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ARTICLE

COMBATING SEX TRAFFICKING: A PERPETRATOR-FOCUSED APPROACH

DONNA M. HUGHES*

This paper is dedicated to Norma Hotaling (1951–2008).

INTRODUCTION

Contemporary human trafficking includes forced labor, slavery, and sex trafficking. The global sex trafficking of women and girls is organized and “industrialized.” Operating within and across national borders, it is comprised of legal and illegal business establishments engaging in a range of sexually exploitative activities, from generally legal acts, such as stripping and producing pornography, to generally illegal acts, such as producing child pornography, distributing obscene materials, and prostitution. Some of these activities, such as prostitution and lap dancing, are legal or unregulated in some counties and states in the United States or in countries around the world.

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She is a leading international researcher on trafficking of women and children. She has completed research on the trafficking of women and girls for prostitution in the United States, Russia, Ukraine, and Korea. She was a research consultant to the Council of Europe on the use of new information technologies in the trafficking in women and children for sexual exploitation. Her recent scholarship has focused on the “demand side” of sex trafficking.

She has worked with prodemocracy activists to collect information on trafficking and prostitution of women in Iran. She has gathered information about the trafficking of North Korean women refugees from activists in the Korean underground railroad.

She has testified before the U.S. House International Relations Committee, the Senate Foreign Relations Committee, the Moscow Duma, and the Czech Parliament. She has participated in government policy conferences in Mexico and Bulgaria.

Her research has been supported by the U.S. State Department, the National Institute of Justice, the National Science Foundation, the Association of American Colleges and Universities, the Norwegian Agency for Development Cooperation, the International Organization for Migration, the Council of Europe, the Rhode Island Board of Governors for Higher Education, and the University of Rhode Island Foundation.

In December she was invited to the White House to witness the signing of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

This paper focuses only on the sex trafficking of women and girls.¹ It formulates a new approach to combating sex trafficking that serves as a complement to the victim-centered approach that has been widely adopted in law and policies in the United States and around the world. Many of the tools for a perpetrator-focused approach already exist or have been enacted by the U.S. Congress and the Bush administration from 2000 to 2008. The foundation exists for a successful, far-reaching global movement to advance the human rights and status of women and girls by ending their commercial sexual exploitation.

This paper will briefly summarize the contemporary anti-sex trafficking movement, including the theoretical analyses and contributions of feminist nongovernmental organizations, conservative and faith-based groups, and the administrations of Presidents Clinton and Bush. It will describe the victim-centered approach to combating sex trafficking first developed by the Clinton administration and implemented by the Bush administration. The factors creating a demand for victims will be described. The paper will analyze how the victim-centered approach has failed to focus attention on the perpetrators of sex trafficking crimes. A new approach called the perpetrator-focused approach will be presented. It broadens the discussion beyond the Trafficking Victims Protection Act definition of sex trafficking to include other sex trafficking crimes.

HISTORY OF THE CONTEMPORARY ANTI-SEX TRAFFICKING MOVEMENT

Feminist Analyses and Debate

Since the 1970s, radical feminists, a minority group of mostly theoretical feminists within the women's movement, have documented and analyzed the harm of sexual abuse and exploitation to women and girls. They believed that sexual exploitation violated women and girls' human rights and right to equality. Kathleen Barry defined sexual slavery as follows:

Female sexual slavery is present in ALL situations where women or girls cannot change the immediate conditions of their existence; where, regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation.²

1. Boys and men are also victims of sex trafficking. They are harmed as much as women and girls by commercial sexual exploitation. For example, in Bangalore, India, a trafficking ring exploiting eunuchs was uncovered. One victim, a sixteen-year-old boy, was kidnapped, forced to undergo a sex change operation, and then used for prostitution. He was confined to a house and threatened with branding with a hot coin on his forehead if he revealed what was done to him. *Boy Forced to Get Sex Changed*, EXPRESS NEWS SERVICE, Nov. 9, 2008.

2. KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 40 (1979).

The radical feminists wrote powerful critiques of stripping, pornography, and prostitution.³ They formed grassroots activist organizations, demonstrated, and held conferences to challenge the misogyny and social harm of pornography and prostitution, going against the rising tide of sexual liberalization, official tolerance, and the power of the sex industry. They were legally outmaneuvered and powerless to stop the growth and expansion of the industrialization of commercial sex acts.

Starting in the mid-1980s, a global anti-sex trafficking movement coalesced to combat the trafficking of women, particularly in Southeast Asia.⁴ Following the collapse of the Soviet Union in the early 1990s and the opening up of the previously closed borders of countries in central and eastern Europe, and central Asia, the trafficking of women escalated, drawing more attention to the problem.⁵ The feminist anti-sex trafficking movement was joined by faith-based groups concerned with the dignity and health of women and girls. Grassroots nongovernmental organizations all over the world called for governmental responses to the problem.

Almost from the beginning of the anti-sex trafficking movement, there was a split among thinkers and activists as to the correct response to the increasing trafficking of women and the growth of the sex industry as a whole. The split centered on the nature of prostitution: was prostitution always harmful and therefore the goal should be the abolition of commercial sexual exploitation; or could prostitution be a meaningful choice and form of work for women? The debate raged and reached its peak at the United Nations Fourth World Women's Conference in Beijing in 1995. The debate came down to the term to be used in the Beijing Declaration and Platform of Action, the document that outlined recommended actions to advance women's rights around the world.⁶ Was all prostitution or only "forced prostitution" to be called a form of violence and discrimination against women? Those advocating the condemnation of only "forced prostitution" won, and for the first time in the history of official United Nations documents, only the "forced prostitution" of women was condemned. This was another defeat for the radical feminists and their allies.

3. See generally *id.*; LAURA LEDERER, TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY (1981); Andrea Dworkin, Writings and Speeches, <http://www.nostatusquo.com/ACLU/dworkin/OnlineLibrary.html> (last visited Apr. 15, 2009); WRITINGS BY WOMEN HURT IN SYSTEMS OF PROSTITUTION ENGAGED IN REVOLT [WHISPER] (on file with author).

4. See INTERNATIONAL FEMINISM: NETWORKING AGAINST FEMALE SEXUAL SLAVERY; REPORT OF THE GLOBAL FEMINIST WORKSHOP TO ORGANIZE AGAINST TRAFFIC IN WOMEN (Kathleen Barry et al. eds., 1984).

5. Donna M. Hughes, *The 'Natasha' Trade: The Transnational Shadow Market of Trafficking in Women*, 53 J. INT'L AFF. 625, 625-51 (2000).

6. See Janice G. Raymond, *Prostitution as Violence Against Women: NGO Stonewalling in Beijing and Elsewhere*, 21 WOMEN'S STUD. INT'L F. 1, 1-9 (1998), for a description of the debate in Beijing.

During the 1990s, the expanding size, ubiquity, and political influence of sex industries around the world led to increased tolerance and even legalization of prostitution in the Netherlands and Germany. As part of the increasing normalization of the sex industries, the International Labor Organization called for formal economic recognition of the “sex sector” based on research and analysis of the sex industries in Southeast Asia.⁷ If these recommendations had been followed with an official recognition of an economic sex sector, the sexual exploitation of hundreds of thousands of persons in Asia and millions more around the world would have been legitimized. The resulting laws and policies would have legalized the sex trade and henceforth treated it as just another component of a country’s economy.

Government Response to Prostitution and Sex Trafficking

During the Clinton administration, the U.S. government also started down the road to calling prostitution a form of work. For example, in 1996, the U.S. Bureau of International Labor Affairs, a division of the Department of Labor, held a symposium entitled “Forced Labor: The Prostitution of Children.”⁸ Joaquin F. Otero, Deputy Under Secretary for International Labor Affairs, defined the commercial sexual exploitation of children as a type of labor: “Forced child prostitution is forced labor and child labor in their most exploitative forms.”⁹

As was increasingly common during the 1990s, Otero adopted a labor framework for discussing prostitution. His use of the term “forced” as a modifier of prostitution raised the possibility of “voluntary” prostitution, even when children were involved. In the same context, he called for the Department of Labor to play an active role nationally and internationally in protecting workers’ rights and promoting labor standards worldwide.¹⁰

Following the Beijing Conference on Women, First Lady Hillary Clinton formed the Interagency Council on Women to bring the Beijing Platform of Action home to the United States and implement its recommendations throughout the government.¹¹ The preferred term of “forced prostitution” was adopted by U.S. officials, including Secretary of State Madeleine Albright.

7. LIN LEAN LIM, *THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 211–14 (1998).

8. *See* BUREAU OF INT’L LABOR AFFAIRS, U.S. DEP’T OF LABOR, *FORCED LABOR: THE PROSTITUTION OF CHILDREN: SYMPOSIUM PROCEEDINGS* (1996).

9. Joaquin F. Otero, *Introduction* to *id.* at i.

10. *Id.*

11. PRESIDENT’S INTERAGENCY COUNCIL ON WOMEN, 1999 UPDATE: AMERICA’S COMMITMENT; FEDERAL PROGRAMS BENEFITING WOMEN AND NEW INITIATIVES AS FOLLOW-UP TO THE UN FOURTH WORLD CONFERENCE ON WOMEN (1999), *available at* <http://secretary.state.gov/www/picw/intro.html>.

Faith-Based Groups and Conservatives Join the Anti-Sex Trafficking Movement

As the global anti-sex trafficking movement has evolved in the first decade of the twenty-first century, more research revealed the ubiquitous violence against women and girls used in prostitution and the magnitude of the trauma and physical harm they sustained.¹² Significantly, in the United States, politically influential conservative and faith-based groups took up the fight against sex trafficking. They opposed tolerating pimping, sex trafficking, and legalizing prostitution. The faith-based groups considered prostitution and sex trafficking violations of human dignity.

To with one word capture the essence of what motivates, what animates the Christian response to Sexual Trafficking I must choose the word “dignity.” The Christian belief that all of us are innately, inherently endowed with dignity extends to every last human being living in the world today. . . . Made in the very image of God, we have dignity. This then is our basis for self worth. . . . Our view of all humankind as deserving of love, respect, and service thus established, our mandate to oppose neglect, oppression, brutality, commodification, and exploitation of humankind is sealed. We must oppose every form of alienation, liberate people from every kind of oppression, and denounce evil and injustice wherever they exist. . . . Christians today feel . . . strongly about the abolition of Sexual Trafficking. Its horrors are so great, it’s injustice so profound that any compromise, any passive acceptance of Sexual Trafficking as a regrettable fact of life, is anathema.¹³

During the 1990s, Evangelical Christians turned their political activism to human rights around the world. In the mid-1990s, a broad coalition of groups came together to support international religious freedom.¹⁴ They supported the use of U.S. foreign policy to promote human rights abroad.

Conservative groups and individuals also joined the anti-sex trafficking movement. They considered the sexual enslavement of a human being a violation of the basic principle of freedom enshrined in the Declaration of Independence and the U.S. Constitution. Joseph E. Schmitz, Inspector Gen-

12. Research reports on the violence against women in prostitution include JANICE G. RAYMOND, DONNA M. HUGHES & CAROL J. GOMEZ, COAL. AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS (2001); JODY RAPHAEL & DEBORAH SHAPIRO, CTR. FOR IMPACT RESEARCH, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO (2002).

13. Lisa L. Thompson, Address at the University of Hawaii, A Christian Perspective on Sexual Trafficking, The Human Rights Challenge of Globalization in Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children 1–2 (Nov. 14, 2002) (transcript on file with author).

14. See ALLEN D. HERTZKE, FREEING GOD’S CHILDREN: THE UNLIKELY ALLIANCE FOR GLOBAL HUMAN RIGHTS (2004), for a description of the broad-based human rights movement.

eral for the U.S. Department of Defense, described how sex trafficking violated the founding principles of the United States:

To actively subjugate—or to turn a blind eye when others subjugate—any group of humans to a category of existence beneath the dignity of individuals created equal, [and] endowed by their Creator with certain unalienable Rights, [among which] are Life, Liberty, and the pursuit of Happiness is, in a word, un-American. Simply stated, slavery is antithetical to the core principles that underlie our Constitution.¹⁵

Michael Horowitz of the Hudson Institute became the coalition leader, bringing together organizations, faith-based groups, and individuals from the political right and left to formulate legislative solutions. Horowitz was a Washington insider with experience in the Reagan administration. He had the experience, vision, and political savvy to lead successful campaigns for human rights law and policy.¹⁶

The broad-based anti-trafficking coalition, (which has never been given a name or structure), was now made up of radical feminists,¹⁷ conservative women's organizations,¹⁸ prostitution survivor-led service groups,¹⁹ secular service organizations,²⁰ conservative service organizations,²¹ and conservative²² and liberal²³ faith-based groups. The groups comprising the opposition to the abolitionists were liberal feminist groups, sex worker rights groups,²⁴ anti-trafficking groups who supported women's rights to freely work in the sex industry,²⁵ and liberal human rights groups.²⁶ As the anti-sexual slavery movement grew, people drew parallels to the previous anti-slavery movement in the nineteenth century—the solution was “abolition.”²⁷

15. *Comm'n on Sec. & Cooperation in Eur. and the House Armed Services Comm., Enforcing U.S. Policies Against Trafficking in Persons: How Is the U.S. Military Doing?* 108th Cong. (2004) [hereinafter *Enforcing U.S. Policies*] (testimony of Joseph E. Schmitz).

16. See Peter Waldman, *Evangelicals Give U.S. Foreign Policy an Activist Tinge, A Campaign to Export Values Makes Legislative Headway Even as It Arouses Critics, A Jewish Leader for the Causes*, WALL ST. J., May 26, 2004, at A1, for a profile of Michael Horowitz.

17. Equality Now; Donna Hughes, University of Rhode Island; the Coalition Against Trafficking in Women.

18. Concerned Women for America.

19. Sage, San Francisco; Breaking Free, St. Paul; Dignity, Phoenix; Veronica's Voice, Kansas City.

20. Polaris Project, Washington, D.C.

21. The Salvation Army; International Justice Mission.

22. Southern Baptists Ethics and Religious Freedom Commission; National Association of Evangelicals.

23. Evangelicals for Social Action; Religious Action Center, Washington, D.C.

24. Sex Workers Outreach Project, San Francisco; The Sex Workers Project at the Urban Justice Center, New York City.

25. CAST (Coalition Against Slavery and Trafficking), Los Angeles; The Freedom Network.

26. Human Rights Law Group (now called Global Rights); Human Rights Watch.

27. Lisa Thompson, of the Initiative Against Sexual Trafficking for the Salvation Army, probably did more than anyone to popularize the use of the term “abolition.” She urged, “Aboli-

By increasing the sophistication and effectiveness of their lobbying efforts, the broad-based coalition shaped the laws and policies on sex trafficking. The election of George W. Bush in 2000 and his support for the abolitionist agenda enhanced these efforts. In 2002, President Bush issued an unprecedented National Security Policy Directive (NSPD) that directed federal agencies to “strengthen their collective efforts, capabilities, and coordination to support the policy to combat trafficking in persons.”²⁸ Bush outlined his administration’s policy on human trafficking, stating,

Our commitment to eradicate trafficking in persons reflects our values and our responsibility to defend human rights; it is a critical element of the foreign policy of the United States. . . . Our Policy [sic] is based on an abolitionist approach to trafficking in persons, our efforts must involve a comprehensive attack on trafficking, the modern day form of slavery. In this regard, the United States Government opposes prostitution and any related activities, including pimping, pandering and/or maintaining brothels as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing. The United States Government’s position is that these activities should not be regulated as a legitimate form of work for any human being. The policy of the United States deems trafficked persons to be considered victims of the trade. To that end, we will support initiatives that provide education and employment opportunities to victims of trafficking, as well as shelter and services while victims rebuild their lives. We will also support initiatives to prevent trafficking; particularly among vulnerable populations such as women and children. One step taken will be to include effective educational campaigns to warn potential victims of the degrees posed by traffickers.²⁹

The Bush policy went beyond opposing sex trafficking by means of force, fraud, and coercion.³⁰ The NSPD directed federal agencies to oppose prostitution, pimping, pandering, and brothels because they contributed to sex trafficking. He based his policy on the human rights principle that prostitution was “inherently harmful and dehumanizing” and should never be regulated as a form of work.³¹ This directive set a far-reaching vision for all persons to be free of commercial sexual exploitation. It was historic and unprecedented. A conservative Republican president of the United States had issued a policy consistent with both radical feminist theory on prostitu-

tion!” at the end of every e-mail she sent, and soon everyone was calling for the “abolition” of sex trafficking.

28. Memorandum from President George W. Bush, Nat’l Sec. Pol’y Directive 22 on Combating Trafficking in Persons (Dec. 2002) (on file with author).

29. *Id.*

30. *Id.*

31. *Id.*

tion and sexual exploitation and conservative, religious philosophy of protecting human dignity.

By the middle of the first decade of the twenty-first century, the success of the global anti-sex trafficking movement and the emerging evidence that the social experiments with legalized prostitution in the Netherlands, Germany, Australia, and New Zealand had failed to transform prostitution into safe work for women, resulted in law and policy makers moving away from trying to transform prostitution into a form of work for women.³² Increasingly, law and policy makers treated prostitution as a harmful activity that should be suppressed or eliminated.

As more cases of sex trafficking were identified, law enforcement and service organizations revealed the extreme violence and slavery-like practices used to control victims and the resulting physical and emotional effects of the trauma. New analyses and terms emerged to describe the global industrialization of sexual exploitation. Recalling the widespread system of forced labor camps in the USSR described by Alexander Solzhenitsyn in *The Gulag Archipelago*, Lisa Thompson of the Salvation Army labeled the global sex industry a “sexual gulag.”³³

The Sexual Gulag is a global system made up of hundreds of thousands, if not millions, of brothels, bars, strip clubs, massage parlors, escort services, and street corners where people are sold for sex. . . . [I]n terms of geographic breadth and the number of those impacted, the comparison of the Soviet’s developed and complex gulag system to the modern day Sexual Gulag, is if anything, inadequate. . . . [T]he Soviet gulag and the Sexual gulag share the same purpose, an economic one, and the real difference between the two is that in the Sexual Gulag there is only one industry in which people are exploited—the sex industry.³⁴

Thompson went on to point out that gulags were hidden from public view.³⁵ In contrast, the sexual gulag operates openly in cities around the world.

32. See Femke van Zeijl, *Prey to the Wolves*, VOLKSKRANT MAGAZINE, Nov. 15, 2003; Menno van Dongen, *A Top Attraction Built on Oppression: Prostitutes at the Wallen Are Often Victims of a Modern Form of Slavery*, DE VOLKSKRANT, Dec. 3, 2005; *Street Prostitution Ends in Rotterdam*, EXPATICA NEWS, Sept. 1, 2005, available at http://www.expatica.com/nl/news/local_news/street-prostitution-ends-in-rotterdam-23645.html; Stephen Castle, *Trafficking Forces Clampdown in Amsterdam’s Red-Light Area*, INDEPENDENT, Dec. 2, 2006, available at <http://www.independent.co.uk/news/world/europe/trafficking-forces-clampdown-in-amsterdams-red-light-area-426653.html>; MARY LUCILLE SULLIVAN, MAKING SEX WORK: A FAILED EXPERIMENT IN LEGALIZED PROSTITUTION (2007).

33. *The Sexual Gulag: Profiteering from the Global Sexual Exploitation of Women and Children: Testimony Before the H. Financial Services Comm.*, 109th Cong. (2005) (statement of Lisa L. Thompson, Liaison for the Abolition of Sexual Trafficking, The Salvation Army National Headquarters).

34. *Id.*

35. *Id.*

Given the sharp distinctions between the two views on the nature of prostitution—work or violence—the organized global system of commercial sexual exploitation of women and girls is more accurately labeled—and treated—as a sexual gulag, rather than a labor sector. The activities of the global sex industry victimize millions for the profit of organized crime groups, family crime organizations, and individual perpetrators. An abolitionist approach aims to assist victims and punish perpetrators.

THE VICTIM-CENTERED APPROACH: A RESPONSE TO THE HUMAN RIGHTS VIOLATIONS OF TRAFFICKING

Development of the Victim-Centered Approach

In the late 1990s, the Clinton administration formulated a policy to address the trafficking of women and girls.³⁶ The Clinton approach followed the recommendations of the Beijing Platform of Action, which called for combating sex trafficking only when “forced prostitution” was involved. The President’s Interagency Council on Women and the Senior Coordinator for International Women’s Issues in the Department of State developed a three-part “comprehensive and integrated policy framework” for combating trafficking.³⁷ The Clinton administration’s efforts focused on three areas: prevention, protection, and enforcement.³⁸ Later, the framework was named the “Three Ps” with the word “enforcement” changed to “prosecution,” creating the Three Ps.³⁹

By the end of the Clinton administration, the “Three Ps” became the basis of the strategy to combat trafficking around the world. Secretary of State Albright met with foreign leaders and made combating trafficking in women a priority.⁴⁰

36. During the 1990s, the problem of trafficking was limited to the trafficking of women and girls, mostly for prostitution. By the beginning of 2000, with the drafting of the Trafficking Victims Protection Act of 2000 and the UN Protocol, forced labor and slavery would be added to the agenda, and trafficking would become “trafficking in persons” and eventually “human trafficking.”

37. Theresa Loar, *Trafficking in Women: The Need for International Cooperation*, in THE TRAFFICKING OF NIS WOMEN ABROAD CONFERENCE REPORT: AN INT’L CONFERENCE IN MOSCOW 23, 23–26 (Nov. 3–5, 1997), available at <http://www.ilhr.org/ilhr/reports/traffic/report.html>.

38. *Id.*

39. Stephen Warnath, Special Counsel and Senior Advisor on Trafficking, President’s Interagency Council on Women, Trafficking of Women and Children: The Future Direction of the United States, Policy Remarks Presented at the U.S.-E.U. Transatlantic Seminar to Prevent Trafficking in Women, Lâviv, Ukraine, (July 10, 1998); *Trafficking in Women and Girls: Testimony on Trafficking in Women and Children, Testimony Before Rep. Christopher Smith, Chairman, H. Subcomm. on Int’l Operations and Human Rights* (Sept. 14, 1999) (statement of Theresa Loar, Director of the Office of the Senior Coordinator for International Women’s Issues).

40. Press Release, President’s Interagency Council on Women, U.S. Pressing Forward to Stop Trafficking in Women and Children (Mar. 1, 2000), available at <http://www.usembassy-israel.org.il/publish/global/archive/2000/march/gi50302.htm>.

The Three Ps framework evolved into the “victim-centered approach.” This human rights approach was codified in the Trafficking Victims Protection Act of 2000. It created new legal responses and services for identified victims of trafficking, such as the T visa for foreign victims of severe forms of human trafficking. President Clinton signed the TVPA 2000 into law in the closing months of his administration, and the victim-centered approach was put into policy and action by the Bush administration.⁴¹

In the Bush administration, Laura Lederer, an appointee in the State Department, suggested adding two Rs, “report” and “rescue,” to the Three Ps framework of combating trafficking.⁴² The U.S. Department of Health and Human Services (HHS) followed this approach and created the “Rescue and Restore” campaign to identify and assist victims of trafficking.⁴³

The victim-centered approach was implemented in the United States through campaigns, trainings, and services for foreign victims (but not for domestic U.S. citizen victims).⁴⁴ The HHS campaign “Look Beneath the Surface” resulted in a paradigm shift in awareness and attitudes toward previously invisible victims. Through State Department diplomacy during the later part of the Clinton administration and the two terms of the Bush administration, the victim-centered approach was exported to countries throughout the world, resulting in the rescue of tens of thousands of victims of human trafficking. The victim-centered approach has successfully changed perceptions about victims who were previously seen as criminals or illegal aliens. It has established new protocols for treatment and services for victims.

Negative Aspect of the Victim-Centered Approach

The victim-centered approach has had unintended negative consequences for victims and the successful prosecution of traffickers. The investigation of a sex trafficking case requires extensive interviews with a suspected victim to determine *if she is a victim*, meaning that either she is a minor or a victim of force, fraud, or coercion. Investigators and service providers say it often takes multiple interviews and sometimes weeks of work with victims before they trust a helper enough to share the truth of their experience. Then the victim must agree to cooperate with law enforcement and usually (but not always) to testify against the trafficker or pimp in a trial. If the victim does not cooperate, it is very difficult for law enforcement to prosecute the case or get a conviction for sex trafficking.

41. Statement on Congressional Action on Victims of Trafficking and Violence Protection Legislation, 2 PUB. PAPERS 2137 (Oct. 11, 2000).

42. Personal communication with Laura Lederer, Bush Administration State Dep’t Appointee, Dec. 2008.

43. U.S. Dep’t of Health and Human Services, The Campaign to Rescue and Restore Victims of Human Trafficking, <http://www.acf.hhs.gov/trafficking/> (last visited Dec. 15, 2008).

44. *Id.* The campaign was designed by Ketchum, a public relations agency, in 2003.

Indeed, the prosecution of sex trafficking cases is also victim-centered: the case depends on the cooperation and testimony of the victim. Without victim cooperation and testimony, there is no trafficking case. If the victim is too frightened of the perpetrators involved, which is not an unusual or unreasonable reaction considering the brutality with which she has been treated and the trafficker's threats against her friends and relatives at home, the prosecutors cannot proceed with a trial.

Research and media reports on sex trafficking focus extensively on the victim and how she was recruited, coerced, controlled, rescued, and restored. There is less description of the motivations, activities, and profits of the perpetrators. To balance the victim-centered approach, a "perpetrator-focused approach" is needed for a more comprehensive effort to combat sex trafficking.

A perpetrator-focused approach will define a strategic and legal framework that targets the activities, investigation, and prosecution of perpetrators. The goal is two-fold: first, to more easily and successfully prosecute sex trafficking cases and relieve the burden on the victim for a successful prosecution, and second, to hold perpetrators accountable by focusing our attention on them and making it easier to combat and end sex trafficking.

THE DEMAND SIDE OF SEX TRAFFICKING

A perpetrator-focused approach starts with analyzing the demand for victims created by the perpetrators or enablers of sex trafficking. In 2000, Donna Hughes described the global sex trafficking of women and girls as based on the dynamics of supply and demand.⁴⁵

To keep the sex industry in business, women are trafficked to, from and through every region in the world. . . . The global sexual exploitation of women and girls is a supply and demand market. Men create the demand and women are the supply. Cities and countries where men's demand for women in prostitution is legalized or tolerated are the receiving sites, while countries and areas where traffickers easily recruit women are the sending regions. Sending countries or regions are characterized by poverty, unemployment, war, and political and economic instability. These conditions facilitate the activity of traffickers who target regions where recruiting victims is easy. . . . In receiving countries or sites where men's demand for women and girls in prostitution exceeds the supply in the local area, women and girls must be recruited and imported.⁴⁶

45. Donna M. Hughes, *Men Create the Demand; Women Are the Supply: Lecture on Sexual Exploitation*, SAFETY AT WORK: HEALTH AND WORKPLACE SAFETY IN THE NEW SOUTH WALES SEX INDUSTRY, Dec. 12, 2000, at 10–14.

46. *Id.* at 12.

In 2002, Hughes described how the victims and the “supply side” of sex trafficking had become the exclusive focus in the anti-trafficking movement:

The victims of sex trafficking and their circumstances are increasingly described, characterized, and analyzed. When much of the focus is on the supply, the result is increasing scrutiny of the women’s lives, motivations, and circumstances, as if they are responsible for the crimes committed against them. Although it is important to understand the supply side of trafficking, it can inadvertently become a form of victim blaming.⁴⁷

From research and conversations with survivors and service providers, Hughes concluded that the demand for victims was “the driving force of sex trafficking,” and that is where efforts to combat trafficking should be focused.⁴⁸ Hughes argued that if the demand for victims is decreased, the number of victims recruited by sex traffickers will decrease.

It is important to identify what is meant by “the demand” and to define and characterize each component so that policies and laws can be created to address it. There are four components that make up the demand: 1) the men who buy commercial sex acts; 2) the exploiters who make up the sex industry; 3) laws, policy, and tolerance of the sex industry in destination countries or cities; and 4) the culture that legitimizes prostitution and pimping.

The Men

Typically, discussions of prostitution and sex trafficking focus on women and child victims. The men who purchase the sex acts remain nameless, faceless, and uncharacterized. They are not stigmatized in the way that “prostitutes” are. Yet the men,⁴⁹ the buyers of commercial sex acts, are the ultimate consumers of trafficked women and children. They use them for entertainment and sexual gratification, and often perpetrate acts of violence against them.

The billions of dollars made by the sex industry globally all come from the pockets of men who buy sex acts or patronize the sex industry. On banning military personnel from visiting establishments where there is prostitution, an official from the U.S. Department of Defense said, “If you

47. Donna M. Hughes, *The Demand: The Driving Force of Sex Trafficking*, Address at the University of Hawaii, The Human Rights Challenge of Globalization in Asia-Pacific-US: Trafficking in Persons, Especially Women and Children (Nov. 14, 2002), in VITAL SPEECHES OF THE DAY, Jan. 2003, at 182–83.

48. *Id.*

49. According to prostitution-related arrest statistics from Chicago in 2001 and 2002, 3-4 percent of “john” arrests were of females. CHICAGO COALITION FOR THE HOMELESS, THE FACTS BEHIND THE FACES (2005).

spend money there, you're giving the money to traffickers, and traffickers are criminals."⁵⁰

Research on men who purchase sex acts has found that many of the assumptions made about them are myths.⁵¹ We need more research on these perpetrators. We have a few point statistics from around the world. In Germany, where prostitution is legal, according to the government there are 400,000 prostitutes being used by 1.2 million men per day.⁵²

The Exploiters

The exploiters are the traffickers, pimps, pornography producers, strip club operators, and brothel owners who make up the sex industry. Pimping is sex trafficking. The legal definitions are the same for the criminal activities they engage in. The tactics, methods of operation, and goals of a pimp are the same as a sex trafficker.

The exploiters include individual perpetrators, organized crime networks, and corrupt officials. Secondary profiteers include hotels, restaurants, taxi services, property owners who rent to pimps, and other businesses that provide support services to the sex industry. The support services have a vested interest; for the exploiters, sex trafficking is a criminal business to make money. Because of official tolerance of the illegal sex industry, the risks are relatively low and the profits high.

There are no studies of the legal or illegal sex industry in the United States. In the 2005 Trafficking Victims Protection Reauthorization Act (TVPRA), End Demand Act, Congress authorized one million dollars to the Department of Justice to study the illegal sex industry in the United States. The study as defined by Congress was never done.

The State

By tolerating or legalizing prostitution and other forms of sexual exploitation of the sex industry, the state, at least passively, contributes to the demand for victims. The more governments regulate prostitution and derive tax revenue from it, the more culpable they are in creating the demand for victims.

If the demand is the driving force of trafficking, it is important to analyze the destination countries' and cities' laws and policies. Officials in destination countries do not want to admit responsibility for the problem of

50. Sgt. Sara Wood, *DoD Personnel Face Stricter Rules of Human Trafficking*, AMERICAN FORCES PRESS SERVICE, Jan. 10, 2006 (quoting John Awtrey, Dir. of Law Enforcement Policy and Support for the Undersecretary of Defense for Personnel and Readiness).

51. For an in-depth look at the demand created by men's decisions to purchase sex acts and efforts to discourage and punish their behavior, see Donna M. Hughes, *Best Practices to Address the Demand Side of Sex Trafficking* (Aug. 2004), available at http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf.

52. Sonia Phalnikar, *The License to Have Sex*, DEUTSCHE WELLE, Jan. 24, 2005.

sex trafficking or be held accountable for creating the demand for victims. Yet in destination countries, government officials working with the sex industry devise strategies to protect the sex industries that generate millions, even billions, of dollars per year for the economy. When prostitution is legal, governments expect to collect tax revenue. Where prostitution is illegal, criminals, organized crime groups, and corrupt officials profit.

The local economy benefits from a profitable sex industry. This is usually known, but unacknowledged by local officials and the business community. Cities in the United States that host large conventions, such as Las Vegas and Atlanta, are hub cities for sex trafficking.

The Culture

The culture, particularly the mass media, plays a role in normalizing prostitution by portraying prostitution as glamorous, empowering, or a fast, easy way to make money⁵³ and portraying pimps as cool, sympathetic characters.

The Internet and other types of new information and communications technologies increase the global sexual exploitation of women and children.⁵⁴ The growth and expansion of the sex industry is closely intertwined with new technologies.⁵⁵ Although trafficking for prostitution is widely recognized, trafficking of women and children for the production of pornography receives less attention.⁵⁶

To combat the demand for victims for sex trafficking, a strategy is needed for each element of the demand and is the basis for a perpetrator-focused approach.

A PERPETRATOR-FOCUSED APPROACH

A perpetrator-focused approach aims to enhance the scrutiny of the demand side of sex trafficking, pressure officials to end their tolerance for the demand for commercial sex acts, and create more tools to hold perpetrators accountable for their actions.

The elements of a perpetrator-focused approach are as follows: 1) continue calling for action against the demand for victims; 2) broaden the discussion of sex trafficking beyond the narrow definition in the TVPA; 3) research, analyze, and investigate the activities and operations of pimps and

53. For a magazine article for young women and teens in which women claim that being a prostitute is empowering, see Jillian Blume, *Prostitution Gives Me Power*, MARIE CLAIRE, July 2005. The women liken themselves to therapists and social workers for men.

54. Donna M. Hughes, *The Use of New Communications and Information Technologies for Sexual Exploitation of Women and Children*, 13 HASTINGS WOMEN'S L.J. 129, 129-48 (2002).

55. See generally MAX TAYLOR & ETHEL QUAYLE, *CHILD PORNOGRAPHY: AN INTERNET CRIME* (2003).

56. Donna M. Hughes, 'Welcome to the Rape Camp': *Sexual Exploitation and the Internet in Cambodia*, 6 J. SEXUAL AGGRESSION 29, 29-51 (2000).

sex traffickers; 4) shift the burden of prosecuting sex traffickers and pimps from the testimony of the victim to the criminal activities of the perpetrators; 5) research and analyze men's behavior and motivation to buy sex acts; and 6) create ways to challenge the culture that normalizes prostitution and pimping.

As the focus on the demand side emerged as a strategy to combat sex trafficking, there was debate. Those who opposed only "forced prostitution" and considered "voluntary prostitution" a legitimate form of work for women opposed a demand-side focus because it called for crackdowns on men who purchased sex acts, the source of money for the sex industry. They also opposed crackdowns on all pimps and brothels; they only wanted those who use force, fraud, or coercion to be criminalized and their illegal operations shut down. Donna Hughes wrote this about the debate over the demand:

As has been noted, the anti-trafficking movement is becoming increasingly polarized. The debate is over demand—will the demand be legitimized and accommodated or will the demand be confronted and stopped. Those are the points of contention, and where policy decisions must be made. And the decisions on what to do about the demand will determine the success in countering the trafficking of women. Whether to legitimize or stop the demand are two different choices. They are not reconcilable end points. . . . The lives of millions of women and children around the world depend on the choice we make.⁵⁷

Hughes also pointed out that the demand for women and girls for prostitution is already criminalized throughout the United States (with the exception of a few counties in Nevada and indoors in Rhode Island):

[I]n the United States, the demand is already criminalized It is illegal for men to solicit women and children for prostitution. It is illegal to pimp women and children. It is illegal to run a brothel. It is illegal to transport women and girls across state lines for purposes of prostitution. It is illegal to traffic women and children into the U.S. for commercial sex acts. We need to demand that these laws be enforced.⁵⁸

The contemporary sex trafficking movement had reinvented the wheel. It had forgotten that anti-pimping laws existed in every state in the United States. Activities such as running a brothel and profiting from prostitution are almost universally criminalized around the world.

New Focus on the Demand

The broad-based anti-trafficking coalition worked successfully with Congress to pass new legislation directing government agencies to take ac-

57. Hughes, *supra* note 47.

58. *Id.*

tion against the demand inside the United States and abroad. President Bush spoke out against the demand in a speech before the United Nations. He urged governments around the world to combat sex trafficking of girls:

There is a special evil in the abuse and exploitation of the most innocent and vulnerable. The victims of the sex trade see little of life before they see the very worst of life, an underground of brutality and lonely fear. Those who create these victims and profit from their suffering must be severely punished. . . . And governments that tolerate this trade are tolerating a form of slavery.⁵⁹

Bush also took the unprecedented action to condemn men who purchase sex acts: “Those who patronize this industry debase themselves and deepen the misery of others.”⁶⁰

In March 2005, the United States sponsored a resolution targeting the demand at the UN Commission on the Status of Women. *Eliminating Demand for Trafficked Women and Girls for All Forms of Exploitation* was the first resolution from a UN body to focus on eliminating the demand.⁶¹ Based on the conviction that “eliminating demand for all forms of exploitation, including for sexual exploitation, is a key element to combating trafficking in women and girls,” the resolution calls on governments to “[t]ake all appropriate measures to eliminate demand for trafficked women and girls for all forms of exploitation; . . . Adopt or strengthen and enforce legislative or other measures . . . to deter exploiters and eliminate the demand that fosters trafficking of women and girls for all forms of exploitation.”⁶² The resolution called upon civil society, as well as governments, to

[t]ake appropriate measures to raise public awareness of the issue of trafficking in persons, particularly in women and girls, including to address the demand side of the problem, and to publicize the laws, regulations and penalties relating to this issue, and to emphasize that trafficking is a crime, in order to eliminate the demand for trafficked women and girls, including by sex tourists.⁶³

Fifty other countries cosponsored the resolution with the United States, and it was adopted by consensus.⁶⁴

In 2005 and 2008, Congress increased the pressure against the demand side of sex trafficking in the Trafficking Victims Protection Reauthorization

59. George W. Bush, President of the United States, Address to the United Nations General Assembly (Sept. 23, 2003), available at <http://news.bbc.co.uk/2/hi/americas/3132984.stm>.

60. *Id.*

61. Press Release, Office to Monitor and Combat Trafficking in Persons, UN Commission on the Status of Women Adopts U.S. Human Trafficking Resolution (Mar. 18, 2005).

62. *Id.*

63. *Id.*

64. *Id.*

Act.⁶⁵ Title II and parts of Title I of the TVPRA 2005 were originally drafted as the *End Demand for Sex Trafficking Act*.⁶⁶ Provisions in these acts charged government agencies, particularly the Departments of State and Justice, to initiate law enforcement programs, research studies, and new standards to combat the demand. One of the far-reaching provisions in the TVPRA 2005 set a standard for evaluating other countries' efforts to reduce the demand for commercial sex acts.⁶⁷ The new demand standard was described in the 2008 Trafficking in Persons Report (TIP Report). Foreign countries will be evaluated on

measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards.⁶⁸

The 2008 TIP Report stated that seventy-one countries had made efforts to reduce the demand for commercial sex acts, including arresting sex tourists, developing education and awareness campaigns, and closing brothels,⁶⁹ and eighty-six countries had made no efforts to reduce demand for commercial sex acts.⁷⁰

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 strengthened the demand standard used to evaluate other

65. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §§ 104, 201, 119 Stat. 3558, 3564, 3567 (2006) (codified at 22 U.S.C. §§ 7103, 7106 (2006), 42 U.S.C. § 14044 (2006)).

66. End Demand for Sex Trafficking Act of 2005 (discussion draft from the 109th Congress, 1st Session) (on file with author).

67. See § 104(b)(1)(A), 22 U.S.C. § 7103.

68. OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, TRAFFICKING IN PERSONS REPORT 284 (2008), available at <http://www.state.gov/documents/organization/105501.pdf>.

69. See *id.* (Argentina, Austria, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Djibouti, Dominican Republic, Equatorial Guinea, Finland, France, Gambia, Georgia, Germany, Ghana, Guatemala, Guyana, Honduras, Israel, Italy, Jamaica, Japan, Kosovo, Laos, Liberia, Lithuania, Macedonia, Mali, Mauritius, Mexico, Nepal, the Netherlands, Nicaragua, Philippines, Portugal, Romania, Rwanda, Senegal, Sierra Leone, Singapore, Slovakia, South Korea, Spain, Sweden, Switzerland, Thailand, Uganda, United Kingdom, Venezuela, and Zambia).

70. See *id.* (Afghanistan, Algeria, Angola, Australia, Bahrain, Bangladesh, Belgium, Belize, Benin, Bolivia, Burundi, Central African Republic, Chad, China, Congo, Cuba, Cyprus, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Greece, Guinea, Hong Kong, Hungary, India, Indonesia, Iran, Ireland, Jordan, Kazakhstan, Kiribati, Kuwait, Latvia, Lebanon, Lesotho, Libya, Malaysia, Malta, Mauritania, Mongolia, Montenegro, Morocco, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Poland, Qatar, Russia, Saudi Arabia, Serbia, Slovenia, South Africa, Suriname, Swaziland, Syria, Taiwan, Togo, Tonga, Turkey, Ukraine, United Arab Emirates, Uruguay, Vietnam, Yemen, and Zimbabwe).

countries' efforts to reduce the demand for commercial sex acts.⁷¹ The Wilberforce Act creates a standalone minimum standard for the annual Trafficking in Persons Report to evaluate whether countries have made "serious and sustained efforts to reduce the demand for . . . commercial sex acts."⁷² The standalone standard gives priority to this measure in determining the Tier placements of countries in the annual TIP Report. Chris Smith, congressional representative from New Jersey and an uncompromising leader against trafficking, made this statement about the demand upon the passage of the Wilberforce Act: "Too much demand, enabled by crass indifference, unbridled hedonism and misogynistic attitudes has turned people, especially women, into objects, only valued for their utility in the brothel or in the sweatshop."⁷³ These new standards originally envisioned by members of the anti-trafficking coalition and officially created by the U.S. Congress, President Bush, and the U.S. representatives to the UN Commission on the Status of Women will have a far-reaching impact on combating sex trafficking in the United States and around the world.

Resistance to a New Focus on the Demand

The new focus on the demand side of sex trafficking has not been popular among some activist groups that defend the right of women to be prostitutes or government agencies that have been directed to create new demand-focused standards or programs. Sex worker rights groups criticized the new focus on demand by writing,

[T]his new . . . focus [on the demand] represents a dangerous slippage into an anti-sex work, anti-male and homophobic mindset which, under the guise of protecting sex workers, is another way of undermining sex workers' autonomy and causing more harm to them. To trivialize this issue by sexualizing it in voyeuristic ways by appealing to male shame and female chastity is a travesty.⁷⁴

Also, anti-trafficking groups that condemned only "forced prostitution" but supported "voluntary prostitution," claimed that a link between prostitution and sex trafficking had not been irrefutably established; there-

71. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified at various sections of 22 U.S.C., 8 U.S.C., and 18 U.S.C.).

72. *Id.* § 106(2)(D) (codified as amended at 22 U.S.C.A. § 7106(b)(11) (Supp. 2009)).

73. 154 Cong. Rec. H10902 (daily ed. Dec. 10, 2008) (statement of Rep. Smith).

74. Sex Workers Project at the Urban Justice Center Network of Sex Work Projects, and Prostitutes of New York, What is "Demand" in the Context of Trafficking in Persons? (Mar. 2005) (unpublished manuscript on file with author).

fore a focus on men who purchase sex acts or pimps who have not been proven to use force, fraud, or coercion was inappropriate.⁷⁵

Several provisions that enacted new programs or studies of the demand were met with delaying tactics and resistance by governmental departments to implementing the authorized programs. The original End Demand for Sex Trafficking Act (incorporated into TVPRA 2005) directed the TIP Office to add a new “demand standard” to the criteria by which countries will be evaluated in the annual TIP Report. Before the bill passed, someone slipped wording into the bill that delayed the new standard by three years. Instead of taking effect in 2006, the demand standard was first used in the 2008 TIP Report.⁷⁶

In the TVPRA 2005, the Department of Justice was directed to do a biennial study on the illegal sex industry in the United States.⁷⁷ The findings would have given the first such study and created a baseline for understanding many of the components of the demand. Two years later the study was still not done and DOJ had not asked Congress for funds to do the study. Members of Congress sent a letter to the House Appropriations Committee urging them to appropriate five million dollars for the study.⁷⁸ The broad-based anti-trafficking coalition wrote a letter signed by dozens of prominent groups and individuals to Acting Attorney General Peter Keisler criticizing DOJ for not doing the study.⁷⁹ The Wilberforce Act directs the Department of Justice to complete this study as defined in the TVPRA 2005.⁸⁰

In addition, the TVPRA 2005 directed the Department of Justice to fund twenty-five million dollars in programs for partnerships between law enforcement and local nongovernmental organizations to provide services to victims of domestic trafficking and develop programs, such as the “john school” to target the demand for prostitution and sex trafficking.⁸¹ Two years later, the call for proposals had never been issued. Members of Congress sent a letter to the House Appropriations Committee urging them to

75. See Global Rights, International Organization for Adolescents, Lawyers Committee for Civil Rights, The Door, & Urban Justice Center, Comments on Bill to End Demand for Sex Trafficking Act of 2005 (Apr. 22, 2005) (unpublished presentation on file with author).

76. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 104(b)(2), 119 Stat. 3558, 3564 (2006) (codified at 22 U.S.C. § 7106 (2006)).

77. See *id.* § 201(a)(1)(A) (codified at 42 U.S.C. § 14044(a)(1)(A) (2006)).

78. See Letter from Carolyn Maloney, Frank Wolf, Thelma Drake, John Lewis and Hank Johnson, to Alan B. Mollohan, Chairman of the Subcomm. on Commerce, Justice, Science & Related Agencies, and Rodney Frelinghuysen, Ranking member of the Subcomm. on Commerce, Justice, Science & Related Agencies (Apr. 18, 2007) (on file with author).

79. See Letter from Coalition Against Trafficking in Women, to Peter Keisler, Acting Attorney General (Oct. 5, 2007) (on file with author).

80. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 237(c)(3), 122 Stat. 5044, 5084.

81. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 202, 119 Stat. 3558, 3569 (2006) (codified at 42 U.S.C. § 14044a (2006)).

appropriate twenty-five million dollars for the programs.⁸² These are a few examples of the resistance by activist groups and government departments to combating the demand that has been created.

Sex Trafficking Crimes

There are many criminal statutes at the federal and state levels that apply to sex trafficking and pimping offenses, but the discussion of sex trafficking is usually limited to the narrow definition of severe forms of trafficking in the TVPA 2000, which requires proof of force, fraud, and coercion or the exploitation of a victim under the age of eighteen. Government agencies have reinforced this narrow focus by issuing calls for research proposals that are limited only to acts of “severe forms of trafficking.” Training materials and conferences only discuss “severe forms of trafficking.” The result has been a distorted understanding of sex trafficking and pimping in the United States. A perpetrator-focused approach will broaden the discussion about trafficking and include all sex trafficking crimes, including those that do not require the proof of force, fraud, and coercion. All research, trainings, and conferences should include all sex trafficking crimes.

In addition to the TVPA definition of “sex trafficking,” educators should include two older federal statutes:

The Mann Act: Often referred to as “sex transportation offenses,” the statutes apply to “who[m]ever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce . . . to engage in prostitution” or “knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense.”⁸³

Importation of Alien for Immoral Purpose provision of the Immigration and Nationality Act: “Import[ing] or attempting to import into the United States any alien for purpose of prostitution . . . or . . . keep[ing], maintain[ing], control[ing], support[ing], employ[ing], or harbor[ing] of an alien in any house or other place, for the purpose of prostitution”⁸⁴

These federal statutes are commonly used in sex trafficking cases by U.S. Attorneys, yet they are excluded from public education and analyses. Significantly, these older federal felonies, as noted above, do not require proof of force, fraud, or coercion, making it easier to prosecute pimps and traffickers.

82. See Letter from Carolyn Maloney, Frank Wolf, Thelma Drake, John Lewis and Hank Johnson, *supra* note 78.

83. 18 U.S.C. § 2422(a)–(b) (2006); see also 18 U.S.C. §§ 2421–2427 (2006).

84. 8 U.S.C. § 1328 (1990); see also 8 U.S.C. §§ 1322–1327 (1990).

The broader discussion of trafficking-related offenses should acknowledge that pimping is sex trafficking. The legal definitions of pimping at the state and local levels are almost identical to the federal definition of sex trafficking. There should be a seamless discussion of pimping and trafficking. There are anti-pimping laws in all fifty states of the United States. Most of the state laws have a lower burden of proof than the federal TVPA statute. Thirty-one states have laws in which at least one pimping offense is a felony that does not require coercion or force. Nine additional states have laws in which at least one pimping offense is a felony if it involves a minor, but does not require coercion or force. And in ten states, all pimping offenses appear to be misdemeanors or require coercion or force; usually the actionable activity is “compelling.”⁸⁵

Historically, society has understood the harm of pimping and the crimes involved. There are many state laws against pimping, and the most serious is profiting from organizing and managing persons for prostitution, which is the basic definition of sex trafficking. With the liberalization of attitudes and increased tolerance for the sex industry, we forgot what we once knew. With the TVPA, we reinvented the wheel. Now, we need to connect the history of combating pimping with the present anti-sex trafficking movement.

Focus on the Men Who Purchase Sex

As part of a perpetrator-focused approach, men should be held accountable for their harmful activities. These men contribute to the problem of sex trafficking. Their behavior should be included in discussions and analyses of prostitution and sex trafficking. Activists should work to stigmatize the buying of sex acts in the way that other harmful activities, such as drunk driving, domestic violence, and smoking, have been stigmatized over the past decades. Men who break the law should be arrested and treated as people who have caused harm to others. Where appropriate, purchasers of sex acts should be charged with felonies, such as child sexual abuse, sexual assault, or statutory rape.

Guided by President Bush’s NSPD and aided by Congress when a new law was required, significant changes were made in law and policy to prohibit U.S. citizens, military personnel, federal contractors, and federal employees from purchasing sex acts. The NSPD 22, *Combating Trafficking in Persons*, states,

The United States hereby adopts a “zero tolerance” policy regarding United States Government employees and contractors to combat trafficking. Departments and agencies shall adopt policies and procedures to: educate personnel and contract employees on as-

85. See Table Compiling State Anti-Pimping Laws (unpublished document on file with author).

signment or official travel abroad about trafficking in persons; to investigate any allegations of trafficking by such personnel; and to punish those personnel who engage in trafficking in persons.⁸⁶

One of the first government actions was to make it easier to prosecute American men who sexually abuse children while in foreign countries. The PROTECT (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today) Act of 2003 criminalized “sex tourists” who prey on children while they are abroad.⁸⁷

Acting on the NSPD, the Department of Defense set a “zero tolerance” policy for military personnel engaging in prostitution and abetting sex trafficking.⁸⁸ The Inspector General of the Department of Defense, Joseph E. Schmitz, described before Congress the harm of tolerating military personnel buying sex acts:

First of all, among the root causes of the recent resurgence of human trafficking, aside from the obvious profit motive of organized criminals, is a general reluctance of leaders at all levels to promulgate and to enforce principle-based standards for subordinates who create the demand for prostitution generally, and for sex slavery specifically. The second lesson learned that I would respectfully reiterate today is that whenever leaders, especially those of us who swear to support and defend the Constitution of the United States, become aware of humans being referred to as just something else (for example, theyre [sic] just prostitutes), we ought never turn a blind eye.⁸⁹

The TVPRA 2005 amended the Uniform Code of Military Justice to punish anyone who used a prostitute.⁹⁰ Henceforth, any service member who is convicted of purchasing a sex act could receive a dishonorable discharge and one year in prison.

The Department of Defense also initiated a mandatory training program on trafficking for all service members. The training was first implemented overseas:

Our primary focus is overseas because of the number of units and personnel that are in countries that are high-demand destinations for trafficked women in the sex exploitation industry. We want to educate people on what it is so they know what to stay away from or what to report.⁹¹

The Department of State also issued a directive to all foreign service personnel, reinforcing a previous ban on purchasing sex acts.

86. Memorandum, President George W. Bush, *supra* note 28.

87. See PROTECT Act of 2003, 18 U.S.C. § 2423 (2006) (penalties against sex tourism).

88. *Enforcing U.S. Policies*, *supra* note 15, at 9.

89. *Id.*

90. See Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, §103(a)(1), 119 Stat. 3558, 3562 (2006) (codified at 18 U.S.C. § 3271 (2006)).

91. Wood, *supra* note 50.

As long established in the FAM [Foreign Affairs Manual], exploiting those in prostitution is considered ‘notoriously disgraceful conduct.’ Furthermore, people who buy sex acts fuel the demand for sex trafficking. . . . [I]rrespective of whether prostitution is legal in the host country, employees should not in any way abet sex trafficking or solicit people in prostitution. . . . Involvement with the commercial sex industry is unacceptable in light of the diplomatic and foreign policy goals of the United States and the conduct that is expected of Department employees. . . . DOS employees who engage in this conduct are subject to discipline.⁹²

At the time the Wilberforce Act of 2008 was passed, Representative Chris Smith called for oversight in all departments with overseas personnel and contractors. Smith called for

investigations by the Inspector Generals of the Department of Defense, State Department and the United States Agency for International Development, respectively, into [sic] ascertain contracts awarded by those agencies. The IGs’ attention would be directed to contracts that carry a risk of encouraging human trafficking, including instances where a contractor or subcontractor may be engaging in the procurement of a commercial sex act.⁹³

During the past six years, where the U.S. government has jurisdiction it has prohibited the purchasing of sex acts by U.S. employees working overseas. It has criminalized and prosecuted citizens who sexually abuse children while they are in foreign countries.

Inside the United States, the federal government does not have jurisdiction over state and local prostitution or pimping laws. Anti-sex trafficking activists need to direct their energies to reforming state and local law and policies to hold perpetrators accountable and reduce the demand for prostitution and sex trafficking.

Focus on the Pimps and Sex Traffickers

A perpetrator-focused approach calls for the investigation and prosecution of all traffickers, pimps, and their criminal associates by federal, state, and local law enforcement. The goal is to end the tolerance of the illegal sex industry in our communities and hold the criminals accountable. These illegal operations often openly advertise in newspapers and on the Internet. Effective legal strategies need to be devised by state and local authorities to permanently shut down brothels that operate as massage parlors, spas, or escort services.

Most state and local laws against pimping need to be modernized by updating the language, upgrading the offenses to felonies, and increasing

92. Memorandum from Secretary of State Condoleezza Rice, Department Policy on the Solicitation of People in Prostitution (June 8, 2008) (on file with author).

93. 154 Cong. Rec. H10902 (daily ed. Dec. 10, 2008) (statement of Rep. Smith).

the penalties. As previously noted, the victim-centered approach often encouraged a critical assessment of the potential victim—is she a real victim or not? We need to shift the focus to judging the perpetrator, not the victim. The anti-battering movement and the anti-rape movement convinced us to stop blaming the victim by asking questions about her behavior or clothing. The focus should be on the perpetrators: Why is he or she pimping women and children? Why is he or she profiting from another person’s exploitation? Why do our state legislators not pass easily enforceable laws with appropriate sentences for perpetrators of serious crimes? Why do our state and district attorneys not enforce existing laws?

New tools created by the Wilberforce Act make it easier to prosecute pimps and sex traffickers. When the Act passed, Representative Chris Smith said, “By prosecuting the traffickers and imposing serious jail time, we are telling these exploiters we are coming after you, we will hunt you down, and you are going to pay for your crimes.”⁹⁴ The new provisions are as follows.

- Federal prosecutors will no longer have to prove that the trafficker knew the victim was under the age of eighteen if they had “reasonable opportunity to observe” the victim. In addition, prosecutors will only have to prove that the trafficker recklessly disregarded that the victim was going to be used for a commercial sex act. To convict off-site brothel landlords who have not had reasonable opportunity to observe the victims, the Wilberforce Act lowers the proof requirement to “reckless disregard.” This provision carries a mandatory minimum sentence of ten to fifteen years and requires no proof of force, fraud, or coercion.⁹⁵ This “provision . . . will greatly enhance the ability to prosecute traffickers and such ancillary supporters as brothel landlords.”⁹⁶
- The sentencing guidelines for “alien harboring” are significantly heightened if the harboring is in furtherance of prostitution. Proof of force, fraud, or coercion is not required. Prosecutors only need to prove that the pimp or trafficker knew or was recklessly blind to the victims’ illegal immigration status. This new “provision will effectively make [sex] traffickers of illegal aliens criminally liable on a per se basis, subject only to their ability to prove that they exercised reasonable due diligence in seeking to determine their victims’ legal status, and were misled about it.”⁹⁷

94. *Id.*

95. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, § 222, 122 Stat. 5044, 5068 (codified as amended at 18 U.S.C.A. § 1583 (Supp. 2009)).

96. Rhode Island Coalition Against Human Trafficking, *The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: 50 Key Provisions*, para. 19, http://www.riagainstrafficking.org/The_2008_Wilberforce_Act_50_Key_Provisions.doc (last visited Mar. 22, 2008).

97. *Id.* at para. 20.

- Under the TVPA 2000, it is criminal for traffickers to use “non-violent and psychological coercion” to compel someone to engage in a commercial sex act. The Wilberforce Act makes it a crime to prey “on a victim’s drug use or addiction (whether pre-existing or created by the traffickers). [This] will, in and of itself, form the basis for convicting traffickers under the TVPA.”⁹⁸

The recently passed Wilberforce Act has other provisions that will enable the U.S. government to more easily prosecute perpetrators. Combined with other trafficking-related federal laws and state and local anti-pimping laws, these laws comprise the basis of the perpetrator-focused approach. More traditional investigative techniques need to be used for anti-trafficking and anti-pimping investigations. The goal is to prosecute the criminals and relieve the burden on the victim to give extensive, difficult testimony in court.

FOCUS ON THE STATE

The United States has done a remarkable job in acting against sex trafficking over the past decade. The TVPA and Reauthorizations and the NSPD are examples of how governments can profoundly change their laws and policies concerning sex trafficking and the demand for commercial sex acts. All of the previously listed changes in law and policy are examples of how the United States has acted to reduce the demand for victims of sex trafficking.

The annual TIP Report on foreign countries’ efforts to combat trafficking has been a very successful way of using diplomacy to encourage other countries to change their laws and policies. The new demand standard on efforts to reduce the demand for commercial sex acts will set a new threshold for persuading other countries to reduce prostitution and sex trafficking.

Now, state and local laws and policies need to be reformed so there are more aggressive efforts to prosecute pimps and men who purchase sex acts. The language of anti-pimping laws needs to be modernized. Pimping offenses should be upgraded from misdemeanors to felonies in recognition of the serious harm pimps do to victims.

Research on sex trafficking has ignored the victims of anti-pimping crimes, focusing only on victims of severe forms of trafficking defined in the TVPA. Many U.S. government-funded research studies have restricted the research to severe forms of trafficking, limiting the data gathered and analysis to a narrow population of victims. The scope of sex trafficking research needs to be broadened to include all trafficking-related offenses and all victims of sex trafficking—foreign and domestic. In the Wilberforce Act, Congress has again directed the Department of Justice to conduct a

98. *Id.* at para. 21.

study of the illegal sex industry in the United States.⁹⁹ That study needs to be completed to create a baseline for understanding the demand for commercial sex acts.

A COMPREHENSIVE APPROACH TO SEX TRAFFICKING

The perpetrator-focused approach is a complement to the victim-centered approach. The victim-centered approach for victims of sex trafficking has initiated a paradigm shift in how women and girls in prostitution are viewed.

There are now many tools available to pursue a perpetrator-focused approach. Prosecutors need to fully implement these new tools. Conferences, trainings, research studies, and scholarship need to examine the full complement of anti-pimping and anti-sex trafficking statutes and policies. Congress needs to hold hearings and activists need to ask the appropriate officials for reports on efforts to focus on the perpetrators.

While efforts are made to strengthen the fight against the demand side of sex trafficking, victims and services for victims cannot be forgotten. The human rights approach to identifying and assisting victims of pimping and trafficking is the appropriate one. In addition, there should be a focused approach to convict perpetrators. Then there will be a balanced, comprehensive approach to combating sex trafficking.

99. Congress directed the Department of Justice to conduct this study in the TVPRA 2005, but the study was never done.