



Judicial Perspectives on Trying Human Trafficking Cases in the United States: Victim-Centered Case Management, Trial Issues, and Restitution

JUDGE ABRAMS

I want to give you a case study and I'm going to refer to the victim by her initials CR, rather than by her name, to protect her privacy. CR was arrested during an undercover operation into illegal prostitution in the Atlanta, Georgia area. She was 17 at the time and she was arrested for engaging in prostitution. However, once it was discovered that she was a minor, the focus of the investigation shifted, as investigators realized that they were possibly dealing with the sex trafficking of a minor. Eventually, the case was investigated by the Georgia Bureau of Investigation, a state investigative agency, and the Department of Homeland Security, a Federal Agency. In May of 2013 Stephen Thomson and Tiara Waters, the defendants in this case, were indicted by a Federal Grand Jury for conspiracy to engage in sex trafficking and sex trafficking of a minor. Ms. Waters plead guilty early on in the case and cooperated against her co-defendant Mr. Thompson. She was sentenced to eight years. Later Mr. Thompson, and this case was prosecuted by both Ms. Coppedge and myself, was found guilty at trial on both counts and was sentenced to 25 years in prison. Now, the most critical person in this investigation was the victim, CR, thus the most important step in this case was developing a rapport with CR. At the time she was encountered she was a minor who had been sexually exploited and then she was arrested. She was an extremely vulnerable victim and her vulnerable position began well before she even encountered Mr. Thompson and Ms. Waters. She was born in Sierra Leone, in the midst of that country's Civil War, and was one of two million displaced persons from that nation. In 2005 at the age of 11 she came to the United States to live with her grandmother, but she had trouble adapting. One of her barriers was the fact that she did not speak English well and she was teased by the other students. As a result she had trouble in school and this led to trouble at home. She did not have parents in the United States and she was consistently shifted from her grandmother's home to her aunt's home and eventually she lived permanently with her aunt, or went to live with her aunt, but that did not lead to any stability. On several occasions her aunt put her out of the house and she also ran away on several occasions. Because she did not have a stable living situation she was extremely vulnerable and had to rely on neighbors and friends for shelter. On one occasion a neighbor offered her a place to sleep for the night and then he raped her, but this was not the first time she had been sexually assaulted by someone who had offered shelter. When she was previously living with a family in Sierra Leone a male family member also sexually assaulted her. So, before the age of 12, this child had faced sexual assault in the very places where she should have been the most safe.

The lack of family stability led to her being placed in a shelter when she was just 17 years old and in 2014 she once again found herself without a home, but she made a plan to enter a job training program, all she needed was a place to live for three months. A friend first told her about Tiara Waters, who would help young girls, she thought this was a savior but after moving in with Tiara Waters and her boyfriend, Mr. Thompson, and living with them for two weeks, she was told that she would have to engage in prostitution or she would find herself homeless once more. Afraid of being homeless and again telling herself that she only had to do this for a short period of time, she began engaging in prostitution and she was forced to give the money that she made to Mr. Thompson. Also, during this time, Mr. Thompson raped her and also boasted about killing other people. He was physically violent to Ms. Waters and CR lived in fear for the seven weeks before she was arrested. Now, fortunately, she encountered law enforcement that had been trained in sex trafficking and who took a victim-centered approach to the case. The investigators immediately went to work to stabilize CR. She was placed in a group home for girls and no longer had to worry about having a safe place to eat and she also worked with counselors, who helped her deal with her psychological and emotional trauma. Because of her age she was placed in a group home, but I want to note that for older victims of trafficking assistance is available for food, shelter, employment and other necessities and this is critical to stabilizing and victims.

At the same time that victim assistance was working to stabilize her, investigators worked to develop trust with her. They maintained contact through a dedicated liaison, they assured her that she was not in any legal trouble and I want to note, as Ambassador Coppedge noted, that she did not face charges on prostitution because once it was determined that she was a minor those charges were dismissed, so she was not convicted of that. And as they helped her stabilize, CR helped enforcement build the case against Mr. Thompson and Ms. Waters.

Now, it is important for judges and fact-finders to understand that there may be contradictory testimony and we had this with CR from the beginning of the case. Oftentimes victims fear law enforcement, they've oftentimes been trained on what to say if they're caught, they also, of course, fear the trafficker and then there is the stigma of shame, which was very, very strong with CR. She came from a small community and she did not want that to get back to the community, that she had been engaging in prostitution. One of the things that is very important for judges and fact-finders to understand is that there are reasons and it is important to have forensic specialists and other experts work with the victim from the very beginning, not only to help the victim, but also when it comes time for trial, they can help explain why there is contradiction why it took a while for the victim to tell the full story to the court.

Now, in the end, Mr. Thompson and Waters were convicted of coercion and in the United States, I think this is an important definition, coercion is using threats of serious harm, or physical restraint against any person, or any scheme, plan, or pattern intended to cause a person to believe that a failure to perform an act will result in serious harm, or to physical restraint against that person. Now in CR's case there was a threat of violence, but more importantly it was the threat of homelessness. The critical thing that, I think, the American law does is say that coercion is to be taken from the mindset of a person in the same circumstances and background of the victim and so, it's not how you, or I, or the fact-finder would have acted in a situation, it's how the victim would have acted. And, in this case, CR was able to testify about her family situation, the lack of stability, the sexual abuse in her past and prior instances of homelessness and this helped the jury understand that, from her position, it was serious harm to be homeless and that is why she engaged and I believe, based on the ability of CR to tell her story and the law that said look at it from the view of the victim, the jury found that these two people had in fact coerced CR into engaging in prostitution. Thank you.

AMBASSADOR COPPEDGE

And now we'll turn to Judge Richard Story, who tried an international criminal case and we know that human trafficking is a huge international business and that criminal groups are motivated by profit and greed to import children into various countries for the commercial sex trade and, Judge Story, you had one such case where the victims ranged in age from 14 to 24 years old, when they were recruited by a family-run sex trafficking operation in the state of Tlaxcala, Mexico and smuggled into the United States. Judge Story, can you talk a little bit about this case and how it came to you and the lessons that you learned from it as the judicial officer trying the case?

JUDGE STORY

Yes, thank you and let me begin by thanking the Academy for giving me the opportunity to be here, it's certainly an honor for me to participate in this very meaningful program. The case that Ambassador Coppedge referred to involved ten young women who had been targeted by what I'll refer to as the Cortes Meza organization. These women were young uneducated women, generally from impoverished areas in Mexico and the men came to their communities and used deception, threats, physical violence, psychological manipulation, promises of love, marriage and a better life, to compel the victims to come to the United States and live with them.

The lead defendant, who ultimately went to trial – the other defendants all pled guilty – was a young man named Amador Cortes Meza and he, along with his brothers and nephews, found these young women in Mexico and, as I said, they typically would go into the community, stay there for a short while, get to know the young women and their families, they would represent to them that they had fallen in love with the young women, wanted to marry them, take them to the United States and have a better life. They suggested that when they reached the States these young women would work, either in restaurants, or as housekeepers and they then made arrangements to bring them to the States. Of course, in each instance they were brought in through the use of coyotes coming through Arizona and brought illegally into the country and were brought to the Atlanta, Georgia area. Once they arrived in Atlanta they were taken to homes and immediately realized this was not what it had been represented to them to be. They were immediately told that they would have to engage in prostitution to pay the cost of their having been smuggled into the country and to pay their expenses for living there. When the victims refused they were beaten, they were threatened with physical harm, they were told that their families would be killed, they were told they were in America illegally and, of course, had no choice but to follow the directions given to them by these men.

The leader, Amador Cortes Meza, was a particularly brutal fellow and the victims who testified at trial vividly described some of the violence that they had to encounter with him. One of the victims, who was only 15 years old at the time, recounted a time when Amador had held a knife to her throat and threatened to kill her because she had talked back to him. Another victim was dragged down a staircase by her hair, beaten with the rod from a closet and after the closet rod broke across her body, Amador threw an iron at her head and sliced her head open. Her head bled for over a week and, of course, she was denied medical care or any treatment

for that. Another victim, who kept trying to resist the prostitution and even attempted to escape, was brutally beaten with a broom and a chair by Amador and, as she attempted to shield her head from the blows, he broke her finger, leaving it permanently disfigured. When she appeared at trial she held up her hand, you could see the disfigurement and she, of course, was never allowed to get any medical care for that. As sad, as terrible as the physical abuse was for these women, they were subjected to psychological and emotional coercion because they were in the country illegally, they felt they could not turn to law enforcement or other government representatives. Perhaps, even more devastating for them, they could not report their circumstances to their own families. The shame of reporting to their families that they were engaged in prostitution, when their families thought they were coming to America for a better life and because of the love of these men that they had met in their own homes, to let their families know they were engaged in prostitution for them would have been worse than trying to just simply survive the circumstances, and the circumstances were shocking to me, it was beyond anything I could comprehend. These women would be taken to apartment complexes each evening, they were expected to work seven nights a week, men would be advised that the women were coming and would be lined up waiting for them. They would be taken by drivers, who were not part of the official ring, so that the traffickers themselves isolated themselves from the conduct. These drivers would take them to the apartments and leave them there with these men. The women were expected to service 20 to 40 customers per night, these men paid twenty-five to thirty dollars for this and all of the money was split between the drivers and the Cortes Meza men. The women received none of the money, so they were penniless. They had to rely entirely on these men for their survival, these men had no other jobs that the women were aware of, they simply sat back, ran the operation and derived the income from what they were putting these women through.

AMBASSADOR COPPEDGE

We start, I believe, this summit with a focus on the victims so we don't forget why we are all here, and in cases in the US that have foreign-born victims, there are provisions in the US law that allow them to remain in the country. And so, I would like to share with you, or Judge Abrams will share with you, the T Visas that we have and the provisions we have in US law, again, to foster ideas about what each individual country could do to protect victims of trafficking. Can we have Judge Abram's slides please? I'm going to skip ahead to the T Visa portion because most of the first slides Judge Abrams simply discussed.

JUDGE ABRAMS

There are two statuses. Oftentimes victims will come to the US and they've been trafficked, so they do not have any legal status and that is one of their prime vulnerabilities, the fact that they are not here in the United States legally, so they are threatened with possible deportation. They also are unable to find any legitimate work. So, under the T Visa program, a person who is or has been a victim of sex trafficking is allowed to apply for a non-immigrant visa. The T Visa will allow a victim of human trafficking to remain in the United States for up to four years. The person also gets an authorization for employment, which is again key, because not only are they now out from under the stigma, or the threat of being deported, but they are also allowed to work and make money.

The T Visa also allows persons to possibly obtain permanent legal residence, they still have to go through the application process, but a possibility of becoming a lawful, permanent resident is available. Finally, another important factor of the T Visa is that the immediate family or relative of a person who obtains the T Visa may obtain derivative non-immigrant status and come to the United States. Again, this is critical for persons whose family might face danger once they come out, come out of the prostitution, or out of the trafficking and also for victims who are vulnerable, still in the United States and living without family. So that is one of the forms of protection that is provided.

AMBASSADOR COPPEDGE

Thank you, Judge Abrams, and so I took that detour because in the Cortes Meza case, I mentioned it in my opening remarks, the NGO worked with the victims and the NGO is the one who helps them apply for their T Visa. In the US, trafficking cases tend to take about a year or a little longer to get to trial. So during the pendency of the case, the victims were able to work, move on with their lives, some of the younger victims were enrolled in school, learned English and most of them got jobs, if they weren't school age. So all that is going on while the trial is pending and, Judge Story, if we could turn back to you and have you talk about after the defendant was convicted, what factors you considered in sentencing because I think that those factors are also important; the way the US sets off our sentencing system. Thank you.

JUDGE STORY

In the United States we have a sentencing commission that has established guidelines that judges are required to consider in sentencing, in any case, and the factors are common sense-type factors, quite honestly. They're factors that, as a judge sentencing a person, I think almost any of us would take into account. The guidelines

are intended to assure that there is consistency in sentencing in the courts across the country, to help assure that sentences are fair and to assure that sentences are proportional to the seriousness of the crime involved. These guidelines establish a baseline punishment and then allow you to take into account other factors before determining the final sentence in the case.

In the human trafficking area some of the factors that, under the guidelines, will enhance or increase the sentence include: the use of fraud or coercion, the use of force or threat of force, the number of victims, the fact that victims may be minors and, if the perpetrator of the crime is part of an organized effort, the role that that person plays in that organization. At a sentencing hearing we typically hear a statement from the defendant. The defendant is permitted to allocute and make a statement and to offer witnesses on his or her behalf as well, but another important aspect of sentencing and the sentencing hearing is the opportunity for the victims themselves to address the court.

The victims are permitted to discuss how the crime has affected them and to express their views concerning punishment of the defendant. I think that, for most judges, this part of the sentencing process is the most informative. While we as individuals may be able, we think, to imagine, to some extent, the impact that a crime may have had on a victim, the personal testimony of that victim is usually quite powerful. A number of the victims in this particular case spoke at the sentencing hearings for the defendants but, for the sake of time, I want to call to your attention the statement of one victim in particular, Natalia, which stands out to me. It's a statement that will forever haunt me, I think, because, based on her statement, I honestly fear that her trust in other people has totally been broken down and, certainly, her ability to ever engage in a meaningful personal relationship with someone, the idea that she could ever trust them. And I want to read to you, just briefly, some of her comments, if you'll allow me to do that. This is what she said: "Francisco", who was the young man who had lured her to America by promises of marriage and love, "Francisco promised my parents and me that we were going to get married in a year or two. He proposed for me to come to the United States with the purpose of me working in a restaurant and he would be working in a taxi. When we arrived here is when I got the biggest surprise of my life, that I was going to be prostituted, to have to lay down with men without my permission and if I didn't do it he would hit me. He left my face bruised, hit me in the stomach without being able to breathe and I told him not to do that to me again. He knew me, he met me, he knew my house and that's what I would tell him, he never found me out in the street so as to make me work as a prostitute. And over the course of time, I did the work that he wanted me to do, without wanting to. Every afternoon, when I would leave and then come back in the evening, I would cry and I'd ask God to get me out of this, or to send me home, but he never wanted to. He told me that I would be working so that we could earn money and that we would get married, and every time I told him that I wanted to go home the answer I would get would be this [threatening hand gesture]. I lived that way for a long time without being able to speak to anybody, the only ones that could listen to me were the walls because I couldn't even go outside or converse with anybody. If I spoke to anybody he would hit me. All the days and months and the year that I was there it was very, very hard and very nasty, and after I had been here six months in the United States I got pregnant from him and I told him that I was pregnant and to make sure he took me to a clinic, not under my name though, a false name. And from there I told him that I wanted to have it and he said no, we had to work, and he gave me some pills to have an abortion and I told him not to do that, it would be better for me to just go home and raise the baby and he told me under the situation that we couldn't have a child because we had to save money and I would ask him well, how come he didn't work, how come he just sent me out to work and that's what I would ask every night when I got home. I had to lay with 20 or 30 men in a night and every time I told him that I didn't want to do the work that he had put me in that position to do he said that's what I was born to do and, to conclude, he threatened me many times that if I did something, or somebody else did something, he would order to have my family killed". As Natalia made her statement I could see in her face the anguish that was in her heart and I will never forget it. Thank you.

AMBASSADOR COPPEDGE

Here today we have stories with victims that we have met, but again I think this sets the tone for the work that we're doing and why it's so important to give voices and opportunities to those who think they have no voice, that the system does not respect them and that they have no opportunities. In our court systems you have heard from two of our federal trial judges in the United States and I would like to conclude with United States Court of Appeals judge Beverly Martin, who then looks at legal issues that arise in all of our criminal cases including human trafficking cases.

Judge Martin, you are appellate judge now, although you were a trial judge for many years and a US Attorney as well, but now you review trials and contest matters of law. Could you talk to the Academy about some of the issues that come up, including restitution for victims?

JUDGE MARTIN

Thank you, Ambassador, it's certainly a privilege for me to be able to be here and participate. I think I may be the one in the room who is going to learn more than I'm going to contribute while I'm here, so I am especially grateful. Professor McEldowney spoke of envying a system where we have detailed rules; one of the problems with a system with detailed rules is, sometimes, the rules are slow to catch up to what is happening on the ground.

What we've already established, even this morning, is that solving this problem begins with identifying the victims and supporting them in a way that will allow us to bring the traffickers to justice. So one of the reasons why it's difficult to identify these victims is that they are put in fear, because they're told "you are here illegally, if you identify yourself to law enforcement you'll be put in jail". Judge Abrams has talked about some of the steps that we've made in our immigration system to support the victims of trafficking, of both labor trafficking and sex trafficking, to allow them to be protected once they come forward, both with a continued present status and with the T Visa that Judge Abrams talked about, and so that's the first way that we support the victims, we let them know that "although you were brought here against your will you're not going to be punished for that".

The second way that victims are kept in the shadows is through the shame that they feel because of what they're made to do by these traffickers of sex, of commercial sex. They feel ashamed, they worry about their families. And so one of the rules that we've amended, one of our rules of evidence that had traditionally been used in protecting rape victims. the rule of evidence that existed for a long time did not allow a rape victim to be questioned about her sexual history or his sexual history; that rule has now been amended and expanded to include victims of sex crimes. What we often learn about these victims is that maybe they had engaged in commercial sex in some other stage of their life. The rules are now quite clear that that is a separate consideration that has nothing to do with the guilt or innocence of the person who has trafficked them and who has enslaved them and the types of conditions that Judge Story has talked about.

Sometimes, for those of you who have watched television depictions of our courtrooms, you realize we as judges worry about people blurting out things that that we don't want the jury to hear. This rule, Federal Rule of Evidence 412, has also been amended to require any lawyer who's going to introduce any information about a sex victim's background, to give 20 days' notice – I believe it's 20 days – and to list in the papers giving notice to exactly what type of evidence is going to be presented with regard to the victims history. That way the judge knows, the judge can prepare, can make a ruling in advance. No, you are not allowed to talk about that, or the victim is not going to be subjected to that, we're going to focus on the evidence against the trafficker and the conditions imposed upon the sex victims.

So, you asked me to talk about restitution and I promise I'm going to get to it. In our continuing efforts to amend our rules and bring them into an atmosphere where we can support these victims of sex crimes, we have been dealing with the issue of restitution and that is how to compensate these victims for the years of their lives that they've lost, for the damage that has been done to them and our restitution laws have now been amended as well. Judge Story talked about the sentencing process and part of the penalties that are now being imposed upon the traffickers cause them to pay the victims and the amount of money they have to pay is calculated in a couple of ways. They are required to compensate the victims for their personal losses and that includes their loss of housing, any medical costs that have been incurred to help make them whole, get them well and that's both for physical medical needs that arose as a result of their enslavement as well as the psychological medical care that they needed. Also, the laws have been amended to allow the victims to be compensated for the value of their time and that's calculated both looking at the number of days, months, years that they've been kept in these conditions and also the money that was made by the trafficker and in those instances, and as a part of the sentencing, the victims are allowed to come in and talk about the conditions, which we hope is done in an environment where they can be nurtured and supported. And certainly with trial judges like Judge Abrams and Judge Story and Judge Duffy, who you'll hear from either later today or tomorrow, the process should be empowering to these victims. That's what we're hoping and their testimony is taken into account in arriving at a figure that that they'll be paid. There's always a question of whether the restitution awarded is going to be collectible. One of the tools that we use in that regard is, if we've been able to, or if law enforcement authorities have been able to identify any assets of the sex traffickers, of the labor traffickers, then those assets are seized and our law specifies, as well, that the money isn't forfeited to the United States government but that it goes, instead, to the victims to help with their rehabilitation and their long-term survival. Recently these cases are not so much coming to the appellate courts, we do not see a lot of the cases yet, but one of the cases that's notable from my circuit is a strange case. The defendant's name was Damion Baston and he dressed like Dracula, including yellow contact lenses and gold fangs. Somehow he set up this trafficking empire working like that, but his empire expanded around the world. He would find these young women in various countries and enslave them and manipulate them using some of the methods that Judge Story talked about. At sentencing his defense was that he had sent some of these young women to other countries to serve as prostitutes, and his defense at sentencing was, well you know, "the Constitution of the United States, the laws of the United

States, stop at the boundary of the United States and you can't cause me to pay restitution for the acts that are required of these young women outside the boundaries of the United States". And my court in a ruling, and I don't think it's been tested in other circuits, I think it's a fairly new issue that's come up, my court said that under the Foreign Commerce Clause of the United States Constitution he could be indeed held accountable for the time and the damage done to this young woman, in this case in particular in Australia. And so it doubled the amount of restitution that was awarded to this young woman who had been prostituted in Australia and I believe this Dracula character actually had some assets that were able to be forfeited and converted into money to pay these victims.

AMBASSADOR COPPEDGE

Thank you so much, Judge Martin, for your comments and again our goal in starting focusing on rules of evidence that protect victims and restitution awards that go to victims, victim's statements in court, services by NGOs during the pendency of the process, all of these areas are ways that the US system supports victims of trafficking in an effort to make them whole again and help them start a path down towards their new lives. So we have to put victims front and center. Thank you all very much for allowing us to address you.