannies that are trafficked.” Larry, a law enforcement agent, confirmed this, and referring to the Sabhnani case (a high profile labor trafficking case that occurred in Nassau County, Long Island), noted that law enforcement often have limited access to labor trafficking venues.

Except for the one case on Long Island, I haven't seen any new cases of domestic work. Even that case, the lady was out walking around [the trafficked domestic worker had escaped confinement in the home] and somebody noticed her, so I don't think it's one of those cases where it's too much in the open like prostitution is, because it's in the household. Who actually gets into that household except the people who live there, or actually somebody sees a lady like they saw in Nassau County walking around? ... But in New York City, how many millions of people live here ... for us to go into all these places and talk to nannies? It's just a very very hard case. I haven't seen any of them yet.

However, Nora, a case manager, had several domestic worker clients and believed law enforcement should be looking for exactly these types of cases. “It's troubling that there's this kind of disproportionate energy placed on one kind of trafficking, and yet the way we're going about finding those cases is very very limited, versus all the other kinds of trafficking that could really be an issue in our country, and the investigative resources not really being expended to find those cases. ... A big reason we're seeing cases with prostitution is because those are the cases that people are looking for.” As a criminal activity, prostitution was an easy site for law enforcement intervention. Larry told me that he was not seeing cases of forced labor, so his office focused on domestic teen prostitution. “We haven't seen those numbers, so my turn was from international

trafficking to more US girls being recruited here in the United States.” Larry believed the incidence of forced labor was minimal and that if there were actual cases, the victims would find a way to come forward. “We just can’t find the crimes. ... [If] people [are] being trafficked, then I would see a lot more cases like you heard about the Nassau County [Sabhnani] domestic case coming out. ... In this day and age – with the media [and being] so accessible to cell phones or house phones, watching TV you see all these shows, everything else going on – I don’t see why a lady can’t pick up the phone and call.” Interestingly, the domestic sex trafficking victims that Larry was identifying were not coming forward on their own, but Larry and his colleagues were seeking them out via targeted investigations. Will, a federal agent, agreed that if labor trafficking was a problem he would see more cases. “It’s not because we’re not looking; it’s because it’s not there.” He then told me most of the cases his unit identified were based on tips from existing informants rather than proactive investigation.

Yet law enforcement’s focus on sex trafficking did not necessarily produce viable cases. Roxanne, an immigration attorney, noted that law enforcement was more focused on prostitution than on actual trafficking. “This emphasis on sex trafficking is basically leading to a lot of cases that are duds. ... Many AUSAs [Assistant US Attorneys] have expressed that to me. Because ... [of] the conflation between prostitution and sex trafficking, the result is that you get ... a lot of interest in raiding brothels or massage parlors, and then there is no force, fraud or coercion, and so they can’t make a trafficking case, but yet that's what they are being ... encouraged to investigate. And so as a result, they don't really have a lot of great cases that they are pushing forward.”

Providers noted that clients identified through other channels by NGOs were generally more cooperative than those identified through law enforcement raids; however, law enforcement continued to focus on raiding brothels rather than investigating NGO-identified cases. Radha, an immigration attorney, told me, “Unfortunately, there seems to be an interest in ... going out and ... focusing on the sex, the prostitution ... engaging in raids, so they can build a good case and then trying to prosecute those cases as opposed to taking ... clients that are ... coming in on their own ... but they also know and have acknowledged that it’s clients who come in on their own, rather than through a raid, who are more cooperative and more interested in cooperating. It just doesn't seem to translate.” Bridget, the director of a trafficking services program, agreed that this focus on raiding brothels was detrimental to victims identified through other channels. “When they are putting resources into it, it’s into raids rather than ... processing paperwork for victims who have already come in or really doing investigations of victims that are coming in on their own, that kind of thing.” Jarrah told me, “We've got all of these sex workers that were forced into it [trafficked]... and we are bringing them into federal law enforcement, and they are not interested, and yet on the other side they are doing all of these raids into brothels and not finding any trafficked persons. And it's like, well there might be [trafficking victims], but that's not the way you find them.”<sup>43</sup> Service providers were baffled by why law enforcement was not interested in NGO-identified cases, when the victims were generally more stable and willing to cooperate than those identified through law enforcement raids.

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<sup>43</sup> See Ditmore (2009) for a full discussion of the impact of law enforcement raids as a tool for identifying trafficking victims.

While the differences between criminal and victim definitions of trafficking partially accounted for the law enforcement focus on sex trafficking (a victim could be defrauded into labor but there is no prosecutable crime), service providers noted that even with sex trafficking cases, law enforcement agents were often uninterested in or slow to respond to NGO-identified cases. Yet most victims were identified by NGOs rather than by law enforcement. Annette, who held a policy position in a federal trafficking office that oversees service provision for victims, told me that “The majority of our victims ... didn't come originally from law enforcement; [the case] came from an NGO to law enforcement.”<sup>44</sup> Gwen, who worked in federal law enforcement, noted, “We have a lot of referrals from NGOs. Some of our major cases came from NGOs.” She mentioned one large labor trafficking case in New York in which the first victim was identified by an NGO. “[The NGO] ended up with the first victim that got out and brought the case to [federal law enforcement agency] and said, ‘Hey, we think we've got something that's trafficking, can you look at it?’ And without them bringing that referral and that victim to us, we wouldn't have rescued another 90, 95 victims.” While this case was a success in that law enforcement investigated the NGO tip, law enforcement’s response was also incredibly delayed and the victims remained in the situation for months after the NGO alerted authorities. Nancy, a case manager who had worked on the case, told me how long it took to get law enforcement to respond. Her supervisor “talked to [federal law enforcement agency] many times until they finally got interested in the case and they started making investigations and stuff. ... And they kept

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<sup>44</sup> The US Department of Health and Human Services (HHS, through a contract to the US Conference of Catholic Bishops) and the Department of Justice Office for Victims of Crime (OVC) administer services for certified and pre-certified victims of trafficking through a network of NGOs. Pre-certified victims are eligible for services if it is believed they will qualify for a T-visa, even if there is no active law enforcement investigation.



telling us, ‘Oh, we’re going to do the raid,’ and I think ... they told us at the end of March, ‘We are going to do it in April, we’re going to do it in May,’ and ... finally they did at the end of June.’”

Bridget and other providers noted a recent shift in law enforcement response that was highly unpredictable. “I really wish I could say these cases are the ones, and I used to say ... they want the sex cases, and they don’t want the labor cases, but I feel like I can’t even say that anymore. ... I don’t even know if ... we can tell you who they are going to be interested in, because some cases they are just gobbling up and we don’t expect to them to be interested, some cases that are just totally juicy cases and they just are not.” While service providers understood that a certain level of evidence was required for prosecution, they also questioned why law enforcement did not investigate certain cases that they as service providers clearly viewed as trafficking. Sometimes victims desperately wanted justice served or were fearful because their trafficker was still at large, but law enforcement would not pursue the case. Jarrah, an immigration attorney, told me, “We’ve got clients who they see their trafficker in the street and ... federal law enforcement knows it, everybody knows it, but they are not going and grabbing these guys. And we can’t really figure out why not, what the situation is.” Nancy, a case manager, told me a similar account of one of her sex trafficking clients who had seen two of her traffickers in her neighborhood on multiple occasions, but federal law enforcement reportedly did not have the resources to investigate. The client was a victim of forced prostitution, so even the inconsistency in definitions could not explain this lack of response. Bridget, the director of a trafficking services program, noted, “There are a lot of cases where I think that the best thing for everyone is that

there is not a prosecution ... but there are cases that we really would like to see the people in jail that aren't pursued, so I think that's ... difficult.”

Providers seemed unsure to what to attribute the shift. Some cited changing priorities, while others perceived a drop in resources. Bridget, told me, “My sense is that it is a drop in resources and a drop in priority. I think that ... ICE as an agency ... they are not really putting the resources into it.” Sheila, noted, “All of a sudden ICE will disappear for long periods of time and seem not to be interested in the cases at all, and then we hear from the grapevine that it's an internal problem.” Lynn, a federal prosecutor, affirmed that there were, in fact, competing priorities for law enforcement. “The problem with the ... agencies ... that are tasked with this stuff, given all the other priorities that exist in New York for both agencies, ICE and FBI, are too small. ... It's really hard because it's a huge priority, very time intensive, and yet [it is] probably lower on the list of priorities because of these offices having terrorism as the main thing.” Jim, a federal agent, told me that his anti-trafficking unit had been downsized in recent years, and they were often called onto other types of cases. “We don't work only on trafficking. There is lots of smuggling and some gangs stuff.” Dean, a federal prosecutor, cited a number of barriers, including lack of funding and competing criminal justice priorities, as hampering victim identification.

The big issue you're hearing from everybody is victim identification, and I don't know why we're not finding more victims. ... Our biggest obstacle is it's a new statute ... and then there is just a resource issue, you know? These are tough times and this office hasn't had a resource increase since 2000, since before the act was enacted. ... There's been no increase by anybody; in fact, there's been diminishment in many areas in the FBI post-9/11, with ICE post-9/11. ... There just aren't really the federal resources out there and ... everything is so focused on terrorism and domestic security, and the war in Iraq has been expensive. ... So the criminal justice process ... has not had an increase in its capacity to match the enactment of the new statute.

Law enforcement not only held different conceptions and relied on different definitions of trafficking from service providers, but limited resources also meant they had to prioritize which cases moved forward. How they made these decisions took a number of factors into account, ranging from the number of victims affected, the visibility of the case, the quality of evidence, as well as the value they assigned to any particular form of trafficking.

*Two Obstacles to Certification – The Law and Law Enforcement*

Law enforcement failure to pursue cases dramatically affected victims' access to immigration relief and federal benefits. While the TVPA established a series of victim protections, law enforcement's role in evaluating cases significantly affected the timing and type of benefits for victims. The drafters of the TVPA recognized that, "victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes" (TVPA, 2000a). As a result, the TVPA provides assistance to victims, including federal benefits and immigration relief. The process of "certification" makes a victim of a severe form of trafficking eligible for benefits and services to the same extent as a refugee, if he or she "is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons" and "has made a bona fide application for a [T-]visa" or "is a person whose continued presence in the

United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons” (TVPA, 2000a).<sup>45</sup>

All victims of severe forms of trafficking are eligible to apply for the T-visa; however, they must demonstrate willingness to cooperate in the investigation and prosecution of their trafficker, usually by submitting a law enforcement certification form (known as the I-914B) completed by a federal law enforcement agent. Since the application process for a T-visa can take several months to a year, and prosecutors often want victims to refrain from applying for the visa until prosecution is complete,<sup>46</sup> law enforcement may apply for immediate temporary immigration relief called “continued presence” (also known as “CP”) on behalf of those victims who assist in an ongoing investigation or prosecution (see Figure 3 for a comparison of CP and the T-visa).<sup>47</sup> Once “certified” by one of these means (see Figure 3 for a comparison of the two), victims are eligible for federal benefits, such as Medicaid and Food Stamps, and receive a permit to work legally in the United States. In both cases, law enforcement play a vital role in documenting that trafficking occurred so that the victim may become certified as a victim of a severe form of trafficking. Service providers had two complaints about the requirement that victims cooperate in order to receive certification. First, many victims were too traumatized or fearful to cooperate with law enforcement, so they were unable to qualify for the protections set forth in the law. Secondly, law enforcement personnel

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<sup>45</sup> The Department of Health and Human Services is responsible for certifying victims once the required documentation is submitted to US Citizenship and Immigration Services (USCIS).

<sup>46</sup> There was some debate among various criminal justice authorities as to whether granting T-Visas to victims (discoverable information during a prosecution) could be used by the defense as evidence of the government exchanging benefits for victim testimony. Several prosecutors suggested that it did not matter whether the victim had CP or a T-visa – an argument could be made by the defense on both counts and it was more important to ensure victims had access to benefits. Other prosecutors and agents would not complete an endorsement for the T-visa until a prosecution was complete.

<sup>47</sup> CP is not required to receive a T-visa. Rather, CP fills the gap in benefits and immigration status for some victims while they wait to apply or receive approval for the T-visa.

were often hesitant to endorse even those victims who did cooperate if the case was not prosecuted.

	<b>Continued Presence “CP”</b>	<b>T-visa</b>
<b>Eligibility</b>	Victims who are necessary to an ongoing law enforcement investigation or prosecution	Any victim “ <u>willing to assist</u> in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons”
<b>Wait Time</b>	1 – 6 weeks	3 months – 1 year+
<b>Who Submits?</b>	Law enforcement official	Victims may self-petition, but the application is very complicated. An 1-914B (completed by law enforcement) is not required, but expedites the process
<b>Expiration</b>	1 year, with option to renew	4 years – after 3 years victims may apply for legal permanent resident status

**Figure 4: Comparison of Continued Presence to the T-Visa**

Informants universally praised the inclusion of immigration relief for victims of trafficking in the law. Paul, who held a policy position in the federal government, told me, “The single most important part of that legislation is the ability to give temporary presence in the US to people who are cooperating and a three year visa with the possibility of permanent status.” Maribel, a service provider, agreed but viewed the requirement for victims to cooperate with law enforcement negatively. “That immigration assistance piece ... it was very future-forward thinking. However, the whole willingness to cooperate with law enforcement and how that actually plays out on the ground is so detrimental. I think that the whole certification status is just a bunch of BS. ... What other victim of crime at the federal level needs to be certified by a government agency that they are actually a victim of a crime? None. ... This

population needs to jump through so many hoops to actually be considered a certified victim of trafficking.”

Many criminal justice professionals viewed the requirement that victims be “willing to assist in every reasonable way” to gain certification as essential to prosecuting traffickers. Dale, a federal law enforcement administrator professed, “We’re just going to have more victims if we don’t put the bad guys in jail. ... And I think we’ve been fairly successful at helping victims and putting the bad guys in jail.” Max, a Congressional staffer, cited competing arguments for and against victim cooperation. “The Justice Department will say, ‘We need to get access to these victims, because there are all these other victims out there, and if we get the information we can ... save more individuals.’ And I’m all for that ... but if no one is coming forward, then you’re not getting access to anybody.”

Service providers reported that the cooperation requirement was indeed a barrier, and as a result, certain victims elected not to pursue the T-visa. Roxanne, an immigration attorney, told me about several clients who chose not to report their cases to law enforcement (and therefore go without certification), because they were fearful that the traffickers would retaliate against their grown children living in their home country.<sup>48</sup> “They just didn’t want to take the risk, because the adult children were back in the home country and then the traffickers might know where they lived.” Nadia, a survivor of trafficking, told me that after she escaped, associates of her traffickers called her parents in her home country and threatened to kill them if Nadia did not pay back the money they claimed she owed. She did not come into contact with law enforcement

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<sup>48</sup> Victims of severe forms of trafficking may apply to bring certain relatives, including minor children, spouses, and parents and minor siblings (if the victim is a minor) to the US under derivative T-visas. Other relatives, such as grown children, do not qualify for the derivative T-visa.

until several years after she escaped the trafficking situation, but she questioned if she would have trusted any protections that they could offer. “I don’t know how things would have played out had I met all these people [law enforcement and service providers] ... when my parents were still threatened. ... I don’t know. ... I truly believe that there was absolutely nothing they could have done for my parents in Russia. ... Once they said, ‘We have people on the ground.’ I said, ‘Where my parents live? Even if you have guys in Moscow, St. Petersburg, this is nowhere near there.’ Don’t be ridiculous, telling me you have some FBI agents in Russia was going to save my family.” Roxanne reinforced this point. “I think there is this perception that once people cooperate with law enforcement, it's kind of like what you see on TV ... the Witness Protection Program, and there's no protection, and so they are really really vulnerable.”

A number of my informants emphasized the contradictory notion of forcing undocumented migrants (who are afraid of being deported and may come from countries where law enforcement is corrupt) to cooperate with law enforcement to receive benefits and services. Sheila, the director of a trafficking services program, asserted, “I think this victim cooperation piece is a nightmare. To have that requirement at the same time that immigrants are afraid to reveal themselves in any way, how can you expect this to work?” Rocio, a survivor who had been trafficked into forced prostitution, told me about how scared she was of law enforcement. “I was afraid at any moment they would arrest me ... and I thought they were going to deport me. ... I knew they could deport me for the kind of work I was doing.” Rocio was identified during a law enforcement raid, so her options were to cooperate or be deported. While she ultimately agreed to cooperate, those victims identified through other channels have a

greater incentive to remain under the radar and avoid any contact with law enforcement.

Service providers reported that fear and trauma were the biggest barriers to victim cooperation. In some cases, criminal justice authorities wanted to pursue a case, but the victim was not ready or willing to cooperate. Indeed, victims were often re-traumatized by re-telling their story to law enforcement. Ella, an immigration attorney, told me, “We've had people walk away.” Other providers told me that up to fifty percent of their clients would disappear, because they did not want to deal with law enforcement. This meant that the victims would remain undocumented and have no access to services or benefits. Jarrah, an immigration attorney, told me that a lot of victims were coming forward, but disappeared once they learned of the cooperation requirement. “Our worst-case scenarios are the ones where they come in, we tell them about our services, but the US government provides so many restrictions on how they can get these services – like cooperation, not being able to work in prostitution, and not being able to leave the country, that clients disappear ... because it's too overwhelming and there's too many restrictions on how to get the status.”<sup>49</sup> Ella believed the cooperation requirement was detrimental to her clients' well being.

I dread working on cases when there is an investigation. I dread it. I hate it. I don't like dealing with law enforcement. My clients don't like dealing with law enforcement, but in order to get the T-visa you have to cooperate with law enforcement. Of course, on the other hand, when it's a successful prosecution or an investigation that's really done right, it's a win-win for everyone, except for the trafficker [laughs]. But when it's this ... weird tug-of-war dynamic over law enforcement trying to get their claws into your clients, and the client is too scared to cooperate, like trying to find a balance in those situations has been really negative and really stressful.

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<sup>49</sup> During the period of my fieldwork, the government had not yet released regulations on the process for victims transitioning from T-Visa status to legal permanent residency (allowable after three years according to the TVPRA). As a result, immigration officials warned victims that they may not be allowed to re-enter the US should they leave the country temporarily to visit family.



Jarrah noted, “All the clients, even if they end up cooperating, are terrified of cooperating. None of them want to, but the ones that really want that immigration status do it, because they know that that's the only way ... they're going to be able to get immigration status.” Indeed, the promise of immigration status served as a “hook” to persuade victims to cooperate in law enforcement investigations.

While some victims were reluctant to interact and cooperate with law enforcement, others were highly motivated to assist in punishing their traffickers or to access immigration benefits. Yet criminal justice authorities, and law enforcement agents in particular, were often uneven gatekeepers in terms of granting CP and endorsing victims for the T-visa. Despite their primary goal of investigating and proving crime, law enforcement agents took on the additional role as arbiters for federal benefits and immigration status; the decision of if and when to endorse victims was highly discretionary and subjective. While the providers I spoke to viewed these immigration remedies as essential to the law, every single one emphasized the enormous obstacles, and often lengthy process, for victims to gain certification, and with it immigration status, benefits, and the ability to work legally in the US.

As the most immediate source of immigration relief and benefits, continued presence hugely contributed to stabilizing undocumented survivors who recently escaped a trafficking situation. At a Congressional hearing I attended, Marcy Forman, the Director of the Office of Investigations at ICE, touted continued presence as part of their victim-centered approach to trafficking (October 31, 2007). Service providers viewed CP as hugely important for those victims who received it, but the majority of their clients never obtained CP despite provider efforts to advocate for it; providers

viewed the process as anything but victim-centered. Service providers continually told me of their difficulties getting law enforcement to respond to requests for CP for their clients, or even to interview victims to assess the viability of a case to see if they might qualify for CP. Fran, a federal grants administrator, confirmed this lack of response from law enforcement as a national problem. “Some of our victim service providers say they spend weeks or months trying to get someone from law enforcement to come in and interview a victim, that the victim is willing but they can't get law enforcement there.” Without even an interview with law enforcement, clients experienced long delays in certification and consequent benefits; they would never receive CP. Ella, an immigration attorney, acknowledged the competing goals of law enforcement and service providers, but questioned the lack of concern for victim needs. “It's like we all have jobs to do, and I understand that their job focus is obviously very different from mine, but having less of a tolerance for bullshit and excuses might be helpful.” She continued, “I hear a lot of other attorneys working on trafficking cases here in New York being very frustrated with how clients were treated and how CP is not issued when it's supposed to be.” Audra echoed this sentiment. “I certainly agree that there are different priorities and limited resources that they have available to them ... and I acknowledge that they have a different goal and agenda than my own, but I feel like that's not an excuse for refusing to do even the minimum in terms of responding to the minimum needs of our clients.” For Ella's and Audra's clients, an interview with law enforcement was the difference between potentially immediate immigration status and the ability to work legally in the US and having to wait months or years to access these

same benefits. Without even an interview to assess whether law enforcement viewed the situation as trafficking, the road to documented status became longer.

A number of providers told me that even when victims were actively collaborating in an investigation, law enforcement agents were still often reluctant to grant, and would sometimes withhold, CP or refuse to sign a T-visa endorsement. This was an issue that went beyond New York City, as provider after provider cited examples at a national conference I attended. While nearly every provider I spoke to complained about the obstacles to getting CP for clients, when I asked Jim, a federal agent, how long it takes to get a victim CP, he told me, “As soon as a victim is identified, the CP paperwork goes in so they can get services, and the NGO can handle it.” Speaking at a national conference, Gwen noted, “We don’t have to have a trafficking prosecution to grant a victim CP; we do have to have an investigation.” Providers told a different story. Bridget, the director of a trafficking services program, told me of law enforcement, “I would say the obstacles are refusal to give continued presence, even when a client is actively working and helping them with a case. That’s for me the number one hurdle, terrible thing.” Providers described clients actively participating in law enforcement investigations but not receiving CP in return. Bridget continued, “We have a client who was driving around in a car pointing out places her traffickers lived, identifying people left and right, like you’d think she should be on the payroll over there as much as she was helping them.” But the client never received CP. Jarrah, an immigration attorney, gave me a similar account.

The most frustrating part of working on these cases ... [is] we’ve done extensive intakes, the person is clearly trafficked, we will take them to ICE, even to meetings of two hours each, all this information. ... We are giving phone numbers, we’re giving addresses, we’re giving money orders, we are getting

photographs, all this information, and the ICE agent will look at us and say, ‘I personally believe that this person is trafficked, but I have to corroborate all of this person's evidence or information and, we need other witnesses, or we need to go to these houses,’ and then the case just gets lost, and they drop the case and they don't do anything about it, and we have to make a gazillion phone calls to try to get ICE interested.

In practice, if the case was not prosecuted (for whatever reason), the victims did not receive CP.

Most victims, even after agreeing to cooperate in a law enforcement investigation, had to wait out the long process of applying for a T-visa. Without CP, victims remained “pre-certified” until their T-visa was approved (see Figure 4 for a summary of protections available to pre-certified and certified victims). This could mean months of waiting without any legal immigration status in the country, and consequently no ability to work legally or access benefits – a significant and lengthy burden for victims. Nora, a case manager, reflected on how imperative certification was for her clients. “To help them get these documents that identify them ... that's so empowering when you're able to do it, and it's so disempowering when you're not, because you have these clients who continue to live kind of underground and ... having to ... wait out the long process of applying for a T-visa.” During my year of fieldwork with one NGO, there were clients who entered the program shortly after my arrival who still had not received their T-visas upon my departure. These survivors continued to work undocumented, because they had no other options to support themselves. The drafters’ goal of victim protection was not being met in a consistent or timely manner.

	<b>Pre-certified Victims</b>	<b>Certified Victims</b>
<b>Social Services</b>	✓	✓
<b>Federal Benefits</b> (Medicaid, Food Stamps, cash assistance)		✓
<b>Immigration Status</b>		✓

**Figure 5: Protections Available to Pre-Certified and Certified Victims**

Sheila, the director of a trafficking services program noted, “The worst thing we can do to survivors is make them wait to work. I've never known such a motivated group of people who want to work and are determined to work.” Pre-certified clients still had needs for food, shelter, medical care, and while NGOs, with funding from grants, were able to assist with some of these needs, undocumented victims lingered in a precarious situation. Melissa, who works for a federal grant program, noted, “[when] the clients remains pre-certified ... they are not able to work, and they don't have access to public benefits. ... Health care is a nightmare when they are not insured and don't have access to Medicaid, and so that is a gap that causes a lot of other gaps.” While some victims sought out jobs in the informal sector, others were too afraid of being deported to work without a permit. Nora emphasized the disparities between certified and non-certified clients.

You can ... see ... the second class citizen thing with clients who aren't certified and those who are, because you have all these legal documents that ... put them on the map for everybody in the community who employs them, who provides medical care, who ... they might ... open a bank account with, versus the clients who don't have any of those documents, still may have suffered a severe form of trafficking and may not be able either to convince [the government] of that or are in the process of getting all of that ready. And there's all these things that they really need that they can't get in the same way or with the same ease that other clients have.

Certification became one more bifurcation in the process of implementation.

Applying for the T-visa had hurdles of its own, many of them similar to CP. In some cases willingness to cooperate was sufficient for victims to receive an I-914B; even if law enforcement chose not to pursue the case, the agents still agreed to complete the endorsement in support of the victim's T-visa application. However, providers recounted a shift away from this stance initially taken by law enforcement following the passage of the law, toward a more stringent standard for endorsing victims based on whether corroborative evidence was available and prosecution possible. While the law does limit CP to those victims needed for a criminal investigation, the T-visa only requires willingness to cooperate. However, law enforcement often used the same criteria for completing an I-914B as they did for granting CP. While corroboration is required to prove most crimes, victim benefits are not generally contingent upon it. Jarrah, an immigration attorney, noted, "In the beginning, when I first started ... law enforcement was a lot more interested in the trafficking cases and actually getting clients certified than they are now, so I think it's been kind of a negative turn of events." While law enforcement personnel emphasized how important victim cooperation was to identifying additional cases, they often shrugged it off if it did not serve their purpose. Rather than endorsing any victim "willing to assist in every reasonable way," law enforcement tended to endorse I-914Bs only for those victims with a prosecutable case. As a result, victims were faced with additional delays in approval of their T-visa applications and consequent benefits eligibility. Jarrah told me,

We do not understand why, because, under the law, a trafficked person just must abide by reasonable requests for cooperation, and 'reasonable' is kind of subjective, but if our clients are saying that 'I'm willing to cooperate as far as ICE or FBI or the AUSAs want to take this case, I'm giving you all this information, I'm here, I'm ready to do whatever it is they're asking me to do,' to me that is cooperating with reasonable requests for cooperation. And these

clients ... they're going to these meetings, they're offering up all this information, and then ICE or FBI or the AUSA is actually requesting a stricter standard than what the law requires.

She added, “We've actually had one of the ... division heads ... say to us ... ‘We've got too many cases coming in. Look, the requirement for us is that a trafficked person must have an idea of where the trafficker is, preferably in the United States, and the trafficking cannot have happened over five years ago.’ Well, that doesn't fit into most of our clients. Most of our clients, it takes them, especially when they're trafficked into sex work ... we are averaging five to ten years before they come out and tell anybody that this is what happened, so that's a huge problem.” Even if these victims were willing to cooperate, law enforcement agents were generally unwilling to accept the cases, and, thus, unwilling to endorse them for the T-visa. Criminal standards of evidence were getting in the way of survivors accessing victim benefits.

NGO service providers acted as mediators between their clients and state actors but had little power to change law enforcement practices. Jarrah, an immigration attorney, wondered, “What are these people supposed to do if ... a law enforcement agent doesn't want to help our clients? What do we do?” I sat in on one meeting between a victim, Camille (who had been trafficked into domestic work twice), and her case manager, Sadie. They had called the Department of Justice hotline to report what had happened to the victim and said she was willing to cooperate.<sup>50</sup> After several months of waiting, unable to work because she was undocumented and at a virtual standstill with her life, Camille inquired of Sadie, “Why don't they believe me?” Her impression was that since the government had not expressed interest in her case, they

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<sup>50</sup> The Department of Justice runs a trafficking hotline, which victims and service providers can call to report cases of trafficking. Generally a staff member conducts an intake by phone and then the case is referred to a prosecutor to assess and determine viability of the case, need for further investigation, etc.

must not believe her story. Audra, an immigration attorney, noted, “The Trafficking Victims Protection Act, when it first passed, everyone was really concerned ... about survivors’ willingness and comfort in talking to law enforcement. And obviously that’s still a problem, but now the problem seems to be getting law enforcement to cooperate with the clients, and that’s an additional hurdle that they shouldn’t have to go through.” She continued, “Even making that step is so huge and then to be practically slapped in the face by law enforcement who is like, ‘That’s not a trafficking case, and we’re not going to help you’ or just dragging their feet and then not being as responsive for whatever reason.” Service providers and survivors were frustrated when they went out on a limb and made the decision to cooperate with law enforcement but received no response or validation. Audra continued by telling me what she needed from law enforcement to move forward with a case. “I perceive law enforcement’s role as ... taking the report down, taking the facts down and then ... reporting it to the local AUSA or the DOJ. ... If they don’t want to take the case on, fine, but then it’s their responsibility to say ‘Yes, client X met with me on September 1, 2007. She reported these facts,’ signed John Doe. That’s what I need, you know?” Having this signed endorsement greatly sped up the T-visa application process.

Providers often reported federal agents telling them that a particular case was not trafficking, despite their strong assertion that the victim fit the criteria for a VSFT. Conceptions of “what counted” as trafficking and differences between criminal and victim definitions permeated implementation and often contributed to discord amongst professionals working on different pieces of the law. While service providers believed meeting the VSFT definition and being willing to cooperate should be the standard for



granting CP, law enforcement personnel used adequate evidence to prosecute a criminal case as their criterion. For example, Gwen, who worked in federal law enforcement, framed lack of law enforcement response in terms of lack of evidence.

“Nongovernmental agencies only have the story of the victim. That's it. When an investigative agency gets involved, they are able to look at cell phone records, work records, entry and exit records from the United States, who they are talking to on the phone ... when they were at certain places, and so we have access to huge amounts of information during our investigation that the NGO has no idea about, and so there is a reason that the agents probably have not done the continued presence, because they are not sure it's a trafficking case.”

Whether law enforcement had evidence to prosecute a case or not, victims were forced to submit T-visa applications without an I-914B endorsement and thus hope for the best. Rhada, an immigration attorney, complained, “There's problems with how the cooperation element gets interpreted in that all you can do is be willing to cooperate, but law enforcement sees it as being committed to an ongoing prosecution or ongoing investigation.” She added, “I think they are looking at everything as a standard of evidence to get a conviction, whereas we are just trying to show cooperation. We're showing that ... there is a reasonable belief that this person is trafficked and they are willing to cooperate. We are trying to get documentation from them that someone has cooperated, and they are trying to say, ‘There is not enough evidence,’ which is not relevant at all to someone's immigration application.”

The law does limit CP to those victims who are necessary to an ongoing investigation or prosecution but willingness to cooperate is sufficient for the T-visa,

meaning at times service providers were expecting too much regarding CP and that law enforcement were often overly discriminating in granting T-visa endorsements.

Curiously, while law enforcement's main objective was to investigate cases, they held a huge amount of authority over whether and when victims became documented; *criminal* definitions and prosecutorial standards of evidence became the primary gauge for endorsing *victim* benefits.

*"The agents are doing what the traffickers did"*

Law enforcement agents often used a carrot and stick approach with CP or the endorsement for the T-visa, sometimes withholding it indefinitely, and re-creating the control used by traffickers over their victims by coercing them to cooperate through false assurances. When it served their interest, investigators used promises of victim protection to elicit information from victims. Ella, an immigration attorney, told me, "Sometimes ... law enforcement will want tons of information from someone, and they'll be like 'Yeah, yeah, we'll get you CP,' and then they'll drag their feet on it, and it's very frustrating." Radha, an immigration attorney, noted, "It is problematic when we have clients who has been cooperating for months on end with this carrot and stick, [with law enforcement] saying that they are going to get continued presence, and then they don't get it." Nora, a case manager, told me, "I've had one ... case that was brought to me by ICE. They said that they were going to help her [the victim] out, that she had told the truth ... and they said that they had written an application for her certification. But then ... they just dropped the ball, and I called and called and called and called, and it wasn't a priority for them to fix it."

In a bizarre reversal of roles, law enforcement agents made decisions that affected victim benefits and immigration status while service providers and victims collected and provided evidence of trafficking. Sadie, a case manager, lamented that law enforcement would ask victims to provide corroboration for their own trafficking. “The burden of proof shouldn't fall on the clients. The victims shouldn't be doing investigating, and the lawyers shouldn't either. Law enforcement are asking clients to plead their case.” One survivor, Camille, spent months cooperating with law enforcement, but never received CP. One morning, two months after she agreed to cooperate with federal authorities, I sat in on a call with Camille, her case manager, Sadie, and the agent assigned to her case. When Sadie inquired of the agent if any progress had been made on getting CP for Camille, the agent responded, “No,” explaining that since no “official” investigation was underway, nothing could progress in that department. Even though Camille had already participated in two day-long interviews with the agent and was regularly providing names and addresses of people relevant to the case, the agent maintained that she considered this “information gathering” as opposed to an “investigation.” Camille was torn about staying in the US to pursue her case, but her family encouraged her to wait out the process and seek justice against her traffickers. As the “information gathering” stage of her case dragged on, Camille began to run out of options and ways to remain in the US without CP. Her stay at the NGO-affiliated shelter was about to expire, and Camille was hesitant to work without a social security number. All the while, the federal agent declared that CP required “too much paperwork.” As the process proceeded, and the agent continued to ask Camille to remain in the US to provide information and testify before a Grand Jury,

Camille told me, “The agents are doing what the traffickers did. They just say, ‘Stay a little longer, stay a little longer.’” Clearly by the time Camille testified before the Grand Jury, an investigation was underway, and yet she received none of the benefits to which she was entitled under the law. In this case, the agent’s inexperience with trafficking cases was a key factor. She was not well versed in completing the “lengthy” paperwork required for CP or the needs of victims.

Agents also used threats when a victim did not “cooperate” to the agent’s satisfaction. During a staff meeting I attended at an NGO, Nancy, a case manager, reported on a client who was supposed to receive CP and her work authorization card from the federal agent investigating her case. When Nancy spoke to the agent about getting the documents (I was also present for the phone call), he told her he might not give the client CP after all. He said the victim had not disclosed to him some (seemingly irrelevant) details about her health. Nancy reported that the agent said this made him think he should not trust the rest of the victim’s story, and “maybe she’s not going to get an EAD [work authorization card]; maybe the next thing she’ll get is a one-way ticket back to [her home country].” Withholding this documentation was a way to assert control over the victim and replicated the power dynamic of trafficker and victim. In this case the agent could be seen as the “good guy” or “rescuer” for providing these documents in exchange for the victim’s cooperation, but the tactics were not dissimilar from those used by the trafficker.

Law enforcement agents would also withhold CP because of the type of work the victim was doing. Bridget, the director of a trafficking services program, described a situation in which law enforcement agents refused to grant CP because the victim had

re-entered sex work of her own volition. “One of the reasons they can't get CP is when they start working on the investigation, the cops say they basically don't deserve it, because you are still a sex worker, so we don't really believe that you are a victim. They can't conceive of the fact that a person could have been trafficked, had left and then continued to work for themselves in sex work. And that has been, I think, a huge obstacle for them.” For many victims who could not work legally, sex work was their only option for a living wage. Were they to receive a work permit, they could stop, but law enforcement viewed this as a deal breaker.

Bridget noted, “There are so many problems with continued presence. It's like a child begging a parent for candy ... and they [law enforcement] have all the power ... and it's so much faster and easier for them to get the ball rolling for continued presence. ... Continued presence can take as little as two weeks, maybe a month. A T-visa, from the minute you send it could take as long as four months before you get a response [and much longer to prepare and get final approval], and four months is a long time to not see a doctor, to not ... get counseling or whatever other benefits you need.” She added how much effort some clients put into cooperating, often at great personal risk, without getting the immigration status they so desired. “They might've gone through all of those hoops and still not get anything for it. And that's really really hard for our clients, because I have clients who will say, ‘But what did I do wrong? I did what they asked me, why won't they help me?’ And it's really heartbreaking to have to tell them that they have to wait a little longer, because I'm still trying to get a response from any given agent.”

### *Lack of Standards Leads to Lack of Protections*

Even those in the criminal justice field were not certain of the requirements for CP. Lynn, a federal prosecutor, noted that victims have no control over whether an investigation proceeds, but she was unsure how this should affect certification.

I think technically what is required is if the person is a victim of a severe form of trafficking, and they're willing to cooperate in, I think in a federal investigation or prosecution. What does it mean though if there isn't going to be an investigation? Does that mean they don't qualify? Obviously, on its face, that seems unfair, because it's not their fault there won't be an investigation. The reason there may not be an investigation is not necessarily because you don't believe them; it's because there's no good corroboration, we can't bring a case, we can't find the guy, she can't identify the person or whatever it is. ... In fact, ICE or FBI will probably take the view of, hey listen there is no investigation – they can't cooperate, therefore they can't qualify for CP. That doesn't bar them though from qualifying for a T-visa.

Lynn's comments highlight a general lack of clarity surrounding the requirements for CP, the subjectivity involved in making determinations, and how victim certification is tied to the quality of evidence or viability of a criminal prosecution. My informants repeatedly emphasized that there was no standard for granting CP or signing off on the T-visa. As Lynn told me, "All this stuff about the victim benefits and what qualifies is so ill-defined ultimately. ... There are no strict rules or qualifying criteria that can be applied ... across the board. ... I think every office ... every agency is different on how they apply this." She told me her personal views on endorsing victims, highlighting how discretionary the decision is.

Some agencies will take the view that even if you believe them, if there's no way to bring a case and there's no way to corroborate ... that they're a victim of trafficking, you may not even endorse their T-visa. ... They can still get the T-visa without the endorsement of the agency, but it's a whole lot harder. ... My view is if we believe they're a victim of trafficking, even if you can't bring a case, fine they haven't gotten CP, then you maybe should at least endorse them for purposes of that. ... Congress hasn't given us enough guidance. ... I can't argue that ICE is wrong, but I do believe that sort of a more humanitarian point

of view would be to give them the T-visas. ... The truth is that people are interpreting these statutes to mean that if you can't prosecute, you really can't certify. I think that's probably wrong for the purpose of the T-visa and probably right for purposes of CP.

Many providers disagreed with what they perceived as law enforcement's overly strict standard for granting CP or T-visa endorsements. Radha, an immigration attorney, attributed law enforcement's high bar for granting CP to not wanting to take responsibility. "Everybody wants to cover themselves; they don't want to be handing out documents that grant illegal immigrants status just like candy, so they create obstacles." Nora agreed. "There is ... an element of self preservation and not wanting to sign off on anything that could possibly come back to haunt them somehow, such as a case being somehow connected to terrorism and then that impacts the agent's career." Will, a federal agent, told me his hesitation to grant CP stemmed from a fear of being liable if the victim committed a crime. He added, "We're not a social welfare agency; we're an investigative agency" as a justification for not endorsing victims for CP. Audra noted, "It's just really challenging, because I'm still getting the same kind of responses from law enforcement saying, 'Oh, well we don't want to take on the responsibility of ... opening an investigation or writing even a letter,' because of I don't know why. They don't ever get to the point where they explain why. To me it sounds like it's too much paperwork maybe, or I don't know." Marina, a federal victim services liaison, noted, "Some agents just don't know what to do in terms of CP." She added that CP can often help a case, and she tries to use the TVPA to explain to agents the benefits to which a victim is entitled. Pete, a federal criminal justice administrator, noted that law enforcement should not be granting CP selectively. "We don't want law enforcement to have a group of victims but only want three of them to testify and receive CP. The goal

is to get all the victims CP and T-visas.” This point of view was not reaching agents on the ground and victims suffered because of it.

Some criminal justice personnel were more willing to assist victims, but clearly perceived signing off on endorsements for victim certification as secondary to their investigative and prosecutorial work. Dean, a federal prosecutor, spoke highly of NGO service providers, but emphasized that their priorities were often different. “We really couldn't do the cases without them. ... I think where we have breakdowns are timing – they want things to move quickly. We don't always want things to move as quickly. ... We are doing a lot of different things that aren't related ... specifically to their client's T-visa application. We're subpoenaing the records, we're investigating the defendants, we're trying to identify the victims, we're trying to corroborate. ... I mean, I'll give you the I-914B if you cooperate, but that's really not my main goal to fill out an I-914B. My main goal is to prosecute the defendant.” While Dean was willing to provide T-visa endorsements for victims, he is also dismissive of the urgency of accessing immigration relief for victims.

At a national trafficking conference I attended, service providers questioned a high-level prosecutor about the seeming arbitrariness of granting continued presence. The prosecutor responded, “The examples you are giving seem so outrageous. It only serves law enforcement to grant continued presence, because it helps the case.” Of course, helping a case only matters if law enforcement believe a case exists and is prosecutable. He added that continued presence should be granted immediately to anyone assisting in an investigation and that if it was taking more than a month that he wanted to hear about it. While this official seemed well-intentioned, interviews with



professionals in service delivery and at various levels of government indicated that there was a disconnect between policy intentions and how policies were actually being implemented. As one case manager stated at a meeting of local service providers, “This is more an issue of implementation than a legislative issue.” Since the law was unclear on requirements for granting continued presence and no regulations existed to offer guidance to law enforcement, decisions were left to the discretion of individual law enforcement personnel.

*“We’ve given up on law enforcement”*

When law enforcement was uninterested in a case, failed to grant CP, or sign off on the I-914B, NGOs proceeded on their own. Nora, a case manager, noted that law enforcement took on less than half of her clients’ cases. “The others just are sort of still waiting for a T-visa, but law enforcement never had any interaction with them or never took interest in the case. They interviewed them and said, ‘No, we’re not going to work with this.’” If law enforcement failed to document a victim’s willingness to cooperate, the T-visa process was much more difficult. Audra, an immigration attorney, critiqued law enforcement’s unwillingness to provide documentation of victim status. “If they are not willing to open an investigation that’s fine, but ... they can give the courtesy of submitting some kind of letter saying that cooperation was made. That’s all we really need at that point. And I think that’s a more than fair exchange.” Bridget, the director of a trafficking services program, took a more matter of fact approach. “They [law enforcement] haven’t proceeded with most of our cases ... so we don’t work with them a ton, except for the initial, like trying to get [an endorsement], they refuse, they don’t want to talk to us, and then we do the T-visa without them.” Radha, an immigration

attorney, noted, “There are a lot of cases that don't go smoothly, because we bring them to federal law enforcement, and law enforcement just drops the ball, either by saying that they don't see it as a trafficking case or saying that they don't have the resources to investigate, and then at that point you've got somebody who has shown a willingness to cooperate, but we have no documentation for it, so we create our own documentation.”

Without a law enforcement endorsement for the T-visa, service providers were forced to be creative. Jarrah, an immigration attorney, told me how she documents victim cooperation on her own to submit in place of the I-914B with the T-visa application. “We've actually given up on them [law enforcement] ... what we've actually done is say, okay, well we are going to call law enforcement. ... We're going to tell them the story, and if they're not interested ... we do our own legal affirmation of all the times we tried to contact them, and we're applying without law enforcement, because we just don't know what to do.” She told me about the experience she had with one client.

Our worst-case scenario ... she ... was trafficked by someone she believed would be her boyfriend and take care of her and love her, brought here, forced into prostitution and then had a son by the trafficker; she was forced to leave her son with the traffickers. We took her to law enforcement. The traffickers are still here in the US; she still runs into some of the brothers and sisters of the initial recruiter in the streets to this day. She gave over all this information, and they're [law enforcement] just not interested, and the biggest worry is that her child is held hostage in [home country]. She wants the child here, and without law enforcement involved in the case, it is going to be extremely difficult to get that child out of [home country]. And that's been our worst-case scenario. And we recently applied for a T-visa without law enforcement certification, and so we're waiting to see how that's adjudicated.

### **If It Doesn't Count as Trafficking, Do the Victims Get Counted?**

While many have questioned the estimates of the number of trafficking victims in the US (especially compared to the number of victims identified) circulated by the State Department, a number of law enforcement agents, in particular, referred to the

numbers as “inflated” (US GAO, 2006). Jim told me, “I don’t believe any of the numbers.” Will concurred. “I can’t stress enough how inflated the numbers are.” While service providers agreed that there were methodological concerns about how the estimates were calculated, many also suggested that low numbers of identified victims were partly a consequence of law enforcement not looking in the right places and not recognizing or certifying the victims NGOs brought to them. Since the US government only collects data on the number of trafficking cases that go to trial and the number of victims who are *certified*, informants noted that there were large numbers of people who met the definition of a victim of severe form of trafficking but were never officially counted as victims; any victim who was not certified was not counted. Ella, an immigration attorney, noted, “There are clear numbers on how many people have CP and how many people have T-visas, but ... people who are too scared to come forward, who never could articulate what had happened to them, [are] not even going to a service provider.” She noted that many clients only came to her because they needed immigration help, not because they were victims of trafficking (though they were). Jarrah told me, “We’re helping a lot of clients ... but there is a larger number that we’re missing out on ... that they’re not getting the services that they need, and that’s a huge concern. And so cooperation is one area that we need to address. ... It shouldn’t be mandated. They should still be able to get the benefits just for being identified.” Lynn, a federal prosecutor, suggested that perhaps the solution was to certify more victims. “We should certify these people, because there’s a difference between how many cases we can bring and who actually qualifies as a victim.” The fact that law enforcement

agents were so reluctant to provide CP and T-visa endorsements significantly contributed to the low certifications numbers.

The process for obtaining a T-visa was often filled with obstacles, and not every victim who applied received one. Nora, a case manager, noted that having benefits and T-visas linked to law enforcement endorsement created hurdles for victims.

There is this limit in capacity of ... the types of cases that can be certified and prosecuted versus those that can't, and really what can minimally be done for those that aren't, and you hope it's the immigration route with the T-visa, but we're starting to see that there's major rigidity, that it has to have a law enforcement endorsement, or it has to reach this threshold of collaboration with law enforcement ... but I think that limits the number of people that you can really find and help, and it also doesn't really make the trafficking survivor in the front seat of their own process.

Since law enforcement's priority was to get a conviction, having them in control of victim benefits confused the process.

Providers reported that adjudication of T-visas (done by the Vermont Service Center of the US Department of Customs and Immigration Enforcement (USCIS)) often involved similar hurdles to obtaining CP from law enforcement. Even after law enforcement had signed off on CP or an endorsement for the T-visa, the Vermont Service Center would sometimes decline it. Ella, an immigration attorney, noted, "Sometimes they'll argue, like the FBI will certify people as victims of trafficking, and Vermont will come back and say that they're not." She added, "I find that on the sex trafficking cases, I tend not to get requests for additional evidence, because I think it's just more obvious." Providers frequently complained that Vermont Service Center employees were not well-trained on trafficking and would only immediately approve the most obvious cases involving sexual assault or physical violence. Jarrah, an immigration attorney, noted,

We joke about this. In our applications ... it is helpful if the client has a worst-case scenario. The application will get more easily processed, and it will go faster if there is physical or sexual violence. And so we really ask our clients, 'Did he beat you, did he hurt you, did he or she do this or that?' It does make everything go faster, and I think that is the lack of training and also the salaciousness in the news that it's not trafficking unless she or he was beaten to a pulp. ... So there's just a lack of education and a lack of knowledge about how scared a person can really be without being physically violated.

Providers would often seek out other immigration remedies for their clients that they viewed as faster and easier. The most common alternatives were the U-visa (a visa for general crime victims) and VAWA self-petition (for women who are married to US citizens or lawful permanent residents and are victims of domestic violence), but other survivors sought asylum, applied for a Green Card through their spouse, or applied for Special Immigrant Juvenile Status (SIJS). In other cases, victims sought no immigration remedy and instead chose to be repatriated to their home country or remain in the US undocumented.

Another concern in terms of victims not being identified and counted was those who were deported rather than receiving the benefits to which they were entitled as victims. Sheila, the director of a trafficking services program, referred to several cases in which she believed law enforcement had deported potential victims before investigating if the cases involved trafficking. "It's not just because they didn't know. It used to be you could say, 'Oh well, they didn't know what to ask,' but, 'Hey, this is too much work, it's a headache'? These cases are a headache for everybody. They're hard. What do you do with these people? How do you take care of them?"

If law enforcement was unable to get the full story, the victims were often deported. As discussed in Chapter 4, persistence was key to identifying victims. Molly, a federal prosecutor, told me, "The first time you interview a victim, you never get the

truth.” Jim, a federal agent, noted, “We’ve never had a girl come in and say this is what happened. You’ve got to pull her teeth out to get the information. They are reluctant.” He told me that during the Carreto case, he and his fellow agents interviewed the women five to six times (with the women always saying they were working voluntarily) before they opened up about what had happened to them. Jim also told me that in many instances he thinks a victim was trafficked, but he or she will not admit it. “We’ll get the NGO to talk to them, and if they still don’t come forward, they will be deported.” NGO service providers, as mediators between survivors and the state, worked hard to uncover victims’ experiences and advocate on their behalf to law enforcement. In some cases, NGO providers believed that law enforcement agents were not consistent in giving them and potential clients this opportunity. Charlotte and Nancy told me about a case in which two of Nancy’s clients who had previously escaped had tipped off ICE to the whereabouts of their traffickers. Charlotte received word that ICE had done a raid, arresting one of the traffickers and detaining several women thought to be victims of trafficking. Charlotte offered assistance with the potential victims, but heard nothing back and was later told they were all deported before giving the service providers a chance to speak to them. Nancy told me that these particular traffickers had repeatedly told their previous clients to say they were working voluntarily. “They don’t understand how much time it takes for a story to come out.” In addition to not taking the time to get the victim’s story, law enforcement likely overlooked numerous cases meeting the VSFT criteria (who would be entitled to T-visas) but not the criminal definitions.

Several informants suggested that undocumented victims had good reason to be afraid of identifying themselves to law enforcement and being deported. At a national

conference I attended, one federal agent told the audience, “There is a lot of training in ICE, but there is no will to pursue trafficking. The focus is on forced removal. At the end of the day, this is what agents get recognized for.” Audra, an immigration attorney, agreed.

ICE thinks that they have addressed that tension by having specific task forces [and] ... units specifically focusing on trafficking. And I’ve had agents explicitly say when they interview clients, ‘Oh, you can tell me everything; I’m not here to deport you.’ ... And as much as I appreciate them saying that, I don’t wholly believe them, because even if that agent might not do so, they still work for an organization that is about deporting people, and ... to have that kind of power and discretion is dangerous ... because that’s what makes people reluctant to come forward in general.

As Sheila, the director of a trafficking services program, noted, “How can you convince people who look at the news and see ICE doing a raid and sending innocent people back to a country that they haven’t been in for umpteen years, splitting families apart, and then the next day tell them that ICE will help them?”

During the end of my fieldwork, ICE launched a public awareness campaign placing posters on subway marquee and bus shelters with the image of a seeming trafficking victim’s face and the words, “Human Trafficking. Sexual Exploitation. Forced to work against my will. Hidden in Plain Sight,” followed by a phone number to report possible trafficking and the ICE logo (see figure 6). A related public service announcement posted on the ICE website, ends with the text, “If you see me... You can help me by calling” and listing the ICE hotline and logo (ICE). “ICE is asking for the public's assistance to help us recognize and identify the victims of modern-day slavery who are in our midst,” said Miguel Unzueta, special agent in charge for ICE investigations in San Diego. He added, “ICE is committed to giving trafficking victims the help they need to come forward, so we can put an end to this reprehensible form of

modern day slavery,” making no reference to the inherent contradiction posed by asking the public to report undocumented immigrants who may or may not have been trafficked to Immigration and Customs Enforcement (ICE).



**Figure 6: ICE "Hidden in Plain Site" Campaign Poster (Image Courtesy of ICE)**

### **NGOs as Experts**

Service providers often attributed the critiques they made of law enforcement – deporting victims, focusing investigative efforts on forced prostitution, not endorsing victims for the T-visa, among others – to a lack of training and education. Jarrah noted that if service providers had more opportunities to train law enforcement, identification could be improved. “The problem is that a lot of service providers are not even ... able to do the trainings [for] them. I think they're being trained by maybe other government



agencies or elsewhere, which is a great start, but I think they really need to get trained by service providers and really hear what's actually happening to victims and what kinds of clients we're getting." She added, "We need to change the paradigm ... in their minds as to what exactly is a trafficked person, and then also train them all in not just looking always towards trafficking into sex work or trafficking and prostitution." These critiques were not limited to law enforcement, and NGO providers often voiced the need for training government bureaucrats, such as Vermont Service Center employees, refugee benefits administrators, court employees, staff at Children and Family Services, and others. NGO providers viewed themselves as specially positioned to provide training to other professionals in the trafficking field, and many spent a significant proportion of their time conducting trainings.

As mediators between victims, criminal justice authorities, and the state, service providers possessed specialized knowledge about victims and their needs. Charlotte, the director of a trafficking services program, told me how she viewed her position. "I think it's a really important role because we are the closest thing ... that comes to the survivor's voice ... so I see our role as really taking what we've seen in the implementation of what's going on, how it works and how it doesn't work, and being able to inform future programming. And I would like to think that we're doing it in a way that best serves the interest of clients." Indeed, these service providers were interacting with victims on a daily basis and listening to their experiences and the types of meaning and value they ascribed to them. Service providers became a type of conduit to survivor experience.

### **“The best it could be”**

While many cases led to tension and divisiveness among anti-trafficking professionals, at times NGOs and criminal justice authorities worked astoundingly well together. One case that many informants cited as a best case scenario was the Carreto case. The case became a “textbook example” of multi-sector collaboration, but since few cases met “textbook” conditions it was a difficult model to replicate. The case involved two main co-defendants, Jose Flores Carreto and Gerardo Flores Carreto, who forced young Mexican women into prostitution in brothels throughout the New York City metropolitan area. Molly, a federal prosecutor, explained that law enforcement identified the case somewhat accidentally. “A lot of that was sort of dumb luck on how we found everybody, and some good work by the agents, but a lot of it was sort of accidental. ... One of our victims’ mother ... had been complaining to local authorities without success that her daughter had been kidnapped, and [she] ultimately made a complaint to the embassy in Mexico City. ICE ... had a photograph and a phone number and they were able to ... find a real address ... and ... saw her going to the Laundromat.” After identifying the first victim, the agents arrested ten individuals including the two Carreto brothers. The victims had been forced into prostitution through a combination of threats, coercion, and isolation tactics. Some of their children were being held in Mexico by the Carreto family, and the women had been coached to always say they were working voluntarily. Because the agents had resources available and took their time, the women gradually began to tell investigators what had happened. The agents and prosecutors were able to corroborate the women’s stories, collect

financial receipts and other evidence, and even traveled to Mexico and ultimately extradited the mother of the Carreto brothers.

Tess, a service provider involved with the case, explained that the case went well because of the dedication of the criminal justice authorities involved. Referring to all of the professionals, including local Assistant US Attorneys, Justice Department attorneys, federal agents, and others, she noted, “They were working on it without turf battles. . . . They really worked well as a team.” She added, “They involved us as service providers from the get go; they gave access to the immigration attorneys representing the women. They utilized a team, and that's the way it's supposed to be. The ICE agents were fabulous. . . . The case managers were fabulous, and the women trusted them [the case managers] so much they actually helped them find other victims of the case and gave permission to pass that on to the prosecutors.” Summing up why the case was such a success, Tess told me, “I think that that law enforcement used enough resources in their investigation, that they really valued information that [our] staff could give them, ICE did, everybody did. . . . It wasn't without its major bumps in the road, but I think you always have that because [of] people working on it who don't look at things the same way, but the end result was fabulous. So that was the best it could be.”

Ultimately, the two main co-defendants accepted a plea deal the day before the trial was scheduled to begin. While the survivors were not required to testify, several of them made victim impact statements at the sentencing, and the brothers were each sentenced to 50 years in prison, one of the longest sentences ever imposed in a trafficking case. Nora, a case manager, told me, “It was such a great day. Everything came together. All of the case agents were dressed to the nines, and service providers

were all in the room. Despite the politics that sometimes come between us, we were all one united front celebrating the outcome – 50 years.” Tess noted, “When it works, it works well. When a case works, like the Carreto case, it's great. But I don't think that's happening enough.”

While service providers and criminal justice authorities both referred to the Carreto case as a shining example of cross-sector collaboration, the factors that made this case so “perfect” shed light on some of the struggles inherent to implementation of the TVPA. First, the case involved forced prostitution, so there was no discrepancy between criminal and victim definitions, and it appealed to those agents who privilege sex trafficking. The conditions of the trafficking were such that it “counted” as a case for service providers and law enforcement agents alike. As a result, law enforcement was sympathetic to the victims and the NGO’s role in assisting them. Second, there was good evidence and law enforcement had the resources to collect it and wait for the victims to stabilize and tell their stories. Consequently, there were no struggles over CP or T-visa endorsements, and all of the victims received benefits and immigration status quickly and easily. This case became a model of sorts, yet very few cases met these ideal conditions. As a result, tensions over what constituted trafficking, which cases to prioritize, and which victims were worthy of benefits plagued implementation and created rifts between service providers and criminal justice authorities.

## **Conclusion**

Angela, a former federal policy advisor involved in the drafting of the TVPA, reflected on its implementation, “One thing that ... made me hopeful as I left is that the law would be implemented – I don't know what the right adjective is, because it

depends on your perspective – you could say in the way that it was intended, but then by whom? Or you could say in a good way, but then again, what does that mean? But I'll just go ahead and say in a good way, and it's what I mean it to mean.” Angela captures the ways in which meanings become entwined with the law and its implementation. While many of my informants agreed that the implementation of the TVPA has been “good” in certain ways, their comments also pointed to the intense frictions of working across sectors, with a multitude of professionals with different priorities and who rely on different definitions and conceptions of “trafficking.” As Audra, an immigration attorney, told me, “The TVPA is a great idea ... but ... because it's somewhat a lofty idea, and people only ... agree on the lofty ideas about it, rather than on the nitty-gritty details of what trafficking really entails, I think that's why we're having such a hard time at implementing and making sure that the law is as effective as it could or should be.” As a result of these discrepancies in the “nitty-gritty details,” large numbers of victims experienced long delays in protections and benefits, were denied the opportunity to seek justice against their traffickers, or were never counted as victims at all. The TVPA “in action” reflected the complicated intersections of the law “on the books” and the law “in their minds,” creating a vortex of tension, confusion, and ambiguity.

## Chapter 7: Conclusion

*Treating law as a cultural reality means looking at the material structure of law to see it in play and at play, as signs and symbols, fantasies and phantasms (Sarat & Simon, 2003: 13).*

*In a perfect world the TVPA would have been written to not have these different types of trafficking separated out (Nora, case manager).*

In this dissertation I have attempted to make connections between the TVPA as law “on the books,” “in their minds,” and “in action” (Schuck, 2000). Since trafficking first entered the legislative agenda in the US, the definition has been highly contested. Two broad coalitions advocated for two highly divergent conceptions of trafficking. One focused on the *type* of work (commercial sex) and the other on the *conditions* of work (by force, fraud, or coercion in all sectors). As a compromise the law covered trafficking into *all* sectors by force, fraud, or coercion, but drew attention to trafficking for forced commercial *sex*. I have attempted to illustrate how this dichotomous effort to draft the law, and the resulting bifurcation of the trafficking definition, shapes the ways in which various professionals think about trafficking and how their conceptions affect implementation. The division and divisiveness that went into the drafting continue to be a through line as the law is put into action.

My fieldwork in New York City serves as a case study of the impact of the legal bifurcation of the trafficking definition. While the players have changed somewhat since the drafting of the law, the core issues and disputes remain the same. The marking of “sex trafficking” as a special category along with the gaps between the victim definitions and criminal statutes have had serious implications for implementation. NGO service providers struggle to serve and advocate on behalf of those trafficked into

all labor sectors. Law enforcement agents define trafficking “by the statute,” but their vision is sometimes limited to one aspect of the dual definitions of trafficking and a privileging of trafficking into forced commercial sex. As a result, the cases that are recognized and prosecuted and the victims who swiftly access protections and benefits reflect Molly’s axiom that “things that involve sex are just different.”

Given the multiple actors, agencies, and agendas involved in anti-trafficking work, a cacophony of voices and narratives emerge regarding the meaning of trafficking, the value of different “types” of victims, and the goals of the law itself. While all are at work on “trafficking” and guided by the legal text of the law “on the books,” as I have described a plethora of additional factors contribute to each implementer’s vision of the law “in their minds.” As a result, the law as implemented “in action” is a translation of the law as written – reflecting its text (itself embedded with cultural anxieties, norms, and assumptions), but also accumulating cultural interpretive fragments along the way that emerge during implementation. The bureaucratic process of identifying trafficking as defined by the law involves a tremendous amount of subjectivity, and thereby moral, emotional, and cultural frameworks that contribute to the law “in their minds.”

While all working toward a common goal of addressing trafficking, varying objectives and motivations, as well as different aspects of the law, propelled diverse implementers. Although the goal of the law was to help victim and punish traffickers, profound gaps in understanding pervade implementation as service providers and criminal justice authorities strive to collaborate and perform their duties. In some ways implementation resembles the law “on the books” in that the text of the law governs

implementation practices; however, in other ways diverse interpretations seem far removed from the material text of the law and rather reflect its cultural text. While ostensibly the inclusion of trafficking into all labor sectors was a victory for those who advocated for a broad and fair-minded approach to the issue, the law's interpretation is very much skewed toward the sex trafficking only approach favored by abolitionist advocates.

While compromise was necessary to move anti-trafficking legislation forward, some of the most serious repercussions are only becoming apparent several years after the law's passage. Based on their symbolic successes with the TVPA, abolitionists have continued to advocate for an even greater focus on "sex trafficking" in the law. During the 2007/2008 legislative session, a coalition of anti-prostitution feminists and conservatives<sup>51</sup> lobbied to change the law to more directly connect prostitution and trafficking, and their efforts were so successful that the House passed a reauthorization bill which effectively eliminated the distinction between severe and non-severe forms of sex trafficking (H.R. 3887). The bill removed the requirement of force, fraud, and coercion from the sex trafficking definition (labor trafficking remained the same). In the proposed bill, the inoperative definition became operative, and anyone "moved into prostitution" was considered a "victim of trafficking." Opponents (including a national network of service providers and the Justice Department, among others) objected to the federalization of prostitution and argued that the changes to the law would detract from the most serious cases of trafficking – those involving children and force, fraud, and coercion. Ultimately, the Senate's reauthorization bill maintained the original definition of trafficking from the 2000 TVPA, and the House changes were dropped from the final

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<sup>51</sup> This coalition consisted of many of the same groups that lobbied during the 2000 drafting effort.



reauthorization compromise (William Wilberforce TVPRA, 2008). However, the proposed changes to the definition in the House bill illustrate how the intricately negotiated compromise definition of trafficking in the TVPA created room to further push the limits of the definition.

The success of abolitionist advocates in convincing the House to expand the definition of “sex trafficking” also highlights the lack of a united service provider voice. Feminist policy organizations and conservative and religious coalitions dominated lobbying efforts around the reauthorization, while the voices of service providers and victims were largely absent until the final stages of the reauthorization. Ella, an immigration attorney, told me that she vehemently opposed the abolitionist effort, but as service providers she and her colleagues had neither the time nor money to lobby Congress. “It’s important for ... lawmakers to hear the voices of the people who provide direct services ... What’s challenging is [we] don’t have any time to run around and do a lot of policy work. At the same time, some of the groups that only do policy I don’t feel ... effectively carry the voice of the victims.” Victor, a Congressional staffer, told me that many Congressmen and women did not have the time to untangle the competing arguments about trafficking and prostitution. In particular, the fact that the abolitionist coalition had the ability to bring together feminists and evangelicals was enough to convince many that the arguments presented by the abolitionist coalition must be widely shared.

They've got Gloria Steinem and the head of the Southern Baptists. And so the combination of moral suasion, familiarity, full-time lobbying, a big-ass Rolodex, and the ability to say ‘I will bring you people from both sides of the aisle,’ that's pretty effective. It’s even more effective when the other side doesn’t lobby at all and doesn’t show up ... and doesn’t raise a finger to defend themselves. So if it's Christians versus Lions, and the Christians just sit there and pray in the

Coliseum, then the lions are going to win. If it's Lions versus gladiators then maybe it's a little different, but ... the good guys haven't really stepped up and started fighting.

Another area in which abolitionists continue to push for a stronger link between trafficking and prostitution is domestic youth sex trafficking – the movement of US citizen youth into prostitution. While the TVPA definition of “severe forms of trafficking” includes any movement into prostitution in which the individual is under 18 regardless of force, fraud, or coercion, in recent years abolitionists have attempted to redirect anti-trafficking efforts away from international trafficking (of adults and children into forced commercial sex or labor) and specifically toward domestic youth sex trafficking. Some providers believe that including individuals moved into prostitution absent any force, fraud, or coercion in the “severe forms of trafficking” definition confused the issue, but they nonetheless recognized these youth as victims under the law. Ella noted, “With underage prostitution I have a bit of an issue with the conflation of trafficking and prostitution. ... I see where the overlap is, but then I think things get mottled and confusing when you talk about them being the same thing.” Even Dale, who directed a federal office devoted to child exploitation, told me, “The core issue ... is different for [domestic youth trafficking victims] than it is from the little girl from Moldova who was brought over here thinking she was coming ... for one thing and ended up being in prostitution. ... They're victimized in a core sense in the same way, and they were both prostitutes; they were both subjected to sexual activity that they shouldn't have been, but one of them may have thought they wanted it and the other one may have thought what the hell's going on, you know what I mean? It's just very very different.”

While a number of my informants were confused by the inclusion of domestic minor sex trafficking in the law, they nonetheless saw it as an important issue needing to be addressed. However, service providers were alarmed at abolitionist advocacy efforts to shift attention *away* from other forms of trafficking and *solely toward* domestic minor sex trafficking. During the course of my fieldwork, numerous people mentioned their fears about government funding shifting to domestic minor sex trafficking to make up for the low number of victim certifications. Sheila, the director of a trafficking services program, told me, “To me, it's not an either or on the two groups. It's like both need a lot of attention and we really need to look at this youth problem, these young girls. ... It's devastating to read about them and hear about them and so is the other worker exploitation, so I think that somebody said that teen prostitution is America's dirty little secret. ... I think all exploited labor is America's dirty little secret.”

Others questioned the motives of organizations promoting a focus on domestic minor sex trafficking to the exclusion of other forms of trafficking. Maribel, a service provider told me, “I find some of the work of ECPAT and Polaris [two organizations devoted primarily to domestic minor sex trafficking] anti-immigrant and racist.” She mentioned a cartoon included in an ECPAT-published report that depicted several women of color entering a door marked “foreign girls” while a caucasian girl walked away pouting from a door marked “American girls” with a “closed” sign posted (Friedman, 2005).<sup>52</sup> The cartoon emerged as part of the argument that American youth trafficked into prostitution were not receiving the same services as international victims.

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<sup>52</sup> The version of the report now posted online has eliminated the portion of the cartoon that included “foreign girls.” An older version of the report with the original image is available at: [http://www.tejiendoredes.net/documentos/152\\_whoistheretohelpus.pdf](http://www.tejiendoredes.net/documentos/152_whoistheretohelpus.pdf)

In fact, American citizens were already entitled to the same benefits, but the TVPA specifically made services and benefits available to international victims who otherwise would not be eligible for them because of their undocumented status. Over the course of implementation, it became clear that navigating the federal benefits system could be just as difficult for an American citizen with no support system as for an international victim of trafficking. The difference was that international victims had access to case management services specifically for survivors of trafficking, while domestic minor sex trafficking victims did not.<sup>53</sup> While this disparity was problematic, efforts to pit one group of victims against another raised questions about what types of victims are worthy of saving. Further, these efforts illustrate how easily the issue of trafficking can be re-envisioned to take on the characteristics of particular interest groups and the need for further research on the consequences of the TVPA and the transformative capability of trafficking as a social and legal issue.

This dissertation also highlights the experiences of trafficking survivors and the ways in which they assign meaning to their own experiences. Survivor narratives both transgress notions of the “typical” trafficking victim and reveal how the loss of free will cuts across all trafficking. These narratives call into question the assumptions about the privileged position of “sex trafficking” and reveal the aspects of trafficking that survivors themselves assigned the greatest meaning: isolation, control, deceit, fear, and threats to their families. Yet the intersections between the demarcation of “sex trafficking” in the TVPA, its elevated status in the minds of law enforcement, and its domination of investigative efforts on the ground are all clear examples of the ways in

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<sup>53</sup> The 2008 TVPRA authorized funds for US citizens; however, Congress has not yet appropriated any anti-trafficking funding.

which social and cultural assumptions about sex as a special category override the lived experience of trafficking survivors and observations of service providers. While NGO providers, as mediators between victims and the state, contest these social constructions, the criminal justice focus of the law facilitates the promotion of “sex trafficking” as the driving force behind implementation. Additionally, law enforcement’s view of trafficking as only encompassing those cases which are prosecutable means that investigators and providers are often at odds with regard to what “counts” as trafficking. While service providers strive to advocate for all victims as worthy of certification and associated benefits, numerous victims experience delays accessing benefits and receiving immigration status.

While titled the Trafficking *Victims Protection Act* by Congress, implementation has been skewed toward criminal justice aspects of the law with victim protection taking a back seat. Indeed, victims have the most at stake in the law’s implementation and are bearing the consequences of uneven implementation. By incorporating sexually-infused social anxieties and cultural assumptions into trafficking implementation, victims for whom these factors have no meaning, are the ones suffering defeat. Debates among advocates that have become conflicts among implementers are creating categories of deserving and undeserving victims. The privileging of law enforcement-identified cases, and consequently (female) victims of forced prostitution (despite the law’s coverage of men and women trafficked into all sectors), means that large numbers of victims are not being recognized – most notably those trafficked into “forced labor,” and very often men.

The social and political contestation that plagued the drafting of the TVPA still haunts its implementation. While the compromise law criminalized trafficking in *all* its forms and established protections for *all* victims, the symbolic sex/labor split has resulted in hierarchies of application. Law enforcement agents are responsible for enforcing “the law,” but the law created the ability for investigators to compartmentalize different forms of trafficking and respond only to those cases fitting their conceptions. Identifying and protecting *all* victims requires a broad re-envisioning of trafficking, in which *all* exploitation by force, fraud, and coercion is deemed equal. As Nora, a case manager, told me, “In a perfect world the TVPA would have been written to not have these different types of trafficking separated out.”

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