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**Title:** Human Trafficking: A Guide to Detecting, Investigating, and Punishing Modern-Day Slavery

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**Summary:**

Human trafficking is not always easy to detect, because it can masquerade as a variety of other offenses. Local law enforcement officers are the first responders in the communities where such crimes occur and are therefore the key players in identifying and exposing these serious crimes.

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Human Trafficking: A Guide to Detecting, Investigating, and Punishing Modern-Day Slavery

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In April 1997, Joseph [not his real name], a homeless, drug-addicted African American man stumbled through the woods in Fort Pierce, Florida. He was dazed and bloody, having just been repeatedly kicked and beaten about the head and face. Deputy Lee, of the Saint Lucie County Sheriff's Department, who was investigating a report of a missing child, observed Joseph. Noticing Joseph's injuries, Lee summoned medical assistance and interviewed the injured man. Thus began an investigation initiated by the Saint Lucie Sheriff's Department, in conjunction with the Fort Pierce Police Department, that uncovered violent and abusive conduct on the part of Lewis Philips, a fruit harvesting contractor who employed Joseph and a number of other workers on a seasonal basis. Philips hooked Joseph and other workers on crack cocaine in lieu of paying them adequate salaries, and applied their earnings of 55 cents per bin of fruit picked to the crack debt that the workers owed him. Philips's payment scheme resulted in a burgeoning debt for Joseph and the other workers and little, if any, take-home pay. Growing increasingly dissatisfied with his work situation, Joseph left Philips's employ in favor of working for a competing fruit harvesting contractor who offered Joseph better terms. Once Philips discovered that Joseph had left to work for a competitor, Philips became enraged and enlisted the assistance of an enforcer to kidnap, beat, and brutalize Joseph in order to "teach him a lesson...."

On the morning of November 22, 1999, 18-year-old Geeta came home to her apartment in Berkeley, California, and was confronted by a horrifying sight. Her two roommates, sisters Leela, 16, and Radha, 14, were lying on the floor, unconscious. The apartment was stifling hot, and Geeta ran about grabbing water and ice to sprinkle on her two unconscious roommates, in hopes of rousing them. Geeta then shook and ultimately slapped the two sisters, but they remained unresponsive. A poor young woman from southern India, Geeta was not well educated and unable to speak English. Utterly desperate, she phoned her place of employment, an Indian restaurant in Berkeley, and summoned restaurant workers to come and assist her. The restaurant personnel arrived in a van and attempted to calm Geeta, who was waiting for them outside of the apartment, in a state of extreme agitation. The workers then rolled one of the unconscious sisters in a rug in order to carry her to the waiting van in a concealed fashion. However, their attempts at concealment failed when a passing motorist noticed a human body part protruding from the rug. Alarmed, the motorist called the Berkeley Police Department. Berkeley police officers responded immediately, along with paramedics, and became suspicious that three young girls, with little or no English language skills, were living alone. Their investigation, which ultimately involved federal agents, revealed that the young unconscious girls were the victims of carbon monoxide poisoning due to a malfunctioning heater. Tragically, one of the two sisters, Radha, ultimately died. The investigation, however, led to the discovery that the young roommates were sex abuse victims of a wealthy and powerful Bay Area businessman who was also their employer.

Both of these examples are drawn from real-life human trafficking cases prosecuted by the Department of Justice. Despite the obvious distinctions between the two scenarios and the means used to harm the victims, they share one fundamental feature: both incidents involve defendants who intimidated victims and forced them to work against their will. Such conduct amounts to modern-day slavery, also known as trafficking in persons.

## The Importance of Identifying the Crime

Human trafficking is not always easy to detect. As these two cases demonstrate, trafficking can masquerade as a variety of other offenses. However, it is important to identify modern-day slavery for what it is--an assault on fundamental human dignity. Local law enforcement officers are the first responders in the communities where such crimes occur and are therefore the key players in identifying and exposing these serious crimes.

## Human Trafficking Defendants Receive Big Sentences

Identifying trafficking crimes for what they are is an efficient way to punish effectively a variety of criminal activity. Time and again we have witnessed the frustration of local officers who arrest persons involved in vice or domestic violence offenses and spend countless hours completing paperwork, only to encounter the same offenders on the street in a matter of days. Lenient laws that enable perpetrators to get away with a mere slap on the wrist serve as a disincentive to enforcement.

By contrast, trafficking crimes carry hefty sentences. Consider the sentences meted out in *United States v. Jimenez-Calderon*, a recent sex trafficking case prosecuted by the Department of Justice and local law enforcement in Newark, New Jersey, a case that just as easily could have been prosecuted as a prostitution case. In *Jimenez-Calderon*, the defendants lured and transported young Mexican girls into the United States under false pretenses, and then forced them into prostitution, using physical violence and threats to maintain strict control over them. On August 7 of this year, two female defendants who supervised the victims were sentenced to more than 17 years after their convictions on federal conspiracy and sex trafficking charges.

Compared with sentences obtained at the state level for similar offenses,<sup>1</sup> and even sentences obtained at the federal level when trafficking is not charged,<sup>2</sup> trafficking crimes are punished more severely. In fact, Congress recently amended the Trafficking Victims' Protection Act<sup>3</sup> to make the most egregious trafficking violations punishable by death. Thus, trafficking crimes are punished with the utmost severity when compared with other applicable crimes covering the same conduct.<sup>4</sup>

## Human Trafficking and Organized Crime

Identifying and pursuing human trafficking crimes is an effective crime control strategy. Recent studies demonstrate a link between trafficking in people and trafficking in drugs and arms.<sup>5</sup> Organized crime syndicates may be involved in all three illicit activities, or use trade routes already established by related illicit organizations to facilitate their criminal enterprise. Organized crime groups have been associated with human trafficking schemes and operate across borders. The intelligence required to dismantle such groups often draws upon the resources and assistance of numerous agencies--local, state, federal, and sometimes even international. Recognizing the links between organized crime syndicates and human traffickers, Congress has now included human trafficking crimes as a predicate offense for the application of the Racketeer Influenced and Corrupt Organizations Act (RICO).<sup>6</sup> Thus, criminal organizations that may be difficult to dismantle under individual criminal liability theories will be easier to reach through the powerful evidentiary tools available under federal organized crime laws.

## No Neighborhood Is Immune to Human Trafficking Activity

Human trafficking is not confined to areas with large immigrant populations. As Joseph's case described demonstrates, trafficking victimizes Americans as well. Disaffected young American runaways are particularly at risk of being targeted by pimps and other sex traffickers.

In addition, the rising incidence of human trafficking investigations throughout the United States confirms that heinous cases of exploitation are occurring in many of our neighborhoods and communities. Federal and local law enforcement officers have uncovered human trafficking operations in virtually every state and territory of the United States. In fact, the Department of Justice has formally opened human trafficking investigations in 45 states and all U.S. territories,<sup>7</sup> and is facing an unprecedented increase in human trafficking investigations and prosecutions. In the last two fiscal years (2001 and 2002), the department's Civil Rights Division and U.S. attorney's offices nationwide have initiated prosecutions of 79 traffickers--three times as many as in the previous two fiscal years. As of August 15, 2003, the

department counted 118 open trafficking investigations-nearly twice as many as were open in January 2001. Since January 2001, the department has charged, convicted, or secured sentences for 109 human traffickers in 33 cases. This is just the tip of the iceberg. Current U.S. government estimates suggest that 18,000 to 20,000 persons are trafficked annually into the United States.<sup>8</sup> Based on these estimates, human trafficking activity is going undetected in many local communities. If left unchecked, the market for human beings will only continue to expand.

#### Human Trafficking Victims Receive Specialized Assistance

The Trafficking Victims Protection Act of 2000 (TVPA), passed by the United States Congress in October 2000, treats victims of trafficking as victims of a violent crime and provides them with assistance and benefits not normally available to victims and witnesses in other types of cases. Particularly in cases where a victim has been brainwashed by the trafficker into believing that U.S. law enforcement will punish her, providing benefits and demonstrating concern for victims is invaluable in building trust. Building this trust will enable the officer to uncover the truth.

Furthermore, in those cases where victims themselves face possible criminal liability on account of their participation in illicit activity, such as prostitution or immigration fraud, the TVPA mandates that law enforcement protect rather than prosecute such victims. The TVPA explicitly recognizes that existing laws and law enforcement procedures often fail to distinguish between victims of trafficking and persons who have knowingly and willfully violated laws. The result is that "victims are often punished more harshly than the traffickers themselves."<sup>9</sup> The act goes on to require that trafficking investigations and prosecutions are of the highest national priority, and that authorities must "protect... rather than punish... the victims of such offenses."<sup>10</sup>

Given their special victim status, trafficking victims may be eligible to receive benefits such as temporary legal immigration status, employment authorization, English language classes, housing and food assistance, medical treatment and psychological counseling. The TVPA also requires defendants to pay mandatory restitution to trafficking victims to help them piece their lives back together.

Recognizing the important function of these federal laws, states are beginning to pass their own antitrafficking laws. Thus far, the state of Washington has passed such a law, and legislators in Texas and Florida are attempting to do the same. Congress, too, in reauthorizing the TVPA, recently recognized that state and local law enforcement officers who detect these crimes must be entrusted with the authority to identify those trafficking victims deserving of the refugee benefits typically accorded to cooperating trafficking victims under the TVPA. Thus, local and state law enforcement officers must receive the training and information necessary to make such determinations. Trafficking investigations must be vigorously pursued to ensure compliance with the clear signals sent by federal and state laws, and to access the unique benefits to which victims of such crimes are entitled.

#### Statutes in the Antitrafficking Arsenal

There are a number of federal statutes, including those recently enacted under the TVPA, that enable vigorous investigation, prosecution, and punishment for trafficking crimes. A variety of substantive crimes covering involuntary servitude, peonage, the slave trade, forced labor, sex trafficking, and document seizures are set forth at 18 U.S.C. 1581 and subsequent sections. While too numerous to discuss in depth, some of the more commonly used statutes warrant discussion.

18 U.S.C. 1584-Involuntary Servitude: One of the most commonly used trafficking laws is the involuntary servitude statute, which carries a 20-year statutory maximum penalty, and up to life imprisonment in cases involving kidnapping, sexual abuse, or death. The death penalty is also available for violations that result in death. The involuntary servitude statute predates the statutes added as a result of the Trafficking Victims Protection Act and is therefore one of the earlier statutes on the books. A conviction for involuntary servitude under 18 U.S.C. 1584 requires proof that the defendant knowingly and willfully held the victim in service against her will, and that the defendant did so through use of force, threats of force, or threats of legal coercion. Because involuntary servitude requires proof that the defendant used violence or threats of force to secure the labor or services of another, the statute is limited in its reach to the most egregious cases of violently enforced labor.<sup>11</sup> This statute fails to reach the more nuanced forms of coercion often used by modern traffickers to force victims into service, such as brainwashing,

psychological coercion, or emotionally blackmailing victims to believe that their family members back home would suffer some unspecified harm.

18 U.S.C. 1589-Forced Labor: Recognizing the limitations of existing laws in reaching psychological coercion, Congress enacted the Trafficking Victims Protection Act of 2000 to supplement the involuntary servitude statutes. Newly enacted sections, such as the forced labor statute at 18 U.S.C. 1589, provide avenues for prosecution of a wider variety of cases, involving some forms of psychological coercion that would not support a prosecution under the involuntary servitude statute. Like involuntary servitude, the forced labor statute carries a 20-year statutory maximum penalty, and up to life in case of kidnapping, sexual abuse, or death, with death penalty eligibility.

Forced labor occurs when the defendant knowingly obtains the labor or services of a victim by using threats of serious harm to, or physical restraint against, the victim or another person. In addition, forced labor can occur where the defendant uses a scheme, plan or pattern intended to lead a victim to believe that the victim or another would suffer serious harm or physical restraint for failing to perform the requested services. Finally, forced labor can also occur where the defendant abuses or threatens to abuse the legal process in order to force the victim to work or perform services.

It is important to note that Section 1589 is not limited to cases where a defendant threatens physical harm or violence but also includes other, nonphysical types of harm. Such harm includes shunning, ostracism, or potential complications for the victim's family members in the native country, such as threats to seize the victim's family home in the country of origin. In addition to serious harm, the statute also punishes behavior that involves threats of physical restraint against a victim or someone else. Physical restraint that restricts movement, such as being locked in but not threatened with physical violence, should satisfy this requirement. Section 1589 further criminalizes behavior where the defendant uses a scheme, plan, or pattern intended to make the victim fear that she or another will be harmed or physically restrained for her failure to comply with the defendant's wishes. Examples of this type of behavior include traffickers who tell their victims stories of the dangers on the American streets in order to convince them that bad things will happen if they try to leave the traffickers' "protection." Finally, the forced labor statute punishes defendants who threaten to abuse the law or legal process to maintain control over their victims. Examples of such control include threatening to report a victim to immigration authorities if she fails to do the trafficker's bidding.

Section 1591-Sex Trafficking of Children or by Force Fraud or Coercion: Another new statute added by the TVPA of 2000 is the statute criminalizing the trafficking of children for commercial sex, or using force, fraud, or coercion in trafficking any adult victim for commercial sex. This statute requires proof that a defendant recruited, enticed, transported, provided, or obtained a victim for a commercial sex act, using force, fraud, or coercion, or, alternatively, knowing that the victim was under 18 years of age. The defendant's actions must also have affected interstate commerce, for example, where a victim is transported across state lines for prostitution, or where the victim is harbored in a brothel that buys supplies, or solicits customers, from another state.

The penalties for such violations are severe: for offenses involving force, fraud, coercion, or minors under the age of 14, the maximum penalty is life imprisonment. For offenses not involving force, fraud, or coercion but where the victim is between 14 and 18 years of age, the maximum penalty is 20 years. Again, under certain conditions, the death penalty may be imposed.

Section 1592-Seizure of Documents: Like the forced labor statute, Section 1592 enables prosecutors to reach traffickers who hold their victims through means other than physical violence. A common practice used by sophisticated, modern-day traffickers involves seizing the passport, government identification, and immigration documents of their victims with the intent to keep victims in service or to restrict their liberty. Section 1592 penalizes such activity by a maximum sentence of five years' imprisonment. It is important to note that the statute does not distinguish between actual and fraudulent documents: defendants who seize either in order to control their victims face criminal liability.

#### Other Legal Considerations

A number of other statutes are available to combat trafficking in persons. Prosecutors use immigration statutes, labor law statutes, tax codes, and other criminal laws to supplement trafficking charges. But

trafficking charges, where appropriate, provide for higher sentences and clearly identify the conduct for what it truly is, exploitation of a human being.

In identifying a trafficking situation, it is important to remember that the victim need not be chained or restrained or even beaten. Modern-day slavery means that the defendants use force or threats of harm to coerce work from the victim. In essence, if the defendants make the victim feel that serious harm will result if she leaves, then the case should be investigated as a trafficking matter. Defendants in trafficking cases argue often that a victim consented to her work conditions because she signed an employment contract or otherwise demonstrated consent. Such arguments do not undermine trafficking charges, where, for example, the consenting victim is defrauded about her working conditions and is thereafter prevented from leaving. In such a case, a victim's initial agreement to work is no bar to a trafficking prosecution.<sup>12</sup> Another common defense mistakenly raised by perpetrators of trafficking crimes is that they paid their workers, even though the payment is usually below the lawful amount and sometimes below what was promised. Again, such facts do not preclude prosecution under the trafficking statutes. In fact, in many trafficking prosecutions, the worker is paid a minimal amount.<sup>13</sup>

The bottom line is that the charging options in trafficking cases are broad, and trafficking charges are effective in bringing to bear significant penalties. "Bad facts," such as payment, consent, and even a victim's failure to flee the trafficking situation, do not necessarily preclude a trafficking prosecution where the defendant uses threats or intimidation to overcome a victim's will to force her to work.

### Practical Tips for Detecting and Investigating Trafficking Cases

Know where to look. Although trafficking can occur at any worksite and in any industry, authorities have noticed patterns. Strip clubs, massage parlors, brothels, sweatshops where garments are manufactured, agricultural sites employing migrant labor, restaurants employing workers to bus tables and wash dishes, and homes employing domestic help exploit a disproportionate number of trafficking victims. Seemingly benign businesses such as nail shops and massage parlors may also offer commercial sex.

Know what to look for. Trafficking victims work long hours, receive very little (or no) pay, are scared of their employers, are restricted in their movement, and may be guarded by other employees or family members of the defendant. Be aware of fatigue, bruises, or other evidence of injury. Look for withdrawn workers who are afraid of unsanctioned contact with outsiders, or whose statements are censored by overseers. When passing parks or other recreational areas where nannies or babysitters may take their charges, note the appearance of these workers: are they old or weak in appearance? Are they afraid to talk (either because of fear of contact with outsiders or because their immigration documents are invalid or have been seized)? In vice operations, take note of particularly young-looking prostitutes.

Know what questions to ask. In "Working Together to Stop Modern-Day Slavery," in the August 2002 issue of the Police Chief, Lou deBaca and Andrea Tisi provide useful guidance on investigative tips and the types of questions to ask potential victims. Examples of appropriate questions include the following: How did you arrive in the United States? How did you come to work for [the defendant]? Describe your work hours and work conditions. Were you paid? Were you free to come and go as you pleased? Could you talk to anyone you wanted to talk to? Did anyone take your passport or other papers?

Be very careful in selecting your interpreter. In cases involving languages not commonly spoken in the United States, such that the available pool of interpreters is relatively small, attempt to find the most trustworthy interpreter possible. Ensure that the interpreter has no biases, in favor of either the perpetrators or the victims. When in doubt, call the Department of Justice at 888-428-7581 for help finding an interpreter.

Ask questions creatively. Concepts of time differ between cultures. Some victims may not know how old they are, since they may hail from countries where birth records are not maintained and they may be illiterate or uneducated. These factors may complicate law enforcement attempts to ascertain facts, such as a victim's age, which is a crucial item of proof in certain types of trafficking cases. Although bone-density and dental examinations may yield an age range, such tests are usually accurate only within a two-year standard deviation.

In situations where "How old are you?" fails to yield an answer, attempt to ask the question creatively. Try

referring to the ages of the victim's family members, for example: Do you have brothers and sisters? Do you remember the day your youngest sister was born? Could you walk and talk then? About how old were you at the time?

If the victim or witness has children, another effective technique is to use the ages of the child or children as a reference point for determining when key events in the trafficking transaction occurred.

Know when to stop asking questions. Never ask the ultimate question--that is, "Were you a slave?" Some cultures have no equivalent word for "slave" or "slavery," and, with certain victims, it may cause such embarrassment that a denial is elicited, even though the reality may be otherwise. Instead, focus on specific instances where the victim's freedom may have been restricted, for example, her freedom to come and go, observe regular work hours, take time off, receive letters, or speak freely to friends and family.

Take pictures of potential targets, witnesses, and victims. Use these photographs when questioning victims and witnesses. In many trafficking cases, key players have a variety of aliases and the witnesses may not know the players by the same names known to the police. More information on potential subjects and witnesses can be obtained by using photographs than by using names.

In suspected trafficking situations, contact people who can help. The Civil Rights Division at the U.S. Department of Justice has two full-time prosecutors devoted to triaging trafficking cases, and a victim-witness coordinator devoted primarily to assisting trafficking victims. This team can help identify whether the case facts meet the standards for a trafficking prosecution, and the coordinator will help in assembling a local team to obtain victim services, such as financial assistance, medical care, immigration relief, and shelter.

Furthermore, the Department of Justice can facilitate contact with the Bureau of Immigration and Customs Enforcement (former INS) and other federal agencies, such as the Department of Labor, the Internal Revenue Service, and the State Department, all of which may have key documentary evidence relating to the victims, witnesses, and subjects. Such paperwork can include facts contained in visa applications made to the State Department and Bureau of Citizenship and Immigration Services (also former INS), requests to the Department of Labor for sponsoring foreign workers, and tax returns. You can reach the Department of Justice toll-free by dialing 888-428-7581.

Ensure the trafficker is not contacting the victim. Victims and traffickers often remain in contact, even after a victim is safely in the custody of law enforcement. Be wary of traffickers' attempts to contact the victim in order to influence her statements.

Expect that potential trafficking victims will not trust the police immediately. In fact, they may trust their traffickers more than they trust police officers. Some trafficking victims may have been led to believe that U.S. law enforcement will put them in jail or deport them to their native countries, particularly where their immigration paperwork is not in order. In some federal investigations involving sex trafficking in particular, victims have considered themselves "married" to their traffickers, and exhibit considerable loyalty toward the subjects. Adopt a reassuring manner and tone with the victim. Enlist the assistance of nongovernmental public interest groups and the Department of Justice to find appropriate housing, medical and mental health assistance, and other services for the victim. Demonstrate the police's commitment to the victim's well being to engender the trust necessary to ascertain the truth with time.

A Rewarding End

Investigating and prosecuting trafficking cases are enormously rewarding, both professionally and personally. Successful investigations not only send the worst kind of criminals to jail for a long time but also transform the lives of victims, many of whom are destitute and defenseless when we liberate them yet go on to lead productive lives after the case is over. Trafficking investigation success stories include numerous examples of poor, illiterate, violently brutalized, and sexually abused victims learning to read, write, speak English, and earn a college degree and generally becoming confident, law-abiding members of society. The gratitude and respect that victims feel for the investigators who liberated them, and the lifetime bond that can develop as a result, are deeply rewarding. As anyone who has worked a successful trafficking investigation will attest, the rewards far outlast the life of the case.

1. See, e.g., *Ohio v. Rodriguez*, 2003 WL 21500153 (Ohio App. 6th Dist.) (sentencing defendant to two years' imprisonment for promoting the prostitution of a minor).
2. See, e.g., *United States v. Miller*, 148 F.3d 207 (2d Cir. 1998) (six-year sentence in conviction for coercing travel and transportation of minors in interstate commerce for purposes of prostitution); *United States v. Drury* (582 F.2d 1181 (8th Cir. 1978) (three-year sentence for similar activity).
3. The Trafficking Victims Protection Act (TVPA), Pub. L. 106-386, Div. A, 112, will be discussed in more detail subsequently. In brief, however, this law was enacted by Congress in October 2000 and codifies some of the core federal trafficking offenses, such as forced labor; sex trafficking of children or by force, fraud, or coercion; and unlawful conduct with respect to documents in furtherance of trafficking, 18 U.S.C. 1589, 1591, 1592. The act also enables trafficking victims to access immigration relief and employment, medical, and other assistance.
4. Convicted human traffickers, like those convicted of other federal crimes, are sentenced in accordance with the U.S. sentencing guidelines. The TVPA and other trafficking statutes establish the upper limit for appropriate sentences.
5. See "Trafficking in Human Beings, Small Arms, and Light Weapons: National and International Economic Impact," paper on chairmanship's view presented during the Eleventh Economic Forum of the Organization for Security and Cooperation in Europe, Prague, Czech Republic, May 20-23, 2003: 3.
6. RICO is contained within the Organized Crime Control Act of 1970 and is codified at 18 U.S.C. 1961 et seq.
7. The only states in which the U.S. Department of Justice has not opened a human trafficking investigation are Delaware, Maine, Rhode Island, South Dakota, and Wyoming. The Department has conducted multiple human trafficking investigations in 39 states and all of the U.S. territories.
8. These cases can be difficult to uncover and prosecute because of the unwillingness of victims and witnesses to come forward and cooperate with law enforcement efforts.
9. Purposes and Findings, Section 2 of House Report 106-487, Part 2.
10. Purposes and Findings.
11. *United States v. Kozminski*, 487 U.S. 931 (1988).
12. See *United States v. Kozminski*.
13. See, e.g., *United States v. Alzanki*, 54 F.3d 994 (1st Cir. 1995), cert. denied, 516 U.S. 1111 (1996).

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