



Domestic Servitude Prosecutions: A Paradox for Fact-Finders?

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A. What do I mean by “paradox for fact-finders?”

Domestic servitude is a form of trafficking extremely difficult to detect and far more pernicious and insidious than other forms of labor trafficking. For example, unlike trafficking victims forced to work on farms or in businesses where public detection of the trafficker’s criminal conduct may more easily occur, the work of domestic servants is performed in private homes. Domestic work often occurs in the absence of any formal contract and, in some countries, is not even recognized as work at all nor a regulated sector of the labor force. Domestic servitude is also characterized by situations that increase these trafficking victims’ vulnerabilities to abuse and exploitation in particular due to: their isolation; the fact that these victims are often not lawful citizens of the country where they are enslaved and so lack information about their rights; these victims’ dependence on their employer for food and housing; and the fact that – in many of the cases we prosecute in the United States – domestic servant trafficking victims are new to the United States with either poor or non-existent English language skills, thus creating a critical barrier for these victims to notify law enforcement about their circumstance.

And yet in many domestic servitude prosecutions, fact-finders and juries confront factual scenarios in which victims of domestic servitude recount instances in which they left the home of their traffickers – to attend church services, for instance, or to visit family members. The victims often detail years of exploitation they suffered without seeking assistance from law enforcement or help from family and friends. Sometimes the victims engage in conduct that can be exploited by the traffickers to undermine their credibility. Evidence, for example, that the victims obtained a visa to enter the country where they labored by falsely claiming that they only intended to visit, not work. And just as frequently, these victims report accounts of their trafficking that involve neither physical force nor bondage. Facts, therefore, that – on their face – seem to contradict at least the general perception of “forced labor.” An evidentiary paradox, if you will.

But as the laws of many countries recognize: domestic servitude can, and often does, occur solely as the result of psychological coercion. In his passionate “Introduction” to the summit, Monsignor Marcelo Sanchez Sorondo remarked that, “It is sadly common – but all too superficial – to reduce violence to pure physical aggression,” given the new forms of slavery that, even in the absence of physical violence, still result in “wounded bodies and souls.” For those of us who serve as prosecutors, we bear the frequent difficult task of educating fact-finders and juries to view the crime of domestic servitude through a more expansive prism of criminal conduct: one in which the trafficking can be, and typically is, achieved through non-violent means.

B. How as prosecutors do we persuade fact-finders that domestic servant trafficking has occurred in the absence of force or overt signs of compulsion?

Fortunately, many countries, including the United States, define “involuntary servitude” very broadly, encompassing conditions under which traffickers compel a domestic servant’s labor by: (1) threatening harm to third persons, such as children or other family members; (2) threatening the victims with arrest or deportation as the result of their illegal status in the country where they are working; or (3) utilizing any scheme designed to cause a domestic servant to believe that her refusal to work *will* result in serious harm to herself or another. Rather than codifying actual violence as the *sin qua non* for proving this crime, United States lawmakers have enacted forced labor statutes that allow fact-finders to convict traffickers of compelling the labor of these victims solely by use of psychological coercion and evidence of the victim’s special vulnerabilities.

In determining if a trafficker’s threats or scheme coerced a domestic servant to perform labor or services under United States law, consequently, the relevant inquiry is not whether the trafficker’s conduct would have been sufficient to intimidate or coerce an educated, financially able, and culturally and socially aware American to remain in service. Rather, the proper analysis is whether the trafficker’s conduct would intimidate and coerce a reasonable person in the victim’s situation to believe she must remain in the trafficker’s service. Our courts have interpreted a victim’s “special vulnerabilities” to include her background, legal status in the country in which she labored, experience, education, socioeconomic status, and power imbalance in relation to the trafficker’s economic station in life. And our courts have made it very clear that a domestic servant victim who reasonably

believes she cannot leave – based on her trafficker’s psychological coercion – is under no affirmative duty to try to escape.

In fact, a majority of the domestic servitude cases that my office has handled have not involved actual use of force or violence; instead, we have relied on evidence of psychological coercion and the trafficker’s use of a climate of fear to compel the victim’s labor based on these special vulnerabilities.

1. Case Study (India).

One case involved a male police officer, his wife, and the police officer’s father, who was a former judge. The wife, a native of India, convinced a young woman – also from India – to travel to the United States to work as the couple’s nanny to their four-year-old daughter. In exchange, the couple agreed to pay the victim a salary, to teach her how to drive, and to treat her like a family member. The police officer’s father used his clout as a judge to provide a sponsorship letter for the victim, claiming in the sponsorship letter that the victim was only coming to the United States as a visitor while knowing that his son and daughter-in-law planned to employ the woman. Initially the couple treated the victim warmly following her arrival in the United States.

But once her visa expired, such that she was in the United States illegally, the couple began insulting the victim and threatening her with jail and deportation if she refused to work or complained about her working conditions. But most devastating of all, the wife – again a native of India and who knew the victim’s family in India – threatened to tell the victim’s family that she was a thief, dated men outside her race and religion, and was involved in terrorist activities. These psychological threats proved more than sufficient for the traffickers to keep their victim a virtual prisoner in their home for years, in the absence of beatings or bondage.

2. Case Study (Swaziland, Africa).

Similarly, another recent domestic servitude case our office prosecuted involved a woman from the Kingdom of Swaziland, Africa, who a minister and his wife convinced to travel to the United States to help cater a wedding for the couple’s son. Upon her arrival to the United States, however, the couple confiscated the victim’s travel documents and forced her to labor as a nanny to their grandchild and housekeeper for nearly three years.

The victim, a 29-year-old woman, had never even traveled outside her small country in Africa. So she arrived in the United States unable to speak English effectively, to drive, or to use a telephone to communicate with her relatives and fiancé. Her traffickers did not resort to violence to compel her labor. Instead, they told her that if she tried to leave their home immigration officials would come to the home at night, arrest her in her nightgown, jail her for years, and then deport her. Again, neither of these cases involved use of force. And yet, both these cases were resolved by the traffickers’ guilty pleas as a result of the extraordinary efforts that our investigators undertook to corroborate the victims’ accounts of the trafficker’s psychological coercion.

C. What responsibilities do we bear as prosecutors to assist fact-finders by ensuring that we have taken steps to present the victim’s story at trial to meet our evidentiary burden?

Again in his “Introduction,” Monsignor Sanchez Sorondo commends participants at this summit to “enhance . . . appreciation of the needs of victims.” For prosecutors, that means that we are duty bound to leave no stone unturned in searching for and ferreting out any evidence to corroborate the accounts of these victims – especially since these trafficking cases in particular involve so few witnesses capable of offering direct evidence of threats or force. In a recent domestic servitude case that I handled, I traveled with case agents to the victim’s home country, the Kingdom of Swaziland, Africa. The victim, rather than utilize immigration benefits available to her in the United States, initially chose to return to her native country. So the case agents and I traveled to Swaziland to prepare the victim for trial and to interview her family members and other witnesses about the circumstances of the victim’s trafficking and promises made to her by the traffickers. The prosecution team also visited areas similar to where the victim had lived an impoverished life prior to traveling to the United States, taking photographs of the area so that the fact-finders would have the benefit of visual images that could underscore how the trafficker’s used the victim’s special vulnerabilities – including her poor background – to compel her labor.

Frequently, too, our domestic servitude cases result from multi-agency collaborations, utilizing the expertise of the U.S. Federal Bureau of Investigation to identify, recover, and search physical items of evidence – like computers and cell phones; Immigration and Customs Enforcement agents to help locate, interview, and secure the travel of international victims or witnesses in preparation for trial; the U.S. Department of Labor – an agency capable of providing financial analysis to help establish the amount of earnings that domestic servants forced to labor are due from their traffickers upon conviction; and the U.S. Department of State’s Bureau of Diplomatic Security, whose special agents are located in every United States diplomatic mission and assigned to investigate human trafficking allegations. Through this kind of multi-agency and international support, our office has been successful in overcoming evidentiary hurdles in these trafficking cases and in presenting compelling cases to fact-finders despite the inherent challenges.

D. Combatting domestic servitude also relies on public awareness campaigns to educate communities about this trafficking crime.

One of the goals of this summit is also to explore and consider solutions to the problem of human trafficking.

My office views our mission to educate the public about domestic servitude to be a critical component in successfully combatting this form of human trafficking. So prosecutors in our office, including the United States Attorney, regularly visit churches, other houses of worship, and civic organizations to help members of the public develop a clearer understanding of domestic servitude; and, importantly, how to report such crimes.

These sorts of public awareness campaigns have produced significant dividends: two of the three recent domestic servitude cases successfully prosecuted by my office resulted in tips that came from the traffickers' neighbors who sought out information about human trafficking, realized that the women about whom they were concerned might be the victims of such exploitation, and reported their suspicions to federal agencies.

In one of the cases, a successful business woman recruited two young women from Nigeria, at separate times, to travel to the United States to care for the woman's young daughter and serve as her housekeeper. She forced the young women to work without pay for long hours, requiring that they sleep on the floor and often eat spoiled food. This trafficker beat her victims, regularly striking them with various objects, including broomsticks.

The first of the two victims escaped the trafficker as the result of the astuteness of the trafficker's neighbor. This neighbor witnessed conduct between the trafficker and one of the young women that alarmed her. The neighbor then conducted some research on human trafficking, surmised that she was witnessing such a crime, and helped the young woman to escape. But tragically, the neighbor did not report the incident to law enforcement officials, thus enabling the trafficker to exploit her second victim. Fortunately, the second victim disclosed her trafficking to a local minister whose congregation had recently learned about human trafficking and her subsequent report of the crime to police led to the trafficker's prosecution and conviction. Public awareness campaigns concerning domestic servitude, accordingly, should occupy a critical rung of any comprehensive platform for attacking this form of human trafficking.

E. Conclusion.

So while this category of human trafficking crime can pose unique challenges to fact-finders, involving inherent contradictions that can seem difficult for judges and juries to resolve, diligence by prosecutors, inter-agency collaboration by law enforcement agents, and greater public awareness and understanding of domestic servitude, can all combine to serve the interests of justice for these victims, if not thwart the crimes altogether in certain circumstances. And we all have our respective roles to play in this process: one case, one victim, at a time.