

TRANSCRIPT

ADDRESSING DOMESTIC HUMAN TRAFFICKING

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The following is Ms. Ramos's keynote address¹ for the "Human Trafficking: Global and National Responses to the Cries for Freedom" Symposium at the University of St. Thomas School of Law on September 25, 2008.

I. INTRODUCTION

I am first going to talk a little about how I came to do this work, the promise I made early in my career, and how I have made good on that promise.

I decided to become a lawyer as a teenager attending high school in Manhattan where I was involved in the Free Angela Davis movement and the early stages of the struggle to end South Africa's apartheid system. After that, I attended Fordham University in the Bronx where I volunteered at the Legal Aid Society. While attending night court arraignments, I met some of the most broken human beings you will ever encounter: prostituted women. I innately knew that these women were not criminals, although they were being treated as such—I saw them as the crime victims.

Not identified as a feminist, because nothing in my background ever supported such a label, I made a personal promise that one day I would do something about these women. I understood what it took for these women to be out on the street or in a brothel and be used, and abused. As a survivor of the social conditions that lead to prostitution, I understood that prostitution was clearly the end result of some of the worst political, social, and economic conditions imaginable. I knew I was not looking at choice, but a lack of choice.

These prostituted women's conditions, as obviously political as they were then and are now, continue to be ignored by the male-led left, liberals and the civil rights movement. In fact, at the time there was no movement

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1. This address has been lightly edited for purposes of this publication.

working to address the social injustice of commercial sexual exploitation. To give you a recent example, just months ago, a New York City police detective abducted and then pimped a thirteen-year-old in Queens. He took this child to a number of barbershops where she was offered up for prostitution. No civil rights leader in New York City publicly spoke out about this police abuse in our community, like they do and should do when there is a police beating.

This is exactly why the civil rights movement in this country has stalled out—because it has never taken seriously the inequality of women of color. Human trafficking is a great example of why this has to change; when you look at who is out on the streets being prostituted, it is disproportionately Latina and African-American women and girls. Donna Hughes, who is on this program as well, has done some important research documenting the racial component of this problem.

Years later, I remembered my promise made in the South Bronx. I served as pro bono counsel to Women Against Pornography, an organization that worked tirelessly to expose the damage committed against girls and women through the sex industry. We were falsely vilified as enemies of the First Amendment, even though so many of us were lifelong leftists who supported dissent, using it quite vigorously to oppose the sex industry in fact.

II. COALITION AGAINST TRAFFICKING IN WOMEN

The evolution of the advocacy done through this organization gave birth to the Coalition Against Trafficking in Women (CATW) twenty years ago. CATW is the first U.S.-based organization to combat human trafficking internationally. It is also the world's leading abolitionist organization working against human trafficking, with over two-hundred partners around the world. The abolitionist approach to human trafficking is premised on the understanding that prostitution is highly political, not inevitable, and is the world's oldest oppression. Abolitionists view the sale or purchase of human beings in commercial sexual exploitation and forced labor as core violations of fundamental human rights, human dignity, and women's equality.

CATW rejects the normalization of prostitution and the promotion of the sex industry through the use of terminology—like “sex work”—that conceals the harms of commercial sexual exploitation as contrary to the achievement of the freedom and equality for all human beings. CATW works to end the demand for commercial sexual exploitation because of its key role in fueling human trafficking.

Eighty percent of all human trafficking victims are women and girls, and seventy percent of them are trafficked for prostitution. The International Rapporteur on Human Trafficking has repeatedly stated that domestic

trafficking must be addressed in order to have a serious impact on international trafficking. That means, for instance, that for every one international trafficking victim, there are an estimated one-hundred domestic victims.

III. TRAFFICKING VICTIMS PROTECTION ACT

The United States federal law on human trafficking, the Trafficking Victims Protection Act (TVPA),² is currently up for reauthorization in the Senate. CATW is co-leading a coalition advocating for revisions in the criminal provisions of the TVPA to better ensure that traffickers are prosecuted and held accountable for their crimes. Over time, we realized that the requirement in the criminal provisions of the TVPA to show “force, fraud or coercion”³ rendered the TVPA an ineffective prosecutorial instrument.

Chief Prosecutor Mark Kappelhoff earlier described the TVPA as an effective law.⁴ CATW holds a completely different view. This law falls significantly short of being the strong prosecutorial instrument Congress intended, and CATW has been working with a broad based coalition to correct that problem without the support of the Department of Justice (DOJ).

Congress enacted the TVPA in 2000 because of the advocacy of NGOs, activists, and concerned lawmakers. In the eight years since its passage, there have been less than seventy successful prosecutions. By all accounts, the TVPA fell short of being the strong deterrent to human trafficking that its proponents had worked for.

The amendments to the TVPA contained in the House version that passed 405-2⁵ were designed to address the shortcomings of the 2000 Act. Congress specifically designed these amendments to address the fundamental weakness of prosecutors having to look elsewhere in order to successfully prosecute cases of “simple” sex trafficking. The TVPA, as written and passed in 2000, created an unintended and largely unworkable high burden of proof regarding this particular class of victims.

IV. THE MANN ACT AND HOUSE REPORT 3887

Prosecutors have increasingly turned to the Mann Act to prosecute their sex trafficking cases. The Mann Act criminalizes anyone who “knowingly persuades, induces, [or] entices . . . any individual to travel in inter-

2. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), 22 U.S.C. §§ 7101–7112 (2006).

3. *Id.* § 7106(a)(2).

4. Mark Kappelhoff, Chief Prosecutor, Crim. Section of the Civ. Rights Div., Federal Prosecutions of Human Trafficking Cases, Keynote Address at the University of St. Thomas Law Journal Symposium: Human Trafficking: Global and National Responses to the Cries for Freedom (Sept. 25, 2008).

5. H.R. 388, 110th Cong. (2007).

state or foreign commerce . . . to engage in prostitution.”⁶ This standard of proof is one that captures more directly the criminal actions of human traffickers. The new language contained in House Report 3887 (HR 3887) allows prosecutors to bring criminal charges against traffickers who “persuade, induce, or entice”⁷ their victims into sexual slavery—bringing the TVPA criminal provisions in line with the current definition of sex trafficking as set forth in section 103(9).⁸

Significantly, this language is consistent with international legal definitions of sex trafficking which have *never* limited sex trafficking to only instances where force, fraud or coercion can be proven. The Palermo Protocol, for example, signed by 117 countries so far, recognizes “position[s] of vulnerability.”⁹ Similarly, the International Rapporteur on Human Trafficking has consistently called for States to take serious measures and act strongly against domestic trafficking. The amendments that CATW and the left/right coalition support will accomplish exactly that.

Our broad-based coalition was able to overcome each and every objection that was raised during our advocacy in the House of Representatives. We are facing considerable opposition, largely led by the DOJ, in the form of accusations about attempts to federalize prostitution. The opposition consistently tries to turn our efforts into a debate about prostitution, which this is not. We seek to amend the TVPA in order to make it a more useful prosecutorial instrument so that federal prosecutors can act against the *traffickers*, rather than their victims, the prostituted.

CATW has consistently stated that trafficking requires a trafficker and that this bill is not designed to prosecute prostitution, only *trafficked* prostitution. While not all prostitution constitutes sex trafficking, the endpoint of all sex trafficking is prostitution. It must be noted that HR 3887 in no way undermines prosecutorial discretion—federal prosecutors retain full prosecutorial discretion in determining which cases warrant their attention and resources. They simply will no longer be limited to cases where they can meet the high burden of proof required to establish force, fraud, or coercion.

CATW has long maintained that, in order to seriously combat human trafficking, we must unequivocally eradicate the social, political, and legal conditions that are hostile to human trafficking. HR 3887 is exactly a step in that direction, and the U.S. Senate should pass a TVPA that leaves *intact* the modifications contained in HR 3887. Those modifications were arrived

6. 18 U.S.C. § 2422 (2006).

7. H.R. 388, 110th Cong. (2007).

8. Trafficking Victims Protection Act of 2000, § 103(9), 22 U.S.C. § 7102(9) (2006).

9. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

at after a thoughtful and in-depth study, which overwhelmingly passed in the House.

V. DISTURBING TRENDS

The DOJ's opposition to this recommended change in the TVPA has been especially disturbing because their own recent internal audit report, dated July 2008, concluded that the DOJ's efforts around human trafficking have been inadequate. According to the internal audit, the "OJP's grant programs have not been effective at identifying and serving significant numbers of alien trafficking victims."¹⁰ In fact, the DOJ's anti-trafficking task force has overestimated the number of trafficking victims they have served by 165 percent.¹¹

Not only are we asked by our international partners and survivors of trafficking, like Somaly Mam, to strengthen U.S. laws, we are also asked to fight the demand. We live in a culture that seeks to normalize the pimps and the Johns that fuel sex trafficking. On September 23, 2008, CATW held our second picket line protest at the corporate offices of HBO. A couple of years ago, HBO aired a program where they trained a camera on the women who are prostituted in the Hunts Points section of the Bronx in the most trivializing of manners, set to music and a poetic-like voiceover. Now HBO is featuring a reality show set in a brothel titled *Cathouse*. By airing *Cathouse*, which presents prostitution as a form of legitimate and harmless entertainment, HBO is promoting prostitution and sex trafficking. By presenting *Cathouse* cynically, as a documentary, they are playing a key role in the cultural mainstreaming of prostitution.

Normalizing prostitution gives men permission to purchase sex, and hence, to demand more women and girls for commercial sexual exploitation—ultimately leading to an increase in sex trafficking. Without demand, there would be no supply. Legitimizing prostitution as “harmless fun” and “work” continues a vicious cycle in which the sex industry expands.

Cathouse fails to provide an objective view of the facts surrounding brothel prostitution, even when legalized. Extensive research in the book *Prostitution & Trafficking in Nevada: Making the Connections*, by Dr. Melissa Farley,¹² reveals how all prostitution causes harm, both to the women involved as well as to society at large.

In a survey of women prostituted in Nevada's legal brothels, 87 percent indicated that they wanted to escape prostitution. Many experienced verbal and physical abuse in prostitution. A Canadian Report on Prostitu-

10. U.S. DEP'T OF JUSTICE OFFICE OF THE INSPECTOR GEN. AUDIT DIV., MGMT. OF THE OFFICE OF JUSTICE PROGRAMS' GRANT PROGRAMS FOR TRAFFICKING VICTIMS: AUDIT REP. 08-26 61 (2008).

11. *Id.*

12. MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS (2007).

tion and Pornography concluded that girls and women in prostitution have a mortality rate forty times higher than the national average.¹³

Significantly, many of the prostituted were controlled by pimps—challenging the notion that their participation was voluntary. Society at large, starting with local communities, is also impacted. For instance, male college students in Nevada were more likely to believe in rape myths and other attitudes which accept violence against women,¹⁴ yet none of these facts are evident in *Cathouse*.

VI. CONCLUSION

How then do we address the world's oldest oppression? Sweden has implemented a human-rights-based legal approach. Years ago, due to the collapse of the Soviet Union, Sweden, a country with legalized prostitution at the time, was overrun with prostitution and human trafficking. Around 2000, Sweden engaged in a national dialogue around the issue, consulted with their human rights experts, and adopted a law that criminalizes the buyers and offers the girls and women an exit strategy.

Sweden's law is premised on the notion that women are human beings and therefore cannot be bought and sold. The early abolitionist Josephine Butler once said, "Robbery and murder are crimes that have always existed but no society ever thought of saying, Since we cannot eliminate robbery or murder, let us agree to a way of living that will submit them to certain regulations and monitoring so the law determines in what places, what times and under what conditions stealing and killing will be permitted."

I hope that each of you will refuse to politically ignore the commercial sexual exploitation of girls and women which is growing globally. When I was growing up, I would often hear people say prostitution always was and always will be the world's oldest profession, thereby rationalizing this social injustice.

Today, due to the work of abolitionists, there is a growing understanding that we cannot leave the world's oldest oppression intact. This movement gives me hope and strengthens me. It is also important to educate yourself about the issue of legalization. The pro-legalizers have become polished at promoting the legalization of the sex industry under the guise of "helping the prostituted" or "preventing HIV." When you examine the facts, legalization actually makes prostitution worse by making it grow exponentially, increasing sex trafficking, making the harm to women invisible, and creating a class of human beings that are not supposed to feel. The government becomes a pimp while it profits off of the inequality and violence against women.

13. SPECIAL COMM. ON PORNOGRAPHY AND PROSTITUTION, PORNOGRAPHY AND PROSTITUTION IN CAN. 350 (1985).

14. FARLEY, *supra* note 12, at 178.

It is also way past time to ask some questions about the demand for prostitution. As Victor Malarek is fond of saying, the three most important letters in demand are M-A-N. I also recommend that you go to the website stoppornculture.com, which is maintained by Professor Gail Dines of Wheelock College. Professor Dines clearly draws the connections between pornography and prostitution. For some time now, anti-pornography feminists have sounded the alarm about the socialization of male sexuality that eroticizes the subordination of women. If you read Dr. Melissa Farley's book, *Prostitution and Trafficking in Nevada*, or any of her other works, you begin to understand that men are turning to the commercial sex industry to have the sex they see in pornography.

Finally, abolitionists also give a lot of thought about the language we use to describe prostitution. For instance, CATW does not use the term "prostitute." We think it is critical that we do not stigmatize the victims by using language that describes the power dynamic, so we say "prostituted child," "prostituted woman," "prostituted person." It is also urgent that men, for the first time *ever*, make equality for women and ending all forms of violence against women *their* political priority and fight for a world where this social injustice becomes a distant memory.