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THE INVISIBLE MAN: THE CONSCIOUS NEGLECT OF MEN AND BOYS IN THE WAR ON HUMAN TRAFFICKING

Samuel Vincent Jones*

I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe . . . . I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me . . . . When they approach me they see only my surroundings, themselves, or figments of their imagination—indeed, everything and anything except me.

—Ralph Ellison[1]

I. INTRODUCTION

On April 4, 2010, CNN's *Larry King Live* aired a special segment, titled "Worldwide Crisis: Human Trafficking," to highlight the crime's brutal and global nature.[2] Joined by Ashley Judd and Lucy Liu, host Larry King described human trafficking as "women and children, kidnapped, bought, [and] sold into bondage."[3] Throughout the program, the commentators made at least twenty-five references to "women" or "girls" to describe, in graphic detail, occasions on which men enslaved and sexually abused females.[4] It portrayed the crime as a contemporary tale of good versus evil about misogyny and the sexual exploitation of women.

The show's intended theme reveals as much by what was not stated as it does by what was stated. The *Larry King* commentators, in powerfully reporting facts regarding global human trafficking, did not convey that boy sex trafficking rings represent a major criminal enterprise in the United States,[5] and around the world,

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[1] RALPH ELLISON, INVISIBLE MAN 3 (1994).

[2] *Larry King Live* (CNN television broadcast Apr. 4, 2010), *available at* http://transcripts.cnn.com/TRANSCRIPTS/1004/04/lkl.01.html.

[3] *Id.*

[4] *Id.*

[5] *E.g.*, Press Release, FBI, Chicago Area Men Arrested in Child Pornography Sting (Sept. 21, 2009), *available at* http://chicago.fbi.gov/pressrel/pressrel09/ch092109.htm (reporting the arrest of four men involved in a child pornography ring targeting underage boys); Press Release, U.S. Dep't of Justice, U.S. Attorney's Office, Dist. of Conn., Project Safe Childhood: Man Who Victimized Boys is Sentenced to More Than 27 Years in Federal Prison (Oct. 26, 2007), *available at* http://www.justice.gov/usao/ct/Press2007/

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with boys constituting up to 90% of the child prostitutes in some countries.[6] The plight of hundreds of thousands of male farm laborers, who are confined and forced to work on U.S. farms without pay, and routinely beaten, burned, and raped,[7] was also omitted from the program's discussion. In fact, the *Larry King* commentators did not refer to boys or male victims throughout the entire special segment, despite the fact that boys account for at least half of all certified child victims of forced labor.[8]

The *Larry King Live* show's glaring omission is consistent with, and sustains, the powerful traditional narrative used by media personalities and commentators to describe human trafficking through sensationalized accounts of heinous male predators molesting female captives, while ignoring the significant number of male victims of forced labor and sex trafficking.[9] For example, although Dr. Janice

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20071026.html (reporting the sentencing of a man arrested for producing child pornography in his house).

[6] Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 B.U. PUB. INT. L.J. 1, 22 n.109 (1999) (stating that 90% of prostitutes in Sri Lanka are boys).

[7] Susan Carroll, *U.S. Officials Say Men Are Being Targeted More as Cases of Forced Labor Increase: Rise in Male Trafficking Victims Seen Traffic: 'Bigger Stigma for Men,'* HOUS. CHRON., July 6, 2009, at A1.

[8] U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 341 (10th ed. 2010) [hereinafter 2010 TRAFFICKING REPORT], *available at* http://www.state.gov/documents/organization/142979.pdf.

[9] *E.g.*, Nicholas D. Kristof, Op-Ed, *Seduction, Slavery and Sex*, N.Y. TIMES, July 15, 2010, at A31; Nicholas D. Kristof, Op-Ed, *The 21st-Century Slave Trade*, N.Y. TIMES, Apr. 22, 2007, § 4, at 13 (noting that "[h]uman trafficking is the big emerging human rights issue for the 21st century" and recounting the story of an eleven-year-old Indian girl who was kidnapped and forced to work in a brothel); *ABC News: Innocence Lost: Trafficking in the U.S.* (ABC television broadcast July 14, 2008), *available at* http://abcnews.go.com/video/playerIndex?id=5374277 (reporting on a young woman's story of being kidnapped and forced into prostitution); *Connect the World: Human Trafficking in Mexico Targets Women and Children* (CNN television broadcast Jan. 12, 2010) (reporting on trafficking of women and children in Ciudad Juarez, Mexico, and noting that most human trafficking victims are "destined for the sex trade" and that "most are women and children"); *Impact Your World: Tracking Human Trafficking* (CNN television broadcast Apr. 14, 2010), *available at* http://www-cgi.cnn.com/video/#/video/world/2010/04/14/iyw.abolish.slavery.cnn (featuring a reporter going undercover in a sex trafficking ring in Cambodia); Kim Kennedy, *The Realities of Human Trafficking: In the End, It's the Customers Who Keep Teen Sex Rings a Viable Source of Profit*, CBS NEWS (Sept. 12, 2007), http://www.cbsnews.com/stories/2007/09/11/ earlyshow/main3250963.shtml ("Human trafficking is a low-risk, high-profit enterprise, and because it looks to the casual observer . . . like garden variety prostitution, it is tolerated."); *On the Record with Greta Van Susteren: Human Trafficking: A Closer Look at a Growing Worldwide Problem* (Fox News television broadcast Dec. 2, 2008), *available at* http://www.foxnews.com/printer_friendly_story/0,3566,460130,00.html (interviewing Ambassador Mark Lagon, Senior Advisor to Secretary of State Condoleeza Rice, who states that trafficking affects 800,000 people a year, "many of them for sexual exploitation" and "a good 80 percent" of whom

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Shaw Crouse implicitly claimed to describe the full spectrum of human trafficking in her article, entitled "No Tolerance for Human Trafficking,"[10] she did not make any mention of male victims.[11] In response to Dr. Crouse's use of the traditional narrative, one astute commentator wrote:

> Mrs. Crouse makes no mention of the laborers with calloused hands and broken hearts whose passports are removed by their employers and told to work even harder. No comment about the men ordered never to report the abuses perpetrated against them. Nothing of the millions of [young boys] around the world forced into lives of destitution and involuntary servitude.[12]

Although it is true that, historically, females have suffered enormous levels of harm, particularly at the hands of males, this truism does not preclude the empirical reality that males have also suffered enormous harm at the hands of both males and females. However, while female vulnerability is often highlighted in contemporary media discourse, male vulnerability is consistently obscured by modern-day media expressions of male dominance and invulnerability perpetuated under the guise of masculinity. To some extent, men and boys have become the victims of this media-driven, socially constructed conception of maleness. Indeed, the notion that males can be oppressed or systematically victimized strikes some as ludicrous. Nevertheless, as this Article will show, this conception of maleness, especially juxtaposed against the backdrop of the human trafficking phenomenon in the United States, is conceptually flawed.

This Article explores the intersection between an attribute of the commercial media and American criminal jurisprudence that existing legal scholarship has largely disregarded: the systematic neglect of male victims in the publicity of human trafficking.[13] Indeed, male vulnerability to human trafficking has been

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are female); Deborah Pryce, *Combating Modern-day Slavery*, HUM. EVENTS (May 8, 2006), http://www.humanevents.com/article.php?id=14618 (making no mention of men, Pryce claimed that "[a]pproximately 18,000 women and children from around the world are brought into this country each year, some smuggled illegally, others lured with visas and the promise of jobs and then coerced into slavery upon arrival").

[10] Janice Shaw Crouse, *No Tolerance for Human Trafficking*, NAT'L REV. ONLINE (June 27, 2006, 6:16 AM), http://article.nationalreview.com/283986/no-tolerance-for-human-trafficking/janice-shaw-crouse.

[11] Carey Roberts, *Humans for Sale*, WASH. TIMES, Sept. 24, 2006, at B05.

[12] *Id.*

[13] ELŻBIETA M. GOŹDZIAK & MICAH N. BUMP, INST. FOR THE STUDY OF INT'L MIGRATION, DATA AND RESEARCH ON HUMAN TRAFFICKING: BIBLIOGRAPHY OF RESEARCH-BASED LITERATURE 4, 7, 13, 25, 45 (2008), *available at* http://www12.georgetown.edu/sfs/isim/Publications/ElzPubs/NIJ_BIB_FINAL_REPORT-1.pdf (noting that out of 218 journal articles on human trafficking, "[o]nly 14 journal articles include discussion of male victims of trafficking and one discusses the plight of male children"); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child*

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neglected even in academic discourse. The traditional narrative posits that women and girls are more vulnerable to human trafficking and thus are in greater need of legal protection, whereas males, conversely, are resistant to human trafficking and thus less in need of legal protection. This Article will demonstrate, however, that men and boys are both more likely than women and girls to become victims of human trafficking and far less likely to receive legal protection.

Additionally, this Article will establish that, although the text of the Trafficking Victims Protection Act (TVPA) is gender-neutral, its implementation is unlikely to protect male victims of human trafficking because the TVPA is largely interpreted and enforced as a law primarily designed to protect women and girls from sexual exploitation. It argues that the traditional notion that human trafficking is primarily a sex crime against females harms the collective good by facilitating the neglect of hundreds of thousands of male victims who suffer from sex crimes or forced labor. This social condition leaves the full extent of the resulting harm unabated and significantly increases the incidence of human trafficking, particularly of male victims.[14] This Article links this injustice to media-driven perspectives and presentations that propagate falsities regarding male vulnerability. It highlights the glaring, but normative, institutional lack of concern for male victims of human trafficking; discusses the reasons for and catalysts of this neglect; identifies the misconceptions that perpetuate it; and argues for the advancement of gender-neutral reporting, research, and funding schemes that delegitimize misconceptions regarding male victims of human trafficking.

This Article situates the discussion along several jurisprudential presumptions: (1) the ultimate goal of American criminal jurisprudence is to prevent the breach of human dignity intrinsic to every person, so as to advance a democracy under which all people enjoy equal protection;[15] (2) every person should be free from violations of human dignity, regardless of his or her social

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Trafficking and Sexual Exploitation, 43 VAND. J. TRANSNAT'L L. 1, 19 n.81 (2010) (citing GOŹDZIAK & BUMP, *supra*).

[14] *See* FREE THE SLAVES & HUMAN RIGHTS CTR., UNIV. OF CAL., BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 9–10 (2004) [hereinafter HIDDEN SLAVES], *available at* http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1007&context=forcedlabor.

[15] 146 CONG. REC. H2675, H2676–77 (daily ed. May 9, 2000) (referencing the Declaration of Independence, the Universal Declaration of Human Rights, and United Nations General Assembly resolutions on trafficking, among others; highlighting the importance of respect for human dignity in American tradition); *see also* Vera Bergelson, *The Right to Be Hurt: Testing the Boundaries of Consent*, 75 GEO. WASH. L. REV. 165, 218 (2007) ("Criminal law should protect human dignity and other aspects of humanity . . . ."); Nora O'Callaghan, *Dying for Due Process: The Unconstitutional Medical Futility Provision of the Texas Advance Directives Act*, 60 BAYLOR L. REV. 527, 558 (2008) ("Due process protections are a fundamental aspect of the American legal tradition, both as an historical matter and as a reflection of a societal respect of human dignity and equality before the law.").

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rank, national origin, ethnicity, or gender;[16] (3) protection of the private interests and human rights of males does not detract from, but rather enhances, the private interests and human rights of females;[17] and (4) a criminal law lacks authority if its directives are morally deficient.[18]

To this end, Part II of this Article highlights traditionally overlooked facets of the human trafficking phenomenon, including male victims of sex slavery and forced farm labor. Part III describes and critiques the textual objectives of the TVPA relative to all victims. Part IV demonstrates that the disproportionate level of focus in publicity and law enforcement on protecting female victims marginalizes male victims and injures males and females alike. Part V highlights the media's complicity in marginalizing male victims of human trafficking by connecting its commercial incentives to its propagation of myths about human trafficking and its subsequent influence on public perception and law enforcement objectives. Part VI concludes by arguing for immediate victim identification training for first responders, a gender-neutral exercise of prosecutorial discretion, and fair and impartial application of the criminal laws designed to prevent harm to males and females alike.

II. HUMAN TRAFFICKING IN THE UNITED STATES

Human trafficking, one of the world's three most profitable criminal activities,[19] affects a large percentage of the U.S. population.[20] Of the estimated

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[16] Samuel Vincent Jones, *The Ethics of Letting Civilians Die in Afghanistan: The False Dichotomy Between Hobbesian and Kantian Rescue Paradigms*, 59 DEPAUL L. REV. 899, 931 (2010) (relying on Immanuel Kant to argue that a person's right to dignity is absolute and unencumbered by "impulses, heredity, social rank, or the advantages that one's individual talents might procure").

[17] *See* JOSEPH RAZ, ETHICS IN THE PUBLIC DOMAIN: ESSAYS IN THE MORALITY OF LAW AND POLITICS 37 (1994).

[18] Samuel Vincent Jones, *Darfur, the Authority of Law, and Unilateral Humanitarian Intervention*, 39 U. TOL. L. REV. 97, 111 (2007).

[19] Franklyn M. Casale, *International Trafficking in Persons: Suggested Responses to a Scourge of Humankind*, 3 INTERCULTURAL HUM. RTS. L. REV. 343, 344–45 (2008).

[20] HIDDEN SLAVES, *supra* note 14, at 1, 10 (noting that forced labor is an extremely pervasive problem throughout the United States and that existing estimates seriously underestimate the extent of such crimes); HEATHER J. CLAWSON, MARY LAYNE & KEVONNE SMALL, ESTIMATING HUMAN TRAFFICKING INTO THE UNITED STATES: DEVELOPMENT OF A METHODOLOGY 2 (2006), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/215475.pdf; UNITED NATIONS OFFICE ON DRUGS & CRIME, AN INTRODUCTION TO HUMAN TRAFFICKING: VULNERABILITY, IMPACT, AND ACTION 99 (2008), *available at* http://www.ungift.org/docs/ungift/pdf/knowledge/background_paper.pdf ("The United States regards trafficking in persons as an important issue both because of its human impact and also because of its consequences for national security, primarily with respect to terrorism, crime, health and welfare, and border control."); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (4th ed. 2004) [hereinafter 2004 TRAFFICKING REPORT], *available at* http://www.state.gov/documents/organization/

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600,000 to 800,000 victims of human trafficking transported across international borders each year, 14,500 to 17,500 of them are reportedly trafficked into the United States.[21] The United States is the third largest destination country in the world for human trafficking, and this modern-day form of slavery is on the rise.[22] The victims are poor, socially isolated, and subjected to physical or psychological torture.[23] Anxiety and fear saturate the daily lives of the victims and destroy their mental health, often leading to problems such as post-traumatic stress disorder, depression, and disorientation.[24] The victims are trafficked for forced labor on farms; in restaurants, nursing homes, private homes, construction sites, and

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34158.pdf; Ellen L. Buckwalter, Maria Perinetti, Susan L. Pollet & Meredith S. Salvaggio, *Modern Day Slavery in Our Own Backyard,* 12 WM. & MARY J. WOMEN & L. 403, 406–07 (2006) (describing human trafficking as "'a transnational criminal enterprise that recognizes neither boundaries nor borders'" and noting that "the United States [is] the third largest destination country in the world for victims of human trafficking" (quoting 2004 TRAFFICKING REPORT, *supra*, at 4)); Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 164–66 (2007) (detailing the United States' existing human trafficking issues surrounding domestic workers; migrant workers in restaurants, hotels, farms, and factories; and those trafficked for prostitution or pornography); *see also* Nilanjana Ray, *Looking at Trafficking Through a New Lens*, 12 CARDOZO J.L. & GENDER 909, 910 (2006) (questioning the effectiveness of law enforcement efforts).

[21] U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2005, at 3 (2006), *available at* http://www.justice.gov/archive/ag/annualreports/tr2005/agreport humantrafficing2005.pdf; *see also* Buckwalter et al., *supra* note 20, at 407.

[22] Buckwalter et al., *supra* note 20, at 407; *see also* Casale, *supra* note 20, at 344–45. These estimates do not include people bought and sold within national borders (internal trafficking) and therefore could be a significant undercount. *Id.*

[23] CAL. ALLIANCE TO COMBAT TRAFFICKING & SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA 16 (2007), *available at* http://www.ohs.ca.gov/pdf/Human_Trafficking_in_CA-Final_Report-2007.pdf (reporting that traffickers often offer victims "good jobs and better lives," but then subject victims to "extreme physical and mental abuse, including rape, sexual exploitation, torture, beatings, starvation, death threats and threats to family members"); U.S. AGENCY FOR INT'L DEV., TRAFFICKING IN PERSONS: THE USAID STRATEGY FOR RESPONSE 5 (2003), *available at* http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/pd-abx-358-final.pdf (noting the link between trafficking in persons and "developmental problems" like "poverty, economic deterioration, conflict, population displacement, postconflict political transition, lack of female educational and economic opportunity, discrimination, and the low value placed on women and children").

[24] U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 21 (8th ed. 2008) [hereinafter 2008 TRAFFICKING REPORT], *available at* http://www.state.gov/documents/organization/105501.pdf (noting that most trafficking victims experience posttraumatic stress symptoms, including "depression, anxiety, hostility and irritability, recurring nightmares and memories of abuse, difficulty concentrating and sleeping, and feelings of apathy or emotional detachment").

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factories; or are compelled to participate in the drug trade, gang activity, or sex.[25] Of these, female sex trafficking is the most discussed via the traditional narrative.[26]

The traditional narrative obscures the plight of male victims, especially male children. For instance, the sex trafficking of young boys feeds the high demand for child pornography in the United States, more than half of which features boys rather than girls.[27] In much of this pornographic material, the boys are subjected to various forms of sadism or masochism, including bondage, rape, or torture.[28] Recent arrests of child pornographers and sex traffickers highlight this disturbing, but underpublicized, trend in the United States. For instance, in January 2008, a South Carolina high school teacher was arrested for possession of child pornography depicting the rape of boys, which also included other acts of physical violence and abuse.[29] In May 2009, a search of a Florida suspect's home uncovered more than 25,000 pictures and hundreds of videos of sadistic depictions of the rape of young boys and infants.[30]

In many cases, the perpetrators of these crimes begin by watching pornography, only to later abuse, molest, and rape boys themselves.[31] For instance,

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[25] Casale, *supra* note 20, at 344.

[26] *See, e.g.*, 2010 TRAFFICKING REPORT, *supra* note 8, at 338 (reporting that labor trafficking for domestic servitude is common in the United States); Kevin Bales et al., *Hidden Slaves Forced Labor in the United States*, 23 BERKELEY J. INT'L L. 47, 48 (2005) (reporting that 27% of trafficking victims are forced into domestic servitude); Srikantiah, *supra* note 20, at 164 ("A disproportionate number of domestic workers in the United States are immigrant women and women of color.").

[27] UNICEF, PROFITING FROM ABUSE: AN INVESTIGATION INTO THE SEXUAL EXPLOITATION OF OUR CHILDREN 11 (2001).

[28] JANIS WOLAK, DAVID FINKELHOR & KIMBERLY J. MITCHEL, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD-PORNOGRAPHY POSSESSORS ARRESTED IN INTERNET-RELATED CRIMES: FINDINGS FROM THE NATIONAL JUVENILE ONLINE VICTIMIZATION STUDY 5 (2005), *available at* http://www.missingkids.com/en_US/publications/NC144.pdf (reporting that one in five child pornography defendants possessed material depicting sadism and masochistic acts).

[29] Press Release, U.S. Dep't of Justice, South Carolina High School Teacher Pleads Guilty to Enticement of a Minor and Transportation of Child Pornography (Mar. 13, 2008), http://washingtondc.fbi.gov/dojpressrel/pressrel08/wf031308a.htm.

[30] Press Release, U.S. Dep't of Justice, Brevard Man Sentenced to 30 Years in Federal Prison for Distribution of Child Pornography (Mar. 11, 2010), *available at* http://tampa.fbi.gov/dojpressrel/pressrel10/ta031110a.htm.

[31] *See, e.g.*, Press Release, U.S. Dep't of Justice, Boca Raton Man Sentenced on Charges of Attempted Internet Enticement of a Minor (Dec. 15, 2008), *available at* http://miami.fbi.gov/dojpressrel/pressrel08/mm20081215.htm (reporting that defendant tried to meet with a boy, who was actually undercover agent; a later search uncovered child pornography on his computer); Press Release, U.S. Dep't of Justice, Franklin Resident Arrested for Distribution and Possession of Child Pornography (Sept. 25, 2009), *available at* http://memphis.fbi.gov/dojpressrel/pressrel09/me092509.htm (reporting that defendant in child pornography case admitted to having sex with four underage boys living nearby); Press Release, U.S. Dep't of Justice, New Jersey Man Sentenced to Nine Years in Prison for Distribution of Child Pornography and Attempted Enticement of a Minor (Sept. 4,

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after watching footage of a man sexually abusing a ten-year-old boy,[32] a forty-one-year-old ex-police officer named Donald Rager began chatting with boys aged thirteen to sixteen via the Internet, with an eye toward raping them.[33] At the time of Rager's arrest, he had raped at least fourteen boys in Illinois, Indiana, Iowa, and Wisconsin, and had recorded and distributed several videotapes of the encounters.[34] In this manner, male sex trafficking perpetuates the very kind of demand on which it feeds.

The absence of publicity regarding boy sex trafficking makes it increasingly attractive to criminal networks that specialize in obtaining young boys for sex and pornography, as revealed by the arrest of a Chicago sex ring known as "Boy Lovers."[35] Similarly, a recent U.S. Customs operation, called "Operation Blue Orchid," uncovered a criminal network that extended from Russia to the United States and specialized in filming and distributing footage illustrating the rape of boys.[36] Given the advent of these criminal networks and the relative obscurity in which they operate, it comes as no surprise that, despite blatant underreporting of the plight of male victims, males account for nearly half of all missing persons in the United States,[37] at least 16% of the male population in the United States is known to have been sexually abused,[38] there are approximately 300,000 boy

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2008), *available at* http://washingtondc.fbi.gov/dojpressrel/pressrel08/wf090408b.htm (reporting that during an online conversation with an undercover officer, the defendant admitted to raping an eleven-year-old boy and then transmitted videos of other men having sex with prepubescent boys).

[32] Press Release, U.S. Dep't of Justice, Former Illinois Police Officer Sentenced to Over 31 Years for Traveling to Iowa to Have Sex with 13-Year-Old Boy (Apr. 23, 2008) (on file with author).

[33] *Id.*

[34] *Id.*

[35] Press Release, FBI, *supra* note 5.

[36] Press Release, U.S. Dep't of Justice, Riverside County Man Sentenced to 20 Years in Prison for Traveling to Sexually Abuse a 7-Year-Old Boy (Jan. 28, 2008), *available at* http://losangeles.fbi.gov/dojpressrel/pressrel08/la012808ausa.htm.

[37] *See NCIC Missing Person and Unidentified Person Statistics for 2009*, FBI, http://www.fbi.gov/about-us/cjis/ncic/ncic-missing-person-and-unidentified-person-statistics-for-2009 (last visited Sept. 28, 2010) (reporting that of the 719,558 missing persons in 2009, 343,175 were males).

[38] Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREVENTATIVE MED. 430, 430, 433 (2005) http://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdfhttp://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdfhttp://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdfhttp://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdfhttp://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdfhttp://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdfhttp://www.jimhopper.com/pdfs/Dube_%282005%29_Childhood_sexual_abuse_by_gender_of_victim.pdf; *see also* Lara Stemple, Op-Ed., *The Hidden Victims of Wartime Rape*, N. Y. TIMES, Mar. 2, 2011, at A25, (pointing to United Nations' reports indicating "that out of 5,000 male concentration camp detainees held near Sarajevo during the Bosnian conflict, 80

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prostitutes in this country,[39] and in most large U.S. cities, the number of male and female child prostitutes is essentially equal.[40]

As with most victims of sex trafficking, such acts wreak havoc on the child's physical, psychological, and social well-being, resulting in headaches, stomach aches, eating disorders, fear, anxiety, depression, declining grades, aggression, and increased likelihood of adolescent prostitution, substance abuse, and suicide attempts.[41] These problems become especially acute in boys, who frequently do not report the abuse because of socially imposed pressure to be self-reliant and desire sex, which results in a lack of proper treatment for the boys, as well as a lack of societal awareness about the problem.[42] When boys do report abuse, they face severe stigmatization, which increases the likelihood that they will suffer psychosocial problems.[43] In many cases, the harm suffered by boy victims of sexual abuse plays a significant role in such boys later becoming victimizers when they reach adulthood.[44] Because female sex trafficking is erroneously regarded as the principal undertaking of human traffickers, the prevalence and magnitude of boy sexual abuse, the full extent of human traffickers' profit from the sexual exploitation of boys, and the medical impact of sexual exploitation on boy health are all comparatively neglected and grossly underdeveloped.[45]

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percent acknowledged having been sexually abused [and i]n El Salvador, 76 percent of male political prisoners told researchers they had experienced sexual torture").

[39] ROBIN LLOYD, FOR MONEY OR LOVE: BOY PROSTITUTION IN AMERICA 226–27 (1976).

[40] DONALD J. WEST, MALE PROSTITUTION, at xii (1993); *see also* Kristof, *supra* note 9 ("[R]eports and studies . . . suggest that between 100,000 and 600,000 children may be involved in prostitution in the United States, with the numbers increasing.").

[41] ANN WOLBERT BURGESS & CHRISTINE A. GRANT, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILDREN TRAUMATIZED IN SEX RINGS 2 (1988), *available at* http://www.missingkids.com/en_US/publications/NC71.pdf.

[42] *Id.* at 4 (listing other possible reasons, such as fear of losing independence and unsupervised activities, the stigma surrounding homosexuality, and media depictions of sexual abuse); LLOYD, supra note 39, at 33–35 (describing the degree to which self-denial and parental fear of publicity impede "successful prosecution" of adult victimizers).

[43] UNICEF, *supra* note 27, at 11 ("[P]roblems in the adult male victims of childhood sexual abuse . . . . [M]ay include mild to severe psychiatric disorders, substance abuse, and serious sexual problems—including intimacy and sexual-identity problems, the early adoption of high-risk behaviours and the circular transformation of the child victim into an adult perpetrator.").

[44] *See* BURGESS & GRANT, *supra* note 41, at 3 figs.1 & 4 (citing a study of forty-one serial rapists which revealed that 56% had been abused as boys, as well as a study of incarcerated child molesters which revealed that more than half had a childhood history of sexual abuse).

[45] *See id.* at 4 (noting that one of the reasons for underreporting of sexual abuse of boys is that "the media have focused their attention primarily on the abuse and vulnerability of girls rather than boys" (citing A. NICHOLAS GROTH, MEN WHO RAPE: THE PHYSCHOLOGY OF THE OFFENDER (1979))).

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Additionally, the alarmingly high demand for forced labor is marginalized even though it provides a greater incentive for human traffickers.[46] Furthermore, social conditions indicate that males are most vulnerable to this form of human trafficking.[47] The demand that triggers trafficking for forced labor, however,

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[46] *See generally* David A. Feingold, *Think Again: Human Trafficking*, 150 FOREIGN POL'Y 26 (2005) (exposing the myths of human trafficking and noting that "the worldwide market for labor is far greater than that for sex"). *See also* INT'L LABOUR OFFICE, A GLOBAL ALLIANCE AGAINST FORCED LABOR 12 (2005), *available at* http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-declaration/documents/publication/wcms_081882.pdf (estimating that forced commercial sexual exploitation represents only 11% of the 12.3 million cases of forced labor in the world). Although incidents involving male victims are grossly unreported and underrepresented in studies, according to one report that surveyed 131 reported incidents of forced labor in the United States between 1998 and 2003, 46.4% involved prostitution and 3.1% involved forced sexual exploitation of children, whereas 49.3% involved forced labor exploitation. HIDDEN SLAVES, *supra* note 14, at 1, 14. Social service nonprofit agencies report that a large proportion, if not a majority, of their clients are victims of forced labor, not sex trafficking. Srikantiah, *supra* note 20, at 185.

[47] *See* U.S. DEP'T OF HOUS. & URBAN DEV., THE 2009 HOMELESS ASSESSMENT REPORT TO CONGRESS 22 (2010), *available at* http://www.hudhre.info/documents/5th HomelessAssessmentReport.pdf (stating that 63.7% of the sheltered homeless are men); Ellen Goodman, *The Curse of an Equal Workforce*, BOS. GLOBE, Feb. 13, 2009, at A17 (noting that men are losing their jobs faster because they work in areas that are harder hit in today's economy, such as construction and manufacturing; also asserting that "[i]n the past year, eight out of 10 pink slips went to men"); Sarah Kliff, *Why Are the Really Old People Women?*, NEWSWEEK, Sept. 28, 2009, at 72 (stating that statistically, men are more likely to die from heart disease, commit suicide, be murdered, die in a non-automobile-related accident, and die by firearms than women); Michael Keizer, *Women's Health Is a Red Herring (and So Is Men's)*, GLOBAL POVERTY (July 13, 2009, 11:03 AM), http://news.change.org/stories/womens-health-is-a-red-herring-and-so-is-mens ("[I]n many developing countries, men are more likely to die from violence than women."); *Suicide in the U.S.: Statistics and Prevention*, NAT'L INST. OF MENTAL HEALTH, http://www.nimh.nih.gov/health/publications/suicide-in-the-us-statistics-and-prevention/ index.shtml#risk (last visited Dec. 29, 2010) (finding that almost four times the number of males as females die by suicide and that nearly five times as many males as females aged fifteen to nineteen die by suicide); *see also* Ray B. Williams, *Our Male Identity Crisis: What Will Happen to Men?*, PSYCHOLOGY TODAY (July 19, 2010), http://www.psychologytoday.com/blog/wired-success/201007/ our-male-identity-crisis-what-will-happen-men ("[M]ales are falling behind in school, committing more suicides and crimes, dying younger and being treated for conditions such as ADHD more than females."). The rationale behind the apparent neglect of male harm in the United States becomes even more perplexing and elusive when one considers that women tend to be substantially better off than their male counterparts in certain ethnic populations; *see also* LIONEL TIGER, THE DECLINE OF MALES: THE FIRST LOOK AT THE UNEXPECTED NEW WORLD FOR MEN AND WOMEN 181–82 (2000) (stating that men are more vulnerable than women and describing men as the "second sex"). Another commentator has noted:

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differs greatly from that of sex trafficking. Because of increased polarities of wealth between the United States and other countries, and a rising demand for discounted labor, certain poverty-stricken communities migrate to the United States in search of employment.[48] Despite media and political attempts to pathologize certain categories of immigrants for avoiding the legal process when migrating, lawful travel into the United States has become possible mostly for the economically privileged or ethnically preferred.[49] Consequently, for some, "[t]he desire to migrate can seldom be met through legal channels."[50] The legal restrictions, coupled with the insatiable desire of some to migrate for employment, render this category of people especially vulnerable to criminal networks, often facilitating an operational link between human smuggling operations and human trafficking.[51] After reaching the United States, the smuggled migrant often loses his autonomy and consumerist identity and becomes a tool for generating profit.[52]

> Black women are more likely than Black men to have at least a Bachelors degree. Two of every three Bachelor degrees attained by Blacks are awarded to women. Black women showed a 91% increase in enrollment in graduate study from 1976–1997, while Black men showed only a 34% increase for the same time period. More Black men attain their high school diploma in prison every year than graduate from college.
>
> With regard to the workplace, Black males hold fewer jobs in the professional sector than Black females. Fourteen percent of Black men hold managerial and professional jobs as compared to 18% of Black women.

Aaron Lacy, *The Most Endangered Title VII Plaintiff? Exponential Discrimination against Black Males*, 86 NEB. L. REV. 552, 568–69 (2008) (citations omitted).

[48] INT'L LABOUR OFFICE, HUMAN TRAFFICKING AND FORCED LABOUR EXPLOITATION: GUIDELINES FOR LEGISLATION AND LAW ENFORCEMENT 3 (2005) [hereinafter GUIDELINES], *available at* http://www2.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf.

[49] *Id.*; *see also* Judith Dixon, *The Impact of Human Trafficking*, *in* UNITED NATIONS OFFICE ON DRUGS & CRIME, AN INTRODUCTION TO HUMAN TRAFFICKING: VULNERABILITY, IMPACT, AND ACTION 81, 90–91 (2008) (background paper), *available at* http://www.ungift.org/docs/ungift/pdf/knowledge/background_paper.pdf (discussing the impact of the increase of illegal migration on human trafficking and "possible discrimination against unskilled migrants").

[50] Vincenzo Musacchio, *Migration, Prostitution, and Trafficking in Women: An Overview*, 5 GERMAN L.J. 1015, 1020–21 (2004).

[51] Dixon, *supra* note 49, at 90–91; Musacchio, *supra* note 50, at 1021 (noting that when legal opportunities cannot be found, migrants may turn to traffickers for help).

[52] GUIDELINES, *supra* note 48, at 3; *see also* Signe Damkjaer, *Human Trafficking: The Worst Form of Labour Exploitation*, SCANDASIA.COM (Feb. 6, 2008), http://www.scandasia.com/viewNews.php?coun_code=th&news_id=4057 (suggesting that human trafficking is basically about addressing severe labor exploitation and a lack of decent working conditions in different sectors).

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On some occasions, however, the victim may actually be a citizen, legal resident, or lawful visitor to the United States.[53]

To cite a few examples, Lueleni Maka, a landscape maintenance contractor living in Hawaii, illegally transported Tongan males to his farm and forced them to work more than twelve hours a day, six days a week, under inhumane conditions.[54] In Florida, Michael Lee lured homeless African-American men off the streets of Fort Pierce with offers of payment and lodging.[55] After "deducting" the cost of food, lodging on the crowded floor, and occasionally crack cocaine, the men frequently made less than ten dollars per day for working excessive hours, and were prevented from leaving the compound with threats of physical force.[56] Similarly, in the wake of Hurricane Katrina, a construction services company allegedly promised more than 500 Indian men permanent residence status within the United States for themselves and their families, but then abused the men and confined them to forced labor camps.[57] On another occasion, two mentally retarded men in Michigan were beaten and forced to work on a dairy farm seven days a week, for up to seventeen hours a day, first for minimal pay and subsequently for no pay at all.[58] In the "Deaf Mexicans Case,"[59] a family illegally imported deaf and hearing-impaired Mexicans and forced them to sell up to 200 trinkets each day, threatening physical and mental abuse if they failed to do so.[60]

Boys also make up a significant portion of forced labor victims. For instance, the Avilas family owned and operated restaurants throughout northern California.[61]

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[53] HUMAN SMUGGLING & TRAFFICKING CTR., DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE 2, 6 (2008) [hereinafter DOMESTIC HUMAN TRAFFICKING], *available at* http://www.state.gov/documents/organization/113612.pdf.

[54] U.S. DEP'T OF JUSTICE, REPORT ON ACTIVITIES TO COMBAT HUMAN TRAFFICKING: FISCAL YEARS 2001–2005, at 80 (2006), *available at* http://www.justice.gov/crt/crim/trafficking_report_2006.pdf; *see also* United States v. Maka, No. 08-00024 SOM/KSC, 2008 U.S. Dist. LEXIS 60823, at *1–2 (D. Haw. Aug. 8, 2008) (denying Maka's petition under 28 U.S.C. § 2255 and affirming the conviction of "six counts of human trafficking with respect to involuntary servitude and forced labor . . . six counts of forced labor . . . seven counts of alien smuggling . . . and six counts of alien harboring").

[55] ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED 31 (2007).

[56] *Id.*

[57] David v. Signal Int'l, LLC, No. 08-1220, 2009 U.S. Dist. LEXIS 123212, at *5–6 (E.D. La. Dec. 28, 2009).

[58] United States v. Kozminski, 487 U.S. 931, 934–35 (1988) (stating that men were abused; forbidden to leave the farm; provided inadequate nutrition, housing, clothing, and medical care; and prevented from contacting their significant others or receiving visitors).

[59] United States v. Paoletti-Lemus, No. 1:97-cr-00768-NG-1 (E.D.N.Y Apr. 7, 1998).

[60] *See* Ron Soodalter, *A Blight on the Nation: Slavery in Today's America*, 25 CONN. J. INT'L L. 37, 43–44 (2009) (reporting that the men were "beaten, shocked with stun guns, denied food and water, or locked out [of their apartments]"); Ian Fisher, *U.S. Indictment Describes Abuses of Deaf Mexican Trinket Sellers*, N.Y. TIMES, Aug. 21, 1997, at A1.

[61] *See* Complaint at 7, Abrica vs. Campestre Corp., No. 5:04-cv-02723-RMW (N.D. Cal. July 7, 2004).

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To acquire cheap labor, they allegedly recruited thirteen- to sixteen-year-old boys who spoke only Spanish.[62] The boys worked punishing hours in cramped, mobile-home restaurants: seventeen hours per day, six or seven days a week, without "meal breaks" or "rest periods."[63] They were housed in an unfurnished, two-bedroom apartment, lacking "heat, air conditioning or a telephone," were "forced to sleep on the floor," and were prohibited from leaving except for work.[64] The Avilas subtracted "rent" for this sparse housing from the boys' pay, resulting in the boys receiving an hourly wage of $1.26.[65] A civil complaint filed on behalf of these boys accused the Avilas of false imprisonment, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional infliction of emotional distress, and various other claims related to their torture.[66] Likewise, the Farrells, owners of a Comfort Inn & Suites in South Dakota, allegedly brought nine male and female Filipinos to the United States on temporary visas to work as housekeepers.[67] Once at the hotel, the workers were paid a meager three dollars per hour, charged for transportation to and from work, and required to purchase items they neither wanted nor needed.[68] The Farrells controlled how the victims spent their free time, forbidding them to socialize with Americans or other hotel employees.[69] The Farrells forced seven of the victims to live in the same two-room apartment, which was subject to random searches.[70] The victims were all subjected to threats of deportation and physical violence, which their victimizers doled out for the slightest infractions of their increasingly stringent rules.[71] Eventually, the victims managed to use a hotel phone to call for help.[72] A jury convicted the Farrells on numerous charges relating to peonage and forced labor.[73]

Such profit-generating schemes represent only a miniscule amount of the types of forced labor imposed upon citizens and noncitizens in various industries in the United States. In the United States, the demand for all categories of forced labor, however, is dwarfed by the demand for farm labor. In fact, the demand for farm labor in the United States exceeds that of any other country.[74]

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[62] *Id.* at 7–9.
[63] *Id.* at 7.
[64] *Id.* at 7–8.
[65] *Id.* at 7.
[66] *Id.* at 11–27 (totaling eighteen claims).
[67] United States v. Farrell, 563 F.3d 364, 366 (8th Cir. 2009).
[68] *Id.* at 368.
[69] *Id.*
[70] *Id.* at 369.
[71] *Id.* at 370–71.
[72] *Id.* at 372.
[73] *Id.* at 366.
[74] *Migrant Labor*, *in* THE COLUMBIA ENCYCLOPEDIA 1773 (Barbara A. Chernow & George A. Vallasi eds., 5th ed. 1993).

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There are over two million farms in the United States.[75] Although making an accurate estimate of the number of victims of forced farm labor present on U.S. farms is particularly difficult considering the transient nature of farm labor,[76] conservative estimates place the number of farm laborers in the United States between 2.25 and 2.5 million, comprising approximately 1.8 to 2 million males.[77] A report from the U.S. Department of Labor indicates that males constitute 79 to 90% of all migrant farm workers who are forced to labor on U.S. farms.[78] Up to 75% of these farm laborers are young males transported from Mexico.[79]

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[75] *See Demographics*, U.S. EPA, http://www.epa.gov/oecaagct/ag101/demographics.html (last updated Sept., 10, 2009) (describing agricultural demographics); *see also* U.S. DEP'T OF AGRIC., 2007 CENSUS OF AGRICULTURE: FARM NUMBERS (2009), *available at* http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/farm_numbers.pdf ("The 2007 Census of Agriculture counted 2,204,792 farms in the United States, a 4 percent increase from 2002.").

[76] *See* Kevin Bales & Steven Lize, *Investigating Human Trafficking: Challenges, Lessons Learned, and Best Practices*, FBI LAW ENFORCEMENT BULL., Apr. 2007, at 24, 30–31, *available at* http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2007-pdfs/april07leb.pdf/view. A rural NGO assisting trafficked persons observed,

> The biggest problem with working on these cases is catching the people who are all over the migrant farmworker world—a world that's the hardest to understand and most difficult to locate people. They must be located by word of mouth. It's not as if you can just pick up the phone and call people or mail them a letter.

Id. at 30 (citation omitted).

[77] U.S. GAO, PESTICIDES: IMPROVEMENTS NEEDED TO ENSURE THE SAFETY OF FARMWORKERS AND THEIR CHILDREN 6 (2000) [hereinafter PESTICIDES], *available at* http://www.gao.gov/archive/2000/rc00040.pdf (reporting an estimate of 2.5 million agricultural workers within the United States); Richard Mines et al., *The Latinization of U.S. Farm Labor*, REP. ON AMERICAS, July 1992, at 42, 43 (estimating that there are at least 2.25 million farm workers within the United States).

[78] *See* DANIEL CARROLL ET AL., U.S. DEP'T OF LABOR, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) 2001–2002: A DEMOGRAPHIC AND EMPLOYMENT PROFILE OF UNITED STATES FARM WORKERS 9 (2005) [hereinafter NAWS FINDINGS], *available at* http://www.doleta.gov/agworker/report9/naws_rpt9.pdf.

[79] *Id.* at 3 (noting that approximately 75% of crop farm workers in the United States were born in Mexico and only 23% were born domestically); *see* Philip Martin, *AgJOBS: New Solution or New Problem*, 38 U.C. DAVIS L. REV. 973, 991 (2005) (finding that the majority of agricultural workers are "young men from rural Mexico, and future farm workers are likely to continue to be born and raised outside the United States"). Of the nondomestic workers, 53% were not authorized to work in the United States during 2001–2002. NAWS FINDINGS, *supra* note 78, at 6. Another sources reports that "[o]ver half of the workers employed on U.S. farms are not authorized to work in the United States." Martin, *supra*, at 974.

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Interestingly, the number of Latin American farm workers in the United States nearly mirrors the number of African slaves working on U.S. farms in the 1850s.[80]

Lacking the protection of U.S. labor and employment laws,[81] or a powerful organization to lobby Congress on their behalf or publicize their oppressed circumstances, these predominantly male farm laborers are routinely subjected to physical and psychological exploitation and torture, including beatings and rape.[82] They are also exposed to poisons at a rate unrivaled by any other sector of the U.S. economy, resulting in more than five times the number of deaths produced by any other industry.[83] Approximately 1.8 million of the 2.5 million farm laborers are forced to inhale pesticides that cause death, permanent injury, debility, or other unknown medical side effects.[84] Lacking necessary health equipment and

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[80] JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM 184–85 (1947); Howard Dodson, *How Slavery Helped Build a World Economy*, NAT'L GEOGRAPHIC (Feb. 3, 2003), http://news.nationalgeographic.com/news/2003/01/0131_030203_jubilee2_2.html.

[81] Labor inspectors combat forced labor through labor laws, primarily the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). 29 U.S.C. §§ 1801–1872 (2006). However, the MSPA defines "seasonal agricultural worker" in a manner that specifically excludes "any migrant agricultural worker" and "any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under [the Immigration and Nationality Act]." *Id.* § 1802(10)(B)(i), (iii). Thus, the MSPA offers little help in eliminating forced labor in the United States. *See id.*; *see also* Bales et al., *supra* note 26, at 64 (noting the lack of sufficient resources for the U.S. Department of Labor to investigate and prosecute forced labor claims).

[82] *See* Connie de la Vega & Conchita Lozano-Batista, *Advocates Should Use Applicable International Standards to Address Violations of Undocumented Migrant Workers' Rights in the United States*, 3 HASTINGS RACE & POVERTY L.J. 35, 38–39 (2005) (stating that illegal workers accept extremely low wages and work in atrocious conditions out of fear and will typically not seek the protection of U.S. laws); *see also* Carroll, *supra* note 7 (reporting on a "soft-spoken Salvadoran" victim of human trafficking who was forced to work on a farm without pay and was beaten, raped, and burnt with cigarettes, but ultimately escaped after five months); *see also* Press Release, U.S. Dep't of Justice, Two Brothers Plead Guilty in Conspiracy to Hold Thai Workers in Forced Labor in Hawaii (Jan. 14, 2010), *available at* http://honolulu.fbi.gov/dojpressrel/pressrel10/hn011410.htm (reporting that two Hawaiian men held forty-four Thai laborers captive on their farm using "a scheme of debts, threats, and restraint," including "physical restraint and threats of serious harm"); Press Release, U.S. Immigration & Customs Enforcement, Florida Family Pleads Guilty to Enslaving Farm Workers and Other Related Charges (Sept. 3, 2008), *available at* http://www.doh.wa.gov/hsqa/HumanTraffic/Documents/FarmWrkrs.pdf (reporting that a Florida family brought Mexican and Guatemalan laborers to work on their farm, then coerced them by "beating, threatening, restraining, and locking [them] in trucks").

[83] de la Vega & Lozano-Batista, *supra* note 82, at 41.

[84] *Id.*; PESTICIDES, *supra* note 77, at 5–6. The ill effects may follow from short or long-term exposure through skin contact, inhalation, or ingestion. Acute symptoms range from relatively mild headaches to fatigue, nausea, skin rashes, eye irritation, burns, paralysis, and even death. Chronic illnesses and those with delayed onsets, such as cancer, which may only appear years after exposures to pesticides, can also occur. Some chronic

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protection from these pesticides, these farm laborers are forced to absorb the deadly chemicals for inhumane amounts of time.[85] In addition, more than 800,000 of these farm laborers live without running water and adequate shelter, and thus are forced to eat and sleep in their pesticide-contaminated clothes and chemically abused skins.[86] Their continued labor and obedience are often maintained through deception, confinement using armed guards, psychological and physical abuse, or threats to them or their families.[87] Few would deny that such violations of human dignity are intolerable and represent a glaring indictment of the inadequacy of legislation designed to prevent such contemporary forms of slavery.

III. U.S. LEGISLATIVE EFFORTS TO COMBAT HUMAN TRAFFICKING

The centerpiece of the U.S. effort to combat human trafficking is the Trafficking Victims Protection Act of 2000 (TVPA),[88] and its subsequent reauthorizations in 2003,[89] 2005,[90] and 2008.[91] By its terms, the TVPA is gender-neutral and proscribes human trafficking. The act defines "severe forms of human trafficking in persons" as:

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

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illnesses linked to pesticide exposure may be subtle—such as neurological disorders or reduced cognitive skills. PESTICIDES, *supra* note 77, at 5.

[85] de la Vega & Lozano-Batista, *supra* note 82, at 41–42.

[86] *Id.* at 42.

[87] DESTEFANO, *supra* note 55, at 31; *see also* United States v. Kozminski, 487 U.S. 931, 934–35 (1988); David v. Signal Int'l, LLC, No. 08-1220, 2009 U.S. Dist. LEXIS 123212, at *5–6 (E.D. La. Dec. 28, 2009); Soodalter, *supra* note 60, at 43–44; Srikantiah, *supra* note 20, at 163–64 (describing how trafficked victims are controlled through various forms of coercion).

[88] Victims of Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat 1464 (codified as amended in scattered sections of 6 U.S.C., 8 U.S.C., 18 U.S.C., 22 U.S.C., 28 U.S.C., 42 U.S.C.).

[89] Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C.).

[90] Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat 3558 (codified as amended in scattered sections of 18 U.S.C., 22 U.S.C., 42 U.S.C.).

[91] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of 6 U.S.C., 8 U.S.C., 18 U.S.C., 22 U.S.C., 28 U.S.C., 42 U.S.C.). The reauthorization of 2008 was signed on December 23, 2008, and did not take effect until 180 days after signature. 22 U.S.C.A. § 2370c (West 2010) (effective and applicability provisions).

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> through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[92]

The TVPA purports to direct the use of government resources to prevent human trafficking, prosecute human traffickers, and protect trafficked victims.[93]

A. Prevention

The TVPA requires the attorney general to submit an annual report to Congress providing information on federal government activities to combat human trafficking.[94] It also requires the secretary of state to publish an annual "Trafficking in Persons" (TIP) Report, identifying countries that fail to meet minimum standards to prevent human trafficking.[95] Once a country is identified as failing to meet minimum standards, the United States may eliminate all nonhumanitarian- or nontrade-related foreign assistance to the deficient state.[96] These political and economic pressures have encouraged some states to take steps to prevent human trafficking.[97] Such measures have also been successful in increasing public and institutional awareness about human trafficking.[98]

B. Prosecution

The TVPA bolsters U.S. prosecution efforts by adding new offenses and increased penalties to existing offenses under the U.S. criminal code.[99] These offenses include "[f]orced labor";[100] "[t]rafficking with respect to peonage, slavery, involuntary servitude, or forced labor";[101] "[s]ex trafficking of children or by force, fraud, or coercion";[102] "[u]nlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor";[103] and attempts to kidnap, kill, or engage in aggravated sexual assault.[104]

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[92] *Id.* § 7102(8).

[93] *Id.* § 7101(a).

[94] *Id.* § 7103(d)(7).

[95] *Id.* § 7107(b)(1)(B)–(C).

[96] *Id.* § 7107(a).

[97] Karen Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Transatlantic Slave Trade*, 25 B.U. INT'L L.J. 207, 228 (2007).

[98] *Id.* at 228–29.

[99] *E.g.*, 22 U.S.C. § 7109(b)(2)(C) (allowing increased penalties depending upon the number of victims, continued violations, use or threat of a deadly weapon, and death or bodily injury to a victim); *see also Developments in the Law—Jobs and Borders*, 118 HARV. L. REV. 2180, 2192–93 (2005) [hereinafter *Developments in the Law*] (outlining four specific additions relating to trafficking made to the U.S. criminal code by the TVPA).

[100] 18 U.S.C. § 1589 (2006).

[101] *Id.* § 1590.

[102] *Id.* § 1591.

[103] *Id.* § 1592.

[104] *Id.* §§ 1589(d), 1590(a).

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The TVPA also increases sentencing for offenses involving multiple victims, continued flagrant violations, death or bodily injury, and the use of dangerous weapons in the commission of any of the proscribed behaviors.[105] For example, the maximum penalty for violating the statutes regarding peonage, enticement into slavery, and sale into involuntary servitude has been increased from ten to twenty years imprisonment.[106] The TVPA also provides a civil right of action for victims to sue their traffickers in federal court.[107]

C. Protection

The TVPA attempts to protect victims by legitimizing their immigration status in the United States and making them eligible for an assortment of federally funded benefits similar to those provided to refugees.[108] Victims may apply for a newly established nonimmigrant visa called the T-visa.[109] Responsibility for adjudicating T-visa applications lies with the Department of Homeland Security (DHS).[110] To be eligible for a T-visa and the associated benefits, the victim must establish that he or she: (1) is a victim of a severe form of human trafficking, (2) is physically present in the United States, (3) has assisted in the investigation or prosecution of human traffickers,[111] and (4) would suffer extreme hardship if

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[105] 22 U.S.C. § 7109(b)(2)(C) (2006).

[106] Victims of Trafficking and Violence Protection Act (TVPA) of 2000, Pub. L. No. 106-386, § 112, 114 Stat. 1464, 1486 (codified as amended in scattered sections of 6 U.S.C., 8 U.S.C., 18 U.S.C., 22 U.S.C., 28 U.S.C., 42 U.S.C.) (striking ten-years and replacing it with twenty-years in 18 U.S.C. §§ 1581(a), 1583, 1584 (2006)).

[107] 18 U.S.C. § 1595(a).

[108] *Compare* 8 U.S.C. § 1522 (2006) (providing a list of available assistance programs for refugees including but not limited to employment, medical, job training and instruction, and cash assistance), *with* 22 U.S.C. § 7105 (stating that once certified, benefits may include immigration relief, shelter, protection, legal assistance, and translation services). *See also* Buckwalter et al., *supra* note 20, at 409 ("The TVPA makes 'trafficking victims eligible for federally-funded or -administered health and other benefits and services as if they were refugees.'" (quoting U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 6 (2004), *available at* http://www.justice.gov/archive/ag/annualreports/tr2004/us_assessment_2004.pdf)).

[109] *See* 22 U.S.C. § 7105(b)(1)(B) (expanding benefits to nonimmigrants as defined under 8 U.S.C. § 1101(a)(15)(T)(ii) of the Immigration and Nationality Act).

[110] 22 U.S.C. § 7105(c). The TVPA, as passed in 2000, made reference only to the Department of Justice (DOJ) and Department of State (DOS), as the Immigration and Naturalization Service (INS) was at that time a division within the (DOJ). In 2002, DHS took over those functions formerly carried out by the INS. TVPA § 107(c), 114 Stat. at 1477 (requiring the Attorney General and the Secretary of State to promulgate regulations regarding human trafficking).

[111] 22 U.S.C. § 7105(b)(1)(E)(i); *see also* GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 14 (2007) [hereinafter COLLATERAL DAMAGE], *available at* http://www.gaatw.org/Collateral%20Damage_Final/singlefile_Collateral

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removed from the United States.[112] The number of T-visas available annually is limited to 5,000.[113] Yet, as of October 2008, fewer than 2,300 people had applied for T-visas.[114] Of those 2,300 applications, "1,308 were approved, 709 were denied or withdrawn, and 212 remained pending."[115] These numbers suggest that the TVPA overburdens victims who attempt to qualify for a T-visa. Indeed, the claim of overburdening appears warranted when one considers that in the 2009 fiscal year, only 313 T-visas were granted.[116]

Critics blame the low rate of T-visa grants on the cooperation requirement, pointing out that many human trafficking victims cannot explain or prove how they arrived in the United States or what has happened to them since their arrival.[117] According to some commentators, this feature of the TVPA virtually assures that victims are unlikely to qualify for help in situations in which the victims suffer from severe illness,[118] post-traumatic stress disorder,[119] or a deep-rooted fear that their traffickers will harm them or their families.[120] This conundrum raises questions regarding the propriety and ultimate viability of subordinating the victim's welfare to prosecutorial objectives. The great emphasis on prosecuting human traffickers has the practical effect of subordinating the victim's inherent moral autonomy and right to be free from harm.[121] Such results render the requirement counterproductive because it causes victims to be suspicious and distrustful of law enforcement officials and judicial officers, which further hinders prosecutorial efforts.[122]

Damagefinal.pdf; OFFICE OF THE CITIZENSHIP & IMMIGRATION SERVS. OMBUDSMAN, U.S. DEP'T OF HOMELAND SEC., IMPROVING THE PROCESS FOR VICTIMS OF HUMAN TRAFFICKING AND CERTAIN CRIMINAL ACTIVITY: THE T AND U VISA, at app. 1 (2009) [hereinafter THE T AND U VISA], *available at* http://www.ilw.com/immigrationdaily/news/2009,0130-trafficking.pdf; Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 359 (2007) (noting that, while officially not required, Law Enforcement Certification letters stating that a victim has cooperated will increase the likelihood that a T-visa will be granted).

[112] 8 U.S.C. § 1101(a)(15)(T)(i)(IV).

[113] *Id.* § 1184(o)(2).

[114] THE T AND U VISA, *supra* note 111, at 5.

[115] *Id.*

[116] 2010 TRAFFICKING REPORT, *supra* note 8, at 341.

[117] Haynes, *supra* note 111, at 354–55; *see also* Hussein Sadruddin, Natalia Walter & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 398 (2005) ("What happens to the brain and body during and following traumatic events sheds light on victims' inability to tell or sometimes even remember what happened to them.").

[118] Sadruddin et al., *supra* note 117, at 400–05.

[119] *Id.* at 405–06.

[120] Haynes, *supra* note 111, at 379–80.

[121] *See id.* at 359–60, 369–70; COLLATERAL DAMAGE, *supra* note 111, at 14.

[122] COLLATERAL DAMAGE, *supra* note 111, at 14.

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In addition, it is not a real priority for many victims that their traffickers be imprisoned, particularly in light of the threat of retaliation if the victim testifies against the trafficker.[123] Often this element of fear, coercion, and anxiety prevents victims from testifying.[124] Such fears and anxiety appear justified because even when a case is pursued and victims and their families are provided protection, such measures have occasionally proved insufficient.[125] These findings raise serious questions about the relative merit of victim protection and prosecutorial objectives under the TVPA. Male victims, however, suffer not only from the aforementioned shortcomings of the law, but also, as the next section discusses, from socially constructed nonlegal obstacles that severely limit their rights under the TVPA.

IV. INSTITUTIONAL BARRIERS TO PROTECTING MALE VICTIMS

Contrary to the premise of traditional narratives regarding human trafficking, vulnerability to the crime is not limited to any specific gender or ethnicity.[126] Notwithstanding the TVPA's official text, however, the great weight of anti-trafficking measures have been directed at protecting only one kind of person, whom legal observers have dubbed the "iconic victim."[127] The iconic victim is described and perceived to be a female of European descent, trafficked for sex, waiting helplessly for law enforcement officials to rescue her.[128] It was the bureaucratic obsession with the iconic victim that gave rise to the TVPA.

During the legislative process, politicians focused narrowly on the kidnapping and sexual enslavement of the iconic victim to hasten passage of the TVPA.[129]

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[123] HIDDEN SLAVES, *supra* note 14, at 31. Jennifer Stanger of the Coalition to Abolish Slavery and Trafficking estimated that only half of their clients wished to cooperate in the prosecutions of their perpetrators because of a fear of retaliation. *Id.* This fear is well founded considering that there are organized crime networks throughout the world.

[124] *Id.*

[125] *Id.* at 31–33.

[126] *Summary: A Symposium on Human Trafficking*, COUNCIL ON FOREIGN RELATIONS 1, http://www.cfr.org/content/meetings/human_trafficking_summary.pdf (last visited Aug. 23, 2010).

[127] *E.g.*, Srikantiah, *supra* note 20, at 187 (describing the characteristics of the "iconic victim").

[128] *Id.*; Cynthia L. Wolken, *Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 407, 410–12 (2006) (describing the underage, white, female victim of sex trafficking as the presumed victim of human trafficking).

[129] Srikantiah, *supra* note 20, at 160; Wolken, *supra* note 128, at 410–11; *see also* DESTEFANO, *supra* note 55, at 38 ("During Senate hearings in early 2000, speakers introduced numerous stories that contained the same basic elements: vulnerable young women, some barely in their teens, were tricked into thinking they were going to work in regular jobs, only to find themselves working as prostitutes."); Bravo, *supra* note 97, at 249 ("In public debates leading to the passage of the TVPA, despite some acknowledgement of the existence of labor trafficking, some influential U.S. lawmakers seemed particularly concerned about the sexual enslavement of white women from Eastern Europe."); Jennifer

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Since then, the majority of local law enforcement anti-trafficking efforts have continued to be aimed primarily at protecting female victims of European descent from sex trafficking.[130] Observers note that few victim data-reporting sources identify male victims who are trafficked for sex or forced labor, because most research and investigative efforts focus almost exclusively on female victims of sexual exploitation.[131] The United Nations 2009 report on human trafficking also recognized the lack of male trafficking statistics: "Trafficking in males – adult men and boys – is rarely represented in official national statistics."[132] The National Institute for Justice similarly acknowledged the lack of investigative and prosecutorial emphasis on men and boys: "[C]ases involving men and boys do not make up a statistically significant portion of the sex trafficking cases we investigate or prosecute."[133] In 2006, the Department of Justice (DOJ) recognized

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M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2989–90 (2006) ("The stated purpose of the final version of the [TVPA] is 'to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.'" (quoting 22 U.S.C. § 7101(a) (2000)). During the public debates, U.S. Senator Sam Brownback read an exposé from *The New York Times* emphasizing that the selling of "naïve and desperate young women into sexual bondage" was a rapidly growing criminal enterprise. Bravo, *supra* note 97, at 249. Similarly, U.S. Senator Paul Wellstone expressed that his wife urged him to act on the trafficking problem after they spent time with Ukrainian women who had been trafficked into brothels in the United States. *Id.* Sen. Wellstone only briefly acknowledged that victims were exploited in "'sweatshops and other types of forced labor' in addition to brothels." *Id.* at 250.

[130] *See* 2010 TRAFFICKING REPORT, *supra* note 8, at 340; Chacón, *supra* note 129, at 3035; Wolken, *supra* note 128, at 427; *see also* DESTEFANO, *supra* note 55, at 129 ("[T]he government's emphasis on sex cases obscures the fact that labor cases may be just as rampant, and its continued focus on sex trafficking and the abolition of prostitution has become divisive."); Srikantiah, *supra* note 20, at 177 ("According to DOJ reports, the overwhelming majority of the federal government's trafficking investigations and prosecutions have been directed at sex trafficking of women.").

[131] *See* CLAWSON ET AL., *supra* note 20, at 8 (noting that data on the number of persons trafficked excludes "men, boys, [and] persons who are trafficked for other work (e.g., agriculture, sweat shops, domestic work, servile marriage)"); GOŹDZIAK & BUMP, *supra* note 13, at 4, 7, 13, 25, 45 (noting a general lack of understanding of trafficking victims and their needs, along with a lack of knowledge about the effectiveness of government anti-trafficking programs); 2010 TRAFFICKING REPORT, *supra* note 8, at 340 (reporting that state and local trafficking enforcement efforts focused more on sex trafficking and prostitution—where the victims are more commonly female—than labor trafficking); Ray, *supra* note 20, at 911 ("[T]he overwhelming focus is on trafficking of women and girls into prostitution or pornography rings; there is never mention of the men or boys being trafficked into similar situations.").

[132] U.N. OFFICE OF DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 49 (2009), *available at* http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

[133] Robert Moossy, *Sex Trafficking: Identifying Cases and Victims*, 262 NAT'L INST. JUST. J. 2, 10 n.1 (2008).

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that "[d]ata on men, boys, persons who are trafficked for other work (e.g., agriculture, sweat shops, domestic work, servile marriage), and those who are trafficked within borders are excluded [from human trafficking estimations]."[134]

Some victim data reports have even raised suspicion because of unexplained calculations. For instance, the U.S. Central Intelligence Agency reported in 1999 that an estimated 45,000 to 50,000 people were trafficked into the United States.[135] This original calculation of 50,000, however, did not account for male victims.[136] In 2004, after the passage of the TPVA, the estimate dropped to approximately 14,500 to 17,500 victims.[137] This number also grossly underrepresents the actual number of victims of human trafficking by excluding unidentified victims.[138] In 2006, the U.S. Government Accountability Office, after identifying significant methodological flaws, questioned the validity of statistics disseminated by the U.S.

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[134] CLAWSON ET AL., *supra* note 20, at 8. The National Institute of Justice, when hosting a Trafficking in Persons focus group, acknowledged the danger of neglecting male victims of human trafficking in China. *Trafficking in Persons Summary of Focus Group Discussion*, NAT'L INST. OF JUSTICE, http://www.ojp.usdoj.gov/nij/topics/crime/human-trafficking/focus-group.htm (last updated Dec. 13, 2007). Furthermore, data on the victims of forced labor in the United States are also complicated by the fact that the government does not count the actual number of persons trafficked. HIDDEN SLAVES, *supra* note 14, at 10. Rather, it only counts the survivors, defined in the TVPA as victims of "severe form[s] of trafficking" who were assisted in gaining access to immigration benefits under the TVPA of 2000, 22 U.S.C. §§ 7102(8), 7105(b)(1)(C), (E)). *Id.* The Department of Justice counts only prosecutions and the Department of Health and Human Services counts only the number of persons it certifies as victims. *See* ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2008, at 10–11, 41–42 (2009) [hereinafter COMBAT TRAFFICKING] (listing the number of certification and eligibility letters given, and the prosecutions for labor and sex trafficking offenses during each fiscal year from 2001 to 2008). Survivors who do not access these services or who do not follow up on legal remedies are excluded from the calculations. *See* Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, 43 INT'L MIGRATION 17, 23 (2005) ("The number of cases registered by law enforcement might be an indicator of the functionality of the law enforcement apparatus in a given country, but is unlikely to be a good estimate of the number of trafficking victims.").

[135] *See* AMY O'NEILL RICHARD, CTR. FOR THE STUDY OF INTELLIGENCE, INT'L TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME, at iii, 3 (1999); *see also* DESTEFANO, *supra* note 55, at 13, 32 (discussing Richard's report that estimated that 45,000 to 50,000 women and children were trafficked to the United States); Chacón, *supra* note 129, at 2982 (stating that this number was based on a 1999 estimate calculated by the CIA).

[136] DESTEFANO, *supra* note 55, at 37 (noting that Senator Wellstone "didn't believe the estimated 50,000 trafficking victims brought into the country yearly took into statistical account the men in forced labor situations.").

[137] 2004 TRAFFICKING REPORT, *supra* note 20, at 23; *see also* CLAWSON ET AL., *supra* note 20, at 4 (noting that while U.S. estimates on global trafficking have remained constant, estimates of those trafficked into the United States declined 66% between 2001 and 2004).

[138] HIDDEN SLAVES, *supra* note 14, at 10; Carroll, *supra* note 7.

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Department of State (DOS).[139] Despite the inquiry, the reporting agencies remained silent and offered no reason for the unexplained estimates and apparent use of unreliable sources.[140] Such ubiquitous victim statistics continue to provide a basis for the traditional narrative despite the fact that the data does not account for male victims and has repeatedly proven erroneous or questionable.[141]

The problem is exacerbated by the fact that reporters seldom challenge the flawed statistics despite the ease with which the assertions have been discredited.[142] One reason for the lack of scrutiny, Dr. Christina Sommers explains, is that reporters, who typically scrutinize statistics before publishing them, have a tendency to forego this step when the statistics favor women and girls.[143]

This arrangement is damaging to the public at large for several reasons. First, the practice marginalizes the plight of male victims of forced labor and other

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[139] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-825, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 12–14 (2006). The report concluded that U.S. estimates on global trafficking have a number of limitations, including: (1) "[e]stimate[s that are] not entirely replicable," (2) "[e]stimate[s] based on unreliable estimates of others," (3) "[i]nternal trafficking data [is] not included," and (4) "[e]stimate[s are] not suitable for analysis over time." *Id.* at 13–14. Additionally, even though the U.S. government estimated that 14,500 to 17,500 persons were trafficking within the United States annually, "[d]espite concerted U.S. government efforts to locate and protect victims, the government certified fewer than 900 victims in the United States during the 4 ½ years between March 2001 and September 2005." *Id.* at 17; *see also Trafficking in Persons Report*, U.S. DEP'T OF STATE, http://www.state.gov/g/tip/rls/tiprpt/index.htm (last visited Sept. 25, 2010) (listing the Trafficking in Persons Reports from 2001 to 2010).

[140] Wolken, *supra* note 128, at 414.

[141] *See* CLAWSON ET AL., *supra* note 20, at 8; DESTEFANO, *supra* note 55, at 112.

> In April 2005, a group of human rights activists, lawyers, and researchers challenged the state department document. In an open letter . . . the group said that the statements in the [State Department's] fact sheet made assertions of fact about prostitution and trafficking that were "unsupported or unproven by valid research methods and data." The writers were concerned that such statements might damage ongoing efforts to prevent trafficking and protect the rights of trafficked persons. In their view, the government's single-issue focus on prostitution rather than all forms of trafficking was skewing U.S. actions.
>
> Specifically, advocates challenged the statement that "80 percent of victims are women and 50 percent are children" as well as estimates claiming that 600,000 to 800,000 people are trafficked across international borders each year.

DESTEFANO, *supra* note 55, at 112 (citations omitted).

[142] Wolken, *supra* note 128, at 413–14 (questioning the accuracy of the numbers reflecting the extent of human trafficking in the United States).

[143] Christina Hoff Sommers, *The War Against Boys: How Misguided Feminism Is Harming Our Young Men*, AM. EXPERIMENT Q., Spring 2001, at 26, 36.

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classes of victims who do not fit the iconic victim profile,[144] particularly in light of the fact that many cases involving male victims already go undiscovered even when law enforcement officers actively attempt to identify them.[145] Second, scholarly or investigative research that might prove helpful in discovering better methodologies for identifying or preventing human trafficking of males, and other victims who do not fit the iconic image, is either virtually nonexistent or hideously underdeveloped.[146] Third, it contradicts the resilient, autonomous, and empowered nature of women and girls and buttresses an ideology that relegates females to a perpetual class of helpless victims, which influences funding for anti-trafficking projects that already disproportionately target female sex trafficking.[147]

In 2009, the DOJ disseminated the funding obligations of the DOS and the U.S. Agency for International Development (USAID) for both domestic and international anti-trafficking programs.[148] Of the 222 institutions and programs receiving U.S. funding, only two were committed to combating trafficking of men and boys, with distributions to these groups making up less than 1% of total funding.[149] By contrast, fifteen domestic and international organizations aimed at trafficking of women or girls received around 4% of the total funds.[150] Although the allocations specifically earmarked for gender-specific programs are slight,[151] the near-total absence of publicity and research regarding male victims suggests that more male-centered funding is needed to increase awareness and make up for

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[144] Jacqueline Berman, *The Left, the Right, and the Prostitute: The Making of U.S. Antitrafficking in Persons Policy*, 14 TUL. J. INT'L & COMP. L. 269, 285 (2006) ("In practice, human trafficking also affects men and involves a significant number of other industries including manufacturing, agriculture, and domestic labour."); Anna Gekht, *Shared But Differentiated Responsibility: Integration of International Obligations in Fight Against Trafficking in Human Beings*, 37 DENV. J. INT'L L. & POL'Y 29, 33 (2008) ("[A]uthorities dealing with trafficking came to realize that by focusing on trafficking for prostitution and sexual exploitation they failed to address trafficking of women and girls as well as men and boys for other purposes such as bonded/forced labour, child soldiers, domestic work or organ donations.").

[145] *See* CLAWSON ET AL., *supra* note 20, at 8–9; Srikantiah, *supra* note 20, at 187, 195.

[146] GOŹDZIAK & BUMP, *supra* note 13, at 5, 7, 33 (noting that out of 218 journal articles on human trafficking, "[o]nly 14 journal articles include discussion of male victims of trafficking and one discusses the plight of male children."); Todres, *supra* note 13, at 19 n.81.

[147] *See, e.g.*, COMBAT TRAFFICKING, *supra* note 134, app. D at 88–128 (listing anti-trafficking organizations receiving funding from the State Department and USAID); Stemple, *supra* note 38 (recognizing that the systematic neglect of male victims of sexual abuse harms women and girls by "reinforcing a viewpoint that equates" female status with victim status.)

[148] COMBAT TRAFFICKING, *supra* note 134, at 44; *id.* app. D at 88–128.

[149] *Id.* app. D at 88–128. This amount increases to nine organizations and 4.15% if programs aimed at labor trafficking are included. *Id.*

[150] *Id.* This includes programs aimed at helping "women and children." *Id.*

[151] *Id.* More than 96% of funding for domestic NGOs, and 36% for international and global NGOs, went to programs designed to combat human trafficking generally. *Id.*

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the current disparity.[152] However, as gender-neutral programs that receive the vast majority of U.S. funding are apt to continue focusing almost exclusively on female victims, increases in the rate of male-victim trafficking,[153] as well as gross underreporting of male sexual abuse and labor exploitation, will likely continue.[154] This status quo offers little opportunity for redress to male victims of human trafficking, although they constitute the largest and most vulnerable group of human trafficking victims (when one considers forced farm labor and other categories of human trafficking).[155] Still, correction of this injustice remains elusive and such efforts nearly untenable, largely as a result of the traditional publicity regarding human trafficking. Given the media's impact on law enforcement objectives, this publicity arguably accounts for the vast majority of misconceptions regarding male victims.

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[152] *See* REBECCA SURTEES, INT'L ORG. FOR MIGRATION, TRAFFICKING OF MEN – A TREND LESS CONSIDERED: THE CASE OF BELARUS AND UKRAINE 12–13 (2008) (noting that discussions of male trafficking in Europe and Eurasia are nearly nonexistent); Ray, *supra* note 20, at 911–12 (noting the "overwhelming focus" on trafficking of women and girls, to the exclusion of men and boys, and citing specific international laws that address only sex trafficking or prostitution); Srikantiah, *supra* note 20, at 187 (listing as one characteristic of the stereotypical human trafficking victim, "a woman or girl trafficked for sex"); Todres, *supra* note 13, at 13–14 (noting that, despite the prevailing narrative that trafficking victims are women and girls, statistics show that boys are also commonly at risk).

[153] U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 57 (9th ed. 2009), *available at* http://www.state.gov/documents/organization/123357.pdf (reporting that 45% of certified adult trafficking victims in the United States were men in 2008, a 15% increase from 2007 and a 39% increase from 2006).

[154] *See generally* William C. Holmes & Gail B. Slap, *Sexual Abuse of Boys: Definition, Prevalence, Correlates, Sequelae, and Management*, 280 J. AM. MED. ASS'N 1855 (1998) (estimating the prevalence of sexual abuse of young and adolescent boys in the United States and analyzing this abuse); *see also* Srikantiah, *supra* note 20, at 206 (noting that victims of labor trafficking are often reluctant to come forward for fear of being deported).

[155] *See* RUTH ROSENBERG, U.S. AGENCY FOR INT'L DEV., BEST PRACTICES FOR PROGRAMMING TO PROTECT AND ASSIST VICTIMS OF TRAFFICKING IN EUROPE AND EURASIA 7 (2008), *available at* http://www.usaid.gov/locations/europe_eurasia/dem_gov/docs/protection_final_121008.pdf ("In countries where more attention has recently been paid to [trafficking for labor and trafficking for men], there have been increasing numbers of male victims of trafficking identified . . . ."); 2010 TRAFFICKING REPORT, *supra* note 8, at 8 ("[F]or every trafficking victim subjected to forced prostitution, nine people are forced to work."); Carroll, *supra* note 7 (reporting comments by officials that the actual number of male victims is significantly higher than reported); Roberts, *supra* note 11 ("[M]any believe able-bodied males are the most vulnerable [to human trafficking].").

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V. MEDIA PUBLICITY AND HUMAN TRAFFICKING

Media influence has long affected the administration of criminal justice in the United States, including enforcement of its anti-trafficking measures.[156] The public is inundated with sensational and pervasive crime coverage characteristic of the commercial media.[157] Studies show that increased coverage of crime correlates with increased perception of crime as a serious problem.[158] Because law enforcement officials serve the public, their response to social problems is largely a product of the public's perceptions.[159] The media shapes such perceptions by their description of a suspect's "motive, opportunity, appearance, and historical accounts," which, in turn, justifies the behavior of criminal justice personnel responsible for protecting the public from individuals the media depicts as "corrupt and immoral."[160] In so doing, the commercial media, at least indirectly, set "the moral benchmark" for citizens and law enforcement officials.[161]

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[156] DESTEFANO, *supra* note 55, at 37 (crediting the media for sex trafficking becoming the "main reference point for policy discussions and debates about human trafficking"). *See generally* Dennis J. Stevens, *CSI Effect, Prosecutors, and Wrongful Convictions*, 45 CRIM. L. BULL. 591 (2009) (discussing the power of the media to influence society, and the "CSI Effect" on "prosecutorial discretion").

[157] *See* JULIAN V. ROBERTS & LORETTA J. STALANS, PUBLIC OPINION, CRIME, AND CRIMINAL JUSTICE 69–70 (1997) (citing studies which show that violent crimes are overrepresented in news reports); Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 422–29 (2006) (crediting increased competition between 24-hour news channels and the Internet in the 1990s with the marked increase in network news crime coverage, as well as the tabloid qualities of that coverage); David Bierie & Kathryn Murphy, *The Influence of Press Coverage on Prosecutorial Discretion: Examining Homicide Prosecutions 1990–2000*, 41 CRIM. L. BULL. 60, 62 (2005) (noting that three factors contribute to greatly increased press coverage of a homicide: (1) the victim being white and female; (2) the homicide involving direct techniques like shooting, beating, or knifing; and (3) the homicide having multiple victims or offenders); Malia N. Brink, *A Pendulum Swung Too Far: Why the Supreme Court Must Place Limits on Prosecutorial Immunity*, 4 CHARLESTON L. REV. 1, 10–12 (2009) (noting the large increase in crime coverage in network and local news, as well as television newsmagazines).

[158] *E.g.*, ROBERTS & STALANS, *supra* note 157, at 70 (noting that people who reported themselves as "high media users" rated the seriousness of certain crimes much higher than those who did not); Beale, *supra* note 157, at 442–43 (noting that more than 350 worldwide studies confirm that the media has great power to dictate the salience of an issue with the public).

[159] *See* Robert J. Ramsey & James Frank, *How to Reduce the Incidence of Wrongful Convictions: Current Perspectives of Criminal Justice Practitioners*, 2007 J. INST. JUST. & INT'L STUD. 231, 232 (arguing that unless front-line criminal justice practitioners, such as police officers, believe that wrongful convictions are a serious problem, they are unlikely to make efforts to reduce its occurrence).

[160] *See* Stevens, *supra* note 156, at 597–98; Ramsey & Frank, *supra* note 159, at 232.

[161] *See* Stevens, *supra* note 156, at 598; Ramsey & Frank, *supra* note 159, at 232.

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Commercial media influences on law enforcement activities materialize in an assortment of ways, including the political process. Numerous studies indicate that politics and public perception play a large role in police decision-making.[162] As organs of local government, police are susceptible to the political pressure of mayors, district attorneys, and other local politicians, who are, in turn, under public pressure to prevent certain crimes and protect specific categories of the public.[163] These social pressures may be even greater at the federal level, where congressional committees and the DOJ Office of the Inspector General both tend to impose extra layers of oversight on law enforcement activities.[164]

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[162] Phyllis Coontz & Anne Stahl, *Revisiting Anti-Prostitution Sanctions: An Argument for Changing Policy*, 43 CRIM. L. BULL. 297, 305–06 (2007) (noting that the rates of all arrests, when compared with arrests for prostitution, show that prostitution arrests "are more likely to be influenced by changes in local policy shifts (e.g., rounding up street-level prostitutes during an election year) . . . than in actual changes in the magnitude of prostitution"); James Finckenauer, *Some Factors in Police Discretion and Decision-Making*, *in* THE INVISIBLE JUSTICE SYSTEM: DISCRETION AND THE LAW 43, 44–50 (Burton Atkins & Mark Pogrebin eds., 2d ed. 1982) (reporting results of a study of New Jersey police cadets, stating that the primary motivating factor in their decision to arrest was "to maintain a certain public image of the police role"); Christopher Leon Jones, Jr., *The Protection of Democracy: The Symbolic Nature of Federal Hate Crime Legislation*, 29 T. MARSHALL L. REV. 17, 47–48 (2003) (noting the significant political pressure on police to avoid labeling crimes as "hate crimes" because "politicians do not want the statistics to rise and make the jurisdiction look bad"); James Q. Wilson, *Police Discretion*, *in* THE INVISIBLE JUSTICE SYSTEM, *supra*, at 54, 58 (noting that a study of the exercise of police discretion in eight different-sized communities showed that police policies toward gambling and vice are greatly influenced by the degree to which the public tolerates these activities).

[163] *See* HERBERT JACOB, THE FRUSTRATION OF POLICY: RESPONSES TO CRIME BY AMERICAN CITIES 97–98, 100 (1984) (reciting data showing that police chiefs were replaced more often in cities where they were appointed by the mayor rather than by a city manager, and stating, "[c]hanges in the leadership of the department had more to do with the political ambitions and the electoral fortunes of mayoral candidates than with a department's approach to the crime problem"); Coontz & Stahl, *supra* note 162, at 306–07 (stating that the initiation of the "war on drugs" in the 1980s and the increased public acceptance of legal sexual services were possible reasons for the decrease in prostitution arrests beginning in the 1980s); Matthew C. Waxman, *Police and National Security: American Local Law Enforcement and Counterterrorism after 9/11*, 3 J. NAT'L SECURITY L. & POL'Y 377, 392 (2009) (noting that politics plays a role in local law enforcement in several ways: many municipal police chiefs are appointed by elected mayors, county sheriffs are elected directly, and local government is responsible for police budgetary allocations). *But see* Stuart A. Scheingold, *The Politics of Street Crime and Criminal Justice*, *in* CRIME, COMMUNITIES, AND PUBLIC POLICY 265, 280 (Lawrence B. Joseph ed., 1995) (noting several reasons why local politicians may be loath to raise crime during a campaign: crime is an insoluble problem that they may be blamed for, increased perception of crime could drive away business and new residents, and playing "the crime card" often implicates playing "the race card").

[164] Waxman, *supra* note 163, at 398.

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In some circumstances, the commercial media even assert direct influence over law enforcement officials by participating in police operations, thus facilitating operational connectivity between commercial media demands and law enforcement obligations to the public. This link creates a high risk that commercial media's agenda will overshadow legitimate law enforcement anti-trafficking functions, given that the commercial media often form a "disproportionately large part of a research database,"[165] and naturally favor coverage of (and hence enforcement against) only newsworthy forms of trafficking.[166] Indeed, the U.S. Supreme Court, along with other courts, has lamented the unconstitutionality of media influence on law enforcement.[167]

This concern is well-founded given the case of *Conradt v. NBC Universal, Inc.*,[168] wherein Louis William Conradt, an assistant district attorney, made contact with an online police decoy posing as a thirteen-year-old child.[169] Conradt agreed to meet the decoy, who was participating in an undercover operation designed and executed in conjunction with the NBC series, *To Catch a Predator*.[170] Although Conradt did not appear at the original sting site, police later obtained warrants and, accompanied by a television crew, attempted to apprehend Conradt at his home.[171] When the police entered Conradt's home, he killed himself.[172]

The plaintiff, Conradt's sister, alleged that the law enforcement agency's conduct led to Conradt's death and was motivated by commercial media objectives

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[165] David E. Guinn, Ambiguous Knowledge: Seeking Clarity in the Effort to Define and Assess Trafficking and the Sexual Exploitation of Children 8 (June 21, 2007) (unpublished manuscript prepared for and presented at the International Seminar on the Prevention and Sanction of Trafficking in Persons in Mexico City, Mexico), *available at* http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=199608.

[166] *Id.*

[167] *See, e.g.*, Wilson v. Layne, 526 U.S. 603, 614 (1999) (holding that the Fourth Amendment is violated when police bring members of the press along during the execution of a warrant at a private home, when the media's presence did not aid in execution of the warrant); Berger v. Hanlon, 129 F.3d 505, 508–09, 512 (9th Cir. 1997), *vacated*, 526 U.S. 808 (1999), *abrogated by Wilson*, 526 U.S. 603 (1999) (finding that federal officers violated the Fourth Amendment when they allowed CNN to accompany them on a search of a suspect's home). In *Berger*, the United States Court of Appeals for the Ninth Circuit underscored the potential distorting effect the media could have: "This was no ordinary search. It was jointly planned by law enforcement officials and the media . . . so that the officials could assist in the media obtaining material for their commercial programming. . . . This search stands out as one that at all times was intended to serve a major purpose other than law enforcement." *Berger*, 129 F.3d at 510.

[168] 536 F. Supp. 2d 380 (S.D.N.Y. 2008).

[169] *Id.* at 383, 385.

[170] *Id.* at 384–85.

[171] *Id.* at 385–86.

[172] *Id.* at 386.

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rather than legitimate law enforcement goals.[173] Her reasoning was simple. After Conradt failed to appear at the first sting, a detective spent all night preparing warrants after the show's host "insisted" that the police obtain search and arrest warrants.[174] Despite knowledge that Conradt was not armed or dangerous, more than a dozen police officers, including a SWAT team, raided Conradt's home.[175] The chief of police participated in the operation in order to speak directly with *Dateline* crews on the scene.[176] When police officers learned of the suicide, one reportedly told a *Dateline* producer, "That'll make good TV."[177] In denying NBC's motion to dismiss, the court opined that "the amended complaint plausibly asserts that many of the police officers' actions were motivated not by a genuine law enforcement need, but by Dateline's desire for more sensational footage."[178] The court noted that "[t]he amended complaint alleges that the Dateline representatives . . . were involved in the planning, and that, indeed, they purportedly pushed the police officers into dramatizing their actions for the benefit of the television cameras."[179]

Similarly, on April 17, 2010, Tiffany Tehan left her Xenia, Ohio home and did not return to her husband and one-year-old child.[180] Within a day, the commercial media labeled Ms. Tehan's disappearance an abduction and ignited national hysteria regarding Ms. Tehan's safety.[181] The national commercial media, including *The Today Show* and *Good Morning America*, covered the story and prompted expensive and strenuous efforts by scores of community volunteers, local law enforcement, the U.S. Marshal's office, and the FBI.[182] Ultimately, it was discovered that Ms. Tehan had not been abducted by a "mystery man," nor harmed in any way, but had voluntarily traveled to Florida with a romantic interest to start

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[173] *Id.* at 391 ("The amended complaint alleges that the Dateline representatives . . . were involved in the planning, and that . . . they purportedly pushed the police officers into dramatizing their actions for the benefit of the television cameras.").

[174] *Id.* at 385–86.

[175] *Id.* at 386.

[176] *Id.*

[177] *Id.* at 387.

[178] *Id.* at 390.

[179] *Id.* at 391.

[180] Amelia Robinson, *Xenia Mom Missing*, DAYTON DAILY NEWS, Apr. 19, 2010, at A6.

[181] *E.g.*, Gabriel Falcon, *Mom Vanishes While Shopping*, CNN.COM: AC360° (Apr. 19, 2010, 11:40AM), http://ac360.blogs.cnn.com/2010/04/19/mom-vanishes-while-shopping/?iref=allsearch (reporting that Tehan may be in danger and that police are not ruling out foul play); *The Today Show* (NBC television broadcast Apr. 21, 2010) (interviewing the police officer in charge of the investigation and asking him if he "suspects foul play").

[182] Mark Gokavi & Katie Wedell, *Church Group Helps Search for Woman*, DAYTON DAILY NEWS, Apr. 21, 2010, at A4 (reporting on law enforcement and volunteer efforts to locate Tehan); *Some Good Came from Search for Missing Mom*, DAYTON DAILY NEWS, Apr. 28, 2010, at A10.

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a new life.[183] Responding to the reality of the circumstances, one Ohio police captain blamed the national media's coverage of the story: "It has become a national media trend that shows like Nancy Grace want to interject themselves into cases like this. These cases take on a life of their own . . . ."[184] To the officer's credit, no false arrests were made or charges filed against Ms. Tehan or anyone else, unlike many other cases that suffer from commercial media influence.[185] Because Ms. Tehan agreed to pay restitution for the resources the police used in attempting to find and "rescue" her, the only loss suffered was by the unsuspecting public and numerous victims of crimes who were left unattended while law enforcement officials scurried to locate a person who was in no danger.

The *Conradt* and Tehan cases highlight the commercial media's ability to manipulate public perception and law enforcement operations for the sake of ratings. Although these incidents may not reflect the norm of most law enforcement investigations, they reflect a trend to pursue suspects and crimes on the basis of commercially driven objectives rather than profiles drawn from independent, evidentiary-based analysis.[186] Such circumstances tend to neglect, and encourage punitive attitudes toward, certain groups of people—namely men—to the detriment of the collective good, as discussed in the next section.

A. The Commercial Media and Males

Scholars have long observed that the commercial media's negative depiction of males shapes the public's discourse and perceptions regarding the male identity, and influences the public's overall view of males.[187] It is well-noted that the

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[183] Lou Grieco & Mark Gokavi, *Questions Linger after Disappearance: "I Don't Think She Had Any Idea That All of This Would Escalate,"* DAYTON DAILY NEWS, Apr. 23, 2010, at A3.

[184] Mary McCarty, *Interviews Failed to Solve Riddle of 'Runaway Mom,'* DAYTON DAILY NEWS, May 2, 2010, at A12.

[185] *E.g.*, I. Bennett Capers, *Crime, Legitimacy, and Testilying*, 83 IND. L.J. 835, 855 & n.112 (2008) (discussing the Central Park jogger rape case, which led to several false arrests, as an example of how disproportionate media attention on white victims of rape leads to misallocation of police resources); Tracey L. McCain, *The Interplay of Editorial and Prosecutorial Discretion in the Perpetuation of Racism in the Criminal Justice System*, 25 COLUM. J.L. & SOC. PROBS. 601, 610–11 (1992) (describing the Boston murder of Carol Stuart, which was followed by an "excessive" media response, a huge investigation by police, and a false arrest).

[186] Beale, *supra* note 157, at 447–61 (noting how the modern news media increase the punitive character of public opinion through framing issues, inciting fear about crime, and racial typification); Craig Haney, *Media, Race, and the Death Penalty*, 58 DEPAUL L. REV. 689, 706–09, 729 (2009) (noting the unrealistic qualities of shows like *Smile . . . You're Under Arrest!* and how these depictions "dehumanize[] and demonize[] perpetrators").

[187] *See* WARREN FARRELL, THE MYTH OF MALE POWER 220–21 (1993) (noting the commercial media's constant depictions of males as victimizers); JIM MACNAMARA, MEDIA AND MALE IDENTITY: THE MAKING AND REMAKING OF MEN 98–99 (2006). *See generally* CHILDREN NOW, BOYS TO MEN: MEDIA MESSAGES ABOUT MASCULINITY (2000),

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modern media portrays Latino males as "poor, uneducated, lazy, and violent,"[188] and African-American males as "criminals, delinquents, perfect entertainers and athletes, irresponsible, lazy, overbearing, or devoted sidekicks."[189] However, the media's negative description of men in general provides a strong basis for concern given the impact that the commercial media has on public morality and criminal justice.[190] The overwhelming majority of media descriptions of males have become contemptuous or condescending. Commentators note that "less than 20%" of media descriptions of men are positive.[191] More than 30% of all media dialogue relative to male sexuality depicts men as pedophiles or heterosexuals with "violent, aggressive and dominating" proclivities that are incapable of sexual fidelity.[192] Similarly, "[v]iolent crimes, including murder, assault, and armed robberies [account] for over 55% of all media reporting of male activities."[193] Likewise, "[v]iolence against women by men is the central theme in genres including news, Hollywood film, popular music videos, and video and computer games."[194] Not surprisingly, the likelihood of the commercial media reporting a homicide is greatly enhanced when the victim is a Caucasian female.[195]

The commercial media's constant portrayal of males victimizing females is argued by some observers to be driven by the economic reality that commercial

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available at http://www.childrennow.org/uploads/documents/boys_to_men_1999.pdf (offering details on 1999 research conducted by Children Now describing the media's negative depiction of males).

[188] Jamie Pehl, *Latinos in the U.S. Media* (May 12, 2004), http://www.teachinglitera ture.org/teachingliterature/pdf/multi/latinos_media_pehl.pdf.

[189] Ardis C. Martin, *Television Media as a Potential Negative Factor in the Racial Identity Development of African American Youth*, 32 ACAD. PSYCHIATRY 338, 340 (2008).

[190] MASCULINITY STUDIES & FEMINIST THEORY: NEW DIRECTIONS 7 (Judith Kegan Gardiner ed., 2002) [hereinafter MASCULINITY STUDIES] (crediting Susan Faludi with demonstrating "American culture's transformation by feminism, the ideological containment of that transformation, and the limitations of a simplistic gender rhetoric based on victimization" and recognizing Faludi's claim that transformation is attributed to a manipulative media); *see* SUSAN FALUDI, STIFFED: THE BETRAYAL OF THE AMERICAN MAN 6, 44 (First Perennial 2000) (1999) (describing various methods and means by which the media cast men as victimizers and dysfunctional); Williams, *supra* note 47 ("Continuous negative portrayal of men in the media, along with the feminization of men and loss of fatherhood in society, has caused confusion and frustration in younger generation males, as they do not have a specific role model and are less able to define their role in society.").

[191] *See, e.g.*, Williams, *supra* note 47.

[192] *Id.* Significantly, when the media attribute positive traits to males, such as "sensitivity and emotional depth," such qualities are characterized as belonging to the man's "feminine side," thus suggesting that men can only exhibit these positive attributes by becoming feminized or woman-like. MACNAMARA, *supra* note 187, at 126.

[193] Williams, *supra* note 47.

[194] Lisa M. Cuklanz, *Gendered Violence and Mass Media Representation*, *in* THE SAGE HANDBOOK OF GENDER AND COMMUNICATION 335, 335–36 (Bonnie J. Dow & Julia T. Wood eds., 2006).

[195] Bierie & Murphy, *supra* note 157, at 61–62.

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media are squarely aimed at pleasing a certain category of viewers—namely females—who make up the majority of television viewership:

> What women enjoy watching is the confirmation of their attitudes towards both themselves and men. Women are good, they believe, and men evil. . . . Not only are women the chief victims (and heroic icons) of society but men are their chief victimizers. Unless accompanied by an emphasis on the brutality of men, the emphasis on the suffering of women would be not only psychologically damaging to female viewers but politically meaningless to them as well. Watching the brutality of male characters night after night on prime-time television has a therapeutic value for many women. It provides a psychologically satisfying explanation for the cause of suffering. More than that, it provides a culturally acceptable source for suffering and evil.[196]

Although this assertion appears to offer an overly simplistic response to a complicated problem, its premise appears consistent with claims advanced by scholars, who have considered the connection between the commercial media's fixation on female sexual exploitation and its treatment of the human trafficking phenomenon.[197] When the commercial media's market-driven, negative depictions of males intersect with the unalterable empirical reality that "sex sells"[198]—female sex in particular[199]—the lines between legitimate education about human trafficking and sex entertainment become virtually unidentifiable.[200] For example, consider the Lifetime Network's miniseries, *Human Trafficking*, which focused squarely on sexual exploitation of female victims and male victimizers under the guise of educating the public about human trafficking.[201] The series followed the story of three victims of sex trafficking. Commentators described the victims as: a "perky, blonde, twelve-year-old girl" who is vacationing with her family in Manila when she is kidnapped off the street and forced into the sex tourism industry; a beautiful Ukrainian teenager who believes that she is moving to the United States to become a model, but is instead drugged, raped, and forced to engage in pornography upon her arrival; and a young woman from Prague who was

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[196] PAUL NATHANSON & KATHERINE K. YOUNG, SPREADING MISANDRY: THE TEACHING OF CONTEMPT FOR MEN IN POPULAR CULTURE 143 (2001); *see also* S. Craig Watkins & Rana A. Emerson, *Feminist Media Criticism and Feminist Practices*, 571 ANNALS AM. ACAD. POL. & SOC. SCI. 151, 154 (2000) (noting that since women constitute the largest share of television viewers, they are especially coveted by network television producers).

[197] *See, e.g.*, Wolken, *supra* note 128, at 414.

[198] Guinn, *supra* note 165, at 8.

[199] *Id.* (noting that although significant attention is given to sexual exploitation involving women and girls, there is hardly any talk of "male prostitution in service of female clients" or boy prostitution).

[200] Wolken, *supra* note 128, at 416

[201] *Human Trafficking* (Lifetime Network movie broadcast Oct. 24, 2005).

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repeatedly raped by her captor before being murdered.[202] The purported documentary offers the elements that attract box-office viewers—helpless young women, drugs, violence, sex, money, and the male victimizer.[203] The theme is very much consistent with that of *Larry King Live* and other commentary, such as MSNBC's "Sex Trafficked: One Woman's Story."[204] These sensationalized, emotionally wrenching depictions of sex slavery bolster the skewed belief that the primary form of human trafficking is males enslaving females for sex.[205] But the impact of such distorted depictions on the collective good is far more pernicious, for at least the following reasons.

First, the negative portrayal of masculine identity embodied in the traditional narrative minimizes the public's empathy regarding physiological and psychological harm to males, and perpetuates existing ideological paradigms which argue that men, unlike women, have total control over their labor and relationships.[206] The premise is that while women are good, caring, and sensitive, men are emotionally stunted, sexually insatiable, and nearly immune to pain.[207] The crux of the narrative is not only that men take care of themselves, but also that men have a duty to take care of women and children.[208] Taken to its logical limit, when employment opportunities are nonexistent, men are obligated to place their fate in the hands of human traffickers.[209] Therefore, male forced labor or sex is perceived simply as an agreement for the mutual exchange of benefits and services, or as a harmless experience for males.[210]

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[202] Wolken, *supra* note 128, at 414–15; *see also* Tom Shales, *'Human Trafficking': Exploiting Misery, and Creating It*, WASH. POST, Oct. 24, 2005, at C1 (describing the movie as exploiting the subject matter, rather than doing service to the severity of the issues purportedly presented); Matthew Gilbert, *Disturbing 'Human Trafficking' Captures Brutality of Sex Slavery*, BOS. GLOBE, Oct. 24, 2005, at B5, *available at* http://www.boston.com/ae/tv/articles/2005/10/24/disturbing_human_trafficking_captures_brutality_of_sex_slavery/ ("Lifetime's 'Human Trafficking' can be extremely hard to watch. . . .[,] because it relentlessly depicts the brutal torture of young women who've been kidnapped and sold into sex slavery.").

[203] Wolken, *supra* note 128, at 416 ("It is under this false cover of 'education' that a middle-aged suburban couple, Lifetime's typical viewers, can justify watching *Human Trafficking* even though the series most closely resembled bondage pornography.").

[204] *Dateline: Sex Trafficked: One Woman's Story* (MSNBC television broadcast Aug. 8, 2007); *see also* Adam Ciralsky & Chris Hansen, *Sex Trafficked: Anna's Story*, DATELINE NBC (Aug. 8, 2007, 9:12:32 PM ET), http://www.msnbc.msn.com/id/20182993 (discussing Anna's forced prostitution).

[205] Wolken, *supra* note 128, at 414–16 (asserting that the media often blurs the line between legitimate public education that informs and sex entertainment that misleads).

[206] *Id.* at 434–36; FARRELL, *supra* note 187, at 221 (noting that the media's constant depictions of males as victimizers "blinds [the public] to men as victims").

[207] Wolken, *supra* note 128, at 426.

[208] *Id.* at 435.

[209] *Id.*

[210] *See id.*

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Second, the narrative also conditions viewers to perceive the protection of female victims as not only the greatest law enforcement necessity, but also as the *only* necessity.[211] It creates what some scholars describe as a universal "distrust toward innocent men," making nearly all men objects of suspicion and highly vulnerable to false accusations and wrongful convictions. [212] This arrangement operates as a catalyst for laws and policies designed to protect only "women and girls."[213] Such policies exclude men and boys and potentially marginalize female

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[211] *See id.* at 414–16; *see also*, Guinn, *supra* note 165, at 8.

[212] FARRELL, *supra* note 187, at 221; MACNAMARA, *supra* note 187, at 113 (acknowledging that "court cases have found that women do make false allegations against men" and noting a "Purdue University study which found that more than 40 per cent of rape cases were classified as false by police and FBI studies using DNA testing [that] exonerated 30–35 per cent of 4,000 sexual assault cases examined over a four-year period"); Alan Dershowitz, *When Women Cry Rape — Falsely*, BUFFALO NEWS, Aug. 11, 1994, at C3 ("New York sex prosecutor Linda Fairstein told an interviewer that 'there are about 4,000 reports of rape each year in Manhattan. Of these, about half simply did not happen. . . .' Objective data show that the percentage of false reports in rape cases is considerably higher than the percentage of false reports for other violent felonies. One reason for this disparity is that the police rarely prosecute women who deliberately file false rape reports." (alteration in original)); Glenn Sacks, *UM Right to Deny Protesters a Forum to Publicly Name Alleged Rapists*, BALT. SUN, Oct. 15, 2007, at A13 ("According to a study conducted by former Purdue sociologist Eugene J. Kanin and published in Archives of Sexual Behavior, in more than 40 percent of the cases reviewed, the complainants eventually admitted that no rape had occurred. Mr. Kanin also studied rape allegations in two large Midwestern universities and found that 50 percent of the allegations were recanted by the accuser. . . . Craig Silverman, a former Colorado prosecutor known for his zealous prosecution of rapists during his 16-year career, says that false rape accusations occur with 'scary frequency.'"); *see also* John Eligon, *Judge Sees Vindication for a Man Jailed in Rape*, N.Y. TIMES, Nov. 11, 2009, at A28 (stating that Biurny Peguero Gonzalez confessed to lying about being raped after DNA exonerated a man that spent four years in jail); David Reich-Hale, *Republican Nassau County DA Candidate Joy Watson Hits Kathleen Rice on Hofstra Case*, LONG ISLAND BUS. NEWS, Sept. 28, 2009 (stating that Danmell Ndonye, a former Hofstra University student, admitted to lying about rape accusations after a video of the incident exonerated the men arrested because of her false allegation); *Alleged MSU Rape Victim Admits to Lying*, SULPHURDAILYNEWS.COM (Oct. 27, 2010, 8:31 AM), http://www.sulphurdailynews.com/news/x294023819/Alleged-MSU-rape-victim-admits-to-lying (stating that the Calcasieu Parish Sheriff's Office arrested Tyler Leger for alleged rape while he attended class at McNeese State University and jailed him for nearly thirty days and that his accuser, Kolbie M. Wade, later admitted that she lied about rape and that "she did not know Leger").

[213] FARRELL, *supra* note 187, at 227–28; *see also* Paycheck Fairness Act, S. 3772, 111th Cong. (2010) ("Despite the enactment of the Equal Pay Act of 1963, many women continue to earn significantly lower pay than men for equal work. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination."); Exec. Order No. 13,257, 67 Fed. Reg. 7,259 (Feb. 19, 2002) (establishing the Interagency Task Force to Monitor and Combat Trafficking in Persons, the duties of which include examining "the role of the international 'sex tourism'

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victims who do not conform to the "Hollywood-created mold of a victim's color, gender and country of origin,"[214] or do not bear a "resemblance to the iconic images of human-trafficking victims, young girls whose faces are plastered on billboards alongside 1-800 numbers to report crimes."[215] This further harms the collective good by facilitating a false and dangerous belief among law enforcement officials and the public that whenever women and girls are victimized, the offense is inevitably committed by a man. Nothing could be further from the truth.[216]

B. Female Victimizers

The traditional narrative, that perpetrators of human trafficking are males who prey on helpless female victims for sex, neglects the fact that women are often guilty of human trafficking. To cite but a few examples, between 2003 and 2005, Noris Elvira Rosales Martinez and Ana Luz Rosales Martinez operated a human trafficking ring out of Hudson County, New Jersey, smuggling Honduran women into the United States.[217] The women, many of whom were underage, were forced

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industry . . . in the sexual exploitation of women and children around the world"); Exec. Order. No. 13,506, 74 Fed. Reg. 11,271 (Mar. 16, 2009) ("The purpose of this order is to establish a coordinated Federal response to issues that particularly impact the lives of women and girls and to ensure that Federal programs and policies address and take into account the distinctive concerns of women and girls . . . ."). The Paycheck Fairness Act's premise and purported findings are inconsistent with existing scholarship, and "a 2009 analysis of wage-gap studies by the Labor Department evaluated more than 50 peer-reviewed papers and concluded that the aggregate wage gap 'may be almost entirely the result of the individual choices being made by both male and female workers.'" Christina Hoff Sommers, Op-Ed., *Fair Pay Isn't Always Equal Pay*, N.Y. TIMES, Sept. 22, 2010, at A25. Another study indicates that in "2008, single, childless women between 22 and 30 were earning more than their male counterparts in most U.S. cities, with incomes that were 8% greater on average." Conor Dougherty, *Cities Where Women Outearn Male Counterparts*, WALL ST. J. (Sept. 1, 2010, 12:01 AM ET), http://blogs.wsj.com/economics/2010/09/01/cities-where-women-outearn-male-counterparts/.

[214] Wolken, *supra* note 128, at 414.

[215] Carroll, *supra* note 7 (explaining how a "soft-spoken Salvadoran man" was forced to work on a farm without pay for five months, while being beaten, raped, and burnt with cigarettes).

[216] *See* Ray, *supra* note 20, at 911 ("[A]s to sex trafficking, the overwhelming focus is on trafficking of women and girls into prostitution or pornography rings; there is never mention of the men or boys being trafficked into similar situations."); Wolken, *supra* note 128, at 416; *see also* Edi C. M. Kinney, *Appropriations for the Abolitionists: Undermining Effects of the U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS*, 21 BERKELEY J. GENDER L. & JUST. 158, 160 (2006) ("Yet despite the diverse conditions and forms of abuse attending forced migration and labor, some international campaigns to combat human trafficking tend to focus the political spotlight on young women and children exploited for commercial gain in the sex industry.").

[217] Press Release, U.S. Attorney's Office, Dist. of N.J., Three Plead Guilty in International Human Smuggling Ring; Young Honduran Women Required to Work in

to attract male customers and get them to buy alcohol at a bar.[218] The women were often subjected to various forms of physical abuse and coercion.[219] For example, one of the "enforcers" of the ring forced a pregnant woman to ingest drugs that aborted her fetus.[220] After pleading guilty to violating the TVPA,[221] the defendants each received maximum sentences from the U.S. District Court.[222] Similarly, on August 28, 2007, Cristina Andres Perfecto pled guilty to sex trafficking of a juvenile, and sex trafficking by force, fraud, and coercion.[223] Perfecto admitted to bringing two thirteen-year-old girls from Mexico to Tennessee; abusing them physically, verbally, and sexually; and coercing them into prostitution.[224] Likewise, in June 2007, Olga Mondragon, a forty-seven-year-old El Salvadoran woman, pled guilty to federal charges stemming from her participation in a human trafficking operation.[225] As part of a massive ring of human traffickers, she forced at least 120 women into indentured servitude.[226] Mondragon promised to transport women from El Salvador to the United States, but later forced them to work in bars and abused them.[227] Mondragon was sentenced to eighty-four months of imprisonment and, along with her seven co-defendants, forced to pay over $1.1 million in restitution.[228] On February 11, 2009, Gladys Vasquez Valenzuela, Mirna Jeanneth

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Hudson County Bars (Aug. 3, 2006) [hereinafter Human Smuggling Ring Press Release], *available at* http://www.justice.gov/usao/nj/press/files/mart0803_r.htm.

[218] *Id.*

[219] *Id.* (reporting that the women were hit, threatened with physical harm, and threatened to be reported to immigration authorities); *see also* Brian Donohue, *For Woman Who Enslaved Others, a Prison Cell Awaits: Leader, Sister, and Boyfriend Get Maximum Terms in Honduran Human Trafficking*, STAR-LEDGER (N.J.), Jan. 5, 2008, at 1 (reporting that members of the ring admitted that women were forced to pay them $500 per week, were prohibited from leaving the apartments where they were forced to live, and were encouraged to prostitute themselves).

[220] Human Smuggling Ring Press Release, *supra* note 217.

[221] *Id.*

[222] Donohue, *supra* note 219.

[223] Press Release, U.S. Dep't of Justice, Nashville, Tenn., Woman Sentenced on Sex Trafficking Charges (Dec. 24, 2009), *available at* http://www.justice.gov/opa/pr/2009/December/09-crt-1382.html.

[224] *Id.*; Sheila Burke, *Raid Here Ends Girl's Captivity as a Sex Slave*, TENNESSEAN, Nov. 11, 2006, at A1.

[225] Press Release, U.S. Attorney's Office, S. Dist. of Tex., Woman Pleads Guilty to Human Trafficking Related Charges (Jun. 5, 2007), *available at* http://www.justice.gov/usao/txs/releases/June2007/070611-Mondragon.htm [hereinafter Mondragon Press Release].

[226] Lise Olsen, *Details Emerge from Sex Ring Crackdown: Team Rescued 120 Women from Grim Conditions When It Dismantled the Operation in Houston*, HOUS. CHRON., June 29, 2008, at A1.

[227] Mondragon Press Release, *supra* note 225.

[228] Press Release, U.S. Dep't of Justice, Houston Women Sentenced for Human Trafficking Related Charges (Apr. 1, 2008), *available at* http://www.justice.gov/opa/pr/2008/April/08_crt_263.html (reporting that the other defendants were Oscar Mondragon,

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Vasquez Valenzuela, Gabriel Mendez, Maria de los Angeles Vicente, and Maribel Rodriguez Vasquez were convicted of various human trafficking violations in U.S. District Court for the Central District of California.[229] The defendants used the promise of legitimate jobs in America to entice Central American women to cross the U.S.-Mexico border.[230] Upon reaching the Los Angeles area, the defendants forced the women into prostitution and subjected them to myriad forms of torture, including beatings, manipulations of debts, threats of rape, and threats to murder the victims' families or have witch doctors place curses on them.[231] The defendants pled guilty to conspiracy, sex trafficking by force, fraud and coercion, and importation of aliens for purposes of prostitution, with each defendant being sentenced to thirty years or more.[232]

Despite such examples of female human traffickers, the commercial media continues to use the traditional narrative to influence an unsuspecting public. Commentary regarding female traffickers often employs the term "happy traffickers" to describe former female trafficking victims who later engage in trafficking of others.[233] This characterization is emblematic of a media-driven tendency to recast female traffickers as victims rather than criminals. Whether the reluctance to highlight female criminology derives from concern over being perceived as misogynistic, or fear of losing television viewership, the commercial media's omissions regarding the presence and activity of female traffickers harm the collective good because it leaves the public unaware of the full spectrum of victimizers. The media's traditional narrative thus pressures the allocation of local government resources to prosecute only a small pool of victimizers, thereby allowing a substantial number of them to remain free to continue to harm others.[234] It comes as no surprise that there is now "significant growth" in the ranks of female human traffickers.[235]

Maximino Mondragon, Victor Omar Lopez, Walter Corea, Kerin Silva, Lorenza Reyes-Nunez, and Maria Fuentes).

[229] Press Release, U.S. Dep't of Justice, Five Defendants Convicted of International Sex Trafficking for Forcing Central American Girls and Women into Prostitution (Feb. 12, 2009), *available at* http://www.justice.gov/opa/pr/2009/February/09-crt-117.html.

[230] *Id.*

[231] *Id.*

[232] Press Release, U.S. Dep't of Justice, FBI, Five Sentenced for Forcing Guatemalan Girls and Women to Work as Prostitutes in Los Angeles: Sentences From 30 to 40 Years in Prison for Sex Trafficking Ring Defendants (Aug. 18, 2009), *available at* http://losangeles.fbi.gov/dojpressrel/pressrel09/la081809.htm.

[233] 2008 TRAFFICKING REPORT, *supra* note 24, at 11.

[234] *See* Todres, *supra* note 13, at 13 (stating that increased awareness of female traffickers will help law enforcement and immigration officials combat trafficking and educate potential victims that women may be traffickers, as well).

[235] *E.g.*, ALEXIS A. ARONOWITZ, HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS 52–55 (2009) (noting that the number of female traffickers is "significant and increasing," and citing Dutch National Rapporteur statistics that thirty-two female suspects were arrested in 2006, 78% of Nigerian suspects were women between 2002 and 2006, and the German Federal Criminal Police reported that

Perhaps equally alarming is the fact that the commercial media have not applied the term "happy traffickers" to males, nor attempted to recast male victimizers even though male traffickers might also have been victims of sexual abuse or human trafficking.[236] As discussed later, what appears to influence the disparity in treatment is that males are rarely considered victims when the harm is caused by female victimizers.

C. Males as Invulnerable Beings

The media-driven traditional narrative that human trafficking is predominantly about men enslaving females for sex, and that males have total control over their destinies, is complicitous with an ideology that males cannot be victims. Rather than portraying men as victims, popular TV shows, like *Sex in the City,* and scores of women magazines, such as *Cosmopolitan,* perpetuate the pervasive "objectification of men as sex objects for the [sexual] gratification [and entertainment] of women," under the guise of celebrating female sexual freedom.[237] The concept that males cannot be victims is left unchallenged by the lack of responsible media coverage, which renders silent the voices of male victims of human trafficking. Consequently, public servants (such as ministers, social workers, postal service mail carriers, etc.), who otherwise would play an important role in identifying human trafficking victims, are left uninformed regarding the full spectrum of human trafficking victims and victimizers.[238] Prosecutors, likewise, are reluctant to attach harsh penalties and the high stigma associated with human trafficking to females who enslave or harm males.[239] These circumstances virtually preclude males being perceived as victims of females.[240]

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almost one-fourth of German suspects were female in 2007); 2008 TRAFFICKING REPORT, *supra* note 24, at 11 ("Although men are more commonly identified by the media as traffickers and exploiters . . . a closer look at trafficking reveals that women are frequently culpable offenders too."); Todres, *supra* note 13, at 13 (citing the International Organization for Migration research finding that 40% of recruiters for human trafficking in Southeastern Europe were women).

[236] *See* 2008 TRAFFICKING REPORT, *supra* note 24, at 11.

[237] MACNAMARA, *supra* note 187, at 83–84. Macnamara notes that "*Sex in the City* scriptwriter Cindy Chupac advises women to pass on boyfriends after they have finished with them—which she terms 'man-me-downs.'" *Id.* at 124; *see also* Colleen Carroll Campbell, *Exhibitionist Student Is No Feminist Heroine; Point of View; Women Are Not Liberated By Imitating Boys Behaving Badly; Other Views,* LOUIS POST-DISPATCH, Oct. 14, 2010, at A13 (Karen Owen, a former Duke student that created and emailed a forty-two-page graphic report of her sexual encounters with thirteen Duke athletes, along with their real names, was viewed by some as the "new face of women's liberation," and as an imitator of male behavior by others).

[238] Wolken, *supra* note 128, at 416.

[239] *See* Chacón, *supra* note 129, at 3035 (pointing out that the trafficking charge carries a "particular stigma, one that seems best reserved for the worst of the worst offenders"); Kay L. Levine, *When Gender Meets Sex: An Exploratory Study of Women Who Seduce Adolescent Boys,* 15 WM. & MARY J. WOMEN & L. 361, 375 (2009)

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To gauge the degree to which male victims are conceptually invisible in the sphere of criminal justice when the victimizer is a female, one need not look beyond the criminal justice and commercial-media response to the spate of cases involving adult females who rape male children.[241] For instance, after Pamela Rogers was convicted of having sex with her thirteen-year-old male student, the court sentenced her to only nine months in jail.[242] Similarly, there is the case of Mary Kay Letourneau, who at age thirty-four had sex with a twelve-year-old boy, and was sentenced to only six months confinement—only to be paroled and found raping the child again in her car when he was thirteen-years-old.[243] Another court

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(discussing how "criminal justice officials' long standing tendency to regard female offenders as sick rather than evil . . . often results in lenient treatment for female criminals relative to male criminals").

[240] *See* Wolken, *supra* note 128, at 434–35 ("Subordination feminism supports and perpetuates the notion that it is almost impossible for men to be truly enslaved.").

[241] *Compare* Gabrielle Banks, *Teacher Jailed for Having Sex with Student: Contact Continued After Charges Filed, Prosecutor Says*, PITT. POST-GAZETTE, Aug. 21, 2008, at B1 (reporting that Beth Ann Chester, who had sex with a fourteen-year-old student, received a sentence of one and a half to three years after pleading guilty to statutory sexual assault, corruption of a minor, and criminal use of a communication facility (a cell phone)), Leslie Berestein, *Former Teacher Gets 3 Years for Sexual Acts with Student*, SAN DIEGO UNION-TRIBUNE, Apr. 23, 2010, at B3 (reporting that Adrienne Feistel, a fifth-grade teacher who molested a twelve-year-old boy, received a three-year sentence after pleading guilty to one count of statutory rape), *Ex-Teacher Gets 6 Years in Sex Case*, GREENVILLE NEWS, Feb. 20, 2008, at A3 (reporting that Allena Williams Ward received six years in prison after raping five boys, ages fourteen and fifteen, on several occasions), Mitch Stacy, *Teacher Averts Jail by Admitting Sex with Boy, 14*, S. FLA. SUN-SENTINEL, Nov. 23, 2005, at 6B (reporting that Debra Lafave, a teacher who had sex with a fourteen-year-old student, was sentenced to three years of house arrest after pleading guilty to two counts of lewd and lascivious battery), Rene Stutzman, *Teacher Accused of Sex with Teen Gets Probation*, ORLANDO SENTINEL, Oct. 2, 2008, at D6 (reporting that Jennifer Tarkenton, a teacher who pled no contest to a charge of felony battery after being caught having sex with a fourteen-year-old student in her car, received five years of probation), *and* Max Zimbert, *No-Contest Plea to Sex Charges*, L.A. TIMES, Mar. 26, 2010, at AA4 (reporting that Amy Beck, a middle-school teacher who had sex with a fourteen-year-old student and pled no contest to lewd and lascivious acts, received a two-year sentence), *with* Alan Riquelmy, *Man Gets 20 Years for Molestation*, COLUMBUS LEDGER-ENQUIRER (Ga.), June 28, 2010, http://www.ledger-enquirer.com/2010/06/28/1176569/columbia-man-sentenced-for-statutory.html (reporting that a Georgia man pled guilty to statutory rape and child molestation, and received a twenty-year sentence for having sex with a fourteen-year-old girl).

[242] Kate Zermike, *The Siren Song of Sex with Boys*, N.Y. TIMES, Dec. 11, 2005, § 4, at 3; Brian Dakss, *Jail for Teacher in Sex Case: Deal Gets Pamela Turner 9 Months; Male Student Involved Was 13*, CBS NEWS (Aug. 12, 2005), http://www.cbsnews.com/stories/2005/08/12/earlyshow/living/main773196.shtml (discussing the Pamela Rogers Turner sentencing).

[243] *National Briefing Northwest: Washington: Contact with Ex-Lover Is Permitted*, N.Y. TIMES, Aug. 7, 2004, at A13; Robin D. Stone, Op-Ed., *When Yes Doesn't Mean Yes*, N.Y. TIMES, Aug. 16, 2004, at A15.

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sentenced Sandra Geisel to six months confinement after she raped her sixteen-year-old student.[244]

Like the female traffickers who are described as "happy traffickers," female rapists of male children are not typically described or treated as rapists. Rather, they are labeled "teacher/lovers" or "heterosexual nurturers,"[245] and the male child rape victim is regarded as "lucky."[246] Such characterizations not only mask and romanticize the immense harm that male children suffer at the hands of a surprisingly large, but under-publicized, number of female perpetrators;[247] they also reveal what some commentators recognize as society's "strong need to portray female-perpetrated statutory rape as a crime of love."[248] Kay Levine points to research that characterizes such efforts as an attempt to "reinterpret[] the woman's criminal behavior as a sign of nurturing and caring, thereby rendering her less threatening and less responsible from a criminal law perspective."[249] Levine also points out that the normative refusal to recognize the immense and criminal nature of the harm to the male child may represent just another manifestation of a "long standing tendency to regard female offenders as sick rather than evil."[250]

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[244] Brian Dakss, *Sex Scandal Teacher Turns Tables?: Considering Suing Teen Accuser, Claiming She was the Victim*, CBS NEWS (Aug. 5, 2005), http://www.cbsnews.com /stories/2005/08/05/earlyshow/main759984.shtml (discussing the Sandra Geisel case and her attorney's claim that she was the victim).

[245] Levine, *supra* note 239, at 374; *see also* Maura Dolan, *Not Only Men Are Molesters*, L.A. TIMES, Aug. 16, 2002, at A1 (stating that incidents of women sexually abusing teenage boys do not always get reported and categorizing some female sex offenders as "teacher-lover" or "Mrs. Robinson" types).

[246] Zermike, *supra* note 242 (suggesting that the "traditional notion that a boy who has sex with an older woman just got lucky" is worthy of rejection).

[247] Kay L. Levine, *No Penis, No Problem*, 33 FORDHAM URB. L.J. 357, 359 (2006).

> Scientists working in the fields of psychiatry and psychology . . . have uncovered evidence that . . . [reveals] a surprisingly high percentage of female sex abusers in the population and have documented an extensive array of child sexual abuse committed by women against boys, abuse that includes rape, child molestation, and even incest. In so doing, they have started to identify the motivations that underlie this behavior and to assess boys' experience of sexual victimization, which, contrary to popular belief, can be every bit as traumatic as that suffered by girls.

Id. (citations omitted).

[248] Levine, *supra* note 239, at 375.

[249] *Id.* at 375.

[250] *Id.*; *see also* MACNAMARA, *supra* note 187, at 106 (providing an example of public discourse routinely characterizing women that kill their children as victims of mental illness rather than as criminals); *id.* at 169 (citing a U.S. National Incidence of Child Abuse and Neglect study that indicates that "where maltreatment of children led to death, 78 per cent of the perpetrators were female"); Kieran Crowley et al., *Twisted Rape-Lie Motive – Hofstra Gal Feared Being Branded a Tramp After Romp*, N.Y. POST, Sept. 18, 2009, at 7 (quoting a prosecutor describing Danmell Ndonye, a former Hofstra University student that

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Notwithstanding Levine's observations, such generalizations may also be attributed to social constructions encompassing concepts of victimization that have now, quite arguably, become genderized.

Social norms rarely recognize the serious harm that female sex criminals inflict on males; rather, they view men and boys, in some sense, as willing or rewarded participants in acts that would clearly be deemed severely harmful to females (i.e., sex or labor). Put succinctly, the male is viewed as a victim only in a linguistic sense, whereas the female victim of sex crimes is perceived as a victim in a real or harmed sense, thus resulting in a genderized concept of victimization.[251] To illustrate these claims, consider the proceedings involving Sandra Geisel, a high school teacher who raped a male child. The presiding judge, Stephen Herrick, added that despite the rape, the child "was a victim in only the strictly legal sense. . . . [And] 'certainly not victimized by [Geisel] in *any* other sense of the word.'"[252] Similarly, in *State v. Deihl-Moore*, Moore pled guilty to having sex with her thirteen-year-old student.[253] During discussions of whether Moore should serve time in jail, Presiding Judge Bruce Gaeta remarked that her "repeated sexual acts" with the child did not mean that she was a "sexual predator."[254] Judge Gaeta characterized the relationship as "just something between these two people that clicked beyond the teacher/student relationship, beyond the friendship and the help that she extended to this young man."[255] Judge

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falsely accused five men of raping her on campus but later recanted her story after a video revealed that the sex was consensual, as a "very troubled young woman in need of much help," rather than as a criminal that intentionally caused five men to be wrongfully jailed).

[251] In his treatment of the historical nature of the term "victim," Joel Feinberg notes that it was originally used to describe a person or animal sacrificed to a deity during a religious ceremony. *See* 1 JOEL FEINBERG, HARM TO OTHERS: THE MORAL LIMITS OF THE CRIMINAL LAW 117 (1984). At that time, it was not apparent that the victim chosen for sacrifice was considered disadvantaged or harmed by the selection. *Id.* On the contrary, because only the most beautiful women or bravest men were considered worthy for propitiation of the deities, it was a high honor to be selected as a victim, despite the resulting loss of one's life. *Id.* The term later evolved to refer to someone "who suffers any kind of serious misfortune . . . through cruel or oppressive treatment by other persons," or through natural disaster. *Id.*

In another sense of the word, to be victimized means "to be deceived, cheated, misused . . . exploited." *Id.* at 118. In the historical sense, though, to be victimized was to be honored or exalted, and any attendant harm was viewed as prestigious or tantamount to the satisfaction one is expected to derive from performing a sacred duty. *See id.* at 117. This "honored" view of victimization is consistent with the plight of male victims of human trafficking and female child rape who, conceptually, are viewed as "lucky" victims.

[252] Zermike, *supra* note 242 (emphasis added) (quoting Herrick, J.).

[253] Presentment at 3, *In re* Gaeta, No. ACJC 2002-171 (N.J. Sup. Ct. May 8, 2003) (quoting Gaeta, J.), *available at* http://www.judiciary.state.nj.us/pressrel/gaeta.pdf.

[254] *Id.* at 5 (quoting Gaeta, J.).

[255] *Id.* (quoting Gaeta, J.).

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Gaeta further remarked, "I really don't see the harm that was done here."[256] In contrast, research has not revealed a case in which a court has held a female child victim of adult male rape to be unharmed, loved, or nurtured. In fact, many have argued for the application of the death penalty when males are convicted of raping girls.[257]

Equally telling regarding the refusal to recognize male child victims of female sex crimes as wronged is the fact that male victims are as much the object of visual and cognitive indifference as they are the object of blame. Like the trafficked male who is often perceived as a criminal rather than a victim, male child victims are perceived in the same fashion. In some cases, the molested male child is viewed as a wrongdoer and the adult woman is viewed as the victim.[258] In addition, commentators note that despite the obvious demands for male child sex by females, there is a near-complete absence of commentary on the subject of protecting the male child.[259] In fact, not only are male child victims of female rape *not* viewed as genuine victims, but some states force male child rape victims to pay child support for any offspring resulting from the female's criminal actions.[260]

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[256] *Id.* at 6 (quoting Gaeta, J.). Similarly, a Nebraska Judge, when sentencing Kelsey Peterson, a teacher who had sex with a twelve-year-old student and fled to Mexico with him, stated that Ms. Peterson was not a sexual predator, but simply immature. Kevin Cole & Cindy Gonzalez, *Ex-Teacher Gets Prison for Escapade with Pupil*, OMAHA WORLD-HERALD, Sept. 30, 2008, at A1.

[257] *See* GA. CODE ANN. § 16-6-1(a), (b) (2006) (defining rape as "carnal knowledge of: (1) [a] female forcibly and against her will; or (2) [a] female who is less than ten years of age," and including death as one possible penalty); Coker v. Georgia, 433 U.S. 584, 606–08 (1977) (Burger, C.J.. dissenting) (arguing that the Eighth Amendment does not prohibit the death penalty for the defendant, who "has shown that he presents a particular danger to the safety, welfare, and chastity of women"); State v. Wilson, 96-1392, p. 13 (La. 12/13/96); 685 So. 2d 1063, 1070 (stating, in a case involving two defendants who raped young girls, "[W]e conclude that given the appalling nature of the crime, the severity of the harm inflicted upon the victim, and the harm imposed on society, the death penalty is not an excessive penalty"); Brief for Respondent at 21–22, Kennedy v. Louisiana, 128 S. Ct. 2641 (2008) (No. 07-343) (arguing on behalf of the state of Louisiana that the Eighth Amendment does not prohibit use of the death penalty for a defendant who raped an eight-year-old girl).

[258] *Nancy Grace: Geisel Walks Free After Four Months in Jail* (CNN television broadcast Dec. 15, 2005) (airing an interview between Nancy Grace, the Albany, New York Bureau Chief of the *Daily News*, the attorney for the school at which Geisel taught, and Lauren Lake, Geisel's attorney, wherein Lake argued that the child victims were wrong for having sex with Geisel and manipulated and had fun with her and that the judge was right to admonish them). The transcript is available at http://transcripts.cnn.com/TRANSCRIPTS/0512/15/ng.01.html.

[259] *See, e.g.*, Guinn, *supra* note 165, at 8.

[260] *See* Ruth Jones, *Inequality from Gender-Neutral Laws: Why Must Male Victims of Statutory Rape Pay Child Support for Children Resulting from Their Victimization?*, 36 GA. L. REV. 411, 413, 416 (2002) (citing several instances where males were found liable to pay child support, even though conception occurred from a statutory rape).

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This societal condition is consistent with the ideology embodied in the traditional narrative: namely, that males, unlike females, are sexually insatiable, are always in control of their relationships, and thus cannot be victims of female-perpetrated sexual or criminal acts. This condition ignores the reality, discussed earlier, that male survivors of rape, like female victims, "grapple with feelings of isolation, inadequacy and vulnerability," and frequently turn to alcohol and drug abuse.[261] The lack of equal treatment for male victims ignores the fact that human vulnerability to oppression and lack of power is shared by all victims, regardless of gender, ethnicity, or the type of exploitation being endured.[262]

VI. CONCLUSION

Certainly, a plethora of ideas and recommendations could be proposed in relation to the problem of locating, identifying, and protecting male victims of human trafficking. It is clear that law enforcement officers, prosecutors, and judicial officials each have a vital role to play in U.S. anti-trafficking measures.

A. Law Enforcement Officers

Existing commentary and data regarding human trafficking suggest that while the majority of law enforcement initiatives are commendable, there is a genuine need for victim identification training at the local level regarding the full spectrum of human trafficking.[263] Although the TVPA mandates training for the DOS, DHS, DOJ, and Department of Health and Human Services, only recently (in 2008) has it authorized training for local law enforcement officials.[264] Although it will take

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[261] Stone, *supra* note 243; *see also* Tim Padgett, *Florida Epidemic: Teachers Sleeping with Students*, TIME (May 30, 2009), http://www.time.com/time/nation/article/0,8599,1901762,00.html (noting a 2004 Department of Education study and a 2007 Associated Press report indicating the prevalence of male-female teacher-student sex abuse and arguing that society embraces a double standard relative to female teachers' sexual abuse of male students by advancing the notion that sexual abuse is not as harmful to adolescent males despite the great weight of evidence to the contrary—evidence shows boys sexually abused by women "often develop alcoholism, depression, and their own sexual dysfunctions, including rape, as men").

[262] Stone, *supra* note 243.

[263] 2010 TRAFFICKING REPORT, *supra* note 8, at 342 (noting that victim protections are "far from universal at the state and local levels," and that nongovernmental organizations called for "training to better identify and work with trafficking victims" in state and local programs); Angela A. Jones, *Post-Traumatic Stress Disorder and Victims of Human Sex Trafficking: A Perpetuation of Chronic Indignity*, 4 INTERCULTURAL HUM. RTS. L. REV. 317, 343 (2009) (arguing that because forced labor is a federal crime, local law enforcement is more likely to identify labor trafficking victims as illegal immigrants than victims).

[264] 22 U.S.C. § 7105(c)(4) (2006) (requiring the Attorney General and Secretaries of Homeland Security and State to promulgate rules to implement training for those departments). The William Wilberforce Trafficking Victims Protection Reauthorization

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some time before all relevant officers receive it, the training is vital. Without it, local law enforcement officials, who are often first responders, will remain uninformed about the complete range of human trafficking, and thus lack the skills necessary to recognize victims and victimizers, particularly when the victim does not fit the iconic image.[265] Without the proper training, first responders will tend to encounter many victims of human trafficking without recognizing them as such.[266] The plight of eleven-year-old Given Kachepa[267] a poor Zambian boy, illustrates this point.[268] Kachepa's experience started when a purported Baptist missionary offered to make Kachepa a member of a Zambian boys' choir that would sing in U.S. churches to raise money for Kachepa's family and to build a school in his hometown.[269] When the missionaries offered to help it seemed like a dream come true for Kachepa and the people in his hometown.[270] After Kachepa accepted the offer and reached the United States, the choir director abused him and his fellow choirboys; denied them proper food, education, and adequate housing;[271] and routinely threatened them with deportation.[272] Neither Kachepa nor the other boys were "properly paid for their singing,"[273] and the traffickers never gave the money they received from churches to the boys or their families.[274] Rather, the parties that brought the boys to the United States kept the money themselves and demanded increased labor from the boys.[275] For approximately nineteen months, the boys sang four to seven concerts a day.[276] When they were not singing, they were forced to perform abusive labor, like digging a swimming pool by hand.[277] Despite their wide exposure to the public, law enforcement did not discover their plight. Rather,

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Act of 2008 amended 22 U.S.C. § 7105(c)(4) to read, "The Attorney General and the Secretary of Health and Human Services shall provide training to State and local officials to improve the identification and protection of such victims." William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 212(b), 122 Stat. 5044, 5064 (codified as amended in scattered sections of 6 U.S.C., 8 U.S.C., 18 U.S.C., 22 U.S.C., 28 U.S.C., 42 U.S.C.).

[265] Jones, *supra* note 263, at 343.

[266] *Id.* at 343–44.

[267] Barbara Kralis, *Trafficking in Your Own Backyard*, RENEWAMERICA (Aug. 1, 2006), http://renewamerica.us/columns/kralis/060801.

[268] John Hall, *Zambian Boy's Ordeal Shows Slavery Lingers, Even in America*, ASSOCIATED BAPTIST PRESS (Jan. 11, 2008), http://www.abpnews.com/content/view/3077/121/.

[269] *Id.*

[270] *Id.*

[271] *Nightline: Given's Story* (ABC television broadcast Sept. 21, 2004) (transcript on file with author).

[272] Diane Smith, *Human Trafficking Can Take Subtle Form, as Zambian's Experience in Texas Shows*, FORT-WORTH STAR TELEGRAM, Jan. 4, 2004, at 1B.

[273] Hall, *supra* note 268.

[274] *Id.*

[275] Kralis, *supra* note 267.

[276] *Id.*

[277] *Id.*

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a concerned observer became suspicious and investigated the health and circumstances of the boys, which ultimately led them regaining their freedom.[278]

Law enforcement officials trained to search for iconic female sex traffic victims are ill-suited to identify and aid people like Kachepa. Kachepa's experience thus highlights not only the importance of victim identification training, but also the benefits of training that permits local law enforcement officers to search for human trafficking victims in all potential circumstances. Such measures would help reduce law enforcement officials' overreliance on the media's traditional narrative when formulating their approaches and investigations.

B. Balanced Prosecutions

Prosecutors must become better acquainted with the full range of victims and victimizers and vigorously pursue all human traffickers who profit from forced labor or sex trafficking. Indeed, it is a well-established jurisprudential principle that if a law prohibits a certain form of conduct, such as human trafficking, every person subject to the law should be required to refrain from doing it or be subject to the penalty of the law.[279] Absence of legal consequences is tantamount to extending an invitation to commit the act.[280] Although the strictures of the TVPA prohibit the trafficking of male victims with a threat of penalty for violation, "not every aspect of what constitutes a genuine legal duty reflects a serious demand to be obeyed."[281]

This Article demonstrates that what is truly demanded under the TVPA is not a consequence of its terms, but rather, the consequence of social norms that have a deadly impact on male victims. Given the substantial commonality between the systematic neglect of male victims of human trafficking and social norms regarding certain brands of male harm, human traffickers can generally expect much of their proscribed conduct to go undetected.[282] Without a credible legal demand that directly affects the human trafficker's or would-be trafficker's motives, there is no limit on the harm a trafficker can inflict on male victims, and other categories of victims who do not fit the "iconic" image. As a result, the rise in human trafficking continues, not only threatening the welfare of the collective good, but also compromising the legitimate authority of the TVPA.

Indeed, a legitimate system of law should impose a duty to recognize the human dignity and autonomy of all citizens.[283] The duty to recognize human dignity, and the corresponding right of citizens to demand it, should not be influenced by social rank or impulses.[284] Respecting this right requires that prosecutors avoid treating human trafficking victims as instrumentally valuable, or

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[278] Hall, *supra* note 268.

[279] FEINBERG, *supra* note 251, at 7.

[280] *Id.*

[281] *See* KENT GREENAWALT, CONFLICTS OF LAW AND MORALITY 12 (1989).

[282] *See* discussion *supra* Part V.C.

[283] Jones, *supra* note 16, at 930–31.

[284] *Id.* at 931.

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merely as a means to prosecute traffickers. By conditioning the availability of medical and socially restorative benefits to victims of human trafficking on the victims' cooperation with prosecutorial initiatives, the TVPA ignores the human dignity of a large percentage of victims. This legal practice ignores the victim's moral autonomy rather than restoring it, and places U.S. officials in the same moral domain as victimizers who interfere with the victim's freedom. Moreover, it robs the TVPA of its moral authority.[285]

C. Judicial Officers

Judicial officers have an ethical obligation to apply and enforce laws fairly and impartially.[286] As this Article demonstrates, penal laws have not been fairly applied or enforced against victimizers of males, particularly in relation to sex crimes. Preconceptions that preclude the protection of male victims, whether inspired by commercial media or an individual's ideology, destroy the impartiality and open-mindedness necessary for judicial officers to make correct and sound determinations regarding male victims of human trafficking. Clearly, belief systems perpetuating the notion that males cannot or are unlikely to be victims of sex crimes or human trafficking undermine the impartiality, open-mindedness, and objectivity necessary to determine whether a male engaged in labor or sexual activity is a victim of human trafficking and deserving of protection under the TVPA. More egregiously, judicial sanction of such an approach to social problems leaves male victims of human trafficking defenseless and relegates them to a state of invisibility.

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[285] Samuel V. Jones, *The Moral Plausibility of Contract: Using the Covenant of Good Faith to Prevent Resident Physician Fatigue-Related Medical Errors*, 48 U. LOUISVILLE L. REV. 265, 293 (2010) ("If it is to command authority, the law cannot require moral agents to do or refrain from doing something inconsistent with leading a life of at least minimal moral virtue.").

[286] MODEL CODE OF JUDICIAL CONDUCT R. 2.2. (2008).

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