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The Child Issue

Where Youth and the Law Intersect

The Scourge of Sex Trafficking
Do Bullies Have First Amendment Rights?
Minors Committing Torts: Who Is Liable?
The Questions of Calling a Child Witness

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Shining a Light on the Dark Scourge of Sex Trafficking

Prior to my tenure as Commissioner of the Department of Children and Families (2011-2019), I must admit that I was ignorant of the scourge of **sex trafficking in Connecticut.**

I knew little to nothing about the subject, despite my many years as a Justice and public defender. I had read some columns by Nicholas Kristoff that focused on international sex trafficking and seen movies like "Taken" that similarly described the problem as occurring on foreign soil. But I never would have imagined that the problem existed so close to home. Consequently, it is an understatement to say that I was shocked and dismayed when I learned that there had been over 300 girls and boys (but predominantly girls) in Connecticut who had been identi-

fied as victims of sex trafficking. In every county in Connecticut, there have been reports of sex trafficking. I quickly got an education from my colleagues at DCF regarding the scope of the problem of people who were only too happy to take advantage of vulnerable children and youth. With my newfound awareness, I soon realized both the difficulty of identifying and treating victims and the challenges associated with detecting complicit sex traffickers. Although Connecticut had begun this invaluable work, I concluded that we had a lot more work we needed to do.

Most jurisdictions did not have statutory schemes in place to deal with child sex trafficking because the abuse and neglect of these victims were not being perpetrated by someone “responsible for such child’s health, welfare or care” or “a person entrusted with the care of [the] child.” Put simply, the pimps who preyed on these victims were not people legally entrusted or responsible for them, so the law wasn’t dealing with them. The first thing we did was work with the legislature to enact Connecticut’s Trafficking of Minor Children Law, General Statutes § 17a-106f. (See Sex Trafficking Victim Legislation beginning on page 32.) The legislative improvements allowed the department to deploy staff, expend resources, provide services and treat victims. We sponsored training, put on seminars in which the Judicial Branch actively participated, and I personally met with police departments and prosecutors (state and federal) to identify and prosecute perpetrators who preyed on the youth we identified and rescued.

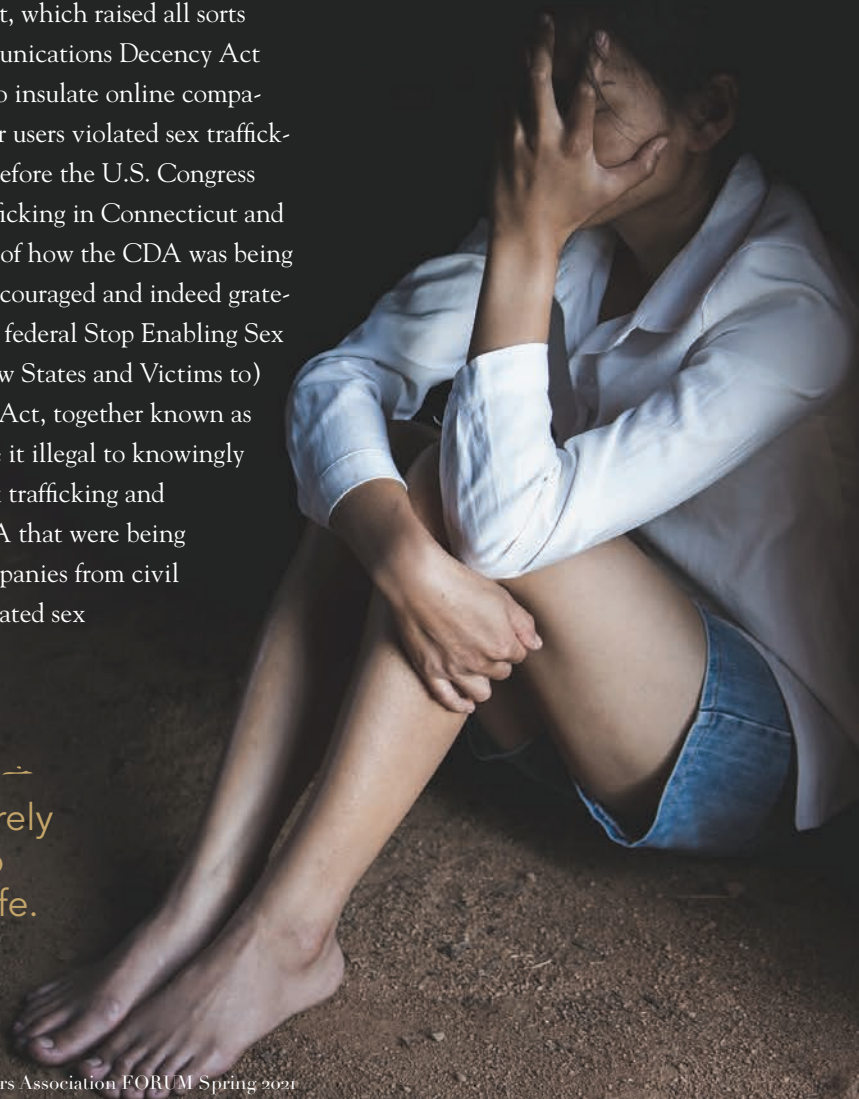
For me, the next step was to identify where these atrocities were happening. Many victims were being recruited through the internet, which raised all sorts of issues regarding the Communications Decency Act (CDA) that was being used to insulate online companies from civil liability if their users violated sex trafficking laws. In 2015, I testified before the U.S. Congress about the problem of sex trafficking in Connecticut and the unintended consequence of how the CDA was being used as a shield. I was very encouraged and indeed grateful when Congress passed the federal Stop Enabling Sex Traffickers Act and the (Allow States and Victims to) Fight Online Sex Trafficking Act, together known as FOSTA-SESTA, which made it illegal to knowingly assist, facilitate or support sex trafficking and amended portions of the CDA that were being used to immunize online companies from civil liability if their users had violated sex trafficking laws.

fact:

Sex trafficking is rarely the first thing to go wrong in a child’s life.
(love146.org)

Still Looking the Other Way

While the legal landscape was undoubtedly changing for victims who could be rescued, treated or made aware of possible remedies and resources, as Commissioner, however, I had another agenda. For me, more imminent concerns were at play. The things that I saw were so horrific – like the young girl who had “\$\$” tattooed on her face and who was about to be sold the next day and transported to New Jersey from a seedy motel in Bridgeport had we not rescued her – that I felt we needed to act more expeditiously. Many youths were victimized at hotels and motels where employees were unaware or willfully ignorant. In fact, a National Human Trafficking Hotline report on human trafficking cases occurring in hotels and motels for a five-year period ending December 31, 2016, shows that nearly 75 percent of sex trafficking cases reported were based there, the most common location for such abuse to occur. These are frequent sites of trafficking because they offer an affordable and easily accessible location for commercial sex acts together with privacy and anonymity.





But make no mistake, it is not sleazy establishments alone that provide haven for these illicit activities. Highbrow establishments and elite venues do as well. It is shocking how often a maître d' or concierge will turn a blind eye to a 15-year-old made up to look older with barely any clothing on parading around a fancy hotel lobby or restaurant, but be able to tell you at a moment's glance how many shots had been poured from an expensive bottle of scotch from the restaurant.

Psychological Trauma

I learned that, unfortunately, severe psychological barriers exist to getting young girls to acknowledge that they have been sexually trafficked. So many victims believe that they are the pimp's girlfriend rather than simply a commodity; too often, as part of a grooming process, they were seduced into believing they actually mattered, and were "just doing tricks to help her guy out through a rough patch." Then, of course, there is the trauma and

lengthy recovery for victims. Two of the many challenges to success are helping the victims to recognize both that they are indeed victims and that they have options. The education, training and public service flyers DCF offers all help. They raise awareness with the victims and provide guidance and information about the resources available to them to overcome coercive control tactics. Our primary role at DCF was to ensure that workers and providers could identify these victims and assist in putting them on the path to recovery and living healthy lives again. It often takes years. These very same challenges make it difficult to identify and support victims should they choose to initiate litigation to deter this destructive activity and compensate them for their seriously damaged young lives. Legislatures have recognized these impediments by extending the statute of limitations for pursuing civil sexual assault cases.

Accountability for Corporate Malfeasance

In the not too distant future, I anticipate criminal prosecutions against corporate entities, including the hospitality industry. As Commissioner, I saw a number of actions brought under the Trafficking Victims Protection Act (TVPA, passed in 2000) including a class action lawsuit by multiple women athletes against the U.S. Olympics Committee, the U.S. Taekwondo Association, and related individuals, as well as a lawsuit against Blue Icarus, LLC, a company that owned the condominium where the victim-plaintiff was allegedly trafficked.

SEX TRAFFICKING VICTIM LEGISLATION

The Trafficking Victims Protection Act (TVPA), passed in 2000, was the first comprehensive federal law to address trafficking in persons. The law provides a three-pronged approach that includes prevention, protection and prosecution. The TVPA exposes corporate entities to potential criminal liability, imposing severe criminal sanctions on whoever recruits, solicits, transports or obtains a person for a commercial sex act (as well as anyone who benefits from such an act) by force, fraud or coercion, or while knowing that the trafficked individual is under 18 years of age. The TVPA has been reauthorized several times. Certain amendments have added real teeth to the act, strengthening and expanding the TVPA to increase its ability to evaluate foreign

government efforts to eliminate human trafficking, prohibit any "knowing benefit" from a trafficking venture, add human trafficking to the list of crimes that can be charged under the Racketeer Influenced Corrupt Organizations (RICO) statute, and lower the standard for criminal liability from actual knowledge of the trafficked individual's minor age (or of the fact that threats or force were used in trafficking) to either knowledge or reckless disregard. The TVPA provides for a federal civil right of action allowing trafficking survivors to sue their traffickers, including a provision permitting a plaintiff to bring suit not only against their "traditional trafficker," but also against anyone who knowingly benefits – financially or otherwise – as a result of the trafficking. The statute also

allows state attorneys general to bring civil actions against human traffickers.

Connecticut General Statutes

§ 17a-106f provides that "(a) The Commissioner of Children and Families may: (1) [p]rovide child welfare services for any minor child residing in the state who is identified...as a victim of trafficking, as defined in section 46a-170; and (2) provide appropriate services to a minor child residing in the state who[m] the Department...reasonably believes may be a victim of trafficking in order to safeguard the welfare of such minor child....(b) The Commissioner...may, within available appropriations, provide training to law enforcement officials regarding the trafficking of minor children. The training

Other lawsuits around the country have included one in Ohio against the hospitality industry claiming that certain prominent hotel chains knowingly benefitted from participating in a venture that they knew was engaged in illegal sex trafficking, in violation of the TVPA, by partaking in acts and omissions that were intended to support, facilitate, harbor, and otherwise further the trafficker's sale and victimization of the plaintiff for commercial sexual exploitation. Moreover, if a hotel has any experience with law enforcement activity on the premises regarding suspected trafficking, I anticipate claims that the establishment knew or *should have known* about the sex trafficking activity. If the hotel accepted payment for the room while doing nothing about what it knew or should have known was going on, I further anticipate allegations that it was directly complicit. Time is on the wane for traffickers who have long capitalized on the hotel industry's refusal to adopt or enforce company-wide anti-trafficking policies. All of this will be grist for the mill as claims under federal law and recently passed state statutes (that essentially mirror federal law) affording trafficking victims civil remedies find their way into courthouses around the country.

What Can We Do?

For starters, we must stop treating victims as criminals and focus on the arrest and prosecution of the buyers and traffickers. Mandating trauma-informed training for prosecutors and defense attorneys would go a long way toward that goal. We must attend to the victims who

shall include, but not be limited to, (1) awareness and compliance with the laws and protocols concerning trafficking of minor children, (2) identification of, access to and provision of services for minor children who are victims of trafficking, and (3) any other services the department deems necessary to carry out the provisions of this section and section 17a-106a." *Effective date October 1, 2014.*

Connecticut General Statutes §§ 17a-106g and 44-5 permit state agencies to consult with local and national hotel and lodging associations to recommend educational training to employees of hotels, motels, etc. Employees are trained when hired to recognize potential victims of human trafficking as well as activities commonly associated with

human trafficking. Awareness campaigns for employees on the activities commonly associated with human trafficking are intended to be ongoing and the operators must certify that each employee of any such establishment has received the training prescribed by this section in each employee's personnel file. The industry in Connecticut was very receptive to working with the Department and many hotels in the tristate region sponsored some of the best training sessions. *Effective date October 1, 2016.*

The Stop Enabling Sex Traffickers Act (SESTA) and the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) are the U.S. Senate and House bills known as the FOSTA-SESTA package that became law on April 11,

2018. They clarify the country's sex trafficking law to make it illegal to knowingly assist, facilitate, or support sex trafficking, and amend the section 230 safe harbors of the Communication Decency Act (CDA) to exclude enforcement of federal or state sex trafficking laws from CDA's immunity. FOSTA-SESTA was an expansion by the federal government of corporate responsibility intended to eradicate online sex trafficking, explicitly allowing online websites to be held liable for certain types of user-generated content, including unlawful content relating to child exploitation and sex trafficking.

fact:

Children being bought for sex are victims, not criminals. (love146.org)

need appropriate shelter and services to get away from and not return to their traffickers. These survivors must be leaders in the development of services, shelters and response protocols to domestic minor sex trafficking (DMST).² We need to learn how to recognize human traffickers and the psychological manipulative tools they employ to recruit their targets to stop the flow of this scourge.³ And as an immediate step, we must help create a path for victims to reenter our communities without the criminal records they've acquired serving their traffickers by supporting legislation allowing them to get criminal records vacated if they can show that the crimes were a result of having been trafficked.⁴ This would bring Connecticut in line with at least a handful of other states to provide an opportunity for trafficking victims to rebuild their lives and become productive members of our communities. ◉

1 In addition to being a partner at Shipman & Goodwin, LLP, Joette Katz spent over eighteen years as an Associate Justice on the Connecticut Supreme Court, hearing approximately 2,500 cases and authoring nearly 500 opinions. Following her tenure on the high court, Katz served as Commissioner of the Connecticut State Department of Children and Families for eight years (2011-2019).

2 See love146.org and theundergroundct.org.

3 <https://vawnet.org/material/national-report-domestic-minor-sex-trafficking-americas-prostituted-children>

4 There is a pending amendment to current statute C.G.S. § 54-95 c to include convictions other than prostitution.