

SLAVERY NO MORE 2012 GLOBAL HUMAN TRAFFICKING CONFERENCE
August 10-11 ~ LOS ANGELES, CA

Human Trafficking in the United States – A D.O.J. Perspective – John Cotton Richmond

Peter White: As we mentioned this morning, John Richmond with the Department of Justice was delayed in flying in, but he has made it, and we know a lot of folks came excited to hear from him so we're going to be running about ten, 15 minutes late, and we're going to forgo the break and have a truncated version of his morning session right now. So it's my privilege to introduce a gentleman who is the former India Field Director for International Justice Mission, who actually helped launch that great organization and now serves as Special Litigation Council for the Human Trafficking Prosecution Unit with the U.S. Department of Justice. I think he spent the whole day at the airport yesterday trying to get here and ended up coming in this morning, so we appreciate his dedication and heart to make it anyway. Please welcome with me John Cotton Richmond from the Department of Justice.

John Richmond: You guys are true believers to stay through your break. That's really impressive. I am glad to be here. I apologize that I was not here this morning. Peter asked me, he said, "*Can you just like the core things that you were going to say. Can you distill it down to a few minutes and race through a couple of concepts.*" I've heard a few panels, and I thought for just a few minutes for the folks who wanted to stay to lift up about 60,000 feet and take a view of human trafficking from that view. That it is not down in the weeds or the specifics which is where I spent most of my time. Every week I get to go around the country and interview real victims and spend time with them. Spend time with real defendants, real perpetrators, getting to know them, hearing their stories. It's very tactile. It's very real.

We try these cases out of the Civil Rights Division in the Department of Justice where I work in the Human Trafficking Prosecution Unit. What I want to do is pull up to that 60,000 feet and give you just a couple quick ideas. The first is, and I'm sure you've already heard this phrase, "*Victim Centered Approach.*" If I could leave you with just a few thoughts of what it means to me. It means essentially we're going to treat victims as if they matter. We're going to move from just trying to figure out what happened in trying to get the bad guys, and we're going to care for the victims throughout the whole process, giving them dignity and respect.

Practically, it means we're not going to deport them. We're not going to harm them. We're not going to arrest them. We're not going to hold them responsible for something they did as part of our case. It's essential, and I talk to prosecutors all over the country about it all the time. Every now and then, I hear a report about a victim or a survivor spending time in jail, and it just drives us crazy. We speed to try and remedy that. Victim centered is just a huge idea.

The other thing I wanted to talk to you about is the core idea of trafficking is always about coercion. It can't be said enough. I think it really comes from this, and this is what I find all the time. People hear a story about a trafficking case. They saw it in a news article. They saw

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a magazine show on TV. They heard from an NGO presentation. They got a glimpse of a story, and then they think that's what trafficking is. That story. That's an accurate but an incomplete idea of what trafficking is. It's everybody's stories, and they're all completely different.

I want to talk to you for a few minutes about the myths of human trafficking that I combat. One of them that comes up all the time is that foreigners have to be involved. I hear regularly from law enforcement officers that say the victim's a U.S. citizen and the defendant's a U.S. citizen, so this can't be a case. Not true. There's no requirement in the federal law. There's no requirement in the state laws that we have a foreign national involved at any level. When you're talking to law enforcement officers that could be something that trips up a case very early on.

Another thing is the difference between smuggling and slavery. I don't know if you guys have explored that at all today. Smuggling is about the movement of people. It's not human trafficking. In fact, I don't even like the term trafficking. I was just telling some friends in another room it makes me think of road congestion. It makes me think of movement. It makes me think of arms dealing and drug trade where things are moving. There's no aspect of human trafficking that has anything to do with movement. It doesn't. All's it has to do with is coercion. It's forcing people to do something.

We had a case in Florida where we tried a U.S. citizen defendant for trafficking, a U.S. citizen victim who's now a survivor in the county. They never left. No state boundaries were crossed. No county boundaries were crossed. No international boundaries were crossed. I liked this picture, because I studied geography in college, and I took air photo interpretation. What I realized is when you look at the earth from satellites, you can't see borders. Defendants don't see borders. They could care less what lines they're crossing. They just want to make money, because it's an economic crime. That's the motivation. It has human rights and personal dignity implications, but it's motivated by money.

We're talking about trafficking and coercion. If you think of trafficking as coercion, smuggling as movement, you can see they overlap. There could be smuggling and trafficking in the same case, and I've indicted cases like that, but it's just really important to remember the difference. Particularly because, and I don't speak Spanish, but lots of people who do tell me when you translate trafficking into Spanish, it becomes smuggling. It creates all sorts of challenges as we work bilaterally with countries in Central America and South America.

Other big myth is that it always is about sex. This is Alex [Campbell]. We just convicted him in Chicago. He's your classic sort of pimp, really nasty fellow, but people think it's all about sex. It has to be sex. It's all domestic minor sex trafficking. It's all sex trafficking. Those are incredibly important cases. I've tried them. They're meaningful, but the vast majority of human trafficking victims in the world are labor trafficking victims. Those cases matter. They're hard to develop. They're hard to prove, but they're meaningful. It's worth the investment of time and energy to do our labor cases. I want to encourage you guys if you

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have the bandwidth to explore putting more and more energy into labor trafficking cases. They're incredibly, incredibly meaningful to do.

Another myth that obviously that victims self-identify, and they don't. Here's a proverb that someone told me about from Cambodia which I thought was really powerful. It's "*men are like gold. Women are like cloth. If gold falls in the mud, it can be cleaned. But cloth stays dirty forever.*" What a terrible idea. What a terrible thought. So much of the time victims don't self-identify not just because of the shame of sex trafficking, but sometimes adult men in labor trafficking don't want to self-identify because of embarrassment and shame and the violence that they've experienced or just feeling like they were duped and got tricked. Like they've let their whole family and village down.

They don't self-identify which means they're going to lie to law enforcement which means that we're going to have prior consistent statements and as anyone who went to law school knows, they drill it into our heads. Never have a prior inconsistent statement. We welcome them. Every case is littered with prior inconsistent statement. I start my jury selection talking about why we're going to have lots of different statements. It's part our cases. We don't run from it. We just have to be ready to tackle it from the very beginning.

This is one that just drives me crazy when people talk about origin, destination, and transit countries and lots of really smart and powerful people do. It doesn't matter. Every time I've heard someone talk about it, it's to cabin off their countries issue so that they don't have to deal with the whole problem. The reality is every country is an origin, transit, and destination country. We need to deal with every aspect of trafficking everywhere.

Chains and beatings have to be there. I can't tell you how many times I've talked to a prosecutor, and they've said there's no chains, there's no beatings, there's no locks on the doors, so we don't have a case. We have to back it up and work through it. Of course, I'm preaching to the choir here, because you guys all know this. It's so important to be patient when you're talking to a supervisor or a prosecutor or a new agent or a new person in an NGO to understand that we've got to take time to educate them on each individual case, bring them up to speed.

What human trafficking is not at least under U.S. law. It's not the things I put up here. It's not illegal child adoption. It's not the trade in human organs. It's not child pornography. All these types of things are crimes. We can prosecute them under other statutes, but it's not trafficking. Trafficking is always going to deal with coercion and profit. Those two things are going to go together. We're going to have commerce and coercion together.

A quick view of our statues. Let me take you through what they are. They've already been referenced by a couple folks, but I just wanted you to see a graphic of them. For forced labor, it's "*knowingly providing or obtaining the labor and services of another person through one of four prohibited means.*" I've put them up here. There has to be labor or services involved. It can't just be someone being mean to someone else. There has to be some aspect of labor or services provided. It has to be through one of these prohibited means. It's going

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to be serious harm, threats of force, scheme, plan, and pattern to make someone suffer serious harm or abuse of law or legal process.

The big idea here is that we're trying to reach more subtle areas. Our old statute before the trafficking victim's protection act was passed reached physical harm, physical restraint and threats of physical harm and restraint. That's it. We couldn't bring all these other things that were specific to the victim psychological coercion, economic coercion, reputational harm. Things like that. We couldn't bring those in as part of the case. A group of prosecutors tried in the (Kuz min ski 00:02:38) case, went up to the Supreme Court, and they got reversed. That was in 1988, so immediately Congress was outraged. As Congress does, they acted quickly, and 12 years later they passed the Trafficking Act.

Sex Trafficking. This is a bar in New York that was taken down a few years ago. Let me show you the elements here. This is a little more complicated, because when Congress wrote it they actually put two crimes in one. So it reads really complicated and really funny, but it's not that difficult. It's that you *"knowingly recruit, entice, harbor, transport, provide, obtain, maintain, or benefit from financially. That you knowingly or in reckless disregard. That someone was under 18 or that forced fraud or coercion would be used. That they engaged in a commercial sex act that it effect interstate commerce."*

Here's some interesting things just on a nerdy note if there are any lawyers in the room. There actually two intent requirements in this statute. You have to prove mens rea twice which is sort of fun for lawyers. The other thing I want you to notice is that it's an or on the means. It's either we don't have to prove force, fraud, and coercion if they're under 18.

Here's a copy of the pimps bible, an actual exhibit that we brought out of a defendants office that he kept. Just walks through chapter after chapter of how to hurt people, how to coerce them. I thought this was great evidence, because it was in his office. He did all these things. I responded to the defendant's motion to exclude it from evidence which I thought was ridiculous. The judge said that he thought it might be prejudicial. I told the judge all my evidence is prejudicial to him. It's just not unfairly prejudicial. Judge wouldn't let him put it in, so I didn't get to put in the pimp's bible until cross examination of one of our victims where the defense attorney decided he would cross the young woman by saying, *"It's not like he had an instruction book on how to do it."* That's was a good time.

Force is classic. It's hitting, slapping, raping, burning, all sorts of things that are physical. Then there's fraud. Tricks, misleading folks. This sign was taken off of a restaurant. The defendant's sister testified about why he picked it. He picked it, because the young lady looked like she was naked behind the guitar. She looked really, really young, and he thought it was funny, because it wasn't a restaurant. It didn't serve food. It was only open from 10:00PM until 4:00AM, and it wasn't a great family place. He thought it was great bait to draw in people that were looking for jobs and of course not draw in customers. What a fun exhibit to actually have up at trial. Coercion is basically defined in the statute as the

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prohibitive means from forced labor, so it's the same idea. Threats of force, serious harm, scheme, plan, and pattern.

You guys have already talked about minor but one thing that the law recently changed in 2008 is now when we're looking at whether someone recklessly disregarded the age of a minor sex trafficking victim, we can also prove it through a reasonable opportunity to observe. When I had one defendant walk a young woman on Monday morning after making her work all weekend into her middle school where he would sign her in as her uncle after she worked in his restaurant all weekend and then joked to his friends that "*she looked so cute and innocent in her little uniform.*" It was a great way to show reasonable opportunity to observe.

Penalties in the federal system are really high. It's a 15 year mandatory minimum basically for sex trafficking up to life, and we have up to 20 years for slavery unless there's an aggravating factor. Then we can go to life.

How do we prove our case? There's two big problems I see all the time in how we actually develop our cases. Let me show you the first one. It said it's a hidden crime. It's like *Where's Waldo* in a sense. My kids love these books, and we all search for it. The problem is that Waldo looks like everybody else and everything else. He's really hard to detect in each picture. I feel like that's how these crimes are. They're right out in the open, but they're hiding in plain sight. It just takes people who are vigilant to find them. That's the case identification that the panels were just talking about.

The other big problem are supervisors. Supervisors do more difficult than anything else. I love this picture of the woman trying to eat her laptop. I think that's how so many agents feel when they walk into their supervisor's office, and they say I've got a case. Of course the reality is all the supervisors used to have your job. They think they were really good at it, and they don't get to do it anymore. When you bring them your case, the first thing they try to do is find the holes in it. There are plenty of holes, because it's a trafficking case. Trafficking cases are train wrecks from the very beginning. There's nothing neat and tidy and prepackaged about them. We have to know this problem. We have to manage our supervisors, and we have to get them up to speed, because it doesn't take any talent to find the weakness in the trafficking case. It takes talent to find the case in the middle of all the weaknesses.

Victims are the core of the case. When I think of victims I think of this. I think of an I-beam. I worked construction for a while, so I really fell in love with these things. This is revolutionized construction throughout the world the I-beam is a massive steel joist that carries huge amounts of weight over long distances, and there's all these physics to it. What it is is that everything attaches to the I-beam. It's why we don't have any pillars in this room right now. That's how I build cases. We have victim centered cases, and we have victim constructed cases. Without victims no one can answer the question why.

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I was just telling some friends that I had to try a case with a dead human trafficking victim in Kansas. Really, really difficult, because no one was there to answer the question why. Why do we have medical records that show he was beaten? No one's there to say, because I tried to run away or because I didn't want to work or because I said no. There was no one there to explain why his passport was held in the employer's office. The employer said it was for safe keeping, because there had been a robbery. There was no one to refute that. There's no one to explain why. Victims are essentials in our cases. We corroborate them every chance we get and build our case around them, because they matter. And we give them dignity throughout the process if we do it right.

The problem with victims though is that they have really bad judgment a lot of the time. They have past, they have difficulty. They make mistakes. They make mistakes after they're rescued. They do things that are embarrassing. We have to disclose them to the defense attorney. We know they're going to be asked about it at trial. All sorts of stuff. In fact, I had one victim that right before she was to testify before the grand jury, we couldn't find her. The victim witness coordinator was going crazy. The NGO was going crazy. No one can locate her.

Finally she pops up in the city where she was going to testify. We're like where were you? She said, *"You're not going to believe it. I was on the Jerry Springer Show."* I'm like, *"What? You're supposed to testify today. What'd you say on the Jerry Springer Show?"* I was really worried. She goes *"Oh it was great. They called me up there. They told me my role. I was supposed to be a stripper from Florida, and I was supposed to be having an affair with this guy that they introduced me to, and that's his wife. We were going to fight. If we fought that would be great, and they said, and if you pull your shirt up you might make extra money but no promises."* So off she goes.

She's in her real name playing this role on the Jerry Springer show, and of course to make extra money not only did they fight, but she flashed the audience a few times which sent the head of the FBI in that city and the U.S. Attorney into apoplectic shock. *"We cannot put her in. Her credibility's destroyed forever."* Of course the first question was I thought Jerry Springer was real. That was what everyone said, but victims sometimes have bad judgment. We have to prepare for that with that, we have to deal with it, and we have to know it doesn't destroy our cases.

This is a big deal, and when I was thinking about what would I really want to communicate in just a few minutes, this came to my mind. That is how do we decide who we can give continued presence to. This is so, so important. The way I think of it are these circles. If you think about the outer circle as all the possible victims in a case. Like when we go up on a case, we don't know who's a victim, who's an enforcer, who's a bottom. Who's the perpetrator? We've got to figure all that out. We start to distill it down. Then we get to victims we identify. We believe these people are victims. We have base information to decide that. They all get continued presence. Boom right then, right there before anything else happens next. We don't use it as bait. We don't string them along. We give them

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continued presence once they're identified as a victim which means they don't have to make it to the inner couple circles in order to get continued presence. They don't have to be named in the indictment as a victim. They don't have to be called to testify at trial.

All the time I'll hear people say, we didn't put her in the indictment, so she's not going to get continued presence. It drives me crazy. We have to give all the victims continue presence, because we've got to keep them involved for a couple reasons. It's the right thing to do. The other thing is it's the law. The other thing is if not they could have information that we would have to disclose to the defendant. I'm going to get criticized, and a motion will be made against me in court that I exported, that is I deported, exculpatory, potentially exculpatory evidence. I can't have that, because I need to keep my job.

This was a quote that I just thought sounds so compelling. I don't know if you guys can see behind me, but it was from a survivor. She basically said, you guys are being so culturally sensitive when you interview me that's your applying stereotypes to me. She was an Asian woman, and she made this statement that *"Everyone treated me like such an Asian stereotype that it created silencing moments."* I thought that is such a great caution, because we spend so much time trying to think about how to be culturally sensitive. I thought that was a really meaningful thought to remember that we also don't want to let our own cultural sensitivity start to create those silencing moments.

We want to corroborate our victims. We're going to do it through lots of ways. Through ledgers and financial investigation, all these things, but another thing we're going to do is we're going to use the internet. I'm seeing more and more of this not only to prove interstate commerce and gather evidence but all the social media stuff. They're all over the place. If I've learned about the social media platforms, they're probably already irrelevant and not cool. I'm pretty sure that no pimps follow me on Twitter, but its incredible the amount of information we're finding on Facebook and Tagged and from a bunch sites right now. People are putting stuff out there, and it is a treasure trove of data to gather up to support our search warrant affidavits, to use when we're cross examining defendants, to use in all sorts of different ways.

Some quick critical comments+ about coercion. The first is debt. Everyone talks about debt as the victim goes in debt to the perpetrator. I loan him \$5,000. They have to work for me and of course I charge them interest, and they never pay it off. Therefore they're always trapped. That's the classic thing. We've heard it a million times. What I'm seeing more and more is the inverse where the defendant, the bad guy without putting any capital gets all the benefit of the debt. They do it in a couple of ways. They say come work for me, and they'll pay them the first week. The second week, they'll say it's tight I can't pay you, but I'll catch it up next week. They miss a week's pay. Third week they pay them. Forth week they don't. Fifth week they don't.

After they do this for about three or four months, the victim is owed three or four months of salary and feels like if I ever leave they'll never get paid. It's brilliant from a defense

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standpoint, because never had to give the money out in the first place. They get all the benefit of the tether of the debt. I told this to my wife, and she said, "Yeah. If DOJ owed you three months salary I wouldn't let you quit." I was like, "Exactly. It's exactly how it works." I want you to think about the dual use of debt.

Trafficking indicators. Everybody talks about these. I bet there's a bunch of brochures in the back from different groups that have different trafficking indicators listed, and there are all sorts of different ones. They're all real. They all matter, but this is how I like to think of them. I like to think of them like helium balloons. If you go ahead and put a different name of a trafficking indicator next to each balloon, when I get a case, this is what someone comes to me. There are terrible living conditions. There is a failure to pay the right amount of wage. I'm like oh that's really good. How did they use it to coerce the victims? Just because there's exploitive labor, just because there's workplace exploitation doesn't make it a trafficking case by itself.

I need that string. I need that tether to connect the indicators to the coercive scheme, because that's what I have to prove. If you cut all the tethers, they just float away. When you're bringing information to a law enforcement agency, prosecutor that's what they're going to be looking for. They care about the sad story of the bed and the trailer and all that stuff, but honestly they've got it. They're trying to check it off on their list, and they're like how did they use that? How did they use that housing to get to the coercive scheme? How did that affect them? And if you can't draw the tether, you're going to have a harder time persuading law enforcement or a prosecutor that the case is meritorious.

Which brings us to this idea of a coercion continuum. This is how I think about it. Someone brings me a case that's got one, two indicators, so I draw my line here. I've got two indicators. Is that a trafficking case? Maybe. Maybe it's three indicators. Now it's getting stronger. Where we make our money, where we really apply our minds is right here. When we're trying to decide is this case just a workplace exploitation case, or is it a human trafficking case? Reasonable minds have definitely disagreed. I've been in a few rooms for those conversations happen. They're intense, but everybody's coming with the right heart, motives, and they're trying to figure out is this a trafficking case or is this just workplace violence? Is this just a *Fair Labor Standards Act* case where someone wasn't paid the right amount of money? Obviously the more indicators we get, the more evidence, the stronger it gets and the easier the decision is.

I'm going to hit a couple of quick defenses, and I deleted a bunch of them. Let me give you a quick one that always comes up is this benefit bias idea. That if we give them continued presence in T Visa's and all the wonderful services that are available and the tattoo removal and everything that comes along with it that, we're going to get accused of buying our victims testimony. It happens all the time. In fact, I was just telling some folks in another room I was sued for \$20 million, and I just found out this week that the suit was thrown out. I was sued by a couple of guys I convicted, because they said just that that I bribed the

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victims with all these benefits. I can tell you that my wife is relieved that I don't have to pay \$20 million to anybody since I work for the government, and they froze my salary.

It's critical that we deal with this from the very beginning. I talk about the benefits we give the victims in opening statement. We talk about it with the victims before the defense ever gets to cross them about it. We don't run from it. We're not embarrassed by it. We're proud of it, and honestly I want to leave by the end of the trial with everyone thinking that's it? That's all you did for them? Honestly if we prepare a case well that's what they're going to leave thinking, because they're going to hear about the unbelievable ordeal these survivors have gone through.

Initial consent comes up more and more lately for some reason, because there's more and more sophisticated ways to bait people in where it looks like they actually wanted the job, and they signed papers that say they wanted the job. It started off legally. Just because something begins with consent, doesn't mean the consent lasts forever. You all have got your jobs at your various organizations, probably because you wanted them. If your employer next week chains you to your desk and won't let you leave or quit call me. We'll come rescue you. We'll get you out of that oppressive NGO or wherever you're working. I used to work in an NGO don't worry. The reality is that initial consent is not a defense. We have jury instructions that point the law is clear.

The other is this idea of locks. This was a quote that *"There was no gun to her head, no chains, no locks, and she even had a mobile phone."* This idea that she's so free. She could do anything. I put this up here, because I just recently read a transcript of a trial where they basically walked through and explained of course there was no gun to her head. You know how much energy it takes to put a gun to someone's head and keep it there? You have to be there holding the gun the whole time. You can't go anywhere. How much more interesting would it be to create a coercive scheme where the defendant got to leave, and she still felt trapped.

That's what we're trying to get to. We're trying to get to this next idea of an invisible fence. Instead of there being locks and chains, there's this invisible fence that can't be seen from the naked eye but can truly be felt from the survivor and the victim's heart where she feels or he feels like they can't leave. They're trapped, and that's the more difficult evidence to gather, and it's the more compelling cases to prove. They're a lot of fun.

That's in a nut shell just a few of the thoughts that we've been thinking about, and I'm so grateful to Peter and Jocelyn and everybody her for allowing me to participate. Thank you.

Participant: Can I ask one question?

John Richmond: Absolutely. There can be child pornography in a trafficking case. I've charged it in the same indictment, but as the crime itself sits, it's a different crime. It's criminalized under a different section of the code. It could be used as a way to market the services of a victim. It could be used on their phones or whatever else, and we can tangle

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them up on those charges as well. If they don't overlap, it's just not the same thing. What I find is that people will think that we found child pornography on someone's machine, therefore let's indict them on human trafficking. If they were ever in a relationship with any specific person, and they just possessed the child pornography, that's not going to be a trafficking case. I will tell you that we are certainly interested in cases where the child pornography itself, the people performing it or even in any sort of pornography, are forced and compelled to do that against their will, and that would certainly be trafficking. Does that make sense? Thank you all very much.

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