

2008

Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds against Teenaged Prostitutes

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Recommended Citation

Geneva O. Brown, *Little Girl Lost: Las Vegas Metro Police Vice Division and the Use of Material Witness Holds against Teenaged Prostitutes*, 57 *Cath. U. L. Rev.* 471 (2008).

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LITTLE GIRL LOST: LAS VEGAS METRO POLICE VICE DIVISION AND THE USE OF MATERIAL WITNESS HOLDS AGAINST TEENAGED PROSTITUTES

*Geneva O. Brown**

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This Article explores the Las Vegas Metro Police Vice Division’s routine use of material witness holds to detain young prostitutes. The police place the girls on material witness holds, seeking their cooperation in the prosecution of their traffickers and pimps.¹ The girls languish in detention awaiting the outcome of the adult cases in which they are the central or only witness.² This Article reviews the use of material witness holds through the historical perspective of government responses to prostitution and the use of material witness holds.³ The Article then argues that the detention of the girls, sometimes without charges, is a form of secondary victimization.⁴ Many of the girls are from abusive

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1. See Glen Puit, *Juvenile Prostitution Arrests Increase*, LAS VEGAS REV.-J., Oct. 25, 1997, at 1A.

2. See Molly Ball, *The Wisdom of Experience*, LAS VEGAS SUN, July 13, 2005, at 1B.

3. See *infra* Part I.

4. See *infra* Part III.C; see also Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 SOC. JUST. RES. 313, 314 (2002) (“Secondary victimization

homes,⁵ and the system that is meant to protect them further victimizes them.⁶ This Article surmises that the use of United Nations-drafted protocols, designed to deal with trafficked women and children, is a more humane approach.⁷ Under these protocols, trafficked women and children are not seen as persons who aided and abetted in their sexual exploitation, but as victims of human rights violations.⁸ The Article concludes that the Las Vegas Metro Police should observe the international standards set forth by the United Nations and recognize a new paradigm in dealing with sex trafficking and sexual exploitation cases.

I. INTRODUCTION

Hope was a seventeen-year-old runaway. Las Vegas Metro Police arrested her after she violated curfew and gaming rules by being a minor in a casino at 4:00 a.m. The officers arrested Hope believing she was in the company of her pimp. Hope was dressed in a very provocative style. The officers' goal in arresting Hope was not just to give her a solicitation record but to prosecute her pimp. Hope assumed that she would be detained and released after her initial appearance. Hope was wrong.

Hope remained in juvenile detention wondering why she could not be released to a family member. The district attorney argued that if she were released, her pimp would influence her not to cooperate or would remove her from the jurisdiction. The Las Vegas Metro Police expected Hope's cooperation for the pimp's prosecution in adult court while she remained in the juvenile detention facility.

The Las Vegas Metro Police Vice Division routinely detains young prostitutes.⁹ The charges range from a minor in a gambling establishment to solicitation.¹⁰ District attorneys request "courtesy

has been defined as negative social or societal reaction in consequence of the primary victimization and is experienced as further violation of legitimate rights or entitlements by victims.").

5. See Norma Hotaling, Kristie Miller & Elizabeth Trudeau, *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider's Perspective*, 18 YALE J.L. & FEMINISM 181, 182 (2006) (citing Melissa Farley et al., *Prostitution, Violence Against Women, and Post-Traumatic Stress Disorder*, 8 FEMINISM & PSYCHOL. 405 (1998), available at <http://www.prostitutionresearch.com/fempsy1.html>).

6. See Orth, *supra* note 4, at 321.

7. See *infra* Part V.

8. See G.A. Res. 55/25, art. 6, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

9. See Juliet V. Casey, *Human Traffic Targeted*, LAS VEGAS REV.-J., Mar. 16, 2005, at 1A.

10. See *Teen Prostitution II* (Nevada Public Radio, KNPR 88.9 radio broadcast Jan. 29, 2007) (transcript on file with author).

holds” for the girls.¹¹ The courtesy holds allow the police to detain the girls no matter what the state of their pending charges.¹² District attorneys explain to the courts that the courtesy hold will protect the young woman from being released into the arms of her pimp.¹³ However, the material witness hold also gives the Las Vegas Metro Police access to a potential witness no matter what the state of her case.¹⁴ The stance of Las Vegas Metro Police in detaining young girls in hopes that the girls will cooperate countermands the argument that detaining the girls protects them.¹⁵ If the pimps are as dangerous and violent as the police claim, they place the girls in greater danger by requesting their cooperation through statements and potential testimony. Where can a teenaged girl hide when she is a runaway and a potential juvenile delinquent?

The profile of most girls like Hope includes a home where physical and sexual abuses are common.¹⁶ Young girls find escape from such homes only to be used by men who readily seek to exploit their youth and vulnerability.¹⁷ The Las Vegas Metro Police Vice Division further exploits them by seeking to gain their knowledge of the local sex industry.¹⁸ The criminal justice system places the girls in the extremely caustic position of testifying against their former boyfriend/lover/caretaker/abuser.¹⁹ It is well documented that pimps use physical and sexual intimidation to gain the cooperation of their victims.²⁰ Requiring the girls to face their pimps in court through cooperation and testimony compounds their fear. Furthermore, cooperation does not guarantee

11. Courtesy holds are the nomenclature of the Las Vegas Metro Police Department for material witness holds. They consist of officers requesting the girls be detained even if family shows up to claim them. Molly Ball, *Authorities Clash Over Handling of Teens Arrested for Prostitution*, LAS VEGAS SUN, Apr. 5, 2005, at 1A.

12. *See id.*

13. *See infra* note 187 and accompanying text.

14. The material witness hold is not dependent upon pending charges against the detainee. *See Ball, supra* note 11.

15. *See id.* (reporting Chief Deputy Public Defender Susan Roske’s view that “[t]he girls are being used for their potential testimony, not protected for their own safety”).

16. *See* Hotaling, Miller & Trudeau, *supra* note 5, at 182.

17. *See id.* at 185-86.

18. *See* Int’l Ass’n of Chiefs of Police, Awards & Campaigns: 1999 Winners, <http://www.theiacp.org/awards/webber/webberwin99.htm> (last visited Jan. 17, 2008) (describing Las Vegas’s Stop Turning Out Child Prostitutes (STOP) Program through which police officers conduct “extensive interviews” of juvenile prostitutes); *see also infra* Part III.C (explaining how the detention of juvenile prostitutes for the purposes of law enforcement cooperation can lead to further victimization of the young women).

19. *See Puit, supra* note 1.

20. *See* Hotaling, Miller & Trudeau, *supra* note 5, at 185-86; *see also* Neal Kumar Katyal, *Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution*, 103 YALE L.J. 791, 791 (1993).

that the girl herself will not be prosecuted.²¹ Seeking to prosecute pimps in the sex industry, the approach used by the Las Vegas Metro Vice Division exploits and re-victimizes the girls.²² The exploitation and victimization of these girls is a violation of their basic human rights.²³

The United Nations Commission on Human Rights Special Rapporteur wrote a report in 2004 detailing the world-wide problem of trafficking women and children for sexual exploitation.²⁴ The report dictates that these women should be seen as victims of human rights violations, not as persons who aided and abetted in their sexual exploitation.²⁵ The Las Vegas Metro Vice Division needs to observe the international standards set forth by the United Nations and recognize a new paradigm in dealing with sex trafficking and sexual exploitation cases.²⁶

The use of material witness holds is a coercive tactic and has a chilling effect on prosecuting the true criminals of the illegal sex trade.²⁷ To gain

21. See Ball, *supra* note 11 (“Police say there is a ‘Chinese wall’ between the STOP investigators [who interview the girls] and other detectives who may pursue criminal charges against the girls. But the defenders say information sometimes crosses the wall, betraying the girls’ trust. The whole arrangement, defenders say, is just an elaborate way to circumventing the girls’ rights.”).

22. See generally Orth, *supra* note 4 (discussing secondary victimization and the psychological effects of criminal proceedings on crime victims).

23. See *infra* Part IV; see also Ball, *supra* note 2.

24. U.N. Econ. & Soc. Council [ECOSOC], Comm’n on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, U.N. Doc. E/CN.4/2005/71 (Dec. 22, 2004) (prepared by Sigma Huda) [hereinafter *Report of the Special Rapporteur*].

25. See *id.* at ¶¶ 6, 9-10.

26. See *id.* at ¶¶ 5-7, 11, 14-16, 18, 20 (detailing the legal framework for the international standards on human trafficking); see also 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, art. 2, U.N. Doc. A/RES/55/25 (Jan. 8, 2001) [hereinafter *Trafficking Protocol*] (describing one purpose of the Protocol as “to protect and assist the victims of . . . trafficking, with full respect for their human rights.”); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter *Rights of the Child Protocol*] (listing measures to take to guarantee that children are protected from trafficking); U.N. Econ. & Soc. Council [ECOSOC], *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, at 5, U.N. Doc. E/2002/68/Add.1 (May 20, 2002) [hereinafter *Report of the High Commissioner for Human Rights*] (recommending eleven guidelines to ensure protection of human rights and providing a legal framework to do so).

27. See FRANCIS T. MIKO & GRACE (JEA-HYUN) PARK, CONGRESSIONAL RESEARCH SERVICE, *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE* 3 (2002) (noting that when authorities do enforce

the cooperation of girls who work the sex trade, authorities place them on material witness holds.²⁸ The material witness holds allow courts to detain the girls indefinitely.²⁹ Under the Nevada code, juveniles are not entitled to bail.³⁰ They are detained at the discretion of the juvenile judge.³¹ Therefore, the girl must generally stay in custody pending the outcome of the alleged pimp's case.

The analysis in this Article unfolds in four Parts. Part I assesses the history of government response to prostitution and the metamorphosis of prostituted women from victims to co-actors in the sex trade. Part II then reviews the use of material witness holds as a coercive tactic utilized by law enforcement and the genesis of the material witness hold in post September 11th cases. Part III uses the foundation of prostitution prosecutions and material witness holds to examine the use of both by Las Vegas Metro Police. Part IV then argues that the use of material witness holds to detain sexually exploited youth to cooperate with law enforcement causes secondary victimization and calls for the adoption of United Nations standards for sexually exploited and trafficked children. The conclusion offers three proposals to give child prostitutes legal rights and recognition.

prostitution laws, it is against the trafficking victims, not the traffickers, and that “[f]ew victims dare testify against the traffickers or those who hold them”); Ball, *supra* note 11 (quoting Chief Deputy Public Defender Susan Roske: “We have girls who go to court and plead guilty, but they still detain them until they testify To me that’s coercive.”).

28. See Ball, *supra* note 11; Puit, *supra* note 1.

29. See *infra* notes 200-06 and accompanying text.

30. See NEV. REV. STAT. ANN. § 62C.040 (LexisNexis 2006). The statute provides:

1. If a child who is alleged to be delinquent is taken into custody and detained, the child must be given a detention hearing before the juvenile court:

(a) Not later than 24 hours after the child submits a written application;

(b) In a county whose population is less than 100,000, not later than 24 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined;

(c) In a county whose population is 100,000 or more, not later than 6 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined; or

(d) Not later than 72 hours after the commencement of detention at a facility in which adults are not detained or confined, whichever occurs first, excluding Saturdays, Sundays and holidays.

2. A child must not be released after a detention hearing without the written consent of the juvenile court.

Id.

31. See *infra* notes 200-06 and accompanying text.

II. HISTORICAL BACKGROUND

A. *The Mann Act*

The human trafficking of women for sex work has a history that parallels the political and social development of the United States. Prostitution thrived in colonial New York prior to the American Revolutionary War. For example, one British flesh merchant imported approximately three thousand women from England and the West Indies to service the British military who then occupied New York.³² By the 1840s, New York was described as the Gomorrah of the New World.³³ Public response to the emergence of brothels and sexually permissive subcultures ranged from tacit acceptance to violent riots.³⁴ In addition, regional mores shaped the way in which different parts of society reacted to prostitutes.³⁵

The State of New York chose to protect property rights, and thereby was forced to protect prostitution as well.³⁶ Antebellum New York prostitutes used the property laws to protect themselves against violence and intimidation.³⁷ “Before the creation of a municipal police force in 1845, criminal prosecution in New York was a private matter. Individual citizens, not public officials, initiated most criminal charges. Shrewdly bringing legal proceedings against their aggressors, prostitutes utilized the machinery of the state to defend their interests and property

32. TIMOTHY GILFOYLE, *CITY OF EROS* 24 (1992) (“Large numbers of prostitutes congregated at the foot of Broad Street in the temporary houses replacing those destroyed in the fire of 1776. Nicknamed Canvass-town and Topsail Town after the material used for roofs, the buildings were described by William Duer as ‘cheap and convenient lodgings for the frail sisterhood, who plied their trade most briskly in the vicinity of the shipping and the barracks.’ The small district of prostitutes thrived until economic development pushed it elsewhere after 1800.”).

33. *Id.* at 29. Gilfoyle noted that in the 1820s New York had an estimated 200 brothels, but by the 1860s a police report detailed over 600. *Id.* at 30-31. Sanitary workers and physicians investigating health conditions and overcrowding counted over 500 brothels. *Id.* at 31.

34. See JOHN D’EMILIO & ESTELLE FREEDMAN, *INTIMATE MATTERS* 140 (2d ed., Univ. of Chi. Press 1997) (1988) (“Before the establishment of professional police forces, irate citizens occasionally attacked brothels, as they did during the warehouse riots in eighteenth-century Boston and in Maine and Pennsylvania during the 1820s.”); see also GILFOYLE, *supra* note 32, at 76-79. New York experienced a “decade of riots” in the 1830s. *Id.* at 76. Vigilantes pretending to be customers attacked madams in their brothels, and women of the streets suffered attacks. *Id.* at 78. Gilfoyle wrote that the increasing frequency of the attacks during the 1830s reflected, in part, the growing perception that prostitutes were fair game for the aggressions of frustrated males. *Id.* at 81.

35. See D’EMILIO & FREEDMAN, *supra* note 34, at 141-42.

36. GILFOYLE, *supra* note 32, at 83.

37. *Id.* at 82.

rights”³⁸ The state was placed in the legally awkward position of protecting and defending prostitution.³⁹ Prostitutes were able to operate as independent agents and did not have pimps to exploit them. Civil actions were brought against clients who acted violently, and the women could transact their business knowing they had the protection of the state.⁴⁰

This permissive attitude toward prostitution, and vice in general, began to change with the coming of the Progressive Era.⁴¹ The concurrent emergence of three social tensions led to moral panic with regard to sex: “immigration, urbanization, and the sexuality of women.”⁴² Prominent white slave author E. Norine Law wrote that “the stock of the immigrants entering the United States, and especially its cities, is growing constantly worse. Drawn first from the higher and more intelligent types of northwestern Europe, our immigration has degenerated constantly to the poorest breeds of the eastern and southern sections of the continent.”⁴³ Rising xenophobia due to the arrival of 13 million immigrants between 1900 and 1914 constructed the moral panic.⁴⁴ Jews, Italians, and the French were singled out as ethnic groups that produced most of the pimps and prostitutes.⁴⁵

The moral decay of America was blamed directly on the increased migration of immoral immigrants who had not been part of America’s “religious and moral endeavor.”⁴⁶ Urbanized and sexually active women

38. *Id.*

39. *Id.* at 83. The author noted the precarious situation created by government action on behalf of prostitution:

Unlike earlier societies which barred testimony from prostitutes, or later forms of legal intervention which sought to regulate, control, and hinder the independence of prostitutes, antebellum New York saw governmental power invoked for their benefit. When prostitutes exercised their property rights, the municipality was compelled to defend prostitution and prosecute its more violent enemies. Since antebellum government was devoted primarily to protecting the interests of taxpayers and private property, a bewildered municipality faced an unappealing, imperfect choice: suppress sexual deviancy, punish prostitutes and thereby violate their (and ultimately others’) property rights, or punish their male aggressors and tolerate the existence of prostitution.

Id.

40. *See id.* at 82-84.

41. *See* DAVID J. LANGUM, *CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT 15-18* (1994).

42. *Id.* at 17.

43. E. NORINE LAW, *THE SHAME OF A GREAT NATION* 58 (1909).

44. *See* LANGUM, *supra* note 41, at 16.

45. *Id.* at 18.

46. *See* James Adams, *Alien Animals and American Angels: The Commodification and Commercialization of the Progressive-Era White Slave*, *CONCEPT ONLINE* J. 7 (2005), http://www.publications.villanova.edu/Concept/2005/Alien_Animals_new.pdf.

were an affront to traditional American values.⁴⁷ In late 19th century America, the conspiracy of silence regarding sexuality allowed the sex industry to thrive outside the borders of traditional society.⁴⁸ The rise in urbanization and the dissolution of the traditional rural family archetype sowed the seeds of moral decay.⁴⁹

Reformers attempted to halt any further decline.⁵⁰ Women and sexuality became a particular focus. A double standard existed for women in 19th century America. They were required to have the strictest purity, while men had considerable freedom to indulge their sexuality before and outside of marriage.⁵¹

The liberalization of sexual attitudes compounded by the overt sexuality of young women was troublesome for reformers.⁵² Writers portrayed the new generation of young white women—urban, single professionals—as easy prey for foreign men.⁵³ Immigrant men of nefarious reputation were said to be seeking to take advantage of the gullible young women.⁵⁴

Chicago at last has waked up to a realization of the fact that actual slavery that deals in human flesh and blood as a marketable commodity exists in terrible magnitude in the city today. It is slavery, real slavery, we are fighting. . . . The white slave of Chicago is a slave as much as the negro [sic] was before the civil war [sic]⁵⁵

The tales were the foundation for the social construction of white slavery.⁵⁶

James Adams defined a white slave as “an innocent white woman, usually (but not always) a second or greater generation American citizen, weakened by the convergent forces of industrial progress, alcohol, and public immorality, and thus easy prey for foreign/Jewish predators either

47. See Marlene D. Beckman, Note, *The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women*, 72 GEO. L.J. 1111, 1115 (1984).

48. LANGUM, *supra* note 41, at 21.

49. *Id.* at 16.

50. Beckman, *supra* note 47, at 1115.

51. John C. Burnham, *The Progressive Era Revolution in American Attitudes Towards Sex*, 59 J. AM. HIST. 885, 886 (1973).

52. LANGUM, *supra* note 41, at 15-17. Langum quotes legendary social worker and reformer Jane Addams as stating that “‘never before in civilization have such numbers of young girls been suddenly released from the protection of the home and permitted to walk unattended upon city streets and to work under alien roofs.’” *Id.* at 17.

53. See Adams, *supra* note 46, at 8.

54. *Id.*

55. LANGUM, *supra* note 41, at 27 (quoting *Chicago's Civic Revolution That Shall Free The White Slaves*, CHI. TRIB., Oct. 17, 1909, at 4) (alterations in original).

56. See Adams, *supra* note 46, at 1-2.

acting directly or through their corrupt domestic agents.”⁵⁷ White slavery became the popular nomenclature for men of scurrilous origin who drugged and coerced females into prostitution.⁵⁸ These stories created a societal hysteria that eventually led to legislation controlling the movement of women across state lines and disallowing women to engage in non-marital sexual relationships.⁵⁹

Representative James R. Mann from Illinois introduced an act in December 1909 at the request of Chicago prosecutors who claimed that girls and women were being forced into prostitution by unscrupulous pimps and procurers.⁶⁰ The White Slave Traffic (Mann) Act, passed in 1910, sought to criminalize the act of transporting women across state lines for the purposes of sex or prostitution.⁶¹

57. *Id.* at 8.

58. *Id.* at 11.

59. *Id.* at 1. Adams writes that:

by 1915 social reformers were no longer battling the existence of public vice, but were instead battling a monster of their own creation: the archetype of the White Slave. Growing out of the public campaigns of the social purity organizations as they disseminated their message of outrage against public vice, it had taken on a life of its own through the commodification of these campaigns in the form of consumable cultural artifacts. Indeed, by the second decade of the twentieth century the organized American traffic of women for the purposes of coercive prostitution had ceased to exist, if it ever existed at all, through the actions of the Social Purity organizations, but in its place now existed an enduring “urban legend” which to this day is still accepted as real.

Id. at 2.

60. See generally White Slave Traffic (Mann) Act, Pub. L. No. 61-277, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-24 (2000)). Under the Mann Act, there was a five year penalty for buying or aiding in the transport of a woman for the purposes of prostitution, debauchery, or other immoral purposes. *Id.* § 2, 36 Stat. at 825. If the woman or girl was under the age of 18, the fine doubled to ten years imprisonment. *Id.* § 4, 36 Stat. at 826. The Mann Act has faced several legal challenges. The most notable was the Supreme Court’s decision to uphold the Act in *Hoke v. United States*, 227 U.S. 308, 323 (1913). Four years later, the Supreme Court broadened the scope of the Act in *Caminetti v. United States*, 242 U.S. 470 (1917), by holding that the Act applied to noncommercial acts of immorality. *Id.* at 486. The Court seized on the phrase “any other immoral purpose,” concluding that Congress intended to prevent the use of interstate commerce to promote sexual immorality. *Id.* at 485-86. This interpretation radically changed the scope of the Act. The FBI continues to use the Mann Act to prosecute. In 1978, Congress amended the Act to address child pornography by making the Act gender neutral, thereby addressing the sexual exploitation of both boys and girls. Protection of Children Against Sexual Exploitation, Pub. L. No. 95-225, 92 Stat. 7 (1978) (codified as amended at 18 U.S.C. §§ 2251-53 (2000)). All references to debauchery and any other immoral purpose were later replaced by the phrase “any sexual activity for which any person can be charged with a criminal offense.” Child Sexual Abuse and Pornography Act of 1986, Pub. L. No. 99-628, § 5, 100 Stat. 3510, 3511 (codified as amended at 18 U.S.C. § 2421).

61. Mann Act, Pub. L. No. 61-277, 36 Stat. 825.

The hysteria over white slavery did not stop states from harshly punishing women who were either prostitutes or having sexual liaisons outside of marriage.⁶² The Mann Act was used to prosecute beyond the scope of its original legislative intent of commercial vice, and became a mandate for prosecuting sexually promiscuous women.⁶³

In *Caminetti v. United States*, the Supreme Court upheld convictions where there was no evidence of prostitution by the women, involuntary or coerced travel, or profit garnered by the defendants.⁶⁴ The Court also found that women were co-conspirators in their own transport across state lines for purposes of prostitution.⁶⁵ The Court diverged from the opinion of Progressive Era reformers that women were victims, and Justice Holmes declared in *United States v. Holte* that “we abandon the illusion that the woman is always the victim.”⁶⁶

The Mann Act illustrates the evolution of state and federal approaches to prostitution. Women in the sex trade in early United States history were ignored by the states and allowed to ply their trade in red light districts. Once local and federal agencies sought to intervene, these women became simultaneous victims and defendants. This dichotomy would continue to pervade federal law enforcement in trafficking cases, and would emerge in material witness cases after September 11th.

At that time, federal law enforcement began using material witness laws to detain individuals indefinitely prior to prosecution.⁶⁷ Federal

62. See *id.* (enacted “to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls”); see also Beckman, *supra* note 47, at 1120-23.

63. See *United States v. Holte*, 236 U.S. 140, 145 (1915); see also Beckman, *supra* note 47, at 1118, 1123.

64. *Caminetti*, 242 U.S. at 485-86.

65. See *Holte*, 236 U.S. at 145; see also Beckman, *supra* note 47, at 1120.

66. *Holte*, 236 U.S. at 145.

67. See Stacey M. Studnicki & John P. Apol, *Witness Detention and Intimidation: The History and Future of Material Witness Law*, 76 ST. JOHN’S L. REV. 483, 485-86 (2002); Richard H. Parsons, Kent V. Anderson & Jonathan E. Hawley, *Ways to Challenge the Detention of Your Client Who Has Been Declared a Material Witness or the Incommunicado Detention of Any Client*, CHAMPION MAGAZINE, Apr. 2003, at 34, available at [http://www.nacdl.org/public.nsf/\\$\\$searchChampion](http://www.nacdl.org/public.nsf/$$searchChampion) (search for “Ways to Challenge the Detention of Your Client”) (discussing the implementation of indefinite detention laws for suspected terrorists after September 11th). Regarding the detention of trafficking victims, see Dina Francesca Haynes, (*Not*) *Found Chained to a Bed in a Brothel: Conceptual, Legal and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 369-70 (2007). Haynes details the legal quagmire trafficked women must suffer to prove they are victims. Women languish in federal and state custody attempting to prove they are victims of trafficking and prove eligibility for T visas. *Id.* at 369-72; see also AMY O’NEILL RICHARD, CIA CENTER FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED

agents now have the power to detain and deport illegal immigrants working in the sex trade unless they cooperate and testify, creating the detainee/witness category.⁶⁸ Each category of witness, defendant, and detainee exists at the mercy or discretion of federal and state prosecutors, and their rights are significantly diminished in the process.⁶⁹

B. Material Witness History

One of the most salient guarantees of the United States Constitution is the right against unreasonable searches and seizures as enumerated in the Fourth Amendment.⁷⁰ The government, in the administration of justice, cannot seize or imprison a person without probable cause or a warrant. The power to arrest and detain witnesses, however, was enumerated by statute and common law.⁷¹

CRIME 39 (1999), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>. Prior to passage of the TVPA and the creation of T visas, INS agents did not distinguish trafficking victims from other immigrants who gained illegal entry into the U.S. INS claimed a lack of resources prohibited identification and assistance of trafficking victims. The INS treated trafficking victims similar to the immigrants who illegally entered the U.S. See RICHARD, *supra*, at 36.

68. See RICHARD, *supra* note 67, at 39 (“[M]any trafficking victims are placed in INS detention facilities and then deported. Those few trafficking victims, who are designated material witnesses in federal criminal cases brought against the traffickers, may be placed in the US marshals’ custody and held in local jails.”). A woman detained by the government for illegal entry can effectively stay deportation if she claims to be a trafficking victim and can obtain a T visa. Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad*, 11 WM. & MARY J. WOMEN & L. 317, 332 (2005).

69. See Studnicki & Apol, *supra* note 67, at 485-86 (“[T]he United States Attorney General announced that the ‘aggressive detention’ of material witnesses in the wake of September 11th would be the norm.”); Tiefenbrun, *supra* note 68, at 332-33 (“Because the T-visa is essentially a deportation stay, the victim must decide immediately whether she will cooperate with investigators. The law does not allow the victim to delay or even reflect on her choice to assist in prosecution. She must agree to cooperate in order to be given ‘continued presence.’”); see also Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 178 (2007) (noting that very few victims have been able to obtain T visas). Srikantiah notes that TVPA requires law enforcement approval (LEA endorsement) prior to being considered for a T visa, which makes the victim eligible for government assistance. *Id.* at 179-82.

70. U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

71. See, e.g., Act of Sept. 24, 1789, ch. 20, § 30, 33, 1 Stat. 73, 88, 91. The Act provided for the taking of depositions in civil cases of “any person . . . who shall live at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, . . . or is ancient or very

The power to arrest and detain witnesses existed by statute from 1789 until 1948, when Congress repealed the material witness statutes.⁷² No formal authority to arrest material witnesses existed upon the repeal, but the creation of Federal Rule of Criminal Procedure 46(b) in 1946 gave implied authority.⁷³ The courts interpreted the Rule to allow the government implicit authority to arrest and detain witnesses.⁷⁴

The Bail Reform Act of 1966 continued the ambiguity of holding material witnesses. The Act delineated no explicit authority to arrest or detain witnesses, providing only for their release.⁷⁵ Congress addressed the ambiguity of the law in 1984 with the passage of most recent version of the material witness statutes.⁷⁶ The modification allowed for conditions of release and confinement in accordance with the federal statute that regulates the detention of defendants pending trial.⁷⁷ The modification also gave courts explicit authority to arrest, curing the ambiguity addressed in *Bacon v. United States*.⁷⁸

infirm." *Id.* § 30, 1 Stat. at 88. It also provided that "any person may be compelled to appear and [be] depose[d], and allowed if witness could not be produced at trial, the deposition could be used in their place." *Id.*

72. See 28 U.S.C. § 657 (1940) (repealed 1948); see also Studnicki & Apol, *supra* note 67, at 490.

73. See FED. R. CRIM. P. 46(b) (1946) (amended 1966) ("If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the court or commissioner may require him to give bail for his appearance as a witness, in an amount fixed by the court or commissioner. If the person fails to give bail the court or commissioner may commit him to the custody of the marshal pending final disposition of the proceeding in which the testimony is needed, may order his release if he has been detained for an unreasonable length of time and may modify at any time the requirement as to bail."); see also Studnicki & Apol, *supra* note 67, at 491-92.

74. See, e.g., *Bacon v. United States*, 449 F.2d 933, 938 (9th Cir. 1971) ("[T]he legislative and statutory history of Rule 46(b) support the proposition that a power to arrest should be implied. Such a power was expressly provided for by statute until 1948.").

75. Act of June 22, 1966, Pub. L. No. 89-465, § 3(a), 80 Stat. 214, 216 (codified at 18 U.S.C. § 3149 (1970) (repealed 1984)) ("If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure."); see also Studnicki & Apol, *supra* note 67, at 492.

76. Act of Oct. 12, 1984, Pub. L. No. 98-473, § 3144, 1984 U.S.C.A.N., 3182, 3211 (codified as amended at 18 U.S.C. § 3141 (2000 & Supp. V 2005)); see also Studnicki & Apol, *supra* note 67, at 492.

77. 18 U.S.C. § 3142 (regarding release or detention of a defendant pending trial); see also Studnicki & Apol, *supra* note 67, at 493.

78. Studnicki & Apol, *supra* note 67, at 493.

But the statutory requirements for detention of material witnesses remain vague and can lead to abuse by government officials.⁷⁹ If a person is a witness in a federal criminal proceeding, the government need only show the “impracticab[ility]” of securing the person’s presence by subpoena.⁸⁰ A subpoena is not a prerequisite for detention.⁸¹ A federal officer need only assert that the witness is material and the use of a subpoena is impractical.⁸²

The rights granted to the material witness detainees are unclear. A detainee may have counsel appointed by the government if he cannot afford private counsel,⁸³ and he has a right to a detention hearing,⁸⁴ but he still may be detained “for a reasonable period of time.”⁸⁵ The detention may be cured by giving a deposition,⁸⁶ but that does not automatically

79. See generally 18 U.S.C. § 3142(f).

80. See 18 U.S.C. § 3144 (“If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.”).

81. See *United States v. Anfield*, 539 F.2d 674, 677 (9th Cir. 1976) (“A Court in the exercise of its sound discretion has the power . . . to issue a warrant of arrest, not preceded by subpoena, for a material witness.” (citations omitted)).

82. See *United States v. Feingold*, 416 F. Supp. 627, 628 (E.D.N.Y. 1976).

83. See *United States v. Mahard*, 612 F. Supp. 940, 943 (W.D. Tex. 1985) (“[W]here an individual is arrested and the government seeks to detain him as a material witness pursuant to Section 3144, and a judicial officer determines that the individual should not be released on his own recognizance or on an unsecured appearance bond, an attorney must be appointed to represent the individual if he is financially unable to obtain representation.”).

84. See *Parsons, Anderson & Hawley*, *supra* note 67 (“[G]overnment detention violates [the Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections . . .”).

85. 18 U.S.C. § 3144. The Supreme Court has set limits to government deprivation of liberty secured by the Fifth Amendment Due Process Clause. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

86. See FED. R. CRIM. P. 15(a) (“A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data. . . . A witness who is detained under 18 U.S.C. § 3144 may request to be deposed by filing a written motion and giving notice to the parties. The court may then

guarantee release.⁸⁷ Detainees have sought to curtail how the government uses or abuses the material witness statute.⁸⁸ United States courts, however, have given the government great leeway in interpreting the material witness statute depending upon the status of the detainee.⁸⁹

order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.”).

87. See Michael A. Rosenhouse, Annotation, *Validity, Construction, and Application of 18 U.S.C.A. § 3144, Governing Arrest and Detention of Material Witnesses to Federal Crimes*, 2 A.L.R. Fed. 2d 425, 434 (2005) (“Disputes concerning the release of witnesses who were legitimately detained in the first instance have generally arisen in the context of motions by such witnesses to have their depositions taken so that they could be released in accordance with the terms of the statute. In determining whether to release detainees, courts have had to take into consideration the possibility that deposition testimony might be found to be inadmissible at the actual trial as a deprivation of the right of the defendant to confront the witnesses against him, and have sometimes found that continuation of the detention was necessary in such situations . . .”).

88. See *United States v. Awadallah*, 349 F.3d 42, 63-64 (2d Cir. 2003), cert. denied, 543 U.S. 1056 (2005). In *Awadallah*, the Court of Appeals for the Second Circuit found the detention of a material witness for the purpose of securing grand jury testimony constitutional. *Id.* at 64. The district court summarized Awadallah’s detention history:

On Friday, September 21, 2001, FBI agents in California arrested Osama Awadallah as a material witness for a grand jury investigation of the September 11th terrorist attacks. Approximately three hours later, an affidavit in support of an application for Awadallah’s arrest under section 3144 was submitted to a judge of this Court by an FBI agent and a warrant was issued. Over the next twenty days, Awadallah was treated as a high-security inmate, detained in various prisons across the country. Awadallah was eventually flown to New York, where he was kept in solitary confinement and shackled and strip-searched whenever he left his cell. He was unable to have family visits or use the telephone because the prison had no operating telephones and was on a high security alert which prevented family visits. Awadallah was held as a material witness in a grand jury investigation; he was not arrested based on probable cause to believe that he had committed any crime.

United States v. Awadallah, 202 F. Supp. 2d 55, 58 (S.D.N.Y. 2002) (footnote omitted).

89. In *Al-Marri v. Wright*, the Court of Appeals for the Fourth Circuit granted habeas relief and rejected the government’s contention that Al-Marri was an enemy combatant. *Al-Marri v. Wright*, 487 F.3d 160, 164 (4th Cir. 2007). The court reviewed Al-Marri’s detention history:

Al-Marri, a citizen of Qatar, lawfully entered the United States with his wife and children on September 10, 2001, to pursue a master’s degree at Bradley University in Peoria, Illinois, where he had obtained a bachelor’s degree in 1991. The following day, terrorists hijacked four commercial airliners and used them to kill and inflict grievous injury on thousands of Americans. Three months later, on December 12, 2001, FBI agents arrested al-Marri at his home in Peoria as a material witness in the Government’s investigation of the September 11th attacks.

Id. In *United States v. Awan*, the district court, upon a motion by the defendant, dismissed two counts of the indictment but refused to dismiss one count of the indictment. *United States v. Awan*, 459 F. Supp. 2d 167, 172 (E.D.N.Y. 2006). Awan was originally detained on charges of credit card fraud, but a material witness warrant was issued to hold him in connection with the investigation of events of September 11th. *Id.* at 173. After testifying

III. LEGAL BACKGROUND

A. Coercive Use of Material Witness Warrants and Enemy Combatant Designation

The aftermath of the September 11th attacks saw the restructuring of federal criminal law and procedure by the federal government to give more latitude to federal law enforcement officials. On September 18th, 2001, Congress passed the Authorization for Use of Military Force (AUMF),⁹⁰ beginning the period of legislative overhauling that culminated with the passage of the USA PATRIOT Act.⁹¹ The government subsequently used the AUMF to justify the detention of United States citizens under the designation of enemy combatant.⁹² In certain instances, the government used the material witness designation to detain United States citizens who would later be declared enemy combatants.

Through the Northern Alliance fighting in Afghanistan, the United States took U.S.-born Yasser Hamdi into custody in 2001.⁹³ In January 2002, the government transferred Hamdi to Guantanamo Bay, the holding place for non-citizen enemy combatants.⁹⁴ In June, 2002,

before a grand jury, Awan continued to be held and was later charged with “knowingly and intentionally provid[ing] material support and resources, . . . knowing and intending that they were to be used in preparation for, and in carrying out, a conspiracy to murder, kidnap or maim a person or persons outside the United States.” *Id.* In *Al-Kidd v. Gonzalez*, plaintiff Al-Kidd pursued a suit against the government for false imprisonment based on his material witness status and detention. *Al-Kidd v. Gonzalez*, No. CV:05-093-S-EJL, 2006 WL 2682346, at *1-2 (D. Idaho Sept. 18, 2006). The FBI investigated Al-Kidd, a recent Islamic convert and University of Idaho student, after the September 11th attacks. *Id.* at *1. As part of the investigation, Al-Kidd, a citizen of the United States, met with FBI officers on a number of occasions. *Id.* The FBI eventually sought and received a material witness warrant for Al-Kidd based on his acquaintance with another University of Idaho Islamic student who was later charged with making false statements and visa fraud. *Id.* Al-Kidd was detained but his testimony was never sought and he was eventually released from custody. *Id.* at *2.

90. Pub. L. No. 107-40, 115 Stat. 224 (2001) (codified as amended at 50 U.S.C. § 1541 (Supp. IV 2004)) (“[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”).

91. Uniting and Strengthening America by Providing Appropriate Tools Required to Interrupt and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

92. *E.g., Al-Marri*, 487 F.3d at 177; *Rumsfeld v. Padilla*, 542 U.S. 426, 431 (2004).

93. *Hamdi v. Rumsfeld*, 316 F.3d 450, 460 (4th Cir. 2003).

94. *Hamdi v. Rumsfeld*, 542 U.S. 507, 510 (2004). Hamdi was transferred out of Guantanamo Bay once authorities learned he was a U.S. citizen. *Id.*

Hamdi's father filed a habeas petition in the Eastern District of Virginia alleging, among other things, that the government held his son in violation of the Fifth and Fourteenth Amendments.⁹⁵ The petition alleged that Hamdi was without access to legal counsel or notice of any charges pending against him.⁹⁶

The District Court ordered the government to allow Hamdi's attorney to have legal access to Hamdi.⁹⁷ On appeal, the Fourth Circuit reversed that order, holding that the District Court had failed to extend appropriate deference to the government's security and intelligence interests.⁹⁸ The Fourth Circuit remanded the case instructing the Eastern District to consider "the most cautious procedures first."⁹⁹ On remand, the government filed a declaration asserting that Hamdi was fighting with the Taliban.¹⁰⁰ The District Court "criticized the generic and hearsay nature of the affidavit" and demanded the government produce Hamdi-related materials for an *in camera* review.¹⁰¹ The government appealed the order of production to the Fourth Circuit. The Fourth Circuit reversed, finding that a factual inquiry or evidentiary hearing allowing Hamdi to be heard or to rebut the government's assertions was not necessary or proper.¹⁰² Hamdi appealed, and the Supreme Court granted certiorari.

In *Hamdi v. Rumsfeld*, the Supreme Court curtailed the executive branch's interpretation of the power granted by the AUMF.¹⁰³ While the Court recognized the right of the government to detain enemy combatants, those designated as such deserved "notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions"¹⁰⁴

The Court, however, did not disturb the right of the executive branch to declare detainees enemy combatants.¹⁰⁵ The FBI arrested Jose Padilla on a material witness warrant at Chicago O'Hare Airport in May 2002.¹⁰⁶ Padilla appeared before the United States District Court for the Southern District of New York, where the warrant was issued, and the

95. *Id.* at 511.

96. *Id.*

97. *Id.* at 512.

98. *Hamdi v. Rumsfeld*, 296 F.3d 278, 279, 283 (4th Cir. 2002).

99. *Id.* at 284.

100. *Hamdi*, 542 U.S. at 512-13.

101. *Id.* at 513.

102. *See Hamdi v. Rumsfeld*, 316 F.3d 450, 469-71 (4th Cir. 2003).

103. *Hamdi*, 542 U.S. 507 (2004)

104. *Id.* at 533.

105. *See, e.g., Padilla ex rel. Newman v. Bush*, 233 F. Supp. 2d 564, 569 (S.D.N.Y. 2002).

106. *See id.* at 568.

court appointed an attorney.¹⁰⁷ In June 2002, President Bush declared Padilla an enemy combatant, which gave the government the power to transfer Padilla to military custody.¹⁰⁸ Padilla's attorney immediately filed a petition for writ of habeas corpus on his behalf in the United States District Court for the Southern District of New York.¹⁰⁹ The New York district court accepted the claim that the executive branch had authority under the AUMF to detain United States citizens arrested in the United States as enemy combatants, but held that Padilla was entitled to access to a lawyer and a factual hearing.¹¹⁰ Padilla's attorney appealed, and the United States Court of Appeals for the Second Circuit reversed.¹¹¹ It held that the President had no constitutional or statutory authority to detain United States citizens indefinitely without criminal charge if they are arrested within the United States.¹¹² The court found that Padilla must be charged with a crime, detained on some other legally authorized status (such as a material witness hold), or released.¹¹³ The government appealed and the Supreme Court granted certiorari.¹¹⁴

In *Padilla v. Rumsfeld*, the Court ordered dismissal of the habeas corpus petition without prejudice, holding that the District Court for the Southern District of New York was not the appropriate court to consider it.¹¹⁵ Padilla's counsel filed a subsequent habeas petition in the United States District Court for the District of South Carolina on July 2, 2004.¹¹⁶ After detaining Padilla for nearly four years as an enemy combatant, the government transferred Padilla out of military custody and to the custody of the United States District Court for the Southern District of Florida.¹¹⁷ The Supreme Court denied Padilla's request for review of his custodial status, determining the custodial transfer rendered his legal status moot.¹¹⁸ In a pointed dissent, however, Justice Ginsburg asks the question the Court refused to decide: "Does the President have authority to imprison indefinitely a United States citizen arrested on United States soil, distant from a zone of combat based on an Executive declaration that the citizen was, at the time of his arrest, an 'enemy combatant?'"¹¹⁹

107. *Id.* at 568-69, 571.

108. *Id.* at 571.

109. *Id.*

110. *Id.* at 569.

111. *Padilla v. Rumsfeld*, 352 F.3d 695, 698-99 (2d Cir. 2003).

112. *Id.* at 724.

113. *Id.*

114. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

115. *Id.* at 451.

116. *Padilla v. Hanft*, 547 U.S. 1062, 1063 (2006) (Kennedy, J., concurring).

117. *Id.*

118. *See id.* at 1063-64.

119. *Id.* at 1064 (Ginsburg, J., dissenting).

Justice Ginsburg argued that the Court should have decided the issue to prevent a future re-designation of Padilla as an enemy combatant.¹²⁰

The Supreme Court has thus obfuscated any interpretation one could glean from federal law enforcement's use of material witness holds as a pretext for further investigation or prosecution. The FBI originally detained Jose Padilla as a material witness but his status quickly changed to an enemy combatant. Four years of litigation did not resolve the government's potentially coercive use of material witness designation to detain U.S. citizens without due process. The legal ambiguity leaves federal law enforcement with the continuing opportunity to have American citizens declared enemy combatants or material witnesses. The designation of enemy combatant and/or material witness gives detainees limited rights of due process. *Hamdi* did give detainees fundamental rights but did not eliminate the use of enemy combatant status. In contrast, the *Padilla* Court failed to decide the crucial legal question of an absolute allowance or disallowance of the designation of enemy combatant. The Court also failed to address the substantive legal issue of using material witness designation to detain and investigate United States citizens.

Lower courts have issued divergent opinions on enemy combatant status and material witness detentions. In *Al-Marri v. Wright*, the Fourth Circuit found that President did not have inherent constitutional authority to order seizure and indefinite military detention of a civilian.¹²¹ By contrast, in *United States v. Awadallah*, the Second Circuit found the detention of material witnesses for the purpose of securing grand jury testimony was constitutional.¹²² The Supreme Court denied certiorari.¹²³ Courts are conflicted on this issue and will eventually need the guidance of the Supreme Court regarding the coercive tactics of law enforcement and the use of material witness detentions and enemy combatant status to justify indefinite detention. The Supreme Court failed to end the legal quagmire surrounding enemy combatant or material witness designation. As a result, vulnerable populations are at risk. Police detain scores of prostituted women and children, seeking cooperation on trafficking and

120. *Id.* at 1064-65.

121. *See Al-Marri v. Wright*, 487 F.3d 160, 195 (4th Cir. 2007).

122. *See United States v. Awadallah*, 349 F.3d 42, 64 (2d Cir. 2003). The court held that: (1) the material witness statute authorized detention of grand jury witnesses, *id.* at 50-51; (2) the defendant was properly detained pursuant to the material witness statute "when he was held for several weeks without being allowed to give his deposition and obtain release," *id.* at 62; (3) the material witness warrant was valid, *id.* at 70; and (4) the information and evidence obtained by the FBI as result of illegal searches and seizures twenty days before the defendant appeared before the grand jury was not excludable at the perjury trial as fruit of the improper searches and seizures, *id.* at 75.

123. *Awadallah v. United States*, 543 U.S. 1056 (2005).

sexual exploitation cases.¹²⁴ Immigrant women who face detention and deportation are extraordinarily vulnerable. This vulnerability illustrates the danger of coercive tactics of being used by not only the Las Vegas Metro Police but federal law enforcement as well.¹²⁵

B. Trafficked Women and Children

The trafficking of women and children for prostitution is a rapidly growing area of international criminal activity and cause for international alarm.¹²⁶ More than 700,000 people are trafficked each year worldwide, some 50,000 to the United States.¹²⁷ The overwhelming majority of those trafficked are women and children.¹²⁸ At least 100,000 illegally-immigrated women prostitutes work in the United States.¹²⁹ The trafficked women have backgrounds of poverty, illiteracy, civil strife, and low social and political status.¹³⁰ Traffickers can exploit the conditions of trafficked women for their own financial gain.¹³¹

Women are lured into traveling to unknown regions with the promise of high wages and civilized working conditions.¹³² Instead, the women encounter slave-like wages, inhumane working conditions, and indebtedness to their traffickers.¹³³ Women who are trafficked for the sex industry may fare worse than other trafficking victims due to the violence

124. See MIKO & PARK, *supra* note 27, at 3.

125. See Studnicki & Apol, *supra* note 67, at 485-86 (noting that since September 11th there has been a “troubling, potentially unconstitutional” use of material witness law by federal law enforcement”).

126. MIKO & PARK, *supra* note 27, at 1.

127. *Id.*

128. See Susan Tiefenbrun, *The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 126.

129. Press Release, Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, New Global Treaty to Combat “Sex Slavery” of Women and Girls (Feb. 2000) [hereinafter U.N. Press Release], available at <http://www.un.org/events/10thcongress/2098.htm>. Official U.S. government statistics place the number of trafficked people who enter the United States at 18,000 to 20,000 annually. U.S. DEP’T OF STATE, ASSESSMENT OF U.S. ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 3 (2003) [hereinafter U.S. TRAFFICKING ASSESSMENT], available at <http://www.state.gov/documents/organization/23598.pdf>.

130. See Kelly E. Hyland, Comment, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN’S L.J. 29, 35 (2001); see also MIKO & PARK, *supra* note 27, at 2-3 (detailing the reasons, such as poverty and weak law enforcement, for the rise in trafficked women and children).

131. Hyland, *supra* note 130, at 37-38.

132. See Fara Gold, Comment, *Redefining the Slave Trade: The Current Trends in the International Trafficking of Women*, 11 U. MIAMI INT’L & COMP. L. REV. 99, 110-11 (2003).

133. *Id.* at 110, 115.

they face.¹³⁴ Prostitutes who immigrate from Asia often sell for \$20,000 each in the United States.¹³⁵ But the smuggling fees keep trafficked women ensnared to their trafficker, and fear of reprisals keep the women from seeking help.¹³⁶ In addition, trafficked women may suffer retribution and deportation if they seek help from law enforcement, which makes them reluctant to do so.¹³⁷ These women may also face ostracism, and even potential death upon returning home.¹³⁸

Congress passed the Trafficking Victims Protection Act (TVPA) of 2000 to combat the crisis of international trafficking of women to the United States.¹³⁹ TVPA acknowledges the pervasive problem of trafficking and seeks to aid its victims.¹⁴⁰ The Act includes a provision for the certification of trafficking victims who want to cooperate in the prosecution of traffickers. Trafficking victims who choose to testify are deemed “‘victim[s] of a severe form of trafficking’” and are offered the possibility of remaining in the United States during the prosecution of the trafficker under a T-visa or upon the determination of the Department of Homeland Security.¹⁴¹

The T-visa certification entails cooperation in the investigation including: 1) the identification and location of the trafficker; 2) testimony against the trafficker; 3) cooperation with production of evidence and

134. See Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 113-14 (2006) (noting that “ninety-nine percent of women in prostitution [are] victims of violence”).

135. See U.N. Press Release, *supra* note 129.

136. See Gold, *supra* note 132, at 119.

137. See Hyland, *supra* note 130, at 45; see also MIKO & PARK, *supra* note 27, at 3.

138. See Hyland, *supra* note 130, at 43-44.

139. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466 (codified at 22 U.S.C. § 7101(a) (2000)) (enacted “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children”). The TVPA recognized and addressed the limitation of U.S. legislation that treated trafficked women as criminals and illegal aliens as opposed to the victims of a transnational criminal enterprise and the legislation recognized the danger that trafficked women faced upon return to their native countries. *Id.* § 102(b)(14)-(20), 114 Stat. at 1467-68.

140. See 22 U.S.C. § 7101(a).

141. 22 U.S.C.A. § 7105(b)(1)(C), (E)(i) (West 2004 & Supp. 2007). Under the TVPA, a victim must show she:

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and

(II)(aa) has made a bona fide application for a visa . . . that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General and the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.

Id. § 7105(b)(1)(E)(i).

information;¹⁴² and 4) “willing[ness] to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.”¹⁴³

The lure of having a T-visa puts the trafficked women in precarious and dangerous predicaments. Trafficked women face physical and sexual violence on a routine basis, as well as threats to their family members.¹⁴⁴ Trafficked women who choose to cooperate with United States law enforcement risk reprisals; they fear for their lives and the lives of their families in their home countries.¹⁴⁵

The State Department completed an assessment of TVPA implementation in 2003.¹⁴⁶ That same year, the Department of Justice (DOJ) awarded twelve grants totaling \$9.5 million to non-governmental organizations to provide aid to “precertification” trafficked victims with assistance for comprehensive services.¹⁴⁷ The DOJ sought to service thousands of trafficking victims with grants averaging \$790,000 per agency.¹⁴⁸ Protection and assistance for trafficking victims is not authorized without certification.¹⁴⁹ Certification and services are provided upon cooperation with authorities.¹⁵⁰ Once cooperation is established, a panoply of programs and services sponsored or funded by a host of federal agencies is made available.¹⁵¹ Since the enactment of the TVPA, the Department of Health and Human Services (DHHS) has provided certification for almost 400 adults and eligibility for benefits to 28 child trafficking victims.¹⁵² DHHS acknowledged the refugee programs did not provide for the needs of trafficked persons.¹⁵³ DHHS implemented programs and services focused strictly on the needs of trafficking victims, allocating \$4.6 million in grants for 15 organizations to provide temporary housing, independent living skills, cultural

142. *Id.* § 7105(b)(1)(E)(iii)(I)-(IV).

143. *Id.* § 7105(b)(1)(E)(iv).

144. *See* Farley, *supra* note 134, at 124.

145. *See id.*; Tiefenbrun, *supra* note 128, at 161 (noting that without protection for themselves and their families, trafficking victims would be unlikely to assist in prosecutions of their traffickers).

146. *See generally* U.S. TRAFFICKING ASSESSMENT, *supra* note 129.

147. *Id.* at 6.

148. *Id.*

149. *See* 22 U.S.C.A. § 7105 (West 2004 & Supp. 2007); *see also* U.S. TRAFFICKING ASSESSMENT, *supra* note 129, at 5.

150. *See* U.S. TRAFFICKING ASSESSMENT, *supra* note 129, at 5-6.

151. *Id.* at 6-7

152. *Id.* at 5.

153. *Id.* at 5-6.

orientation, transportation needs, education programs, and legal assistance to the certified trafficked persons.¹⁵⁴

The vocational and legal needs of trafficking victims are addressed as well. The Department of Labor instructed its regional offices to aid trafficking victims with vocational and educational needs.¹⁵⁵ Congress directed the Legal Services Corporation to assist trafficking persons who have legal problems.¹⁵⁶ Unfortunately though, federal government agencies are able to assist a very restricted number of trafficking victims¹⁵⁷ because the victims are vetted by DHHS before they are able to access the programs and services.¹⁵⁸ Thus, it is imperative that the United States adopt international standards in the treatment of trafficked women and reconfigure trafficking assistance to aid all victims of trafficking. The United Nations has already given trafficked women legal recognition and has appointed an investigative liaison to address the problem of trafficking in women and children.¹⁵⁹

The United Nations acknowledged the plight of trafficked women by establishing a Special Rapporteur on trafficking of women and children and authoring principles and guidelines regarding the problem.¹⁶⁰ These principles and guidelines emphasize the promotion and protection of the human rights of trafficked women.¹⁶¹ The principles include decriminalizing immigration offenses committed by trafficked persons who have illegally entered countries¹⁶² and banning the practice of confining trafficked women in detention facilities.¹⁶³

154. *Id.* at 5.

155. *Id.* at 7.

156. *Id.*

157. As noted above, only certified trafficking victims have access to these benefits. See *supra* note 149 and accompanying text. Since the enactment of the TVPA, less than 500 adults and children have been made eligible for the benefits. See U.S. TRAFFICKING ASSESSMENT, *supra* note 129, at 5.

158. See U.S. TRAFFICKING ASSESSMENT, *supra* note 129, at 5-6.

159. G.A. Res. 59/166, at 2-3, U.N. Doc. A/RES/59/166 (Feb. 10, 2005).

160. See generally *id.*; *Report of the High Commissioner for Human Rights, supra* note 26; see also *Report of the Special Rapporteur, supra* note 24.

161. See *Report of the High Commissioner for Human Rights, supra* note 26, at 3 (“The human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.”).

162. *Id.* (“Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”).

163. *Id.* at 10 (recommending that countries provide safe and adequate shelter for trafficked persons and further stating that “[t]he provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings,” and that “[t]rafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses”).

The report additionally recommends that states protect trafficked persons from further exploitation and grant them access to “adequate physical and psychological care.”¹⁶⁴ The report details how law enforcement can assist trafficked women,¹⁶⁵ in contrast with the United States response that criminalizes their behavior and seeks cooperation without a support apparatus. The assistance should include shelters, protection from traffickers, and travel assistance to their home countries.¹⁶⁶

In contrast with these ideas, the Special Rapporteur noted that trafficked women and children are often seen as a “law and order problem” and penalized by being charged with prostitution and deported.¹⁶⁷ As a result, trafficked women can face detention and deportation whether or not they are convicted of working in the illegal sex trade.¹⁶⁸ In the United States, once the women are deported, they face a ten-year ban on reentering the country.¹⁶⁹ Trafficked women may seek to stay in the United States and cooperate with law enforcement, but the number of T-visas granted by the United States government is limited.¹⁷⁰ As of June 2003, the Department of Homeland Security received 453 applications and granted 172 T-visas.¹⁷¹ The number of special visas that can be issued by ICE is 5000.¹⁷² This severely restricts the number of women who will ever be able to take advantage of the special immigrant visa or be able to cooperate with the Department of Homeland Security.

164. *Id.* at 3.

165. *Id.* at 9-10.

166. *Report of the High Commissioner for Human Rights, supra* note 26, at 10-11.

167. *Report of the Special Rapporteur, supra* note 24, at 6; *see also* Wendy Gonzalez, *Human Trafficking: Criminalization of Victims in the Sex Industry*, 11 *BUFF. WOMEN'S L.J.* 19, 21-23 (2002-03).

168. *See* Gonzalez, *supra* note 167, at 21-22.

169. *See* 8 U.S.C.A. § 1182(a)(2)(D) (West 2005 & Supp. 2007); *see also* DANIEL KANSTROOM, *DEPORTATION NATION*, 10 (2007) (“Since 1997, more than 300,000 people have been deported from the United States because of post-entry criminal conduct”); Michael O’Connor & Celia Rumann, *The Death of Advocacy in Reentry After Deportation Cases*, *CHAMPION MAGAZINE*, Nov. 1999, *available at* <http://www.criminaljustice.org/public.nsf/ChampionArticles/99nov03?OpenDocument> (highlighting practices that force quick and problematic guilty pleas for immigrants who have re-entered the U.S. after being deported).

170. *See* 8 U.S.C.A. § 1153(b)(4); *see also* U.S. *TRAFFICKING ASSESSMENT, supra* note 129, at 9.

171. *See* U.S. *TRAFFICKING ASSESSMENT, supra* note 129, at 9.

172. 8 U.S.C.A. § 1153(b)(4); *see also id.* § 1101(a)(27) (defining “special immigrant”).

IV. LAS VEGAS METRO POLICE

A. *Las Vegas and Child Prostitution*

Sex trafficking is a pernicious problem for Las Vegas. As the city became one of the fastest growing cities in the nation,¹⁷³ it experienced problems unique to a culture that features gambling and emphasizes adult entertainment.¹⁷⁴ Juvenile prostitution arrests increased over the same decade that Las Vegas' population and tourist numbers soared.¹⁷⁵

The Las Vegas Metro Police Department noted a significant rise in pimp and child prostitute arrests as far back as 1997.¹⁷⁶ Las Vegas Metro Police arrested three pimps and twenty-four child prostitutes in 1994, but just three years later the numbers soared to thirty-three pimps and sixty-two child prostitutes arrested.¹⁷⁷ In 2004, Las Vegas Metro Police arrested 207 prostitutes under the age of eighteen.¹⁷⁸ Child prostitution became a national priority, with the FBI focusing on Las Vegas as one of fourteen cities with the most prevalent child prostitution and trafficking problems in the country.¹⁷⁹

Las Vegas Metro Police recognized that the problem was not merely child prostitutes but the adults that orchestrated the trafficking of minors across state lines for the lucrative sex trade in Nevada. Sergeant Gil Shannon of Las Vegas Metro Police's Juvenile Vice Investigation Squad

173. See Press Release, Robert Bernstein, U.S. Census Bureau, Phoenix Leads in Numeric Growth: Elk Grove, Calif., Named Fastest Growing City (June 21, 2006), available at <http://www.census.gov/Press-Release/www/releases/archives/population/007001.html> (citing Las Vegas as the second fastest growing city in the nation); Press Release, Robert Bernstein, U.S. Census Bureau, Port St. Lucie, Fla., is Fastest Growing City, Census Bureau Says (June 30, 2005), available at <http://www.census.gov/Press-Release/www/releases/archives/population/005268.html> (citing Las Vegas as the third fastest growing city in the nation).

174. See Aaron Drawhorn, *Las Vegas: Growing Hub for Sex Trafficking*, LAS VEGAS NOW, Apr. 24, 2007, <http://www.klas-tv.com/Global/story.asp?S=6421545>; see also Jen Lawson, *Children of the Night*, LAS VEGAS SUN, Dec. 7, 2003, at 1A.

175. Puit, *supra* note 1; see also Ball *supra* note 2 (quoting Henry Cellini, an expert on child abuse, who said that "Las Vegas is in a position to lead the nation in dealing with prostitution issues," because "no one has a problem even remotely similar to the one [t]here").

176. See Puit, *supra* note 1.

177. *Id.*

178. Lisa Kim Bach, *Trafficking in Children on Increase*, LAS VEGAS REV.-J., Mar. 19, 2006, at 1B; see also *Hearing on Assemb. B. 470 Before the Nevada Assemb. Comm. on Judiciary*, 73d Sess. 34-35 (Apr. 4, 2005) [hereinafter *Nevada Hearing*] (statement of Gil Shannon, Sergeant, Vice Section, Law Vegas Metropolitan Police Department).

179. Exploiting Americans on American Soil: Hearing Before the Comm. on Security and Cooperation in Europe, 109th Cong. 6-7 (2005) [hereinafter *Domestic Trafficking Hearing*] (statement of Chris Swecker, Assistant Director, Criminal Investigative Division, FBI).

noted that fifty percent of child prostitutes arrested in Las Vegas in 2004 were trafficked from other states.¹⁸⁰ Law enforcement launched local and national initiatives to confront what was becoming a ponderous problem, and the FBI launched a program called Lost Innocence in June 2003.¹⁸¹ The Lost Innocence Initiative coordinates local and national law enforcement to curb the trafficking of child prostitutes.¹⁸² In addition, in 1999, Las Vegas Metro Police launched Operation STOP (Stop Turning Out Child Prostitutes),¹⁸³ which detains child prostitutes and ultimately

180. Casey, *supra* note 9.

181. *Domestic Trafficking Hearing*, *supra* note 179, at 7 (statement of Chris Swecker, Assistant Director, Criminal Investigative Division, FBI). Mr. Swecker detailed the problem of exploitation of children in the United States:

According to the 2002 National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children, 1.6 million children [are] estimated to run away from home each year, and it is estimated that approximately 40,000 of those children will have some type of involvement in or brush with sexual trafficking.

Many of these victims are abandoned or neglected children who are usually not reported as missing to law enforcement or are runaways from their homes or the foster-care system.

Id. at 6.

182. *Id.* at 7. Robert S. Mueller, III, Director of the FBI, testified before various executive agencies, as well as the House Appropriations Subcommittee on Science, on September 14, 2006. Director Mueller noted:

The Innocence Lost National Initiative successfully addressed the crime problem of domestic trafficking of children for the purposes of prostitution. To date, this initiative has been expanded to 26 cities with an identified child prostitution crime problem. Eighteen task forces have been established with state and local law enforcement to combat this crime problem, with strong support provided by the National Center for Missing and Exploited Children. There have been 188 investigations (child exploitation or child trafficking cases) initiated, which resulted in 574 arrests, 115 indictments and 101 convictions. Prosecution at the federal level has resulted in the dismantling of 16 criminal organizations engaged in child prostitution.

FBI Oversight: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 314 (2006) (statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation).

183. See Int'l Ass'n of Chiefs of Police, *supra* note 18 ("Officers from the Las Vegas Metropolitan Police Vice Section recognized that the traditional methods of addressing the problem were inadequate. We realized that the juvenile prostitutes were victims rather than suspects, and the true suspects were the pimps who turned the juveniles to a life of prostitution, a process call [sic] 'turning them out.' With that in mind, detectives sought a new approach to the investigation and prosecution of these pandering cases and the rehabilitation of the juvenile victims. Las Vegas Metropolitan Vice Section detectives set out to accomplish two goals in every child prostitution case. The first was to locate, arrest, and prosecute any individual responsible for pandering a child. The second was to remove the child victims from a life of prostitution and provide them an avenue to purs[u]e a successful life. This concept required that changes be made in a variety of areas in the criminal justice system. Police collaborated with several governmental agencies and private groups that would be imperative to the success of the project. This program became known as the S.T.O.P. (Stop Turning Out Child Prostitutes) program.").

utilizes the detained child to assist in the prosecution of the pimp.¹⁸⁴ In the fiscal year 2002-2003, the Las Vegas Metro Vice Section placed 101 child prostitutes in the STOP program and arrested 52 pimps for pandering minors.¹⁸⁵

B. Material Witness Holds

Operation STOP may be heralded as a means of yielding sufficient evidence to prosecute pimps for pandering, however *Las Vegas Review Journal* writer Glen Puit noted that “if police suspect a prostitute is underage, they incarcerate her at the juvenile detention center and hold her often for weeks on material witness warrants. Many times the girls aren’t released until they admit their true identity and age.”¹⁸⁶ Operation STOP yielded arrests but the prosecution of pimps remained a legal quandary for Las Vegas, and the State of Nevada District Attorneys Association sought legislative help.¹⁸⁷ The Nevada legislature passed a law that removed the corroboration requirement for the prosecution of pimps.¹⁸⁸ Prior to the legislative amendment, crimes such as prostitution required corroboration before the state could proceed with pandering charges.¹⁸⁹ The removal of the corroboration requirement was touted as

184. See Casey, *supra* note 9.

185. LAS VEGAS METROPO. POLICE DEP’T, ORGANIZATION AND OPERATIONS AUDIT: LAW ENFORCEMENT OPERATIONS 26 (2004).

186. See Puit, *supra* note 1.

187. See *Nevada Hearing*, *supra* note 178 (statement of Ben Graham, Leg. Rep., Nevada District Attorneys Association) (“We’re talking about prostitution, and frequently we’re talking about young prostitutes. This has nothing to do with putting anybody in custody until they give up any names. . . . In this situation, police officers and victims groups are working with prostitutes, and frequently young prostitutes. They are trying to help them get out of the system and prosecute people that are preying upon them. I’m not talking about clients so much as I am people that are pandering. Pandering is getting someone to go into prostitution, or to continue in prostitution. Frequently, we have situations where the only real testimonies we have are these prostitutes. If you sit and watch, and deal with these prostitutes, many of them are really victims rather than criminals themselves, but the way the current statute is structured, without corroborating evidence they can’t even testify against the panderer; the person that is utilizing them to do prostitution. We’re seeking the ability to prosecute panders based upon the testimony of the victim—in this case the prostitute—which is part and parcel of what the panderer is doing. There really is no other crime where this type of evidence, corroboration, is required. From a practical standpoint, who are you going to believe beyond a reasonable doubt, the panderer, who says that they were not getting this person into prostitution, or the prostitute, or victim, really as I see them in many, many cases. They should be able to testify against the people that are preying upon them and getting them to go into, or continue in, prostitution.”).

188. 2005 Nev. Stat. 113.

189. *Id.* (removing pandering from the list of crimes requiring corroboration included in Nevada Code section 175.301). The statute was amended to read:

a critical component in combating the elusive nature of prosecuting pimps.¹⁹⁰ The statutory construction of Nevada's pandering statute now places the onus on the prostituted person to come forth and give testimony.¹⁹¹ The revised statute reduced the complexity of prosecuting pimps, but the statute made the prostituted person the solitary component in prosecuting pimps in Nevada.

The testimony of the prostituted person has therefore become all the more critical to the prosecutor's case. Young women are routinely placed in detention on material witness holds with the expectation that they will cooperate with law enforcement and give testimony against their pimps.¹⁹² The harsh treatment of witnesses by the Las Vegas juvenile justice system and the expectation of cooperation in return are draconian in their approach.

The juvenile justice system in Las Vegas recognizes that detaining young women for the purposes of cooperation is problematic. Judge William Voy of the Clark County District Court, Eighth Judicial Family Division identified the vulnerability of the juvenile prostitutes:

They feel that there is something wrong with *them* and that they are not getting it from the environment they are in whether it is a foster care placement, it's living with their grandmother or living with their parents. The majority of the kids are either living in broken homes and/or foster care placements¹⁹³

Judge Voy recognized that there needs to be a different option than detaining young women although he also noted the importance of garnering their testimony: "[W]e need an alternative to the detention

Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, the defendant must not be convicted upon the testimony of the person upon or with whom the offense has allegedly been committed, unless:

1. The testimony of that person is corroborated by other evidence; or
2. The person giving the testimony is, and was at the time the crime is alleged to have taken place, a police officer or deputy sheriff who was performing his duties as such.

NEV. REV. STAT. ANN. § 175.301 (LexisNexis 2006).

190. See *Nevada Hearing*, *supra* note 178, at 34-35 (statement of Gil Shannon, Sergeant, Vice Section, Las Vegas Metropolitan Police Department). Shannon expressed frustration with not having sufficient evidence to prosecute under the constraints requiring corroboration. *Id.*

191. NEV. REV. STAT. ANN. § 201.300 (explaining how a person is found to be "pandering" and the penalties for doing so, which, by implication, require the victim to come forward).

192. See *supra* notes 9-15; *infra* notes 194-99.

193. *Teen Prostitution I* (Nevada Public Radio, KNPR 88.9 radio broadcast Jan. 29, 2007) (transcript on file with author).

center . . . [but] we have responsibilities to keep the girls here to testify against pimps”¹⁹⁴

The Las Vegas juvenile system has few, if any, other alternatives for young women who are detained for prostitution.¹⁹⁵ During a radio interview for KNPR, host Dan Berns posed the following question to Teresa Lowry, Chief Deputy District Attorney for Juvenile Services in Clark County, Nevada: “DB: If we are talking about hundreds of girls out there on the streets at any given time, give or take, do we have the facilities bottom line, Teresa Lowry, to bring those girls in for treatment and get them back to their families? TL: Right now? No.”¹⁹⁶

The criminal defense bar also expressed concern. Susan Roske, Chief Deputy Public Defender for the Juvenile Public Defender’s Office in Clark County, explained the dichotomous position of the juvenile justice system:

Law enforcement can identify the girls, they can go after the pimps but the juvenile justice system then has the girl and I think we all agree that bringing a girl who is the victim of an adult sexual exploiter into a detention facility is *not* how we want to operate. That girl needs to be in a secure house, because, as we know, if she is not in a secure house she will run, and if she runs she puts herself at risk.¹⁹⁷

All parties involved acknowledge that detention for exploited young women is a problem.¹⁹⁸ No alternatives exist for juvenile prostitutes in Las Vegas due to the lack of interest in funding a safe house or having programs geared toward the vulnerable young women.¹⁹⁹

194. *Id.*

195. *Teen Prostitution II, supra* note 10.

196. *Id.*

197. *Id.*

198. *See id.* (Susan Roske & Teresa Lowry); *Teen Prostitution I, supra* note 193 (Judge William Voy).

199. During the KNPR interview, Judge Voy explained the problems in implementing such a safe house:

WV: We have the girls’ program in WestCare, but, unfortunately . . . it is too easy to run from that program and that’s a problem. . . . What we did is that we decided that we would put together a safe house where we could have these girls in a secure location but not a detention center and not a location like WestCare where you could walk from very easily. . . .

. . .

DB: And who is paying for this?

WV: Well that was the whole issue. We asked the county to pay for it and the way we conditioned the program for the transitional center and we figured out what was the right thing to do for the girl[s], then they would go to wherever the next location would be whether it is Children of the Night program, or Caliente or back home or whatever. We had this all set up but it was all based upon a certain number. We needed a ten bed guaranteed ten kids at any given time in

Once a determination is made to detain a girl as a material witness, Nevada laws do not give a clear indication of restrictions on the detention process.²⁰⁰ Under the Nevada code, juvenile cases are civil, not criminal, in nature and therefore, juveniles are not entitled to bail.²⁰¹ The juvenile judge becomes the sole arbiter of whether and when a detained witness can be released. The juvenile judge can either detain a young girl without a charge or release her to the proper authorities.²⁰² After the initial detention hearing, judicial discretion determines the detention framework.²⁰³ The law does require periodic reviews, but the statute stands silent as to an actual timeframe.²⁰⁴ The judge may order the release of the witness if the court determines the detainee was held for

the center for the funding to work. When we ran our numbers we couldn't guarantee it and so

DB: The numbers?

WV: The financial numbers. We couldn't guarantee that number.

Teen Prostitution I, supra note 193 (sixth alteration in original).

200. See NEV. REV. STAT. ANN. § 178.494 (LexisNexis 2006). The statute dictates:

1. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the magistrate may require him to give bail for his appearance as a witness, in an amount fixed by the magistrate. If the person fails to give bail the magistrate may:

(a) Commit him to the custody of a peace officer pending final disposition of the proceeding in which the testimony is needed;

(b) Order his release if he has been detained for an unreasonable length of time; and

(c) Modify at any time the requirement as to bail.

2. Every person detained as a material witness must be brought before a judge or magistrate within 72 hours after the beginning of his detention. The judge or magistrate shall make a determination whether:

(a) The amount of bail required to be given by the material witness should be modified; and

(b) The detention of the material witness should continue.

The judge or magistrate shall set a schedule for the periodic review of whether the amount of bail required should be modified and whether detention should continue.

Id.

201. See § 62D.010 ("Each proceeding conducted pursuant to the provisions of this title [rights of children] . . . [i]s not criminal in nature.").

202. See § 178.494.

203. The state may either charge the juvenile in juvenile court with solicitation/prostitution or may file a request to detain the juvenile as a material witness for possible testimony in adult court. The Nevada Code provides that the juvenile judge has wide discretion to detain the juvenile under each scenario. § 178.494 ("The judge or magistrate shall make a determination whether . . . [t]he detention of the material witness should continue.").

204. *Id.*

“an unreasonable length of time.”²⁰⁵ The statute gives no indication, however, as to what an unreasonable length of time would be.²⁰⁶

Analogous to federal material witness law, the rights of detainees under Nevada law are limited and ambiguous.²⁰⁷ Judges have the discretion to determine the criteria for detention and whether particular detentions meet an unreasonableness standard.²⁰⁸ Once a juvenile is detained as a material witness, the juvenile subsists in a legal limbo. The only remedy a material witness may seek is release.²⁰⁹ The Nevada courts have not recognized or granted material witnesses relief.

One material witness sued Nevada government officials after being detained by the state for an inordinate amount of time. In *Houston v. Humboldt County*, the trial court detained a material witness in a first-degree murder case for over a year.²¹⁰ The plaintiff sued state and county officials for illegal detention.²¹¹ The United States District Court dismissed the suit, citing a lack of proximate cause between state action and the plaintiff's detention.²¹²

The only relief a Nevada court can grant in such a situation is eventual release. Juveniles have no recourse but to cooperate with law enforcement and testify against their pimps. After the case is prosecuted, the juveniles are returned to their respective jurisdictions without services.²¹³ The Las Vegas community's refusal to place resources at the

205. *Id.*

206. *Id.*

207. *See supra* Part II.B.

208. *See* § 178.494.

209. *See generally* § 178.494; *see also supra* notes 205-06 and accompanying text.

210. *Houston v. Humboldt County*, 561 F. Supp 1124, 1125 (D. Nev. 1983).

211. *Id.*

212. *Id.* at 1126. The court also maintained the prosecutor had prosecutorial immunity. *Id.*

213. *See Teen Prostitution I, supra* note 193. Judge Voy explains:

some girls . . . aren't brought here by a pimp, they are attracted for other reasons and they get here and they end up getting involved in the game. A lot of times they will get picked up by a pimp here—they never came here *intending* to do it but they are now desperate and the pimp is there and you see that combination. Rarely do you see the lone girl . . . well, I actually do see some girls that got here for another reason and needed a way to get home and this is the only way they can do it. They easily get picked up by vice because they have no idea what they are doing, quite frankly. We get some of those and those are the real good ones because we can get them in, realize they are not really in the game—we don't have to do de-programming, do all that stuff—we can get them back to their home jurisdictions. The problem with sending a lot of these girls back is that the home jurisdictions don't understand and appreciate the severity of what we are dealing with here. We get kids, especially those that are repeaters, you know—they came here once before, we arrested them, we went through the court process, we sent them back to their jurisdiction, and then they

disposal of the juvenile justice system leaves juveniles in a quagmire. The juveniles have assisted in the prosecution of their pimps, the criminal justice system has incarcerated them for the duration of the pimp's case, and they are released into the same circumstances that led to their downfall. The juveniles are in a constant state of being victimized.

C. Secondary Victimization

"Secondary victimization has been defined as negative social or societal reaction in consequence of the primary victimization and is experienced as further violation of legitimate rights or entitlements by the victim."²¹⁴ The Las Vegas Metro Police's Operation STOP's use of material witness holds to coerce testimony from child prostitutes can only yield more psychological devastation. The trauma of working in the Las Vegas sex trade is degrading and dehumanizing for anyone,²¹⁵ but for a child the effects are exponentially worse.²¹⁶ Nevada laws give juveniles who are detained no choice but to cooperate with law enforcement and eventually be released.²¹⁷ Las Vegas Metro Police must identify and address the layers of anguish juveniles suffer. Firstly, many young women who become prostitutes were physically and sexually abused.²¹⁸ Secondly, being a juvenile sex worker in the dangerous and adult-entertainment-focused city of Las Vegas is probably overwhelming for a young girl. Lastly, the arrest and detention of juveniles in general can

come back again. Then we find out that the other jurisdiction, when they got the kid back, the kid is a child welfare kid in foster placement—and all they do is place the kid back in the same foster placement that they ran from with no additional services, no counseling, no nothing to address the issues that caused them to be in the situations they were in and guess what? They come back—go figure!

Id.

214. Orth, *supra* note 4, at 314.

215. See Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J.L. & FEMINISM 69, 81 (1998) (quoting Sarah Wynter, *Whisper: Women Hurt in Systems of Prostitution Engaged in Revolt*, in SEX WORK 268 (Frederique Delacoste & Priscilla Alexander eds, 1987)).

216. See Magnus J. Seng, *Child Sexual Abuse and Adolescent Prostitution: A Comparative Analysis*, 24 ADOLESCENCE 665, 671 (1989) (noting that of the prostitution-involved children he studies 82.9% were depressed, 85.7% suffered low self-esteem, and over 75% were potentially suicidal).

217. See *supra* notes 28-31 and accompanying text; see also *supra* notes 183-84 and accompanying text.

218. See Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 LAW & INEQUALITY 609, 613-15 (1984); Seng, *supra* note 216, at 665, 671-72; Mimi H. Silbert & Ayala M. Pines, *Occupational Hazards of Street Prostitutes*, 8 CRIM. JUST. & BEHAV. 395, 398 (1981). See generally John J. Potterat et al., *Pathways to Prostitution: The Chronology of Sex and Drug Abuse Milestones*, 35 J. SEX RES. 333 (1998).

have a negative effect on personality and self-esteem.²¹⁹ The juveniles detained by Operation STOP are prime candidates for secondary victimization.²²⁰ Asking such a vulnerable population to cooperate and testify against pimps and sex traffickers is unfathomable.

Secondary victimization can also manifest itself through a victim's perceptions of criminal proceedings.²²¹ If victims perceive the outcome of the criminal proceeding as not giving the defendant a severe enough sentence, the victim may be fearful of the defendant's release.²²² Additionally, a plea bargain by the defendant could immediately place a juvenile detainee/witness in peril, whether the danger is a real or perceived.²²³ Because child prostitutes are highly susceptible to secondary victimization, the legal system must work to ensure that their rights are protected. One way to accomplish this is the adoption of existing international legal standards.

V. INTERNATIONAL LAW

Recognition of a victim's status as a victim rather than a criminal is critical for crime victims.²²⁴ The victim needs public recognition of the defendant as the perpetrator and herself as the victim of a criminal offense.²²⁵ Denying this need can worsen the effects of secondary victimization.²²⁶ Juveniles who are detained under the guise of Operation STOP will never receive full public recognition as victims. The purpose of detaining juveniles for cooperation is that they would otherwise flee or would not cooperate with law enforcement. They are perceived by law enforcement and the courts as participants in their own victimization.²²⁷

A system that seeks to punish perpetrators prostituting juveniles needs to address the sensitive issues surrounding the detainee/witness. A juvenile prostitute detainee is most likely to be fourteen-year-old runaway with a history of drug and alcohol abuse.²²⁸ The conditions that

219. Orth, *supra* note 4, at 314.

220. *See generally id.*

221. *Id.* at 315.

222. *Id.*

223. *See id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *See Teen Prostitution I, supra* note 193. Judge Voy explains:

There is no easy answer. Some of these girls are finally ready to give it up and we are able to send them to the Children of the Night Program in California. Some of them their maturity level is so low or they may not be able to give it up and keep running from us that we have to send them to Caliente.

Id.; *see also* Orth, *supra* note 4, at 316.

228. *See Seng supra* note 216, at 671-72.

lead juveniles to the streets can never be underestimated. Operation STOP needs to protect the detained juveniles in its zeal to prosecute pimps. While legal and psychological counseling would stymie the effects of secondary victimization,²²⁹ a sophisticated and reasoned approach that balances the need to prosecute pimps and sex traffickers with the needs of the prostitutes is necessary. Juveniles should not be victimized by the criminal justice system that seeks their cooperation. International human rights laws have recognized that prostitution and trafficking victims are an exploited and vulnerable class in need of protection and services.²³⁰ The United Nations has drafted various policies that law enforcement agencies like the Las Vegas Metro Police should adopt or model.

A body of international law exists that can address the detention of child prostitutes.²³¹ In the various resolutions, protocols, and treaties on the subject, child sex workers are treated as exploited parties and not as criminals as they are in the Las Vegas juvenile justice system. The United Nations has addressed the basic rights of detained persons, exploited persons, and trafficked persons.²³² The United Nations has grappled with the transnational problem of trafficked women and children involved in sweat shops and the sex trade. The UN initially crafted the basic human rights for all persons in 1948.²³³ The Universal Declaration of Human Rights (UDHR) affirmed that no one should be held in servitude or slavery, and also proclaimed that no one should be subject to arbitrary arrests or detention.²³⁴

Contrary to the United Nations' philosophy, the Las Vegas Metro Police arbitrarily detain young women, seek cooperation from them, and give them little to no assistance in return. This leads to abuses in the system, especially because juveniles do not have the same due process

229. See Orth *supra* note 4, at 324.

230. See Rights of the Child Protocol, *supra* note 26, at art. 8.

231. See, e.g., *id.*; sources cited *infra* notes 232-33.

232. Trafficking Protocol, *supra* note 26; OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, HUMAN RIGHTS AND PRISONS: A POCKET BOOK OF INTERNATIONAL HUMAN RIGHTS STANDARDS FOR PRISON OFFICIALS 13 (2004), available at <http://www.violencestudy.org/europe-ca/PDF/OHCHR/train11add2.pdf>.

233. See generally Universal Declaration of Human Rights, G.A. Res. 217A, UN.GAOR, 3d Sess., 1st plen. mtg. U.N. Doc A/810 (Dec. 12, 1948). There are no signatories to the UDHR. The Declaration was ratified through a proclamation by the General Assembly on December 10, 1948, with a count of 48 votes to none with only 8 abstentions. United Nations Association in Canada, Questions and Answers About the Universal Declaration, <http://www.unac.org/rights/question.html> (last visited Jan. 17, 2008).

234. Universal Declaration of Human Rights, *supra* note 233, at arts. 4, 9.

rights as criminal defendants.²³⁵ The judicial reason to continue the detention of the child prostitutes may aid the state in prosecuting pimps; nevertheless, the detention is a fundamental violation of the UDHR.²³⁶

Over a succession of several years, the United Nations created the foundation for international human rights standards. The United Nations began with the fundamental rights of self-determination and the pursuit of economic, cultural, and social development by passing the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights in 1966.²³⁷ If a person's rights are violated, the resolution gives the grieved party the right to have an effective remedy to be determined by a competent judiciary.²³⁸ In Nevada, a child prostitute who is detained by Operation STOP has no judicial remedy.²³⁹ The judge who determines the initial detention also reviews the decision in subsequent hearings.²⁴⁰ The International Covenant on Civil and Political Rights elucidated rights in areas that they did not contemplate at the time of the Covenant's adoption: The parties to the Covenant are forbidden from restricting fundamental human rights even if the Covenant does not recognize a particular right.²⁴¹ The Covenant, therefore, restricts the abridging of rights of detained child prostitutes.²⁴²

The United Nations passed a resolution in 1979 recognizing the challenges and discrimination women face.²⁴³ The Convention on the

235. See generally ALISON SMITH, CONGRESSIONAL RESEARCH SERVICE, JUVENILE JUSTICE: RIGHTS DURING THE ADJUDICATORY PROCESS (2007); see also Cecelia Espenoza, *Good Kids, Bad Kids: A Revelation About the Due Process Rights of Children*, 23 HASTINGS CONST. L.Q. 407, 408 (1996).

236. See Universal Declaration of Human Rights, *supra* note 233, at art. 9.

237. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 1 ¶ 1, U.N. Doc A/RES/21/2200A (Dec. 16, 1966). The United States ratified the Covenants on May 10, 1977. United Nations Human Rights Website, Treaty Body Database, <http://www.unhcr.ch/tbs/doc.nsf> (follow link to ratifications and reservations) (last visited Jan. 17, 2008).

238. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 2 ¶ 3, U.N. Doc A/RES/21/2200A (Dec. 16, 1966).

239. See *supra* notes 207-12 and accompanying text.

240. See NEV. REV. STAT. ANN. § 178.494 (LexisNexis 2006).

241. International Covenant on Civil and Political Rights, *supra* note 238, at art. 5 ¶ 2.

242. See generally *id.* at art. 9.

243. See generally Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. Doc A/RES/34/180 (Dec. 18, 1979). The United States accepted the Convention with a "signature only" designation. The signature only designation is defined by the UN Treaty Reference guide as:

Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed

Elimination of All Form of Discrimination against Women (CEDAW) identified discrimination that impaired women from partaking equally in the political, social, economic, and cultural aspects of life in their countries.²⁴⁴ The convention sought not only to condemn all forms of gender discrimination; it sought legal protections for women.²⁴⁵ The legal protections included an outright ban on “traffic in women and exploitation of prostitution of women.”²⁴⁶ CEDAW protects vulnerable and exploited women worldwide. To the contrary, The Las Vegas criminal justice system exploits child prostitutes through Operation STOP. The Las Vegas Metro Police detain girls for the criminal act of prostitution, but the police expect the girls to cooperate in the prosecution of their pimps.²⁴⁷ The criminal justice system exploits vulnerable young women whom it is meant to protect according to international legal standards. Similar to trafficked immigrant women who are asked to cooperate in exchange for T-visas, the child prostitutes are expected to risk their lives and cooperate with law enforcement. Many of the young women are sent home without services or assistance.²⁴⁸ The exploitation of young women, whether by sex traffickers, pimps, or law enforcement, is what the drafters of CEDAW sought legal redress against.

The rise in international trafficking of children for prostitution and pornography lead to the United Nations’ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.²⁴⁹ The Protocol requires parties to forbid the sale of children, child prostitution, and child pornography and to make such activities illegal.²⁵⁰ The Protocol also requires parties to adopt measures that protect the rights and interests of child victims.²⁵¹

to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. CEDAW treaty.

United Nations Treaty Collection, Treaty Reference Guide, <http://untreaty.un.org/English/guide.asp#signaturead> (last visited Jan. 17, 2008).

244. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 243, at art. 1.

245. *Id.* at art. 15.

246. *Id.* at art. 6.

247. See Bach, *supra* note 178; see also Casey, *supra* note 9.

248. See *supra* note 199 and accompanying text.

249. See generally Rights of the Child Protocol, *supra* note 26.

250. Rights of the Child Protocol, *supra* note 26, at arts. 1, 3.

251. *Id.* at art. 8 (“Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process . . .”).

The approaches of the Las Vegas Metro Police Department and the United Nations to the problems of child prostitution and child trafficking could not be more divergent. Article 8 of the Protocol requires a measured and thoughtful approach in dealing with child witnesses and victims. The best interest of the child is the primary consideration.²⁵² Legal support services and protection of the victim and her family are also required of parties to the Protocol.²⁵³ Operation STOP, on the other hand, treats as disposable those child witnesses who are detained. Judge William Voy expressed frustration with the approach to child prostitutes from whom the state seeks cooperation in prosecutions.²⁵⁴ Las Vegas Metro Police violated the letter and spirit of the Protocol meant to protect an exploited and vulnerable class.

Attacking the criminal aspects of trafficking, the United Nations passed the Convention against Transnational Organized Crime, which included provisions for suppressing the trafficking of women and children.²⁵⁵ The Protocol requires parties to protect the privacy and identity of victims by making the legal proceedings confidential in nature.²⁵⁶ The Protocol also requires parties to provide assistance in “the physical, psychological and social recovery of victims” of trafficking.²⁵⁷ Parties are also required to consider either repatriating trafficking victims or assisting in returning them to their countries of permanent residence.²⁵⁸ Detained child prostitutes in Las Vegas are required to give police statements and potentially identify the pimp or trafficker in court. The child-prostitute-as-witness is not protected from the abuses of the criminal justice system. This zealous approach to prosecuting pimps and traffickers can leave child prostitutes without assistance when prosecutions are complete. The Las Vegas Metro Police and the Juvenile Court system must approach the child prostitution problem with the nuances contemplated by the Protocol drafters. Sending children home or placing them in safe houses is a short-term solution that does not address the root causes of child prostitution.

252. *Id.*

253. *Id.*

254. *See supra* notes 193-94.

255. Trafficking Protocol, *supra* note 26, at art. 2. The United States ratified the Protocol on November 3, 2005. *See* United Nations Office on Drugs and Crime, Signatories to the CTOC Trafficking Protocol, http://unodc.org/unodc/crime_cicp_signatures_trafficking.html (last visited Jan. 17, 2008).

256. Trafficking Protocol, *supra* note 26, at art. 6.

257. *Id.*

258. *Id.* at arts. 7, 8.

VI. PROTECTING THE RIGHTS OF CHILD PROSTITUTES

The following proposals seek to balance the need for holding sex traffickers and pimps accountable with the protection of and assistance for prostituted children. States such as Nevada that aggressively prosecute sex traffickers and pimps must 1) adopt the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children; 2) grant children detained on material witness warrants the right to counsel; and 3) allow a civil cause of action for prostituted women and children against sex traffickers and pimps.

The Las Vegas Metro Vice Division must adopt United Nations model standards when seeking cooperation from child prostitutes. The Vice Division needs to observe the international standards set forth by the UN and recognize a new paradigm that young girls are not just witnesses to be used for the prosecution of pimps, but they are victims themselves. Prosecuting pimps must include parameters for the protection of prostitutes. The state legislature should draft legislation that recognizes that prostitution is not a victimless crime. In its zeal to eradicate child prostitution in Las Vegas, the criminal justice system must not trample upon the lives of vulnerable and exploited girls. The Nevada legislature should adopt Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

Nevada grants juveniles the right to counsel during delinquency proceedings.²⁵⁹ The right to counsel should be extended for civil actions such as material witness holds. Due process rights can be easily ignored when the child prostitute does not have an advocate in court. Children in the juvenile or adult criminal system are not always fully apprised of their rights.²⁶⁰ Children may also too easily waive the critical constitutional right of counsel.²⁶¹ To ensure that child witnesses do not languish in detention awaiting the outcome of an adult prosecution, an advocate is needed for the child.²⁶²

259. See NEV. REV. STAT. ANN. § 62D.030 (“If a child is alleged to be delinquent or in need of supervision, the juvenile court shall advise the child and the parent or guardian of the child that the child is entitled to be represented by an attorney at all stages of the proceedings.”).

260. Barry C. Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J. CRIM. L. & CRIMINOLOGY 1185, 1199 (1989).

261. Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 579 (2002).

262. *But see* Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child’s Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 246-47 (2005). Henning challenges the traditional “best interest,” or client centered, model of juvenile representation. *Id.*

States that recognize the victimization of prostitutes have drafted novel legislation that allows the prostituted person to claim a civil cause of action against johns, pimps, panderers, solicitors, and recruiters.²⁶³ Illinois has taken the lead with the Predator Accountability Act.²⁶⁴ The Act specifically addresses juvenile victims of prostitution,²⁶⁵ allowing juveniles to file actions against their pimps and be granted compensation for the violence, humiliation, and exploitation they suffered.²⁶⁶ The tort action is an attempt to vindicate the victim and may result in substantial monetary recovery to publicize and combat the prostituting of children.²⁶⁷ The tort claim complements Article 6 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.²⁶⁸ A successful claim would give much needed recognition to an exploited and overlooked group and ensure greater accountability of panderers in the child sex trade.

VII. CONCLUSION

Child prostitutes, like Hope, are released from juvenile detention facilities after the state has concluded its case against the trafficker or pimp. Girls are routinely returned home to dire circumstances that create runaways and child prostitutes. A multifaceted approach is needed in seeking solutions to the pervasive problem of child prostitution. Prosecuting pimps and sex traffickers is an important component in a crime that has national and international ramifications. Nevertheless, the detention of child prostitutes for the sake of

As revealed in a number of the state assessments on the access to and quality of juvenile counsel, attorneys who adhere to the best-interest model often give very little attention to challenging the government's case, conduct little or no investigation, and frequently rely on probation officers as the primary source of information about the client and the charges. An attorney who believes that juvenile court intervention is best for the child may refuse to fight or be lackadaisical in fighting allegations of delinquency—even if he or she knows the client is innocent.

Id. at 288-89 (footnote omitted).

263. See generally Shay-Ann M. Heiser Singh, Comment, *The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice*, 56 DEPAUL L. REV. 1035 (2007) (providing an overview of past and existing statutory causes of action available to prostitutes in the U.S.).

264. 740 ILL. COMP. STAT. ANN. 128/5, 10 (West 2007) (“The purpose of this Act is to allow persons who have been or who are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.”).

265. *Id.* at 128/10(2), (5), (7)-(8), (10).

266. See *id.* at 128/20 (authorizing various forms of relief).

267. See Note, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 HARV. L. REV. 2574, 2588-91 (2006).

268. See generally Trafficking Protocol, *supra* note 26, at art. 6.

prosecutions is not the solution. Any state that seeks to utilize children in its prosecution of adults in sex trafficking and prostitution should be able to guarantee child witnesses basic due process rights and legal and social service assistance. The Las Vegas Metro Police Department and the Juvenile Court do not offer basic assistance to their child witnesses and by failing to do so they violate the basic human rights of child prostitutes.

