Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery

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GLOBAL SEX TRAFFICKING AND THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000: LEGISLATIVE RESPONSES TO THE PROBLEM OF MODERN SLAVERY

Rasy Kandathil*

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INTRODUCTION

Human trafficking is becoming the fastest growing criminal activity in the world. Generally, trafficking is defined as the transportation of persons across international borders for labor purposes, by means of force, fraud, or coercion.¹ Commerce directly related to human slavery yields approximately $7–$10 billion a year, trailing only behind drugs and weapons trade for international profit.² According to recent congressional findings, over 700,000 human beings are trafficked across international borders each year, including approximately 50,000 women and children into the United States.³ Women and girl children are the primary targets for sexual exploitation into prostitution, pornography, sex tourism, and other commercial sex activities. Police authorities readily admit that their estimates regarding the volume of victims are conservative.⁴ These facts are a stark indication that the problem of human slavery is immediate, large, and local.

Responding to the reality of modern-day slavery, Congress enacted the Trafficking Victims Protection Act ("TVPA") in 2000⁵—the strongest domestic legislative effort to combat international trafficking in the world. Despite the broad protections offered by the TVPA, prosecutions to assist victims of trafficking have not proceeded under recent legislation. Since the TVPA’s enactment in 2000, the U.S. government has assisted only 450 victims out of their slavery.⁶ Hundreds of trafficking investigations, indictments, and convictions have successfully proceeded...
under the TVPA. Yet, as of this date, there has been no sex trafficking prosecution brought under the Act and concluded through trial in a court of law. The TVPA’s legislative provisions relevant to “sex trafficking” have not yet received the testing of judicial interpretation.

Prior to the TVPA, law enforcement used a combination of criminal, labor, and immigration laws to address trafficking offences. However, cobbling various charges together to prosecute defendants often failed to reflect the seriousness of the crimes committed. The TVPA was designed to aggressively punish and prevent trafficking, while also protecting victims. Yet, this legislation appears to be failing to reach the problem effectively. While the TVPA is an excellent improvement over the scattered legislative band-aids that were used by prosecutors previously, there are some clear shortcomings.

In particular, the TVPA should explicitly exclude the “consent” of a trafficked person as a defense to trafficking violations. The issue of consent has stymied prosecutors, and acted as a barrier to trafficking prosecutions. Complex economic and social influences can cause

7. In its January 2004 report, the Taskforce cited its investigative work in the last three years leading to charges against 111 traffickers (seventy-nine of which included sex-trafficking allegations) and convictions or guilty pleas from seventy-seven defendants, fifty-nine of whom were found guilty of sex-trafficking charges). Finally, the report cites that as of January 28, 2004, the Criminal Section of the Civil Rights Division had 142 open trafficking investigations. John Ashcroft, Prepared Remarks of Attorney General John Ashcroft Regarding Human Trafficking (Jan. 29, 2004), available at http://www.usdoj.gov/archive/ag/speeches/2004/12904aghumantrafficking.htm (last visited Apr. 1, 2005).


persons to become ensnared in trafficking schemes. Some victims, at least initially, consent to being trafficked; others are trafficked by outright violence, deception, or intimidation. Because there is a wide spectrum of sex trafficking situations, debates on the definition of the crime have hinged on whether or not the women knew of or consented to the sex work. However, the issue of a victim's agreement is legally irrelevant. A person cannot consent to enslavement or any type of forced labor. The Thirteenth Amendment forbids slavery; an individual may not sell herself into bondage. In addition, a contract that involves committing a crime is unenforceable. When an individual decides to leave a job, but is forced to remain against her wishes, the work is involuntary regardless of the victim's "initial" consent.

In the same vein, courts should be encouraged to interpret the TVPA's "force, fraud, or coercion" broadly, so that psychological forms of coercion are sufficient to support trafficking prosecutions. Focusing on a victim's purported consent has tended to obscure the prominent human rights issues that lie at the heart of trafficking offenses, and has created a hierarchy between innocent victims who deserve protections (non-consenting women) and morally corrupt non-victims who do not deserve protections (consenting/initially consenting women). Some defendants have successfully argued that where a woman was not subjected to physical restraint or force, there was no trafficking. Yet, the TVPA's definition of coercion is deliberately broad in order to recognize more subtle forms of restraint and psychological manipulation.

International law is instructive, as it has recognized the integral role of organized crime in global trafficking offenses, while also making consent explicitly irrelevant to trafficking violations. Legislators should amend the TVPA to meet international standards so as to acknowledge the strong international crime aspect of trafficking, and treat victims uniformly, regardless of consent.

Further, Congress should design measures within the Act to educate and punish "johns"—men who purchase the services of trafficked women for sex acts. By not addressing the demand side of sex trafficking, the TVPA fails to appreciate the economies that fuel the industry's rapid growth. Using the analogous global industries of drugs and weapons, neglecting to attach criminality to the buyer-side of trafficking is a severe policy deficiency.

In addition, the need for heightened education, training, and awareness regarding the crime of trafficking is acute. Across the board—

from law enforcement to service organizations to prosecutors—levels of public awareness on trafficking are reprehensibly low. This has led directly to the slow recognition of victims and subsequently, a low number of prosecutions.

Finally, the TVPA’s enactment for the treatment and protection of victims is commendable, but it remains insufficient. Focusing on bulk-up prosecutorial frameworks of federal law and protecting against immigration fraud, as the TVPA does, can eclipse the importance of rescuing and providing support services to victims. An appropriate response to the trafficking problem is both legal and social in aspect, incorporating prosecutorial aims while also focusing on assisting victims. This approach frees prosecutors to target and indict traffickers, while protecting trafficked persons from further harm. Without ensuring the protection and health of victim-witnesses—who are needed to provide evidence against their abusers—prosecutors are left with big, but ultimately, ineffective legislative weapons to combat trafficking.

I. Describing The Problem of Modern Slavery: The Players

Poverty is the primary cause of trafficking.\footnote{11} Because economic desperation makes migration an appealing option, sex traffickers prey on women in regions where employment prospects are bleak and females maintain a subordinate role in society. Unlike drugs, the sex trafficking industry is especially lucrative because human beings can be sold as commodities several times. Women provide a flexible, inexpensive, virtually inexhaustible source of labor.\footnote{12} They can be trafficked across national borders by car, bus, plane, and boat along strategic sites that are fluid enough to be moved when police crackdowns occur.\footnote{13}

A. The Victims

Foreign females are often targeted because it is much more difficult for an enslaved girl to escape in a country where the language and area

\begin{footnotes}
\end{footnotes}
are unfamiliar. Even if she does escape, she usually has no contacts in the destination country, making it difficult to get help or to return home.

Deceived by smooth-talking recruiters, some women are lured by false pledges of high wages and good employment conditions in a foreign locale as nannies, models, or dancers. In some countries, indigent families will sell a daughter to a trafficker, who either pays for the girl at the outset, or provides a loan called a "debt bond" to the family (which the girl must then pay off through prostitution). Other girls may simply be kidnapped and taken to another country.

Some women know that they will be trafficked to work as strippers, escorts, or prostitutes, but have little understanding of the conditions that await them. They are held in apartments, bars, and brothels where they service multiple men per day. They are raped, beaten, and confined under unspeakable conditions. Using intimidation and violence, a trafficker typically requires the victim to repay an insurmountable debt of $20,000–$40,000 for the costs of transport and migration. It usually takes time for the girl to earn enough money to buy her freedom, and by then, she may be infected with AIDS or another disease.

Many of these girls will never escape. Some will die of AIDS and other communicable diseases; some will resort to suicide. Some will earn enough to repay their debt and purchase their freedom. Among this group of women, some will stay in the destination country and enter the "legitimate" work force; others will remain in the sex industry as prostitutes or become brothel owners and traffickers themselves.

B. The Traffickers

Most trafficking is linked with crime syndicates throughout the world. An organized criminal group is defined as "a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes... in order to obtain, directly or indirectly, a financial or other material benefit."

16. Raymond & Hughes, supra note 13, at 8, 22.
17. Id. at 53.
18. Id. at 85.
Organized crime groups can be large, highly structured and hierarchical with many key leaders or small and decentralized, without a formal structure other than an allegiance to the “business venture.” Sex industry owners rarely run the daily frontline operations, but rely upon many levels of people to run the business.\(^\text{21}\) Thus, using law enforcement to cut off a local operative and rescue victims may result only in a temporary and limited relief. Ultimately, the larger crime network survives—only to emerge elsewhere, with new women to exploit and harm.

Trends show that transnational crime groups traffic women and children from source countries, move them through a country of transit with lax immigration regulations, and ultimately, enslave them in a rich country of destination.\(^\text{32}\) Source countries are characterized by a low public awareness of the criminality of trafficking and also by a weak system of laws to punish traffickers, leaving young women vulnerable to easy deception.\(^\text{23}\) On the other hand, destination countries, like the U.S., are wealthy and provide the capital to keep the international market for sex trafficking profitable.

Typically, women are first trafficked into the U.S. with a legitimate visa.\(^\text{24}\) It is easy then to keep women in the country by having them overstay their visa. Using fake employment offer letters, work records and financial statements, traffickers can acquire business (B1), tourist (B2), student (F1), fiancée (K1), and entertainer (P1, P3) visas.\(^\text{25}\) Of course, traffickers also use illegal methods to bring women into the U.S. However, these methods carry a higher degree of risk.

Upon reaching the destination country, traffickers demand that a woman turn over her passport, employment papers, and other legal documents. Without papers, contacts or knowledge of the legal

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23. According to the U.S. State Department, the primary source countries for the U.S. are Thailand, Vietnam, Mexico, Ukraine and the Czech Republic. Other documented instances in the U.S. have included women trafficked from the Philippines, Korea, Malaysia, Latvia, Hungary, Poland, Brazil, and Honduras.
24. INS workers readily admit that there is no means to track tourist visas, and that it is nearly impossible to check on student visas issued by American universities. The U.S. State Department has suggested that visa interviews be handled by senior consular officials so that their superior experience and education could be utilized to better identify and prevent potential trafficking situations. O’Neill Richard, supra note 10.
protections available to them, traffickers can easily threaten victims with arrest and deportation to ensure their compliance.\textsuperscript{26}

1. The Buyer Side of Trafficking: "Johns"

Men who buy women for commercial sex acts come from all nationalities, all ages, and all socio-economic brackets.\textsuperscript{27} Buyers come from all walks of life: they are married and single, professional and uneducated, military and civilian. However, social service providers, advocates and researchers report one commonality: men are seeking young women, and often underage girls.\textsuperscript{28}

Many brothels that house trafficked women cater specifically to buyers within the women's ethnic communities.\textsuperscript{29} On the other hand, many men are not interested in staying within their own ethnic group but seek the thrill of more "exotic" women. Often, there are racial restrictions on what men are allowed into certain brothels. Law enforcement in New York City reports that in Chinatown, the Chinese houses of prostitution are closed to non-Chinese buyers.\textsuperscript{30} Male customers must speak the right language and dialect to gain access to the brothels.

Buyers tend to view women in prostitution as objects or commodities to exercise temporary control over.\textsuperscript{31} Women report that buyers often expect sex without condoms; they also report a significant rate of violence, degradation and humiliation from buyers, if refused. Note, one buyer's remark:

When there is violence ... it is mostly the prostitute's fault. See, I am going to buy something. If I am satisfied with what I am buying, then why should I be violent? I will be violent when I am cheated, when I am offered a substandard service, when I am abused or ill treated. Sometimes [violence] is because the prostitute wants the client to use condoms. They

\textsuperscript{26} See http://www.captivedaughters.org/What_is_Trafficking.htm (last visited March 8, 2004).
\textsuperscript{27} Raymond & Hughes, supra note 13.
\textsuperscript{29} Raymond & Hughes, supra note 13.
\textsuperscript{30} Id.
\textsuperscript{31} Anderson and O'Connell Davidson, supra note 28.
force it on the client... He will naturally be disgruntled, and there will be altercations.\textsuperscript{32}

And here, another customer's position:

If [the prostitute] takes money and does not perform what she is expected to, then the customer will get angry. See, I understand that the prostitute is there in the first place because she has no choice or is forced there. I feel bad about this, especially if she is forced or sold. But the fact is that she is in the flesh market. The rules of the market apply to her as well as to one who has come out of her own choice.\textsuperscript{33}

These types of responses from buyers help to demonstrate that the problem of sex-trafficking is deep-rooted. Buyers believe they have an economic right to abuse women and purchase commercial sex acts\textit{ even when they might suspect an illegal trafficking situation}. A legislative response to trafficking that merely punishes traffickers, without appreciating the contributing violence and abuse of customers, is deeply flawed.

\section*{II. International Crime: Tracing the Growth of Human Trafficking Industries}

It was not until the turn of this century and the demise of communism that the crime of trafficking became one of global industrial proportion.\textsuperscript{34} Economic and political destabilization in world regimes, soaring levels of unemployment, and a general sense of hopelessness have made the weakest segments of society even more vulnerable to exploitation. Stark disparities between first-world and third-world nations, enhanced by the media, have also made perceived employment opportunities in wealthy countries more alluring. International crime syndicates thus capitalize on poverty, refugee-status, and desperation by selling dreams of prosperity to female victims who are hungry for an economic foothold.

Because of explosive growth in the commercial sex industry, sex trafficking is extraordinarily lucrative. By capitalizing on recent

\textsuperscript{32} Id. at 24.
\textsuperscript{33} Id. at 24–25.
\textsuperscript{34} Tiefenbrun, \textit{supra} note 22, at 131.
improvements in communication and transportation technologies, traffickers have become efficient at recruiting large numbers of women abroad via advertising, travel and employment agencies. The Internet especially has expanded the global marketplace for sex trafficking. Unfortunately, the spread of AIDS has not discouraged the sex industry's growth. "Instead, it has led traffickers to seek even younger girls, who are more likely to be disease-free." With increasing demand for sex services as a result of the globalization of business, booming tourism rates, and growing numbers of rich businessmen seeking entertainment while abroad, sex trafficking produces big profits at a relatively low risk to perpetrators.

Inadequate legislation, lethargic prosecutions, and corrupt law enforcement officials have directly contributed to the rise in trafficking. Such large economic benefits attach to the sex trafficking industry that government officials often condone the practice. Tourist agencies, hotels, transportation services, law enforcement, immigration and government officials stand to gain financially from sex trafficking.

A. Trafficking and the Role of Transnational Crime Organizations

Powerful international crime networks are particularly dangerous to fight and require significant resources to investigate. Investigations often necessitate following a convoluted trail of forged documents, financiers, recruiters, and bribed officials. In this way, human trafficking cases are labor-intensive and time-consuming, often involving many victims and requiring the full-time involvement of multiple attorneys and investigators. Recognizing that there are particular challenges involved with fighting organized crime, the responsibility falls upon international and domestic law enforcement agencies to coordinate investigations and prosecutions with local, state and foreign agencies.

37. Tiefenbrun, supra note 22, at 139.
Human trafficking is a transnational problem of global consequence. Acknowledging the international organized crime component of trafficking violations, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("Trafficking Protocol") was adopted in 2000 to supplement the United Nations Convention Against Transnational Organized Crime. The Trafficking Protocol contains the most widely accepted definition of trafficking for purposes of sexual exploitation.

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

Children, under the age of 18, who are recruited, transported, held, or received for exploitation, regardless of the method used, are always understood to be "trafficked."

The Trafficking Protocol takes a definitive stance on the question of consent by making it absolutely irrelevant. It also explicitly recognizes the transnational crime component of trafficking offenses by adopting the Protocol as a supplement to a larger legal framework of international organized crime. Yet, despite these major strides in defining the offense

41. G.A. Res. 55/25, supra note 39, at 32.
42. Id.
43. Id. at 32-33.
of trafficking, the Protocol should be criticized for its lack of attention to victims' services. The Protocol does not mandate services to victims, it merely asks governments to consider providing recovery and support services. Although the Trafficking Protocol supplements the Transnational Crime Convention, it also does not require governments to protect victims from being deported back to their homelands, and perhaps back into the hands of their traffickers.

III. A Three-Prong Approach: The Trafficking Victims Protection Act

The TVPA has three stated purposes: (1) to punish and prosecute traffickers; (2) to prevent trafficking; and (3) to protect victims.

The TVPA aims to punish and prosecute trafficking offenders by establishing new felony charges, harsher penal sentences, and mandatory restitution to victims for violations. For putting a person in peonage, kidnapping, inducing an individual into slavery, or holding or selling a person into involuntary servitude, the TVPA increased sentences from a ten-year maximum to twenty year and a fine. If death, kidnapping, an attempt to kidnap, aggravated sexual abuse, an attempt to commit aggravated sexual abuse, or an attempt to kill occurs in concurrence with a trafficking offense, the TVPA permits a sentence of life in prison. A violation of the sex trafficking provision is punishable by life imprisonment.

The TVPA aims to prevent trafficking by encouraging cooperation and coordination among international agencies. The legislation provides for (1) the regular assessment and monitoring of adherence to minimum standards to eliminate trafficking by other countries; (2) the enhancement and support of increasing economic opportunities in countries of origin; and (3) the establishment of education and awareness campaigns to warn potential victims and to strengthen law enforcement efforts. The TVPA commits to the "development of educational curricula regarding the dangers of trafficking," and has allotted

44. Id. at 33.


46. Yet, contrast this to the statutory maximum penalty for dealing ten grams of LSD or distributing one kilogram of heroin both of which are also punishably by life imprisonment. 21 U.S.C.A. § 841 (b)(1)(A) (West 1999 & Supp. 2004).


48. Murphy, supra note 25, at 15.
"grants to nongovernmental organizations to accelerate and advance the political, economic, social and educational roles and capacities of women in their countries."  

The TVPA aims to protect victims who are willing to aid prosecutions by providing access to special health and social benefits, as well as temporary residence in the U.S., with employment authorization under new visa provisions. The T-visa, a new addition to the Immigration and Nationality Act, allows victims to remain in the United States as long as necessary to strengthen "the ability of law enforcement to detect, investigate and prosecute trafficking offenses, while simultaneously offering a temporary safe haven for victims."  

Under the T-visa, victims also qualify for shelter, counseling, health care, and authorization to work. Despite the TVPA's admirable aims, its protections often hinge upon timely, sensitive identification of a "victim of a severe form of trafficking."  

Before being identified as a trafficked person, law enforcement officials may view these individuals simply as illegal aliens or worse yet, willing accomplices to trafficking. Victims have a legitimate fear of arrest or deportation, which strongly precludes them from seeking help and heightens their vulnerability to exploitation by traffickers. The TVPA attempts to answer these concerns by providing trafficked persons with immigration status and social services. Yet, even after trafficked persons are identified, access to special benefits is subject to meeting three eligibility criteria. First, the individual must demonstrate that she is a victim of a severe form of trafficking as that term is defined in the TVPA. Second, the victim

49. Trafficking Victims Protection Act § 106(a)(4)-(5).
51. 22 U.S.C. § 7102(13).
53. U.S. Department of Health and Human Services, Fact Sheet: Certification for Victims of Trafficking at http://www.acf.hhs.gov/trafficking/about/certvictims.html. "Children victims of trafficking (under the age of 18) do not need to be certified in order to receive services and benefits".
54. This is defined as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subject to involuntary servitude, peonage, debt bondage, or slavery." 22 U.S.C. § 7102(8)(A),(B).
must be willing to assist in every reasonable way in the investigation and prosecution of the trafficker. Third, the victim must "have completed a bona fide application for a T-visa; or have received continued presence status from U.S. Customs and Immigration Services in order to contribute to the prosecution of human traffickers." Once they have met these certification requirements, "victims of trafficking will receive an official letter of certification from the U.S. Department of Health and Human Services."56

Often, the process of certification is prolonged and rigorous—at a time when a victim's need for services is most acute. While trafficking may create the same needs as other crime victims, most trafficked persons face many more obstacles to rescue and recovery. Generally, trafficked persons face many more barriers that prevent them from accessing available services: they are often culturally, linguistically and physically isolated; afraid of law enforcement and deportation; and deeply ashamed of being forced to work in the sex industry.57

IV. THE DILEMMAS OF COERCION AND CONSENT: TRAFFICKING AND THE TVPA

The TVPA describes trafficking as an "evil," in opposition to the principles of the Declaration of Independence, and recognizes it as a form of slavery and a violation of an inalienable human right, outlawed by the U.S. Constitution. However, unless an individual can establish that she was a victim of "severe forms of trafficking in persons," she does not qualify for the heightened benefits under the TVPA.58 This is defined as:

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force,

55. U.S. Dept. of Health and Human Services, supra note 53.
56. Id. "Adult victims of trafficking who are certified by the U.S. Department of Health and Human Services (HHS) are eligible to receive certain benefits and services".
fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.\textsuperscript{59}

Congress also defined "coercion" broadly as "(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process."\textsuperscript{60}

Statutory language indicates, however, that if the transported victim is at least eighteen years of age, and neither force, fraud nor coercion was used to induce the performance of a commercial sex act, the offense does not fall within the scope of the TVPA. The onus falls upon prosecutors to prove the use of "force, fraud, or coercion." Thus, confusion over "consent," and whether it affects the legal definition of trafficking, has resulted in sentences that are inconsistent with the TVPA's purpose to punish traffickers severely.

\textbf{A. Psychological Coercion?}

Although some trafficking cases are evident, many do not fit into the statutorily defined boundaries of the TVPA. Courts should be encouraged to interpret the phrase "force, fraud, or coercion" broadly. Cases commonly arise that may not qualify as strict trafficking cases, but involve strong coercive elements, i.e., psychological manipulation and confiscation of identity papers.\textsuperscript{61} Removing a woman's identity papers upon arrival in a foreign country can be terrifying, and a very viable means of controlling her actions. Also, women trafficked to the U.S. are sometimes aware of the sexual nature of their intended work but are unaware of the deplorable conditions that await them. These victims may not have been deceived about the "deal" at the outset, but when the work becomes too abusive or degrading, they want to renege. However, traffickers will not allow them to break their quasi-contract, at least until their debts are repaid.

Upon arrival in the U.S., the terms of debt repayment for various travel costs may change. Women may be forced to accept exorbitant or inflated costs for room and board and other basic necessities, such as

\begin{itemize}
\item \textsuperscript{59} 22 U.S.C. § 7102(8).
\item \textsuperscript{60} 22 U.S.C. § 7102(2).
\item \textsuperscript{61} O'Neill Richard, \textit{supra} note 10, at 25.
\end{itemize}
clothing and medicines. Enormous debts quickly accrue when abusive accounting practices and interest rates come into play.

Traffickers will purposefully keep women "off balance"—sometimes allowing them to run errands unaccompanied, and then at other times, abruptly cutting off freedoms. Victims' attorneys report that while traffickers may not abuse their victims directly, witnessing the trafficker hitting their girlfriends puts the women in fear of making the traffickers angry.

The line between consent freely given versus consent forcibly obtained through psychological abuse is hardly bright-line. To complicate the picture, some women freely and voluntarily consent, absent force or fraud, to being trafficked for sexual exploitation; they are not confined against their wishes, but choose to participate in commercial sexual acts for profit.

The current legislative definition of trafficking was drafted to minimize the potential for fraud by this latter type of "opportunistic alien." However, the process of qualifying for protections under the trafficking laws can be so rigorous and complicated that it excludes legitimate victims from benefits. A strict application of the TVPA's trafficking definition has had the tragic effect of excluding those victims whose mistreatment does not rise to the level of "severe forms of trafficking" from access to the TVPA's enhanced benefits.

The question of whether psychological manipulation raises itself to the level of the TVPA's "force, fraud, or coercion" is important, because unless a woman can show that she has been a victim of a "severe form of trafficking," she will not qualify for its higher standard of protections. Often, proof involves a victim's word against that of her trafficker. Understandably, this raises issues of nightmarish proportion for victims and prosecutors.

V. The Crazy Horse Case: Putting the TVPA on Trial

In 2001 the strength of new legislation was tested when Alaskan officials launched the first-ever prosecution under the TVPA: the so-called Crazy Horse case. Alert immigration officials heard a radio advertisement reporting that Russian dancers would be performing at an Anchorage,
Alaska strip club. Suspecting a trafficking situation from the broadcast, law enforcement officials began investigations that finally led to a January 4, 2001 raid on the Crazy Horse nightclub. INS confirmed that seven women, ages sixteen to thirty, had entered the United States on December 20, 2000 on tourist visas, accompanied by their “dance teacher,” Viktor Virchenko. Traffickers had acquired tourist visas for the women and girls under the pretense that they were to perform native folk dances of the Krasnodar region of Russia in cultural festivals.

Tony and Rachel Kennard of Alaska, Pavel Paris Agafonov of Georgia, and Victor Virchenko of Russia, were charged under a 23-count indictment for their involvement in a scheme to traffic six adult women and underage girls from Russia into Alaska to dance nude in strip clubs. Officials reported that after the raid, the dancers were taken into protective custody and cared for under the Justice Department’s emergency witness protection program, with help from Catholic Social Services.


66. According to the indictment, Virchenko was a well-known dance teacher in the Krasnodar region of Russia. He agreed to recruit women by telling them they would be performing traditional folk dances at a nonexistent cultural event called “Russian Winter in Alaska.” Virchenko taught the women dances and had professional photographs taken of them. He sent the photos to Tony Kennard, who rejected some of the prospects as “not attractive enough for the conspiracy’s purposes.” See Sheila Toomey, E-mail Points to Strip Scam, ANCHORAGE DAILY NEWS, Jan. 15, 2001, available at http://www.mailutilities.com/news/archive/22/220.html. See also New charges filed in strippers’ case: Chugiak couple are accused of trafficking in humans, ANCHORAGE DAILY NEWS, Feb. 23, 2001.


69. The final indictment mentioned only six victims, although earlier charges had named seven. According to the reporter, officials could not be reached to explain the mysterious “disappearance” of this seventh victim from indictments. See Sheila Toomey, New charges filed in strippers’ case: Chugiak couple are accused of trafficking in humans, ANCHORAGE DAILY NEWS, Feb. 23, 2001.


In a successful showing of cooperation, the case was investigated jointly by the INS, FBI, and the Anchorage Police Department, and was prosecuted by the Criminal Section of the Department of Justice's Civil Rights Division and the U.S. Attorney's Office for the District of Alaska.\textsuperscript{72} Criminal proceedings were launched against the defendants under provisions of the TVPA through a coordinated interagency effort organized by the Trafficking In Persons and Worker Exploitation Task Force.\textsuperscript{73} As well, because of the recent enactment of anti-trafficking legislation, the case earned the "attention of the highest levels of the Department of Justice in Washington."\textsuperscript{74}

Prosecutors learned from the victims that when they arrived in the U.S., they were told the cultural festival was over. On their second night, they were taken to the Crazy Horse nightclub and told they would have to dance nude to pay off their expenses. According to the indictment, when the women, who did not speak English, refused, Virchenko "screamed and cursed at them, telling them they were ungrateful . . . He informed the dancers that they could not leave the country until they had earned enough money dancing at the club to pay for their return ticket and living expenses."\textsuperscript{75} Their passports and return tickets were taken away, and the women were held in a single room, sleeping on mattresses on the floor.\textsuperscript{76} Their federal indictment continued:

Unable to leave the country without their plane tickets and travel documents, unable to speak English, and fearing that harm would come to them if they did not acquiesce, [the women] submitted to the defendants' demands . . . hoping to be allowed to leave on January 19, 2001, the return date of their plane tickets.\textsuperscript{77}

Crazy Horse management confirmed that the women were forced to turn over all their earnings from dancing to the defendants.

\textsuperscript{73} Id.
\textsuperscript{74} Sheila Toomey, 2 face charges in dancers' case, Stripping: Russian women were expecting cultural performance, Anchorage Daily News, Jan. 10, 2001.
\textsuperscript{76} Cheng, supra note 71.
Investigators discovered that the traffickers had arranged for the women to come to the U.S. largely through electronic mail ("e-mail"), leading to a plethora of evidence that existed only on the hard drives of the defendants' personal computers. Federal defenders and prosecutors were required to sift through forty-five gigabytes of information, and 1,700 pages of paper for evidence. Defenders cited the difficulty of preparing a defense that involved tracking down potential witnesses in Russia and the time-consuming task of reviewing large amounts of electronic evidence, to support arguments for the postponement of trials for months to accommodate these constraints. Meanwhile, prosecutors protested that the victims were being forced to "put their lives on hold" and that defenders were seeking delays to inveigle plea bargains.

Copies of email messages dated October 17 and 18, which were included in the court file, revealed the disturbing details of how the traffickers had chosen their victims and planned to manipulate them.

These are good escorts but if you taking [sic] a playboy scale they are only about 5–7. They are attractive but they are escorts, not models.... But my bigger concern is logistics of bringing them to Alaska. All of those jobs will pay off only if they get visa.... We need to control them. We may be better off controlling models (than) escorts but escorts are better at sales and communication. I rely on you as far as Alaska market goes. I have seen girls that (are) just about as good as the ones you seen making good money in Atlanta and Mexico.

Another e-mail message dated December 18 said, in part: "What is the cost for getting them here around the 20th [sic] the club wanted to hit the X-mas season if it does not cost (too) much." Then, another message, on December 19 said: "We were a little rushed for getting the contract signed anyway. The other strip club (Crazy Horse) is making better deal so we might go with them. Now that everyone know(s) that we have girls coming in the deals are getting sweeter!"

Taking into account the effects of abuse on a young victim, federal prosecutors specially requested that one of the sixteen-year-old girls testify via deposition. Reporting that she was in "fragile" condition and

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79. Id.
80. Id.
81. Id.
82. Id.
under the care of a therapist, a prosecutor pleaded to the judge that "just the sound of Virchenko's voice sets her off." The court was informed that before being found by INS, she had attempted to disfigure herself and was suicidal. Although the judge scheduled a hearing on the matter, he noted that laws allowing minor victims of sexual abuse to testify outside the presence of the abuser usually applied to much younger victims.

With this strong evidence to support anti-trafficking charges, it seemed that the first prosecutions undertaken with the TVPA's escalated penalty scheme would prove the new legislation a profound success. However, as time passed, federal prosecutors agreed to drop the most serious charges arising under the TVPA, including those dealing with kidnapping, forced labor and witness intimidation. As a result of this plea bargain, defendants Tony Kennard, Victor Virchenko and Pavel Agafonov pled guilty to charges of visa fraud and violations of the Mann Act. Charges against Kennard's wife, Rachel, were dismissed entirely.

According to local reporters following these events, prosecutors proposed these plea bargains only after independent defense investigations in Russia turned up evidence that the victims may have known that they were expected to dance nude before leaving their country. To the defense, if the women had consented, then the case did not involve trafficking in women. Apparently, the prosecution agreed. When the 27-page defense memorandum was submitted apprising the court of this position, with the results of their international investigation, prosecutors became willing to negotiate charges down.

In a bold effort to challenge this turnover, two of the victims, one of whom refused to give her name, came forward. Using an interpreter, the two women reaffirmed their ignorance of the traffickers' intent and their subsequent mistreatment. The women told their interviewer that they spoke publicly for the first time because defense lawyers were misrepresenting their role in the case. Prior to sentencing, the judge also

83. Id.
84. Sri Lanka encourages the use of video-taped testimony from children and other victims as evidence in trials of traffickers to decrease potential trauma to victims. See U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT: TRAFFICKING VICTIMS PROTECTION ACT 2000, at 20 (June 2003).
87. Id.
heard from the mothers of the two underage girls. They said their
daughters believed they would perform at cultural festivals and never
expected to dance naked.9\textsuperscript{9} Both mothers testified that their daughters
were no longer welcome in their village because they were portrayed in
newspapers as prostitutes who knew they would be expected to perform
nude. The women also gave pre-sentence testimony that vigorously de-
nied their consent to nude dancing.9\textsuperscript{0}

During sentencing, at least one judicial official voiced his frustra-
tion at the turn of events.9\textsuperscript{1} U.S. District Court Judge James Fitzgerald
got beyond the 27-month sentence suggested by prosecutors and a
defense attorney, sentencing Victor Virchenko of Russia to 30-months
in federal prison, calling his conduct “despicable and inexcusable.”9\textsuperscript{2} The
two other remaining defendants also pled guilty to six counts of lying on
visas and two counts of bringing minors across state lines for immoral
purposes: Pavel Agafonov, a Russian immigrant living in Georgia, was
sentenced to 18 months in prison;9\textsuperscript{3} and Tony Kennard of Alaska, the
alleged mastermind of the plot, was sentenced to forty-six months in
federal prison and two years probation.9\textsuperscript{4}

91. Berkeley landlord sentenced in human smuggling case, Associated Press, Jun. 19, 2001, available at http://sfgate.com/cgi-bin/article.cgi?file=/news/archive/2001/06/19/state1937EDT0249.DTL; Matthew Yi, Guilty Plea in Smuggling of Girls: Landlord Gets 5 Years in Prison, S.F. CHRON., Mar. 8, 2001, at A21. Lakireddy Bali Reddy pled guilty to four federal counts: two counts of transporting minors for illegal sexual activity, one count of conspiring to commit immigration fraud and one of filing a false tax return. Reddy’s plea bargain included at least five years in a federal prison and a payment of two million dollars in restitution to four parties: three surviving victims and the parent of a fourth victim, the seventeen-year-old who died of carbon monoxide poisoning in one of his Berkeley apartments. In agreeing to the plea bargain, Reddy avoided what could have been as many as thirty-eight years in prison. In a late-breaking development, U.S. District Judge Saundra Armstrong placed Reddy’s plea bargain in jeopardy when she stated at his sentencing hearing on June 19, 2001 that she wanted to increase Reddy’s sentence. Prosecutors and defense attorneys then met to renegotiate the deal and came back with a longer eight year sentence.
93. Id.
The commercial sex industry has challenged the definition of trafficking by raising the issue of consent into the debate. Defendants in trafficking cases have attempted to raise consent as a potential defense to the criminality of their conduct. By highlighting a distinction between victims that have been forced or coerced, as opposed to women who have given some type of initial consent to sex work, they raise the question of whether these women qualify as "victims." On the other hand, many women's rights advocates have long held the position that consent is irrelevant because there is no true consent to prostitution. As demonstrated in the Crazy Horse case, this highly-nuanced distinction has played an influential role in the prosecution of TVPA offenses.

When defining "commercial sex acts" under the TVPA, according to women's rights advocates, consent is legally irrelevant. However, the commercial sex industry has attempted (successfully, it appears) to create a defense against prosecution of these crimes by highlighting the controversial issue of whether victims are forced or coerced if they have given initial consent. Here, in the Crazy Horse case, the very insinuation of "consent" devalued the victims' account of abuse, prompting the women to defend themselves publicly, exposing them to further trauma, while also influencing prosecutors to plea bargain away the higher penalties available under the TVPA.

The violent cascade of reactions showcased in the Crazy Horse case goes to the heart of a persistent issue in the trafficking debate. Consideration of the "consent" issue is revealing as it seems to create a clear distinction between "innocent" women and children who are true victims deserving of protection, while vilifying those women who made some type of choice to engage in sexual acts for profit. The moral overtones in this judgment are particularly disturbing when the quasi-defense of consent has the practical effect of denying victims protections they badly need while allowing traffickers to receive lowered sentences. This is in clear opposition to the congressional intent evidenced by Congress' enactment of the TVPA and the strong protections offered to victims therein. The crime of sex trafficking involves levels of violence

95. Candes, supra note 9, at 577-8.
96. Id. at 577-8. "Commercial sex act" is defined as "any sex act on account of which anything of value is given to or received by any person." TVPA, 22 U.S.C. § 7102(3).
and suffering which affect its victims and society on profound and personal levels. The law continues to be reprehensibly slow to recognize and protect those who have been exploited by traffickers.

The apparent evolution of a "consent" defense to the offense of trafficking is particularly goading as, under both international and U.S. law, consent has never been a valid defense to transporting persons for prostitution.\textsuperscript{98} Under the Mann Act, for instance, the consent of a woman transported is not a defense.\textsuperscript{99} Ascertaining a person's consent, initial consent, or non-consent to sex trafficking tends to create a hierarchical view of victimization. Because the level of human rights abuse involved is so severe, focusing on the intent of a trafficked person is inappropriate and tends to sift between victims who truly deserve protections over those that do not—punishing trafficked persons over traffickers. Consent should be wholly irrelevant to a determination of whether a criminal violation of trafficking legislation has taken place. Creating a legal question out of consent puts the burden of proof on victims and takes away from the goals of punishing traffickers and international crime syndicates that are responsible for the situation.

The definition of trafficking put forth by the TVPA was drafted specifically to protect victims who were subjected to subtle forms of coercion—forms that do not always involve traditional ideas of force.\textsuperscript{100} Coercion or force includes obtaining or maintaining through act or threat the labor, services, or other activities of a person by physical, legal, psychological, or mental force.\textsuperscript{101} It also entails a person's reasonable belief that she has no other alternative but to perform the labor, service or activity. Coercion also includes threats of physical harm to the victim as well as her family.\textsuperscript{102} Although it is not perfect, the TVPA bridges an important debate between the spectrum of opinions on the issues of "force, fraud or coercion."

Clearly, every woman that leaves her home country is not a victim of trafficking. There is an important distinction between illegal trafficking

\textsuperscript{100} Candes, supra note 9, at 578.
\textsuperscript{101} TVPA § 7102(2).
and migration to another country. But, what may have started as an autonomous decision to migrate elsewhere can quickly develop into an illegal trafficking situation when upon arriving at a destination, the person is subjected to coercion, violence or threats of violence under exploitative circumstances. A victim's initial consent should not affect the vigorous prosecution of traffickers.

VI. The TVPA: Areas for Improvement in the U.S. Response to Trafficking

In conclusion, the TVPA falls short of its three stated purposes: (1) to punish and prosecute traffickers; (2) to prevent trafficking; and (3) to protect victims.

A. Prosecutions

1. Consent Should Not Act as a Barrier to Prosecutions Under the TVPA

Legislators should take their cue from the Trafficking Protocol and amend the TVPA to explicitly exclude the defense of "consent" to the crime of trafficking. Some prosecutors are simply unaware of the scope and elements of the crime of trafficking. As evidenced by the Crazy Horse case, merely raising the debatable issue of victims' consent to prosecutors—purportedly discovered in interviews of overseas Russian witnesses—prompted plea bargaining negotiations.

Often, prosecutors enter plea agreements under other lesser criminal statutes because there are high standards of proof in showing "severe forms of trafficking" to predicate relief under the TVPA. Yet, the increased penalty schemes under the TVPA can discourage traffickers from pleading, forcing public trials that put victims at risk. Balancing the potential trauma of having victims testify at trial against their traffickers, prosecutors will attempt plea bargain. Also, the lengthy, often-dangerous investigations and the resource-intensive nature of trafficking cases

105. "Once uncovered, trafficking and slavery cases usually take about a year and a half to investigate and prosecute, according to the Department of Justice's Involuntary Servi-
tend to make these types of cases unattractive to prosecutors. Exercising their broad prosecutorial discretion, attorneys choose to proceed under kidnapping, RICO, peonage, money laundering, and collection of extension of credit by extortion charges that impose strong penalties with elements that may be easier to prove.

The TVPA should be amended to address these concerns—explicitly removing consent as a defense to the crime and returning a focus to punishing traffickers, not victims.

2. Punishing the "Johns": Addressing the Persistent Problem of Demand as it Pertains to the Sex Trafficking Problem

Consumer demand for commercial sex services provided by trafficked women and its profitability as a global business venture are closely linked. Yet, the TVPA fails utterly to address the buyer-side of the crime. The legislative approaches to the narcotics and arms trade are instructive when applied to the trafficking problem. Recognizing the strong economic dimension involved in these criminal enterprises, legislators have long forbid the purchase of drugs and guns with harsh deterrent penalties that have effectively curbed easy acquisition. Yet, the TVPA neglects this obvious analogy, refusing to attach similar penalties to the "johns" that purchase illegal commercial sex acts and fuel trafficking economies.

Without dealing definitively with "johns," the TVPA neglects dealing with an important dimension of the crime. Unless demand severely diminishes, it is not likely that the illegal trafficking in women and children for the purposes of sexual exploitation will cease.

The TVPA should be amended to penalize customers who, when apprehended, will be prosecuted and punished with more severity than the typical inconvenience of spending an hour in jail. In South Korea, police have threatened to publish the names of brothel owners that employ trafficking victims and their patrons. Because of these owners are prominent citizens, this strategy has proven to be an effective deterrent. Some American cities have decreased their prostitution rates by

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posting the names and pictures of convicted “johns” on the Internet, on television, or in local newspapers. Some anti-prostitution advocates have also suggested impounding or confiscating the automobiles of convicted “johns” and/or requiring them to attend “john schools,” where they are taught about the harms of prostitution. The TVPA should be amended along lines such as these to encourage the education and punishment of consumers.

B. Prevention: Raising Levels of Education and Public Awareness

It is often the case that officials view trafficked women as willing participants in the crime. Because of this attitude, victims are often dispatched to their home countries summarily and traffickers escape without real punishment. As these victims return home, afflicted by post-traumatic stress—they take with them the testimony that might have been used to convict and punish their captors.

Local law enforcement may also miss possible trafficking instances. Local police tend not to be overzealous on investigations involving brothels and massage parlors, where much of the trafficking is occurring. Prostitution is sometimes seen as a victimless crime and therefore of lower priority than gang warfare, narcotics trafficking, or other street crimes.

Law enforcement and government officials require education to effectively combat trafficking. Raising their awareness to the types of deception used to coerce these women, and the effects and levels of violence and suffering associated with trafficking would greatly advance their ability to recognize and deal with the problem. Concerted victim-oriented action requires heightened levels of education and awareness on


109. Raymond Hughes, supra note 13, at 96.

110. Id. at 96.
Television, radio and newsprint publications, as well as school programs, should be developed to raise awareness among young women and girls about the dangers of trafficking and how to avoid becoming a victim. Under the TVPA, the President must establish, carry out, and help to fund international initiatives to develop educational curricula regarding the dangers of trafficking. Victims, and potential victims, must be educated to understand that they will not be deported for coming forward to law enforcement officials. If traffickers are able to frighten victims away from seeking help, then many trafficking offenses will go unpunished as police investigations are unlikely to independently discover trafficking schemes.

C. Protection

1. The T-Visa Provision: Too Restrictive and Limited in Number

In order to address the immediate problem facing trafficking victims who are left stateless, homeless, and often destitute, the T-visa allows the victim to stay in the U.S. after she is freed. The T-visa permits up to 5,000 trafficking victims to remain in the U.S. for three years with non-immigrant status and employment authorization. The T-visa also

111. Id. at 96.
112. The U.S. Department of Justice has created a series of information brochures to educate and raise awareness in communities that are available on its website at http://www.usdoj.gov/trafficking.htm. These resources are designed to assist NGOs and advocacy and social service organizations—as well as trafficked persons.
113. 22 U.S.C.A § 7104a(4), (5) and b (2000).
114. Federal authorities recently announced a pilot program to combat the growing problem of human trafficking by working with social service groups to persuade victims to come forward and help prosecute the criminals who enslaved them. In Philadelphia, Phoenix, and Atlanta, workers at social-service agencies such as Catholic Social Services will be trained to spot and care for victims, who will be encouraged to contact local and federal law enforcement. Victims who help investigators track down their traffickers will be offered help including food stamps and Medicaid. They will also be eligible for T-visas whether or not their cooperation leads to a conviction.
allows for the victim's spouse, children, and her parents to gain T-visa status.\(^\text{116}\)

The purpose of these TVPA sections is to provide victims with an incentive to testify against traffickers and extend some protection to women and their families abroad. However, the standards for a T-visa qualification for women over the age of 18 are still too restrictive to accomplish the goals of victim protection.\(^\text{117}\)

All T-visa applicants must show "extreme hardship involving unusual and severe harm upon removal," yet the TVPA does not define what situations qualify under that standard. The current definitions of "extreme hardship" were developed in the context of immigrant deportation hearings to determine whether a subject that had lived in the country for many years would face problems upon being forced to leave.\(^\text{118}\) For instance, "extreme hardship upon removal" could be shown when the subject has a young child who is a U.S. citizen that has a life-threatening disease for which the only treatment is available in the U.S.—clearly the child would suffer "extreme hardship" if the immigrant-parent was removed.\(^\text{119}\)

A demonstration of "extreme hardship" in the context of a trafficking victim is highly inappropriate. Victims of sex trafficking are typically isolated, confined, never kept in the same location for long, and are therefore without the kinds of "hardship"-producing relationships that the provision contemplates.\(^\text{120}\) If this language was meant to elicit evidence of a well-founded fear of persecution in the country of origin, then the Attorney General should be allowed to grant asylum to these victims on a case-by-case basis.\(^\text{121}\)

In light of the 50,000 estimated victims trafficked into the U.S. annually, the numerical annual cap of 5000 T-visas is arbitrary and far too low.\(^\text{122}\) There is no similar limit on the number of visas extended to asylees and refugees permitted into the United States.\(^\text{123}\) The cap was

\(^{116}\) This option is only available if the victim is under 21 years old and the Attorney General makes a determination that it is necessary to avoid extreme hardship.


\(^{118}\) Ryf, supra note 2, at 68–69.

\(^{119}\) Id.

\(^{120}\) Id.

\(^{121}\) The bill which eventually became the TVPA originally permitted the Attorney General to grant asylum to victims who could show a well-founded fear of persecution in their country of origin. H.R. Rep. No. 106-487, pt. 2, at 43 (2000) (proposed by Sam Brownbeck, R-Kan., Paul Wellstone, D-Minn., Chris Smith, R-NJ, and Sam Gejdensin, D-Conn.).


\(^{123}\) Ryf, supra note 2.
apparently placed to address concerns regarding fraudulent claims of trafficking. These concerns are unjustified, as T-visa applicants and victims seeking to adjust their status must go through a validation process where their history is meticulously evaluated.\textsuperscript{124}

Ultimately, the T-visa is "booby-trapped" with a number of steps and qualifications so as to prevent fraudulent claims. But because the T-visa's qualification process may be dauntingly complicated to a victim, the legislative provision may ultimately be self-defeating—at the end, failing to accomplish its primary purpose of extending protections to victims.

2. Training, Assessing and Providing Victims' Services

Most communities do not have an organized system of care to address the special needs of victims of trafficking. Often, care is provided \textit{ad hoc} and through existing community service organizations that are not designed or funded to serve the complex needs of trafficked persons.\textsuperscript{125} Indeed, the particular concerns of ethnic communities cannot be addressed adequately by agencies that do not have culturally relevant connections, experience or expertise. When attempting to serve or advocate for trafficking victims, it is important to do so through sensitive qualified interpreters that can properly assess and meet the needs of individuals within their cultural context. Because there are many barriers to a trafficking victim successfully finding assistance, service groups must be proactive and creative in their approach. Local community-based service agencies should be available to help prevent trafficking and intervene for trafficked persons.\textsuperscript{126}

a. Reintegration

Reintegration services are important to help women that have been displaced by trafficking but wish to return to their home countries. Repatriation can be particularly dangerous for trafficking victims, as they may face punishment from organized crime groups or from the native


\textsuperscript{125} See Report on Trafficking in Persons, supra note 55, at 13.

\textsuperscript{126} Id.
country's legal system for illegal migration. Victims may also face ostracism and condemnation from family and friends. Gender and ethnic discrimination can compound the isolation victims feel when they are unable to effectively express their needs. The difficulty in addressing these issues has made reintegration an especially complex issue, requiring sensitivity and services that few communities are prepared to provide.

b. Shelters

Victims often find more success in recovery when they are housed together and can share their experiences with one another. However, trafficking victims are housed in violence and rape shelters, where women do not always speak their language. In addition, trafficking victims have experienced terrible forms of exploitation, encompassing a range of human rights violations like forced prostitution, prolonged confinement, rape, and torture. The need for mental health services can be especially acute for these victims. Special sensitivity to their needs would include providing housing with women in similar circumstances, language support, and counselors, social workers and medical personnel trained to address the particular problems associated with trafficking.

Complicating this picture, some shelters are reluctant to accept trafficking victims because they pose added security risks. The trafficking industry’s association with organized crime and gangs increases the potential for violence not only against former victims, but for all occupants of the shelter.

3. Witness Relocation: Protection Programs for Witnesses and Their Families

In several trafficking cases, victims who escaped from brothels were hunted down by traffickers and forcibly returned. Under the TVPA,

128. Richard, supra note 10. See also the story of “Nina,” U.S. Dep’t of State, Annual Trafficking in Persons Report: Trafficking Victims Protection Act 2000, (June 2003), 6. The story of Nina highlights the importance of this service. Nina was a nineteen-year-old from southeastern Europe when she was recruited by traffickers supposedly to work as a waitress. She was raped, beaten, drugged, and forced into prostitution. After a bold escape, her trafficker was able to hunt her down and bring her back. She was taken into protective custody during a police raid and agreed to be a witness against her trafficker. However, the police officer assigned to protect her
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Trafficking victims are afforded certain protections if their safety is at risk or there is danger of recapture and reprisal by a trafficker—which also extends to their family members.\(^{129}\) Protection must be legitimately extended to witnesses and their families to ensure testimony at trial and prosecutions. Because the character of trafficking today involves multinational crime cartels, ensuring the cooperation of victims is critical to infiltrating and acquiring evidence against trafficking syndicates. Legislators should consider extending protections and benefits to all victims of trafficking—not only victims of severe forms of trafficking. Even where a woman cannot show "force, fraud or coercion" sufficient to qualify for protection under the TVPA, some legislative measures should be drafted to encourage her cooperation with prosecutors and investigators. Ultimately, the evidence she could provide will prove invaluable in capturing and prosecuting high-ranking traffickers. It would behoove the U.S. to make legislative changes that will provide incentives for this special class to come forward.

**Final Conclusions**

Trafficking in people is a modern-day manifestation of slavery.\(^{130}\) In order to effect justice for thousands of victims, trafficking must receive international recognition as an abominable human rights violation. The problem is growing. Although the TVPA is the strongest legislative response to trafficking in the world, it must be improved, as there are important weaknesses to its approach. Without change and improvement, victims will be denied the protection and services they require, while prosecutors and law enforcement officials remain hamstrung, without the resources they require to punish traffickers and prevent further trafficking offenses.


The *Crazy Horse* case is a powerful and compelling illustration of the sex trafficking problem, and the TVPA's failure despite strong evidence (1) to punish and prosecute offenders under the penalty schemes of recent trafficking statutes; (2) to prevent trafficking; or (3) to protect victims, who ultimately felt they needed to come forward to the public to claim their innocence of a crime. It is a galling reminder that even with our best legislative efforts, legal solutions have done little to curb what is at its heart a sickening, persistent, and ancient moral problem.

Sex trafficking requires an urgent and compassionate response from all parts of society who desire its eradication. The recommendations raised above regard some of the immediate problems within the U.S. response to the problem of modern slavery. Victims must be recognized quickly, recovered, and protected. Current legislation does not accomplish this effectively. Changes in present enforcement strategies will require concerted, cooperative action from all levels of society—from law enforcement, to service organizations, to legislators, to the general public. As with the analogous global industries of weapons and narcotics, the crime of trafficking is transnational in scope and economic in character. An appreciation of trafficking's dimensions and its dangers necessitates a legal response that treats victims with sensitivity, traffickers with an intolerance for their crimes, and "johns" with rehabilitative education and, if necessary, punishment. 

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