

WHERE ARE THE VICTIMS?

THE CREDIBILITY GAP IN HUMAN TRAFFICKING RESEARCH

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ACKNOWLEDGEMENTS

We would like to thank Dr. Roza Pati for inviting us to be part of this very important symposium on human trafficking and for all the great work St. Thomas University does in this area. We were particularly interested in the varying viewpoints on the issues of human rights vs. criminal rights. This symposium highlights the dedication of advocacy groups across disciplines and demonstrates the potential for sustainable improvements in detection of modern day slavery victims, apprehension and prosecution of traffickers, and recovery services for victims.

I. Introduction

Nothing drives the passion and stirs the emotion, especially in the United States, more than the horrendous stories of modern-day human slavery. Whether sexual, domestic, or labor, the terror

and horror that human trafficking victims have endured defies the scope of our sensitivities. Most who work in human service fields have heard many stories of these survivors. We have heard of the dedication of the practitioners and law enforcement officers who are involved in the apprehending, and prosecution of offenders, and advocate for victims in these very complex cases. To realize that that this may be happening in our own towns and neighborhoods, invisible to us as we go about our daily comfortable lives, is unthinkable. Therefore, it is not surprising that when presented with these stories, we responded as a nation via our legislators. Since Congress first acted on this issue in 1999, the federal government has supplied more than 150 million dollars to fight human trafficking in the United States alone. However, the most recent data suggests that there tens of thousands fewer victims than originally cited. While no one would argue that any victim in the United States is worth the support of our various systems, the danger of loss of credibility for those persons rises when there is a substantial gap between the cited numbers of cases and those that have be exposed. The purpose of this presentation is to examine those gaps, the language commonly used that may undermine credibility related to victims, and suggestions for action that would strengthen future arguments for federal funds to serve victims of human trafficking.

II. Background of current U.S. Policy to human trafficking

Since the mid 1990's the Unites States has played a leading role in putting trafficking in person on the global community's radar and in addressing trafficking in the United States. However, prior to 2000 there was no comprehensive Federal Law that protected victims of trafficking or to enable prosecution of their traffickers. ¹ The passage of the Trafficking Victims

¹ Anthony Destefano, *The War on Human Trafficking: U.S. Policy Assessed*, xvi-xix(2007)

Protection Act of 2000 (TVPA)² made human trafficking a Federal Crime and was enacted to assist countries in combating human trafficking overseas, to protect victims in the U.S. and help them rebuild their lives and to strengthen laws of arrest and prosecution of traffickers with new Federal penalties. The TVPA passed in 2000 and subsequent reauthorizations made it illegal to obtain or maintain persons for commercial sexual activity by using fraud, force, or coercion for those 18 years of age or older. Proof of force, fraud, or coercion is not required for those victims under the age of 18. The law also criminalizes the use of force or coercion to provide, or obtain, persons for any labor or services (farm work, factory work or household service)³. It also updated and supplemented existing involuntary servitude statutes used to prosecute trafficking crimes, enhanced the penalties for trafficking crimes and provided a range of new protections and assistance for victims of trafficking.

The authors recognize the need for comprehensive legislation related to trafficking in humans that provides standardized language for national policy. The problem lies within the context of how the need for the legislation was presented and the zealous response to the issue. Prior to the passage of the TVPA, at a 1999 Congressional hearing on human trafficking, legislators learned about the horrors of trafficking in human beings through the testimony of practitioners and rescued victims themselves. Victims testified about the terror and brutality they went through as modern day “slaves”. At that time, Congressmen requested data related to the scope of human trafficking in the U.S. The numbers presented to them were provided by the

² Victims of Trafficking and Violence Prevention Act of 2000, 42 U.S.C. § 405(a) (2000). PUBLIC LAW 106–386—OCT. 28, 2000, available at <http://www.state.gov/documents/organization/10492.pdf>

³ Title 18, U.S.C. §§ 1581, 1584 Involuntary Servitude and Peonage Section 1584 of Title 18 makes it unlawful to hold a person in a condition of slavery, that is, a condition of compulsory service or labor against his/her will. Section 1584 also prohibits compelling a person to work against his/her will by creating a “climate of fear” through the use of force, the threat of force, or the threat of legal coercion which is sufficient to compel service against a person's will. Section 1581 prohibits using force, the threat of force, or the threat of legal coercion to compel a person to work against his/her will. In addition, the victim's involuntary servitude must be tied to the payment of a debt.

Department of State and the CIA. The data presented estimated that there were as many as 50,000 modern day slaves trafficked in the United States every year and 700,000 victims were trafficked globally each year.⁴ It was on acceptance of these data that Congress passed the Trafficking in Victim's Protection Act of 2000.⁵

However, in the 2003 revision of the assessed number of human trafficking victims in the U.S., the number of victims was revised by the Department of Justice to 18,000 to 20,000 people trafficked annually in the United States.⁶ It is important to note, that the decline from 50,000 estimated victims as cited above to the revised number of 18,000 to 20,000 does not reflect a reported drop in the crime of human trafficking. Instead, it reflects a revision of the methodology used to estimate these numbers. The U.S. Department of Justice estimate is based upon a statistical method called "Markov Chain Monte Carlo,"⁷ a statistical method often used in medical studies and complex surveys. This method replaces unknown or missing data by making use of plausible values for unknown information. It creates estimates of what is unknown. These estimates went through an additional analysis, a Bayesian analysis⁸, which integrates previous estimates of human trafficking or, when those estimates are missing, expert surveys. The data provided then are, according to U.S. Department of Justice, estimates of estimates, rather than reporting of known cases. For additional information regarding the methodology used to generate the U.S. Government estimate, please contact the State Department's Office to Monitor and Combat Trafficking in Persons at (202) 312-9672.

⁴ See http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf

⁵ Washington Post Article, Human Trafficking Evokes Outrage, Little Evidence (September 23, 2007) available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401.html>

⁶ See http://www.usdoj.gov/crt/crim/wetf/us_assessment_2004.pdf p. 8.

⁷ Id.

⁸ Id.

Given this knowledge of how the TVPA was initially passed and the subsequent disclosure of how the numbers of victims are estimated, it is important that all who work in this field move forward with caution or risk the loss of credibility on a very important issue. The large gap in estimates may call into question the reliability of any information provided and has potential consequences for future policy and funding issues related to this crime. Even though the United States is widely regarded as a destination country for trafficking in persons, the exact number of human trafficking victims within the United State has remained largely undetermined.

III. The Hidden Crime: Reasons for Potential Underreporting

As we heard often during this symposium, by the very nature of the crime, human trafficking is largely hidden and accurate data on the extent and nature of human trafficking is hard to calculate. Trafficking victims are often in dangerous positions and may be unable, or unwilling, to jeopardize their lives to report to or seek help from relevant authorities. Victims may live daily with emotional and physical abuse, inhumane treatment, and threats to their families back home. They may fear authority figures and are often told that if discovered, they would be imprisoned, deported or tortured. Visas and other identify documents, if any exist, are often taken by their traffickers as an addition method of detaining the victims.

Fostering fear of authority in victims is a common contributor to poor detection of human trafficking victims. Douglas Blackmon⁹ compares the current issue of human trafficking to the past history of post-abolition slave treatment in the U.S. in the late 1800's. According to Blackmon, for decades after emancipation, thousands of African Americans were forced into labor after charges were made against them through the criminal justice system. To pay off these so-called debts they worked for

⁹ Blackmon, D. A. *Slavery by another name: The reenslavement of black Americans from the Civil War to World War II*. Garden City, NY: Doubleday. (2008).

landowners without, or at best minimal, compensation. If they resisted, new charges were filed against them, thus their debt increased. This method of control is similar to many founded cases of human trafficking today. This form of slavery very much resembles the stories of human trafficking today.

Because of these reasons, many professionals feel that human trafficking is an underreported crime, not unlike domestic violence or rape where victims have to put their trust in police, prosecutors and victims services professionals to face their accusers in court. The fact that human trafficking victims are often from other countries and cultures that do not value women as well as being unfamiliar with the language or culture here, magnifies their distrust of authority and unwillingness to come forward.¹⁰ Another contributing factor is some victim's fear of access to justice because of their own immigration status. Victims who entered this country without proper documentation have a limited understanding of their legal rights¹¹. According to Logan, Walker, and Hunt, human trafficking perpetrators often use victims for criminal activity and victims fear that they will be perceived as criminals as well if they attempt to seek help.

Identifying human trafficking crimes continues to present special challenges to federal investigators and prosecutors. Since the primary eyewitness to, and evidence of, the crime is typically the trafficking victim the first step in pursuing these crimes is usually to discover the victims. Yet these victims are often hidden from view, employed in legal or illegal enterprises, do not view themselves as victims, or are considered to be criminals or accessories to crimes (e., prostitutes or smuggled aliens). Average citizens, or even state and local law enforcement

¹⁰ Conference Panels: "Human Trafficking: Global and Local Perspectives". St. Thomas University School of Law, February 12, 2009.

¹¹ T.K. Logan, Robert Walker and Gretchen Hunt . *Understanding human trafficking in the United States*. Trauma Violence Abuse 2009; 10; 3

working in the community may be the first point of contact for a trafficking victim, rather than federal law enforcement.¹² Moreover, trafficking in persons cases are difficult to pursue because they are complex, multifaceted, and resource intensive and a single case may involve multiple victims requiring a variety of services including food, shelter, counseling protection etc.

Federal agencies must determine whether those identified as potential victim have in fact been trafficked and then secure their cooperation in order to pursue the investigation and prosecution of the traffickers. As previously mentioned victims may be reluctant to testify because of trauma, fear, loyalty to the trafficker, or distrust of law enforcement. Such crimes may involve labor exploitation, sex exploitation, alien smuggling, organized crime and financial crimes. Human Trafficking is a transnational crime requiring collection of evidence from multiple jurisdictions from overseas and may involve violations of labor, immigration, antislavery, and other criminal laws. Victims of trafficking are bought, sold, sometimes transported across national boundaries, and forced to work in legal or often illegal activities including the sex industry, sweatshops, domestic service and agriculture among others. Despite International acknowledgment of the trafficking problem as a human rights violation, estimates of the number of victims remain questionable because of the hidden nature of the crime, methodological weaknesses and numerical discrepancies.¹³

IV. Office to Monitoring Trafficking in Persons Office: A New Bureaucracy is Formed

In response to the complexities noted above, part of the outcome from the passage of the TVPA was to create an entirely new bureaucracy that attempted to consolidate several major federal departments and agencies under one roof to deal exclusively with trafficking of persons.

¹² See GAO Highlights of GAO-06-825, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives. July 2006, D.C.

¹³ Id.

Housed within the Department of State, the new agency is called the Office to Monitor Trafficking in Persons and consolidates the anti-trafficking activities of the Department of State, Health and Human Services, Homeland Security, Labor and others.

Another outcome of the TVPA was the creation of new, or expansion of existing, not-for-profit agencies that were eligible to apply for the millions of dollars in federal grants related to human trafficking. Since the enactment of the TVPA, 500 million dollars has been spent or allocated both domestically and globally.¹⁴ Many of the domestic grants have few accountability standards, or performance measures included in the funding criteria. As a result, little data is provided to the funding sources related to outcome measures for these federal dollars. An additional concern noted is the lack of apparent coordination and collaboration among the major Government funding agencies, such as the Department of Justice or Health and Human Services in how data is collected and aggregated.

Across the U.S., over 40 local human trafficking task forces were established with federal funds however were not required to collect any data.¹⁵ It was not until January 2008 that these task forces were required to enter any data with the Bureau of Justice Statistics.¹⁶ In addition to the lack of accountability regarding data, the funds had very few restrictions on how they could be used. As a result, tax dollars are used to provide solutions before we know the extent of the problem. For example, it is acceptable to use this funding to purchase designated vehicles and fund special deputy positions designated to human trafficking even if there are no reported victims in the funded task force's community. There was no requirement as to how often the task forces were to meet or even who was to be on the Task Force. The obvious purpose and

¹⁴ See note 5

¹⁵ See BJA, Characteristics of Suspected Human Trafficking Incidents, 1-5 2007-8. NIJ22456-1/2009. D.C.

¹⁶ Id.

goal was to establish a mechanism for the major stakeholders, federal and state law enforcement, prosecution, victim's service providers and other NGO's a formal way to communicate and collaborate on the human trafficking issues and cases in a particular region. However, without guidelines as to how communication and collaboration is to occur, the results can be disappointing. Failed communication among partners within the Task Force can result in duplication of efforts in some areas and gaps in others. This lack of accountability has created a huge credibility gap that is now coming to the attention of policy makers who are now reviewing their funding priorities in lean times.

According to an expose printed in the Washington Post¹⁷ Health and Human Services (HHS) was paying people to find victims. As a result of criticism of how lack of accountability has wasted tax dollars, the Bush administration paid a New York public relations firm 12 million dollars to launch a major campaign to train people to find victims. Last fall, HHS announced the funding of an additional \$3.4 million in new street outreach awards to 22 agencies and groups nationwide. The Washington Post article cited the outcomes of one agency funded with this money in Dallas, The agency received \$125,000 and used the funds to increase awareness and educate area hospitals, police departments, domestic violence shelters and any other agency that might come in contact with victims of human trafficking over a year. To date, three victims have been reported.

A. The U.S. Trafficking in Person's Report

One of the major responsibilities of the Office to Monitor Trafficking in Persons is to prepare the U.S. Government's Official Report (TIP) on trafficking annually. The Trafficking in Persons report is considered to be the most comprehensive anti-trafficking review issued by

¹⁷ See *supra* note 5

any single government.¹⁸ The reports over the years since the TVPA was enacted in 2000, varied considerably in official yearly estimates of human trafficking into the United States. The report quoted from 45,000 and 50,000 persons trafficked into the U.S. that was reflected in the 2002 report which included only estimates of females that were trafficked into the U.S. for sexual exploitation. The first year the estimates clearly did not include labor trafficking or adult males. In 2003, the Trafficking in Persons Report estimate mysteriously dropped to between 18,000 and 20,000 and dropped again in 2004 to between 14,500 and 17,500. Similar discrepancies exist in the U.S. TIP Global estimates the 2001 and 2002 TIP Reports estimated worldwide trafficking to be 700,000. This estimate increased to 800,000 to 900,000 in the 2003 report then decreased to a range of 600,000-800,000 in 2004.

B. Methodology Questions and Issues

A wide range of estimates continue to exist on the scope and magnitude of human trafficking, both internal and transnational. The International Labor Organization (ILO) – the UN agency charged with addressing labor standard, employment, and social protection issues – estimates that there are 12.3 million people in forced labor, bonded labor, forced child labor, and sexual servitude at any given time; other estimates range from 4 million to 27 million (DOS, 2006). The U.S. Department of State continues to produce estimates of the annual worldwide trafficked population at 800,000 to 900,000, with 14,500 to 17,500 trafficked in the United States alone.¹⁹ These estimates, while widely quoted, are questioned by many, including the U.S. Government Accountability Office (GAO), which reviewed the estimation methods used by the U.S. government, ILO, the United Nations Office on Drugs and crime (UNODC) and IOM. GAO found that all of these estimates are questionable because of methodological weaknesses

¹⁸ See *supra* note 12

¹⁹ See Jeremy Wilson and Erin Dalton's Rand Corporation Report: Human Trafficking in Ohio: Markets, Responses and Considerations. 11 (2007)

previously mentioned. Limitations also include the inability to replicate estimates based on potentially unreliable estimates not suitable for analysis over time. It goes on to report that country data are generally not reliable or even available much less comparable and that there is considerable discrepancy between the numbers of observed and estimated victim of human trafficking.²⁰

As mentioned above, the Governments Official Report on Trafficking, the annual TIP report, which is published annually, shows considerable fluctuation in official yearly estimates of human trafficking into the United States.. The 2000 report, for example, stated that there were between 45,000 and 50,000 persons trafficked into the U.S. The 2002 report stated that 50,000 females were trafficked into the U.S. for sexual exploitation, the first year the estimates clearly did not include labor trafficking or adult males. In 2003, the Trafficking in Persons Report estimate mysteriously dropped to between 18,000 and 20,000. The number dropped again in 2004 to between 14,500 and 17,500. Estimates have essentially remained the same in recent reports.²¹

We believe that it is a mistake to continue to quote statistics that may not be reliable or valid such as those the U.S. government continues to cite based on estimates alone. Funding for concerns such as human trafficking can often be emotion-based. Just as the initial funding was largely due to the emotion stirred by the figures reported, current funding can be reduced drastically if the perception is that the issue has been inflated and the funds used ineffectively for assisting victims or catching perpetrators. In a depressed economy, accountability should increase. These data are too easy to challenge and the we suspect the challenges are coming. Considering the amount of funds allocated and the apparently disparity in how these funds are

²⁰ See *supra* note 12

²¹ See *supra* note 12

allocated almost no research has been done on the effectiveness of anti-trafficking efforts in the United States or abroad. Little is known about what really works and what does not.

“Measuring Human Trafficking success remains one of the most problematic and least well-developed areas of human trafficking research” admitted the U.S. Department of State after their Seminar on Trafficking in Persons Research in 2005.²²

Three years ago after the government downsized its estimates of trafficking cases, many state that even the new numbers do not reflect actual cases. The CIA analysis that developed and ran the computer simulation program that estimated that the new numbers of victims trafficked into the United States was 14,500 to 17500 a year, which are the statistics now being quoted widely are being questioned by experts such as Dr. David Bank, a statistics professor at Duke University. According to the Post report he maintains that it unlikely that this was a robust sound analysis. Others called the estimates totally unreliable.²³

As the U.S. Government has spent over \$500,000,000 worldwide and as financial resources in these tough economic times are being drastically cut and/or reallocated, how do we keep close the credibility gaps between anecdotal data, case studies, and hard concrete actual confirmed cases? In essence, how do we keep the momentum that the TVPA has generated alive?

IV. Comments from Local DOJ Funded Task Forces

The Justice Department’s human trafficking task force in Washington. D.C., according to the Washington Post report, mounted an aggressive effort to find victims. However the former chair of the D.C. task force states that in spite of hours and hours of overtime spend in multiple ways including interviewing foreign women in local brothels that it has been very difficult to

²² Office to Monitor Trafficking in Persons Research fact sheet: D.C. (2005)

²³ See *supra* note 5

find any underlying trafficking. In spite of the thousands of law enforcement officials and other first line responders nationwide who have been trained by the 42 task forces funded nation-wide in how to identify crimes of trafficking, the results are comparably small in comparison to the expected outcomes. Many of the local DOJ funded task forces are under pressure to justify their grants and find victims express their frustrations.

Orange County California

The concern about lack of communication and cooperation among some task force members in the same region are cited by the Orange County California Anti-trafficking Task Force.²⁴ The Orange County Anti-trafficking task force applied for, and received, an additional \$1.2 million dollars. Officials from the Westminster Police Department maintained that trafficking in humans was a considerable problem in Orange County, particularly in the Asian community. Half of the funds were to be used by the Police Department and the other half by the local Salvation Army for victim's services. These funds are in addition to the \$450,000 funds previously received for the Department of Justice funded local Task Force. However, the same Westminster Police Department official, Lt. Dereck Marsh, stated at a statewide symposium on human trafficking that there were significant discrepancies between the estimate of human trafficking victims and the actual victims and that this is a significant issue he has to address. The gap between estimates and actual measures and the nebulous outcome expectations from the funding sources may contribute to the reluctance of local law enforcement to dedicate resources and personnel to human trafficking task forces and enforcement efforts. Lt. Marsh further states that law enforcement does not appear to be motivated to participate simply because a local task

²⁴ Orange County (Calif) Register, "Anti-Trafficking task force gets \$1.2 Million. (October 14,2008)

force has received funding. It is his suggestion that funding opportunities should be tied to local agency participation not just attending a task force meeting.²⁵

San Diego California Task Force

According to an article published in the North County (San Diego) Times²⁶, funds from the first year of a \$448,134 federal grant to establish a multi-agency human trafficking task force in San Diego County was used to train officers and improve community awareness. However, the article states that the efforts have not resulted in increased prosecutions. It further states that some area law enforcement officers remain skeptical about the extent of human trafficking in the area. The article cites concerns voiced by an immigration lawyer who has represented a number of trafficking victims. Like other stakeholders have questioned, this attorney is not sure whether the lack of victims identified is because there are not many victims or whether they are unwilling to come forward. At the time the San Diego California Task Force received a three-year grant in 2005 it was estimated that there were more than 50 victims in North County alone. So far there are a dozen open cases which have yet to be verified as human trafficking victims.

Lee County Florida

In one local Southwest Florida task force that has been provided DOJ funds for the past three years, there is often only one law enforcement member present at the meetings and his attendance is infrequent. This funding for this detective's position is entirely from the DOJ grant. His reluctance to participate is candidly reported by his because of the lack of cases he has to

²⁵ Lt. Dereck J. Marsh. Paper presentation at State Human Trafficking Symposium, titled: Issues Impacting Human Trafficking Collaborations: A local Law Enforcement Perspective. (March, 2007)

²⁶ North County (San Diego) Times article: Human Trafficking grant has pay to train officers, improve awareness. (April 23, 2006)

investigate. He voices little need for such specialized investigative services when there are so many other crimes and victims. In Lee County, during the previous three years of funding, despite many investigation, there not been a single confirmed and certified trafficking case and only a handful of pre-certified victims. Out of the 42 potential human trafficking cases referred to this Task Force in 2008, none were confirmed as true human trafficking cases.²⁷ Even so, Lee County Florida has just received an additional \$250,000 in federal funds for the Task Force and the OVC has just provided \$260,000.00 to Catholic Charities for comprehensive victim's services in Lee County for the next 18 months (ending in 2010). Additionally the Department of Health and Human Services (HHS) continues to fund victim awareness and services through its "Rescue and Restore" initiatives in the same area, often duplicating efforts with little communication and/or coordination with the task forces in the area.²⁸

Rand Corporation – Ohio Study

The Rand Cooperation was awarded a large DOJ grant to study human trafficking in Ohio. In this study of Human Trafficking²⁹ a content analysis identified concrete cases for the years 2003 – 2006. There were only 15 actual cases identified in the two study areas of Columbus and Toledo during this three year period. The study revealed that respondents stated that even though there are few identified cases relative to other crimes most believe that the problem is significantly larger than the known cases imply. A few practitioners stated that they believed that there are as many as 3 to 10 trafficking victims for every one identified. Other practitioners around the country have also mirror these beliefs. The authors of the study summarizes their findings by stating that policy makers and practitioners must carefully weigh

²⁷ Author's (McGaha) notes and personal knowledge as co-chair of Lee county Human Trafficking Task Force.

²⁸ *Id*

²⁹ *See supra* note 1

their response to this crime relative to others. Further, it is agreed that even though all serious crimes warrant attention, providing resources to any crime obviously limits resources that can be used to address another.

V. Improving Credibility: Data Collection Efforts

In an attempt to address the lack of data being collected by participants in funding for human trafficking, the DOJ provided funding to the Institute on Race and Justice at Northeastern University in collaboration with Urban Institute to develop a standardized and reliable way to routinely collect data from the funded task forces around the country.³⁰ The program is called the Human Trafficking Reporting System (HTRS). The result is a collection of the number, characteristics, and other variables in human trafficking reports, investigations, arrests, and prosecutions across the nation. It is expected that these data will assist the Department of State, and others, in the assessment of the success of human trafficking prevention and intervention strategies. The Human Trafficking Reporting System (HTRS) is designed to provide systematic information on cases of human trafficking that have come to the attention of law enforcement and to establish a sustainable data collection and reporting mechanism specific to the problem of human trafficking.

Initial findings of the Human Trafficking Reporting System

The initial findings of the HTRS were released this past January by the Bureau of Justice Statistics (BJS).³¹ In the first 21 months of operation, the Human Trafficking Reporting System ((HTRS) gathered data from 38 of the 42 federally (DOJ) funded task forces around the country.

³⁰ Human Trafficking Collection and Reporting Project: Online Resource Center: Developing a National Human Trafficking Reporting System. Retrieved from <http://www.humantrafficking.neu.edu/> 1-5 6/9/2006

³¹ See BJA, Characteristics of Suspected Human Trafficking Incidents, 1-5 2007-8. NIJ22456-1/2009. D.C.

During this 21 month period the Task Forces reported a total of 1229 suspected Human trafficking incidents that involved 871 suspects and 1442 potential victims. Sex Trafficking accounted for 83% of the 1,229 alleged incidents of human trafficking reported, labor trafficking 12% and other 5%. Forced prostitution (46%) and child sex trafficking (30%) represented the largest categories of confirmed human trafficking investigations that were ultimately found not to involve human trafficking elements. However, of the 1,229 suspected incidents of human trafficking that were investigated less than 10% were confirmed as human trafficking case. Ten (10%) were pending confirmation and 23% had been determined not to involve human trafficking. The remaining 58% lacked information on whether the alleged incident was confirmed human trafficking case. About 78% of the cases were reportedly still under investigation and 22% of the cases had been closed.

The 38 Task Forces also reported on the citizenship status of 112 suspects in confirmed human trafficking incidents. Overall, 56% of suspects were U.S. Citizens, 21% were undocumented aliens, and 11% qualified aliens. U.S. Citizens (64%) constituted the largest percentage of suspects in confirmed sex trafficking incidents. Among the 16 suspects in confirmed labor trafficking incidents, 8 were qualified aliens and 2 were undocumented aliens. Over 90% of the alleged human trafficking incidents were female and 40% of labor trafficking victims were female while 99% of the sex trafficking incidents were female. Hispanics accounted for the largest percentage (40% of victims and an equal number were white (23%) or black (21%). Asians represented 10% of sex trafficking victims and 31% of labor trafficking victims.³²

³² *Id* at 6-10

Government Accountability Reports (GAO)

Concern over the credibility of human trafficking case estimates are cited within the government itself. The U.S. Government Accountability Office (GAO) also criticized the method the U.S. government used to estimate that 600,000 to 800,000 people were trafficked worldwide annually. This estimate was developed by one person who did not thoroughly document how he obtained his numbers, so that the estimate could not be replicated, and caused doubt about the numbers reliability. According to the GAO report, the U.S. Department of State as not yet established an effective mechanism for estimating the number of victims, or for conducting ongoing analysis of trafficking related data kept by government entities. A recent GAO report calls for into question the U.S. Government estimates stating that the accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data and numerical discrepancies. The report continues to identify many of the challenges associated with accurately representing human trafficking activities and victim. The most pertinent discussion referenced the lack of performance measures, which have led to vague outcomes. These vague outcomes are a consequence of the disparity between the severe definitions of trafficking at the federal and state levels of government versus the “severe” definitions of trafficking at the State and Federal level.³³

The report also maintains that existing estimates of the scale of trafficking at the global level are also questionable and improvements in data collection have not yet been implemented. The GAO study reinforced that the entire U.S. governments estimate that the trafficking policy was based on, was developed by one person who did not document their work so the estimate may not be replicable which casts strong doubt on its reliability. Also, country data are generally

³³ See *supra* note 12 at 12-14

not available, reliable or comparable and that there remains considerable discrepancy between the numbers of observed and estimated victims of human trafficking. The U.S. Government has not yet established an effective mechanism for estimating the number of victims or for conducting ongoing analysis of trafficking related data that resides within various government agencies. The U.S. Government and three credible Global organizations gather data on human trafficking, but methodological weaknesses affect the accuracy of their information. Efforts to develop accurate trafficking estimates are further frustrated by the lack of country data resulting in a potential and considerable discrepancy.³⁴

Attorney General's Annual Report to Congress on Human Trafficking

The Department of Justice, through the Attorney General's office, in accordance with the TVPA is required to provide Congress a comprehensive update on human trafficking efforts annually. According to the most recent AG's report³⁵ the only verifiable U.S. data document the number of trafficking victim officially certified by the Department of Health and Human Services. Since 2001 the office of Refugee Resettlement, issued 1974 certifications or letter of eligibility to receive federally funded benefit as trafficking victims. Clearly this also is indicative of the huge discrepancy between the number of certified victims per year and the numbers of estimated trafficking victims in the US annually. This raises questions about whether the estimates are extremely exaggerated, or victims are hidden, or whether trafficking victims are not being processed as trafficking victim by the federal government. According to the Attorney General's report on Human trafficking from 2003 – 2007 the Victim of Crimes (OVC) office grantees report that they have provided services to 1,924 pre-certified trafficking

³⁴ See *supra* note 7

³⁵ See U.S. Attorney General's Office "Report to Congress on U.S. Activities to Combat Trafficking in Persons, Fiscal Year 2007. 19-21, D.C.

victims and trained over 78,000 practitioners from all stakeholders. According to the AG's report, both DOJ and DHHS coordinate to ensure that providers do not "double dip" and receive funding from both DHHS and OVC to serve any trafficking victim, pre-certified or certified. However, the findings from a recent program evaluation demonstrate that this does indeed occur.³⁶ Even though the formal processing of trafficking crimes under the TVPA is extremely low compared to the estimates, the numbers are increasing. During FY 2007, for example, the Attorney General's reported that the FBI opened 120 trafficking investigations, 92 indictments filed, made 155 arrests and obtained 57 convictions. This was an increase from the 54 cases opened, 29 indictments, 68 arrests and 15 convictions that were reported the initial year after the passage of the TVPA.³⁷

VI. Summary

Based on our review of the implementation of programs since the TVPA, we offer some suggestions to anticipate arguments over the viability of funding human trafficking efforts in the future. We suggestion that each stakeholder in the area of human trafficking embark on a similar exercise to ensure that credibility is sustained related to the crime of human trafficking.

Recommendations

1. All Task Forces, OVC funded agencies, and HHS recipients who are receiving federal funding should have clear and measurable expectations and defined outcomes. The current requirements focus on frequency counts with no expectations for outcomes. Reliance on frequencies or antidotal evidence and case studies leave a huge

³⁶ Program Evaluation on Victim's Services for Lee County Task Force on Human Trafficking. Conducted by author (McGaha). January, 2009.

³⁷ See *supra* note 28 at 3-5.

accountability gap. This gap could ultimately negatively impact policy and interest in this critical area. As the pendulum swings from the passion that fueled this effort initially to serious questions about the measurable extent of the human trafficking problem in the U.S., the efforts begun to date could be seriously undermined.

2. Local Task Force leaders need better methods to collect and analyze data. The only way that researchers can evaluate the effectiveness of these task forces in the long term is through adequate and consistent data collection. The current focus just on quantitative numbers must be enhanced with qualitative information on the specific cases themselves. We know that prosecution of one case with multiple defendants may impact many victims. Information on the system effect of this prosecution needs to be quantified and reflected in the Task Force reporting system.
3. Victim advocates, community educators, and all stakeholders should use caution when citing estimates of human trafficking as known facts. The actual known numbers are horrific enough. Inflating numbers in an attempt to increase awareness or funding ultimately results in discrediting the entire message. State what is known, then discuss concerns about the hidden nature of the crime and why we need a community awareness to combat this issue.
4. There is a need for greater awareness of human trafficking among the general public, potential first responders (including child welfare caseworkers, doctors, nurses, hospital personnel, law enforcement officials, teachers, and school resource officers, . There is widespread agreement that training to make stakeholders more aware of human trafficking increases the number of case identified. Training should be expanded to

include all stakeholders. Currently, this only occurs in the 42 areas that have funded task forces.

5. Human-trafficking awareness training could be provided in two parts. First all stakeholders could receive the same general awareness information, such as to identify human-trafficking victims, what types of cases exist and their typical fact patterns and what do and who to contact when victims are identified or suspicious activity is discovered. Second, the training could include discipline specific information. For example training for law enforcement could include information on available social service program for victims, questions to investigate in suspected human-trafficking cases and the legal elements of human trafficking and the evidence required to support them. Training for health service staff could include characteristic and the warning in associated with victims of human trafficking when they seek medical attention more generally outreach and education could also be used to improve the awareness of the community at large with regard to human trafficking. Many human-trafficking cases have been discovered by a community member who saw something that did not look right and somehow intervened.
6. Considerations should be made for task forces to become regional related to the scope of the U.S. Attorney's office. Funding for county specific task forces, especially if the county has low victim counts, appears to be inefficient. Within the jurisdiction of one U.S. attorney, there is currently the possibility of several county specific task forces with no collaboration between them. According to data provided, most areas do not have enough victims to justify funding single county entities.

It is important for us to note in summary that we are both advocates as well as researchers. The concerns illustrated above are intended to convey the risks of losing credibility related to a very serious crime, not to criticize any entity that has received funding for human trafficking. We have approached these concerns as a formative program evaluation issue rather than a summative criticism of what has occurred. We are aware that due to the covert nature of the crime, accurate statistics on the nature, prevalence and geography of human trafficking are difficult to calculate. Trafficking victims are closely guarded by their captors, many victims lack accurate immigration documentation, trafficked domestic servants remain “invisible” in private homes, and private businesses often act as a “front” for back-end trafficking operation, which make human trafficking a particularly difficult crime to identify and count. However a method to obtain valid and reliable estimates of this inherently hidden problem is critical for planning and assessing national and international interdiction and prevention initiatives.

The focus on human trafficking has grown considerably in the U.S. since the passage of the TVPA in 2000 and its subsequent reauthorizations in 2003, 2005, and 2007. More recently there has been an interest in research on the topic, spurred in part by the horrific stories and fueled by the high estimates of the extent of trafficking in our country. Unfortunately existing research on human trafficking has yet to move the field beyond estimating the scale of the problem and the difficulty of determining how to count human-trafficking victims. Much of the existing research on trafficking attempts to validate the extent of the crime by relying on overviews, commentaries, and anecdotal information. Therefore, all stakeholders in this important issue are called upon to help develop measurable and defensible outcomes to justify the use of federal funds within their respective agencies.

