

# GOD BLESS THE CHILD: THE UNITED STATES' RESPONSE TO DOMESTIC JUVENILE PROSTITUTION

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MAMA MAY HAVE, PAPA MAY HAVE  
BUT GOD BLESS THE CHILD THAT'S GOT HIS OWN  
THAT'S GOT HIS OWN.<sup>1</sup>

BILLIE HOLIDAY

## I. INTRODUCTION

America cannot make up its mind: Are juvenile girls<sup>2</sup> who have sex victims or criminals? Do they need protection or prosecution? The laws surrounding this issue reflect the country's internal strife, as the United States takes two very distinct positions with respect to juvenile prostitution. On one hand, the country has taken a strong stance against those who traffic juveniles across international borders. On the other hand, the Government criminalizes domestic juvenile prostitutes. The Government has only recently begun to view these children as worthy of Governmental attention.

Though contradictory and facially unfair, these divergent responses are historically consistent, as they reflect racial stereotypes about black juveniles and their sexuality. Even the language used to characterize the two otherwise identical groups of juvenile girls, "sex trafficked victims" as opposed to "prostitutes," evokes racial stereotypes. Many envision images of impoverished European or Asian girls when sex trafficking victims are discussed; for, the modern victims of sex trafficking are third world, non-Western women.<sup>3</sup> In contrast, for many the word "prostitute" evokes visions of young black girls, as "the prostitute, in the public mind [is a woman] of color."<sup>4</sup> Furthering these stereotypes, the Government has utilized photographs that reinforce the racial

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<sup>1</sup> ARTHUR HERZOG, JR. & BILLIE HOLIDAY, *God Bless the Child* (Edward B. Marks Music Corp. 1941).

<sup>2</sup> Although male domestic juvenile prostitution is also a problem that requires discourse, this article focuses solely upon female domestic juvenile prostitution. Therefore, any reference to domestic juvenile prostitution refers to female juvenile prostitution.

<sup>3</sup> Jo Doezema, *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, 18 *GENDER ISSUES* 23, 31 (2000), available at <http://www.walnet.org/csis/papers/doezema-loose.html> 23, 31.

<sup>4</sup> April L. Cherry, Symposium: Re-orienting Law and Sexuality: *Welfare Reform and the Use of State Power in the Prostitution of Poor Women*, 48 *CLEV. ST. L. REV.* 67, 72 (2000).

dichotomy, making European, Latino and Asian children the poster children of their anti-sex trafficking campaign.<sup>5</sup>

In this article, I explore the United States' recent campaign against child sex trafficking and how this campaign has failed, until very recently, to recognize that domestic female juvenile prostitutes also require protection and services. I analyze both domestic and international legislation aimed at protecting victims of child sex trafficking. In addition, I examine the role that racial stereotypes about black women and their sexuality have played in the Government's response to domestic prostitution. Finally, I provide recommendations for advocates of domestic juvenile prostitutes.

## II. THE FIGHT AGAINST INTERNATIONAL CHILD SEX TRAFFICKING

President George W. Bush has been quite vocal about juvenile sex trafficking. In 2003, he proclaimed to the United Nations General Assembly "the trade in human beings for any purpose must not be allowed to thrive in our time."<sup>6</sup> His administration has labeled it modern-day slavery and "one of the most pernicious moral evils in the world today."<sup>7</sup> When NBC's Dateline News asked why child sex trafficking was a priority for the Bush administration, then-Secretary of State Colin Powell replied, "Because it's the worst kind of human exploitation imaginable. Can you imagine young children, learning their ABC's or whatever the equivalent is in their language, being used as sexual slaves for predators? It is a sin against humanity and it is a horrendous crime."<sup>8</sup>

In response to this "horrendous crime", the United States has implemented numerous acts to combat international child sex trafficking, including the Trafficking Victims Protection Act of 2000 ("TVPA"), which was later expanded by the Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA"), and the Prosecutorial Remedies and Tools against the Exploitation of Children Today Act of 2003 ("PROTECT Act"). Notably, this legislation has specifically focused on the plight of children who are not American citizens. Former Attorney General John Ashcroft's definition of trafficking as a

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<sup>5</sup> See e.g., U.S. Dep't of Justice, *Trafficking in Persons: A Guide for Non-governmental Organizations* (2002), available at <http://www.usdoj.gov/crt/crim/wetf/trafficbrochure.pdf>; U.S. Dep't of Justice, *Information for Victims of Trafficking in Persons and Forced Labor* (2002), available at <http://www.usdoj.gov/crt/crim/wetf/victimbrochure.pdf>. As further indication of who the Government considers victims of this crime is the fact that the U.S. Department of State noted that it would be distributing victims' brochures for victims of trafficking, which had been translated into Spanish and would be translated into Chinese, Vietnamese, Thai, and Russian. U.S. DEP'T OF STATE, FACT SHEET: ACCOMPLISHMENTS IN THE FIGHT TO PREVENT TRAFFICKING IN PERSONS (Feb. 25, 2003), available at <http://www.state.gov/g/tip/rls/fs/17968.htm>. These results are as of March 2001.

<sup>6</sup> President George W. Bush, Address to the United Nations (Sept. 23, 2003), in 39 WEEKLY COMP. PRES. DOC. 1256, 1260 (Sept. 29, 2003).

<sup>7</sup> U.S. Att'y Gen. Alberto Gonzales, Address at the Hoover Institution's Board of Overseers Conference (Feb. 28, 2005), in DEP'T OF JUSTICE ANTI-TRAFFICKING NEWS BULL., April 2005, at 1, available at [http://www.usdoj.gov/crt/crim/trafficking\\_newsletter/antitraffnews\\_apr05.pdf](http://www.usdoj.gov/crt/crim/trafficking_newsletter/antitraffnews_apr05.pdf).

<sup>8</sup> Interview by Chris Hansen with Colin Powell, U.S. Sec'y of State, Washington, D.C. (Dec. 11, 2003), available at <http://msnbc.msn.com/id/4039270/>.

“transnational criminal enterprise” makes it clear that domestic juvenile prostitutes are not the victims the United States sought to protect with these sex trafficking laws.<sup>9</sup>

A. *Trafficking Victims Protection Act of 2000*

Congress formulated the TVPA to combat both international and domestic trafficking of persons by establishing measures to prevent trafficking, protect trafficking victims and prosecute perpetrators of trafficking.<sup>10</sup> The statute defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>11</sup> Juvenile sex trafficking is considered a severe form of trafficking in persons; therefore, offenders are subject to harsher penalties.<sup>12</sup> The Act also requires that the President establish an Interagency Task Force, composed of the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence and any other officials designated by the President. The Task Force is responsible for overseeing the implementation of the Act, measuring the progress of the United States and other countries in the prevention of trafficking, and examining the role of international sex tourism in sex trafficking.<sup>13</sup> Furthermore, the statute protects juvenile victims of trafficking, regardless of whether offenders utilized force, fraud or coercion to involve these juveniles in sex trafficking. Thus, the TVPA *per se* concludes that juveniles under the age of eighteen are incapable of consenting to engage in prostitution.<sup>14</sup>

Although the statute appears to provide protection for juvenile prostitutes who are American citizens, it was not enacted with this group in mind. The TVPA seeks to protect foreign juvenile prostitutes trafficked domestically in the United States, as illustrated by the prevention, assistance and protection programs developed by the Act.<sup>15</sup> These programs provide services that primarily aid international victims. For example, one program offers trafficked victims the same rights and services of refugees, even allowing victims to receive visas.<sup>16</sup> The Department of Justice (“DOJ”) conceded in 2004 that “the Department of Health and Human Services’ refugee benefits and services programs and the Office for Victims of Crime’s victim assistance funds are available to alien trafficking victims who are trafficked internationally into the

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<sup>9</sup> U.S. Att’y Gen. John Ashcroft, U.S. Att’y Gen., Remarks at Conference on Sex Trafficking (Feb. 25, 2003), [http://www.usdoj.gov/archive/ag/speeches/2003/022503\\_sextraffickingfinal.htm](http://www.usdoj.gov/archive/ag/speeches/2003/022503_sextraffickingfinal.htm).

<sup>10</sup> Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466-69.

<sup>11</sup> 22 U.S.C. § 7102(9) (2000).

<sup>12</sup> *Id.* at § 7102(8). Sex trafficking is also considered severe trafficking if the victim, regardless of age, was induced by force, fraud, or coercion. *Id.*

<sup>13</sup> 22 U.S.C. § 7103(b), (d) (2000).

<sup>14</sup> The TVPA employs the terms “sex trafficking” and “commercial sex acts.” Commercial sex acts are defined as any sex act on account of which anything of value is given to or received by any person. 22 U.S.C. § 7102(3), (9).

<sup>15</sup> Pub. L. No. 106-386, § 106-107, 114 Stat. 1464, 1474-80.

<sup>16</sup> *Id.*

United States as well as to alien victims who are trafficked internally, but not to U.S. citizen victims of trafficking.”<sup>17</sup>

### B. *Trafficking Victims Protection Reauthorization Act of 2003*

According to Tommy Thompson, former Secretary of Health and Human Services, “The [TVPRA] renews the U.S. government’s commitment to identify and assist victims exploited for labor or sex in the United States and worldwide.”<sup>18</sup> The TVPRA reauthorized the TVPA<sup>19</sup> and expanded it by the following, among other things: permitting civil suits by victims against traffickers for actual and punitive damages; augmenting the Racketeering Influenced and Corrupt Organization (“RICO”) statute to include sex trafficking and forced labor as forbidden acts; encouraging state and federal law enforcement officers to detect and investigate trafficking cases; and mandating that the Attorney General provide a report on the Government’s effort to combat trafficking to Congress annually.<sup>20</sup> The Act also encourages local officials and service providers to treat victims compassionately and, among other things, to help “restore victims to a humane condition of life . . . . [For a] bedrock principle of this legislation is that victims of trafficking in the United States are not perpetrators of crime—they are the victims of crime, and they ought be allowed to rebuild their lives . . . .”<sup>21</sup> Thus, the TVPRA continues the Government’s strong rhetoric against sex trafficking.

### C. *PROTECT Act*

In President Bush’s signing statement for the PROTECT Act, he declared, “This law carries forward a fundamental responsibility of public officials at every level of government to do everything we can to protect the most vulnerable citizens from dangerous offenders who prey on them.”<sup>22</sup> The PROTECT Act of 2003 broadly expands the legal tools for arresting and prosecuting individuals engaged in child sexual exploitation.<sup>23</sup> The act defines sexual abuse as knowingly causing another or attempting to cause another to: 1) engage in a sexual act by threatening or placing that person in fear; or 2) engaging in a

<sup>17</sup> U.S. DEP’T OF JUSTICE REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003, 6 n.1 (May 1, 2004), available at <http://www.usdoj.gov/ag/050104agreport-tocongressivprav10.pdf>. [hereinafter DOJ TRAFFICKING REPORT]. The Government does state in later reports that domestic victims, as United States citizens, may already be eligible for many of these programs. It is unclear what “may already be eligible” refers to and what steps would be needed to become eligible for these programs.

<sup>18</sup> Press Release, U.S. Dep’t of Health and Hum. Servs., Statement by Tommy G. Thompson Sec’y of Health and Hum. Servs. On the Trafficking Victims Protection Reauthorization Act of 2003 (Dec. 22, 2003), <http://www.hhs.gov/news/press/2003pres/20031222.html>. [hereinafter HHS Press Release].

<sup>19</sup> DOJ TRAFFICKING REPORT, *supra* note 17, at 4.

<sup>20</sup> HHS Press Release, *supra* note 18, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> President George W. Bush, Remarks on Signing the PROTECT Act (April 30, 2003), in 39 WKLY. COMP. PRES. DOC. 502 (May 5, 2003), available at <http://www.whitehouse.gov/news/releases/2003/04/20030430-6.html>.

<sup>23</sup> Prosecutorial Remedies and Tools against the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650 (2003).

sexual act with another if the other person is incapable of assessing the nature of the conduct or physically unable to decline to participate in or communicate unwillingness to engage in that sexual act.<sup>24</sup> Further, section 105(f) of the Act defines illicit sexual conduct as: 1) a sexual act<sup>25</sup> with a person under eighteen years of age that constitutes sexual abuse, as previously defined, or attempted sexual abuse<sup>26</sup>; or 2) any commercial sex act<sup>27</sup> with a person less than eighteen years of age.<sup>28</sup> Utilizing these definitions, the statute: 1) permits law enforcement to employ wiretaps to combat sex trafficking; 2) eliminates the statute of limitations for child sexual abuse crimes; 3) makes it more difficult for defendants accused of serious crimes against children to obtain bail; 4) implements a “two strikes” rule that requires life imprisonment for offenders who commit two serious sexual abuse offenses against a child; 5) restricts judicial authority to reduce prison sentences;<sup>29</sup> and 6) removes the prior cap of five years for post-release supervision of sex offenders and replaces it with any term of years or life.<sup>30</sup>

<sup>24</sup> PROTECT Act at § 106(e)(2) (referring to 18 U.S.C. § 2242(1)-(2) (2000)).

<sup>25</sup> A sexual act is A) contact between the penis and vulva or the penis and the anus, and for purposes of this definition, contact involving the penis occurs upon penetration, however slight; B) contact between mouth and penis, mouth and vulva, or mouth and anus; C) penetration, however slight, of the anal or genital opening of another by a hand, finger or by any object, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or D) intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of sixteen years, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person. 18 U.S.C. § 2246(2) (2000).

<sup>26</sup> Attempted sexual abuse by force or threat is “knowingly caus[ing] another person to engage in a sexual act by: (1) using force against that other person; or (2) threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so.” 18 U.S.C. § 2241(a) (2000). Attempted sexual abuse by other means is:

knowingly (1) render[ing] another person unconscious and thereby engag[ing] in a sexual act with that other person; or (2) administer[ing] to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby (A) substantially impair[ing] the ability of that other person to appraise or control conduct; and (B) engag[ing] in a sexual act with that other person; or attempt[ing] to do so.

18 U.S.C. § 2241(b).

Attempted sexual abuse with children is:

knowingly engag[ing] in a sexual act with another person who has not attained the age of 12 years, or knowingly engage[ing] in a sexual act [by force or other means] with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least four years younger than the person so engaging), or attempt[ing] to do so.

18 U.S.C. § 2241(c).

<sup>27</sup> A commercial sex act is any sex act where anything of value is given to or received by any person. 18 U.S.C. § 1591(c)(1) (2000).

<sup>28</sup> PROTECT Act at § 105(f). The PROTECT Act does, however, allow for a mistake of age defense. *Id.* at § 105(g).

<sup>29</sup> This section of the Act has been highly criticized by the judiciary because of the limitation it imposes on judicial discretion. See John S. Martin, Jr., *Let Judges Do Their Jobs*, N.Y. TIMES, June 23, 2003, at A31; *United States v. Flores*, 336 F.3d 760, 768 (8th Cir. 2004) (Bright, J., concurring).

<sup>30</sup> U.S. DEP'T OF JUST., FACT SHEET: PROTECT ACT (Apr. 30, 2003), available at [http://www.usdoj.gov/opa/pr/2003/April/03\\_ag\\_266.htm](http://www.usdoj.gov/opa/pr/2003/April/03_ag_266.htm) [hereinafter DOJ FACT SHEET: PROTECT ACT].

In 2004, when the first individual was arrested and prosecuted under the PROTECT Act, the Department of State issued a press release which declared that the Act “makes it illegal for U.S. citizens and legal permanent residents to travel outside the United States to engage in sexual acts with children.”<sup>31</sup> Thus, while the Act appears to provide protection for all victims of child prostitution, the Government, by its own words and representations, has made it clear that the individuals it seeks to protect with the Act are not domestic juvenile prostitutes. With the omission of an entire group of child victims, it is hard to agree with the DOJ’s statement that the PROTECT Act is a “historic milestone for our . . . children.”<sup>32</sup>

As a result of the TVPA, TVPRA, and PROTECT Act, the Civil Rights Division’s Criminal Section has charged, convicted, or secured the sentencing of ninety-two human traffickers; the DOJ has charged, convicted or sentenced sixty-five sex traffickers; and the Civil Rights Division’s Criminal Section and U.S. Attorney’s Offices has prosecuted thirty-three traffickers under the TVPA.<sup>33</sup> Furthermore, in 2003, the Government awarded \$9.5 million in grants to aid trafficking victims for the provision of, among other things, vocational and English language training, legal support, food and shelter.<sup>34</sup> The present administration is devoting significant resources to fight sex trafficking of international girls. In contrast, it appears that neither President Bush nor the United States has exhibited the same sympathy for American juvenile prostitutes.

### III. DOMESTIC PROSTITUTION IN BLACK AND WHITE

The Mann Act, also known as the White Slave Trade Act, is the oldest federal law aimed at fighting domestic sex trafficking.<sup>35</sup> The Mann Act originally outlawed the transportation of women and girls in interstate commerce for prostitution, debauchery, and other immoral purposes.<sup>36</sup> The Act was amended in 1986, and now outlaws the transportation of an individual with the intent to engage in prostitution or any sexual activity “for which any person can be charged with a criminal offense.”<sup>37</sup> Under the Act, violators face fines, imprisonment for up to ten years, or both.<sup>38</sup>

<sup>31</sup> Press Release, U.S. Dep’t of State, Washington State Man Convicted in Protect Act Case (Mar. 24, 2004), <http://www.state.gov/t/pa/prs/ps/2004/30731.htm>.

<sup>32</sup> DOJ FACT SHEET: PROTECT ACT, *supra* note 30.

<sup>33</sup> U.S. DEP’T OF JUSTICE, FACT SHEET: ACCOMPLISHMENTS IN THE FIGHT TO PREVENT TRAFFICKING IN PERSONS (Feb. 25, 2003), available at <http://www.state.gov/g/tip/rls/fs/17968.htm>.

<sup>34</sup> *Id.*

<sup>35</sup> See 18 U.S.C.A. §§ 2421-2427 (2000 & Supp. 2003). The Mann Act was enacted in 1910.

<sup>36</sup> Tsubasa Wakabayashi, *Student Scholarship, Enjokosai in Japan: Rethinking the Dual Image of Prostitutes in Japanese and American Law*, 13 UCLA WOMEN’S L.J. 143, 176 (2003).

<sup>37</sup> 18 U.S.C.A. § 2421. *Caminetti* expanded the Mann Act, making it illegal to engage in any kind of illicit sex involving the interstate transportation of women. Robert E. Rodes, Jr. *On Law and Chastity*, 76 NOTRE DAME L. REV. 643, 648-49 (2001); see also *Caminetti v. United States*, 242 U.S. 470, 492 (1917).

<sup>38</sup> 18 U.S.C.A. § 2421 (2000 & Supp. 2003).

It is quite telling that the Mann Act was initially known as the White Slave Trade Act. "The very name 'white slavery' is racist, implying as it does that slavery of 'white women' was of a different, and worse, sort than 'black' slavery,"<sup>39</sup> and, in fact, the Mann Act was enacted to end the prostitution of white women. "'White slavery' came to mean the procurement, by force, deceit, or drugs, of a white woman or girl against her will, for prostitution."<sup>40</sup> White women were viewed as victims of prostitution, rather than willing participants. "The 'innocence' of the victim was established through a variety of rhetorical devices [including] . . . her whiteness . . . ."<sup>41</sup> In contrast, when recently freed female slaves wandered throughout the country searching for their children or husbands during the Reconstruction Era, they were often labeled "prostitutes" and "were subsequently detained, fined, imprisoned, and compelled to work."<sup>42</sup> While white women were considered victims of prostitution, black women were deemed criminals, even if they were not actually prostitutes. Hence, the racial divide between individuals who were perceived as prostitutes was established early, and visages of this historical separation continue to operate and shape who is perceived as victims of prostitution and who is deemed a criminal participant.

In modern times, the image of white women as victims has been expanded to include the faces of "third-world" women. Notably, these new images do not portray black faces, despite the prevalence of sex trafficking in many African countries.<sup>43</sup> The perception of black women as criminal agents of prostitu-

<sup>39</sup> Doezeema, *supra* note 3, at 30.

<sup>40</sup> *Id.* at 25.

<sup>41</sup> *Id.* at 28.

<sup>42</sup> Rosemary B. Quigley, *Because We Love You*, 98 Mich. L. Rev. 1822, 1827 (2000) (reviewing LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* (1998)).

<sup>43</sup> DOJ TRAFFICKING REPORT, *supra* note 17, at 10 (reporting that in 2003, the DOJ identified Tonga and Zambia as two of the countries with the greatest number of trafficking victims. Each country accounted for five percent of the victims).

The Office of Refugee Resettlement (ORR) in the Administration for Children and Families within the Department of Health and Human Services (HHS) issues certification letters to adults, and eligibility letters to minors, who are determined to be victims of a 'severe form of trafficking in persons' and so that these individuals can qualify under the TVPA for federally-funded or administered benefits and services to the same extent as refugees.

U.S. Dep't of Justice, Report to Congress from Attorney General Alberto R. Gonzales on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004, 7 (July 2005), available at <http://www.usdoj.gov/ag/annualreports/tr2004/agreporthumantrafficking.pdf>. This data is based upon the number of individuals who received certification from the Department of Health and Human Services to have access to federally funded or-administered benefits and services comparable to those received by refugees. DOJ TRAFFICKING REPORT, *supra* note 17, at 10. It also should be noted that in 2002 the Government encountered victims from fourteen countries, among them Ghana, Jamaica, and Sri Lanka. *Id.* at 3. Interestingly, victims from every country, except for Ghana, Jamaica and Sri Lanka, received certification and eligibility letters. *Id.* The Department of Health and Human Services has even acknowledged that Africa is a frequent source of child victims of trafficking. U.S. DEP'T OF HEALTH AND HUMAN SERVICES ADM. FOR CHILDREN AND FAMILIES, FACT SHEET: CHILD VICTIMS OF HUMAN TRAFFICKING (2004), available at [http://www.acf.hhs.gov/trafficking/about/children\\_victims.html](http://www.acf.hhs.gov/trafficking/about/children_victims.html). Furthermore, Estes and Weiner identified nine African countries of origin of foreign trafficked children that they met during the course of their study. Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Chil-*

tion continues in the present day. A 2000 article reported “[n]inety percent of all prostitution arrests and eighty-five percent of those incarcerated [were] minority women.”<sup>44</sup> Police disproportionately target and arrest prostitutes in low socio-economic communities.<sup>45</sup> As a result, black women are arrested for prostitution at higher rates than their white counter-parts, perpetuating the stereotype that the majority of prostitutes are black women, who deserve to be criminally punished.

This erroneous portrayal of black women as overly sexualized criminals appears to have subconsciously affected the reaction to juvenile prostitutes. Indeed, the Government waited over two years after it first addressed the problem of international sex trafficking to respond to domestic juvenile prostitution. In comparison to the strong language used by the Government to condemn international child sex trafficking, the Government’s rhetoric is quite different with regard to domestic child sex trafficking. America’s delay and continued hesitancy to formulate legislation aimed at eliminating domestic sex trafficking sends a clear message that the Government finds juvenile prostitutes unworthy of protection.<sup>46</sup> In the Government’s eyes, these individuals are not victims. In fact, the United States remains one of only two countries who have failed to ratify the United Nations Convention on the Rights of the Child.<sup>47</sup>

It also appears that echoes of the past continue—white children and women are considered victims of prostitution, while blacks are considered perpetrators of prostitution. Of note, a recent national effort to combine various programs dedicated to eradicating domestic juvenile prostitution provides a striking example. To involve the public and have the public identify with and care about juvenile prostitution, many participating in the conference advocated initiating a national campaign with images of white children as prostitutes.<sup>48</sup> The rationale behind this conclusion was that the public viewed domestic prostitutes as children of color and, therefore, cared less about helping these victims. By portraying the children as white, the public would be able to better relate to the children and would be more likely to view them as victims.

The Assessment of United States Activities to Combat Trafficking in Persons, prepared by the United States Government,<sup>49</sup> begins by noting that

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*dren in the U.S., Canada and Mexico: Executive Summary (Of the U.S. National Study)* 18 (Sept. 19, 2001; revised Feb. 20, 2002), [http://caster.ssw.upenn.edu/~restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://caster.ssw.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf).

<sup>44</sup> Erik Luna, *Principled Enforcement of Penal Codes*, 4 BUFF. CRIM. L. REV. 515, 558 (2000).

<sup>45</sup> *Id.* at 557-58; see also Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN’S L.J. 217, 231 (2003) (noting there are a disproportionate number of women of color charged with prostitution).

<sup>46</sup> “[T]his year, for the first time, Congress is considering changes to anti-trafficking legislation that would recognize domestic trafficking.” Annie Sweeney, *U.S. Kids Coerced into Prostitution*, CHI. SUN-TIMES, [http://www.suntimes.com/special\\_sections/traffic/cst-nws-traffic09.html](http://www.suntimes.com/special_sections/traffic/cst-nws-traffic09.html). (Aug. 9, 2005).

<sup>47</sup> Office of the U.N. High Comm’r for Human Rights, *Ratifications and Reservations* (2005), <http://www.ohchr.org/english/countries/ratification/11.htm>.

<sup>48</sup> Telephone Interview with Claudine O’Leary, Director of Young Women’s Empowerment Project (Aug. 24, 2005).

<sup>49</sup> U.S. DEP’T OF JUSTICE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 1 (Aug. 2003), available at [http://www.usdoj.gov/crt/crim/wetf/us\\_assessment](http://www.usdoj.gov/crt/crim/wetf/us_assessment).

“[t]rafficking in persons is a heinous international crime and human rights abuse.”<sup>50</sup> Furthermore, “as a matter of policy, the U.S. Government opposes prostitution and any related activities as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing.”<sup>51</sup> The Government almost has it right. Trafficking in persons is a heinous international and *domestic* crime and a human rights abuse, but it is not limited to international sex trafficking.

Domestic juvenile prostitution is an enormous problem. A 2001 study estimated that between 300,000 and 400,000 American children are victims of some type of sexual exploitation every year.<sup>52</sup> Recently, the FBI has turned its focus to this problem. In October 2004, the FBI arrested Victor Powell, known on the street as “Mr. Cream” for prostituting two girls aged sixteen and eighteen.<sup>53</sup> It is the first federal prosecution for juvenile sex trafficking in Chicago, a city with an estimated 16,000 juvenile prostitutes.<sup>54</sup> While this is certainly a step in the right direction, it is surprising that the first such arrest in Chicago did not occur until 2005, over a year after President Bush made sex trafficking a priority for his administration. In fact, the initiative to fight domestic juvenile prostitution, the “Innocence Lost” program, did not begin until a year after the battle against international sex trafficking began.<sup>55</sup> Now, however, the FBI contends that juvenile sex trafficking is its top priority.<sup>56</sup> In the summer of 2005, the FBI identified fourteen cities—Atlanta, Chicago, Dallas, Detroit, Las Vegas, Los Angeles, Miami, Minneapolis, New York, San Diego, San Francisco, St. Louis, Tampa and Washington, D.C.—with the largest problems of juvenile prostitution.<sup>57</sup> The FBI has instructed these cities to organize task force groups. Despite these efforts, it still appears that domestic victims are an afterthought in the Government’s battle against sex trafficking. In fact, though domestic prostitution is the FBI’s new “top priority,” the agency has only assigned 45-50 agents nationwide to this task,<sup>58</sup> making one question the level of Government commitment to this problem.

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pdf. The report does not specifically identify who the “United States Government” is; however, the emblems of the DOJ, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security and the Agency for International Development appear on the cover page for the report.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Estes & Weiner, *supra* note 43, at 11-13. Estes and Weiner believe that commercial sex exploitation includes child pornography, juvenile prostitute, and trafficking in children for sexual purposes. *Id.* at 7.

<sup>53</sup> David Heinzmann, *At War with the Pimps of Children: The FBI Is Launching a Campaign Against the Predators Who Control 325,000 Child Prostitutes in the U.S.*, CHI. TRIB., Aug. 5, 2005, at 1, 16; Sweeney, *supra* note 46.

<sup>54</sup> *Id.*

<sup>55</sup> Catholicnews.com, *Panelists Report Alarming Increase in U.S. Child Prostitution*, at <http://www.usccb.org/mrs/panelistreport.shtml> (last visited Jan. 21, 2006) [hereinafter Catholicnews.com]; see also Congressional Testimony, Statement of Chris Swecker, Assistant Director, Criminal Investigative Division, F.B.I. Before the Commission on Security and Cooperation in Europe, United States Helsinki Commission, <http://www.fbi.gov/congress/congress05/swecker060705.htm> (June 7, 2005) [hereinafter Swecker Statement].

<sup>56</sup> Heinzmann, *supra* note 53, at 1.

<sup>57</sup> Swecker Statement, *supra* note 55.

<sup>58</sup> Catholicnews.com, *supra* note 55.

Because juvenile prostitutes have been ignored by the Government until arguably recently, attorneys representing this group of girls face a daunting challenge. The representatives must simultaneously attempt to draw national attention to the plight of these children, call for reforms to the laws that distinguish between international juvenile prostitutes and domestic juvenile prostitutes, and organize a campaign to address the needs of these girls. I believe that advocates should employ the following recommendations to aid juvenile prostitutes: participate in anti-prostitution task forces, fight for the abolition of criminal penalties for victims of juvenile prostitution, and ensure that services and programs for victims are “color-blind.”

#### A. *Anti-Prostitution Task Forces*

Anti-human trafficking task force groups (“task forces”) are one of the main strategies used by the DOJ to address international sex trafficking.<sup>59</sup> These task forces are composed of multidisciplinary groups, including federal, state and local law enforcement officers; community members; and faith-based organizations.<sup>60</sup> Individuals who participate in the task forces receive training in all aspects of contemporary trafficking.<sup>61</sup> For example, in July 2004, the DOJ’s Civil Rights Division hosted a conference in Tampa, Florida to expand the formation of task forces across the country.<sup>62</sup> The conference stressed the “victim-centered approach,” with one panel focusing exclusively on victim’s needs, underscoring that all parties in the fight against trafficking must keep the victim at the forefront of their efforts. “[L]aw enforcement officers and prosecutors [were instructed to] remain acutely sensitive to the health and safety of victims.”<sup>63</sup>

As in the battle against international juvenile sex trafficking, I believe that task forces can be very effective in combating the problem of domestic juvenile prostitution. However in order to be effective, domestic task forces cannot simply be modeled after internationally-focused task forces; instead, they must be specifically tailored to address the needs of domestic juvenile prostitutes. Specifically, grass roots organizations, the juveniles, and the juveniles’ advocates must be included in the task forces.

Grass-roots organizations that specialize in youth services, particularly those that work with homeless youth and those that have been trained to handle victims of sexual abuse, must be incorporated into these task forces. These organizations are often in a unique position to identify youth in the community who are juvenile prostitutes or who are especially vulnerable to becoming juvenile prostitutes, and to address the emotional and psychological needs of these

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<sup>59</sup> U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., ANTI-TRAFFICKING NEWS BULLETIN: NATIONAL TRAFFICKING CONFERENCE EXPANDS TASK FORCE APPROACH 1, 6 (June 2004), available at [http://www.usdoj.gov/crt/crim/trafficking\\_newsletter/antitaffnews\\_jun04.pdf](http://www.usdoj.gov/crt/crim/trafficking_newsletter/antitaffnews_jun04.pdf) [hereinafter DOJ ANTI-TRAFFICKING NEWS BULLETIN].

<sup>60</sup> *Id.* at 1.

<sup>61</sup> *Id.*

<sup>62</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (June 3, 2005), available at <http://www.state.gov/g/tip/rls/tiprpt/2005/46618.htm> (last visited Nov. 14, 2005) [hereinafter DEP’T OF STATE TRAFFICKING REPORT].

<sup>63</sup> DOJ ANTI-TRAFFICKING NEWS BULLETIN, *supra* note 59, at 6.

youth.<sup>64</sup> Furthermore, grass-roots organizations provide alternatives to prostitution. For example, the Young Women's Empowerment Project ("YWEP"), established in 2002, provides peer-based support for female juvenile prostitutes in Chicago.<sup>65</sup> It "aims to promote health, leadership development and creative expression through participatory educational experiences, peer mentors and a nonjudgmental environment."<sup>66</sup> The YWEP has assisted more than 1,000 girls who have had a "direct [contact] in the sex trade."<sup>67</sup> Because of its status as a grass-roots organization, which functions independently from federal and state agencies, the organization has been able to help many girls that law enforcement agencies and/or Government sponsored programs may never have reached.

Further, the involvement of grass-roots organizations will help to de-governmentalize the task force groups. While the Government should be an active participant in the task forces and provide necessary monetary support and resources, advocates also must be keenly aware that too much Government involvement might hinder the effectiveness of the task forces. Many juvenile prostitutes might be suspicious of and reluctant to seek out services or participate in programs that could benefit them because they perceive the programs as Government services. In contrast, these girls are less likely to view grass-roots organizations with such suspicion. Therefore, the youth may welcome the participation of grass-roots organizations. At the very least, they will be more likely to use services provided by the task force groups.

Moreover, while anti-trafficking task force groups have engaged the participation of a wide array of cross-disciplinary groups, the most glaring omission from the groups are the children and their advocates. Above any other individuals or groups, the children know their own needs and can provide the most assistance in formulating preventative programs. In addition, giving victims a role in devising solutions to address the problems is self-empowering for the victims. It is preposterous to discuss the formation of task forces and not include the victims as participants.

Similarly, the task forces cannot exclude public defenders, public guardians and other children's rights advocates. These individuals are charged daily with recognizing that the girls are victims, protecting the girls' rights, and actually incorporating the DOJ's much-touted "victim-centered approach" into their practices. Their perspectives will significantly aid these groups because of their continual and close contact with the victims. Furthermore, they will help to reinforce the victim-centered approach.

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<sup>64</sup> Government-sponsored task forces do encourage the participation of grass roots organizations. However, their participation appears to be secondary to the involvement of law enforcement. I believe that law enforcement is crucial to punishing those who exploit these youth, but should not be the primary group responsible for providing aid to the girls.

<sup>65</sup> Telephone Interview with Claudine O'Leary, *supra* note 48.

<sup>66</sup> The Nathan Cummings Foundation, Young Women's Empowerment Project, [http://www.nathancummings.net/CG\\_details\\_2004/000802.html](http://www.nathancummings.net/CG_details_2004/000802.html) (last visited Nov. 14, 2005); *see also* Young Women's Empowerment Project, at <http://www.youarepriceless.org> (last visited Nov. 14, 2005).

<sup>67</sup> Telephone Interview with Claudine O'Leary, *supra* note 48.

For example, Chicago, one of the cities identified by the FBI as a high risk, with an estimated 16,000 juvenile prostitutes,<sup>68</sup> has organized a multi-disciplinary task force to fight the problem of domestic juvenile prostitution that includes grass roots organizations. In 2004, the Chicago Crime Commission formed the Coalition Against the Exploitation, Prostitution and Trafficking of Children in 2004 (the “Coalition”).<sup>69</sup> The various groups that comprise the Coalition include the Office of the U.S. Attorney, the Cook County State’s Attorney’s Office, the FBI, Chicago Public Schools, the Illinois Department of Children and Family Services, and the YWEP.<sup>70</sup> The Coalition’s goals include spot-lighting the under-reported problem of child exploitation, prostitution and trafficking; advocating for law enforcement resources to be directed toward the prosecution of those exploiting children and provide training to that end; preventing children from being exploited or prostituted by curbing demand and educating young people on how to avoid those who would exploit them; and encouraging researchers to conduct additional valid research on this issue.<sup>71</sup> Especially significant is that the Coalition has included the participation of victim advocates, including the YWEP.<sup>72</sup>

### B. *De-criminalizing Juvenile Prostitutes*

The Coalition represents a positive step in the fight against juvenile prostitution. However, the group cannot be successful in the face of the Government’s failure to include in its new victim-centered approach a commitment from law enforcement agencies that they will cease arresting and prosecuting juvenile prostitutes.<sup>73</sup> When this topic arose in an international context during the Second World Congress against the Commercial Sexual Exploitation of Children in Yokohama, Japan, the United States stated that it “joined the Yokohama consensus, but expressed some reservations about the decriminalization

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<sup>68</sup> Heinzmann, *supra* note 53, at 16.

<sup>69</sup> Interview with Katie Kirby, Executive Vice President of Chi. Crime Comm’n (Aug. 16, 2005). The Chicago Crime Commission is an organization founded to improve the quality of public safety and justice by, among other things, working to educate the general public on crime-related issues, implementing programs and services to address crime problems of significant concern, and reviewing and reporting on legislation related to crime. Chicago Crime Commission, *Mission Statement*, <http://www.chicagocrimecommission.org/home.html> (last visited Nov. 15, 2005).

<sup>70</sup> Interview with Katie Kirby, *supra* note 69.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Estes and Weiner even advocate that the Government refrain from targeting children and that it instead focus upon targeting adult sexual exploiters. Included in their recommendation is that:

law enforcement and human service agencies: a) de-emphasize the apprehension of sexually involved street youth and emphasize the arrest, prosecution and punishment of adult perpetrators of sex crimes against children—pimps, traffickers and customers; b) that Federal law enforcement agencies become more involved in the identification and prosecution of adults involved in national sex crime rings that include child sex among their “portfolio” of services; and c) that appropriate mechanisms be found for private human service agencies to work more cooperatively with law enforcement authorities in the identification and apprehension of adults who commit sexual crimes against children.

Estes & Weiner, *supra* note 43, at 24.

of acts related to prostitution.”<sup>74</sup> The countries participating in the conference had drafted a global commitment document, which encourages countries to fight the sexual exploitation of children without penalizing the children for their participation.<sup>75</sup> In fact, the United States did not even have official representation at the Yokohama conference.<sup>76</sup> Hence, despite its new rhetoric on the issue of domestic juvenile prostitution, the United States has not rescinded this reservation and is, therefore, essentially, on the record as stating that it is acceptable to arrest and prosecute child prostitutes. The United States has no such reservation with respect to international victims of juvenile prostitution. The Trafficking Victims Protection Act of 2000 requires federal authorities to identify trafficking victims and “provide them with information about their rights and translation services.”<sup>77</sup> Further, the TVPA includes provisions requiring that law enforcement officials treat youth as victims of crime, provide them with medical care and other assistance, and protect them while they are in federal custody.<sup>78</sup>

It is illogical to prosecute child prostitutes, whether they are international victims or domestic victims. Thus, it is imperative that, once a law enforcement agency becomes aware that an individual, arrested or detained for suspected prostitution is a minor, it cease all punitive responses. The child should not be fingerprinted or entered into the criminal database. Prosecution for prostitution should no longer be an option. Instead, like international victims, these girls should immediately receive victim services. Legal advocates must argue against the criminal penalization of child prostitutes. In fact, this is a particularly strong argument in light of the fact that the American penal system does not punish any other group that it has deemed a victim of crime.

### C. Making Help Color-Blind

Child advocates who represent juvenile prostitutes must also recognize that race has affected, and likely will continue to, affect the treatment of domestic juvenile prostitutes. The perception that juvenile prostitutes are black, inner-city girls has influenced the willingness of many to sympathize with their plight and identify these girls as victims, rather than criminals.<sup>79</sup> To fight effectively for these girls, advocates will have to work to dispel the racial stereotypes about juvenile prostitution. Many view black girls as overly sexual. They are welfare queens; they are teenage mothers. With these perceptions, the leap to nightwalker is not a difficult one. If young black girls give so freely of

<sup>74</sup> Johanna Son, *Latest News from Yokohama: Consensus on Fighting Child Sex Exploitation Grows Wider*, INTER PRESS SERVICE (Dec. 20, 2001), <http://www.ipsnews.net/alert/yok2012b.html>.

<sup>75</sup> *Id.*

<sup>76</sup> Carmen Madriñan, *Step by Step: Taking Stock of Action Since Yokohama 6*, at [http://www.ecpat.net/eng/A4A02-03\\_online/ENG\\_A4A/Step\\_by\\_Step.pdf](http://www.ecpat.net/eng/A4A02-03_online/ENG_A4A/Step_by_Step.pdf) (last visited Nov. 14, 2005).

<sup>77</sup> 22 U.S.C. § 7105(c)(2) (2000).

<sup>78</sup> *Id.* at § 7105(c)(1).

<sup>79</sup> As previously discussed, some participants in a cross-national representation of juvenile advocates even believed that they had to change the image of juvenile prostitutes in order to obtain public support for their cause. Telephone Interview with Claudine O’Leary, *supra* note 48.

their bodies without requiring payment, they must also be willing to do so in exchange for money. They are not victims; rather, they are knowingly using their bodies to earn an income.

The reality is quite different from this perception. More important than color, these girls are *children*. They are children who are sometimes “branded or tattooed, denoting ‘ownership’” by pimps.<sup>80</sup> They are often beaten and forced to have sex with adults. They are the girls who once played with Barbies and held tight to teddy bears, but now find themselves in cars, performing sexual acts on men old enough to be their fathers. Pimps and johns prey upon the girls’ vulnerabilities. They go to areas where teenagers congregate, like malls and arcades.<sup>81</sup> Pimps, parents, friends and other victimizers trap them into a life of prostitution. Their victimization is color-blind. To make an impact, advocates’ response must be equally as color-blind, not by changing the image of juvenile prostitutes to white girls, but by emphasizing that all children need, deserve and require protection from individuals who would prey on their youth.

Congress has specifically stated in the TVPA that:

[o]ne of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.<sup>82</sup>

Indeed, juvenile prostitution in all forms, including domestic and international sex trafficking, is contrary to the United States’ commitment to providing “liberty and justice for all.”<sup>83</sup> It is shameful that the United States has promulgated objectives for other countries to fight sex trafficking, but has failed to protect its own domestic juvenile prostitutes. The United States must go beyond strong rhetoric and commit to fully protecting domestic victims of juvenile prostitution. These girls should no longer be like the child in Billie Holiday’s song. It is time that they stop having their own.

MAMA MAY HAVE, PAPA MAY HAVE  
BUT GOD BLESS THE CHILD THAT’S GOT HIS OWN  
THAT’S GOT HIS OWN.<sup>84</sup>

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<sup>80</sup> U.S. DEP’T OF JUSTICE, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN & OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, FEMALE JUVENILE PROSTITUTION: PROBLEM AND RESPONSE VII (Nov. 2002), available at [http://www.missingkids.com/en\\_US/publications/NC68.pdf](http://www.missingkids.com/en_US/publications/NC68.pdf) (last visited Nov. 14, 2005).

<sup>81</sup> *Id.* at 1.

<sup>82</sup> 22 U.S.C. § 7101(b)(22) (2000).

<sup>83</sup> Pledge of Allegiance to the Flag, 4 U.S.C. § 4 (2000).

<sup>84</sup> HERZOG & HOLIDAY, *supra* note 1.