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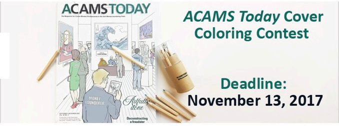

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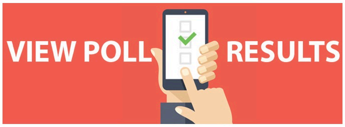

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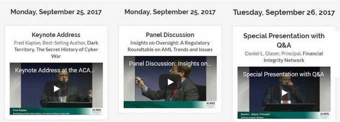
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AML CHALLENGES, **JUNE – AUGUST 2016**

Human Trafficking: Combating this Complex Crime

MAY 27, 2016

Human trafficking is the exploitation of people for commercial sex or for labor; it is modern-day slavery. It plagues not only foreign countries but many communities in the U.S. To combat this heinous crime, it is essential for global communities—and particularly law enforcement and those in the financial industry—to better understand human trafficking, recognize its complexity and to do their part to combat it.

The Crime

There is no question that human trafficking occurs globally. The *2014 Trafficking in Persons Report* issued by the U.S. Department of State reported that in just one year 44,000 survivors of trafficking were identified worldwide. The report also estimated that more than 20 million victims of trafficking have not been identified.

Today, because of this widespread problem, human trafficking is criminalized by most countries. In the U.S., the Trafficking Victims Protection Act (TVPA), which was enacted in 2000, is the federal anti-trafficking law. Title 18, U.S.C., Section 1591 criminalizes sex trafficking, and Sections 1589 and 1590 criminalize forced labor and labor trafficking.

In South Florida alone, the U.S. Attorney's Office for the Southern District of Florida has prosecuted 69 human trafficking cases charging 114 defendants in federal court since 2009. These numbers do not include cases that have been prosecuted in Florida state courts.

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What the statistics do not tell is the pain and suffering behind every human trafficking survivor's victimization. Every victim's dark journey into slavery begins with their vulnerability even before they are trafficked. Victims of human trafficking may be vulnerable for various reasons. Many victims are runaway and homeless youth, undocumented migrants, persons addicted to alcohol or drugs, and impoverished groups and individuals. These circumstances make people especially susceptible to recruitment and control by human traffickers. Still, it is important to recognize that some victims of human trafficking do not fall into any of these groups. Some victims of human trafficking are vulnerable simply because they are young, naïve, in a bad relationship, or going through a difficult period in their lives. Sometimes victims of human trafficking are vulnerable just because they happen to be at the wrong place at the wrong time.

Traffickers routinely use false promises and fraudulent representations to lure and recruit victims. Once the victim is obtained, the traffickers will often resort to coercion and force to exert their control. For example, traffickers might falsely advertise that employers are looking for "models" to lure potential victims and then use coercion and force to compel the victims to engage in commercial sex acts. In this scenario, coercion, force and fraud are all methods used to commit the crime of sex trafficking.

In cases involving sex trafficking of minors, the traffickers may also use force, fraud, and/or coercion. However, traffickers also use mere influence or persuasion to induce minor victims to engage in commercial sexual acts. The TVPA does not require that the government prove force, fraud, or coercion to prosecute offenders who have engaged in the sex trafficking of minors. Indeed, there is a general agreement in much of the international community that anti-trafficking laws apply in cases involving the recruitment, enticement, harboring, transporting, providing, advertising, or maintaining of children for commercial sex acts whether or not the minor is willingly engaging in the commercial sex acts.

Although victims of human trafficking are often transported to work locations by traffickers, the movement of human trafficking victims across borders or even from one location to another is not required. Human trafficking is not transportation-based like narcotics trafficking or alien smuggling offenses. Human trafficking is about the exploitation of people for commercial sex or labor, and not about border crossings or movement.

Why the Identification and Prosecution of Human Trafficking is Complicated

Identifying human trafficking is extremely challenging for a number of reasons. First, human trafficking is not easily defined because it takes many forms and is also often confused with alien smuggling. Sex trafficking, forced labor and involuntary servitude are criminalized in the U.S. and are the main forms of human trafficking. However, other forms of conduct are criminalized as human trafficking in other countries. To complicate matters further, the use of the term "trafficking" often leaves people to mistakenly assume that the movement or transportation of victims is required in human trafficking.

Second, human trafficking is a hidden crime. Whether traffickers are exploiting people for labor or commercial sex, the victimization is usually occurring behind closed doors or away from the public eye. Even victims of forced labor who are working openly at business locations such as restaurants, salons, country clubs or massage parlors are unlikely to be easily identified as human trafficking victims.

Third, the schemes used by traffickers to recruit, obtain, or maintain victims vary and every victim's exploitation is different, which makes it more challenging to identify. For example, labor traffickers often knowingly make false promises and provide false information in labor contracts to obtain workers. These traffickers may then use subtle forms of coercion and threats of deportation to maintain custody and control over the workers. However, significant investigation is required to determine what false promises were made in addition to establishing what coercive means were utilized by the traffickers. In another scenario, an adult victim of sex trafficking may have agreed initially to engage in commercial sex acts but is later forced to continue to do so even after the victim no longer wants to work for the trafficker. Here, the crux of the case is corroborating the

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victim's statements about the force and coercion used by the trafficker. Because of the varying victim circumstances and degrees of control and coercion used by traffickers, it is not always easy for any of us to identify human trafficking without a more thorough investigation and careful consideration. In fact, I routinely receive calls from law enforcement officers asking me whether or not a particular situation is human trafficking. We usually have to work through the evidence in detail together before determining the answer.

Fourth, victims are much less likely to report human trafficking than victims of other crimes. Victims of human trafficking usually do not identify themselves as victims of this crime. To the contrary, although victims of human trafficking know they have been defrauded or abused, many are completely unaware that they have been trafficked. Moreover, traffickers often prevent victims from reporting to authorities through force or threats of deportation, physical or reputational harm.

The challenges continue even after human trafficking is detected and a victim is rescued. Many victims are afraid and hesitant to cooperate with law enforcement, which makes it difficult to assist victims and ensure that they do not return to their traffickers. Food, clothing, medical attention, psychological care, housing and employment are just some of the things that survivors of human trafficking need when they are encountered. Providing for the needs of human trafficking survivors requires significant resources and is reliant on many different entities and individuals.

Finally, gathering sufficient evidence to successfully prosecute a human trafficking case is always challenging. The government must corroborate the victims' accounts through other independent evidence such as contractual agreements (if they exist), financial records, travel records, another witness' testimony, and records for phone and electronic communication accounts. As a federal prosecutor who previously worked on white-collar cases for seven years, I can honestly say that human trafficking matters are some of the most complex cases that I have handled. Separate from the difficulties of corroborating the victims' testimony, the legal challenges and the ability to put the pieces of the puzzle together to adequately demonstrate the fraudulent schemes in human trafficking cases can be complex and time consuming.

Recommendations

Although human trafficking is a complex crime that may take many forms, look for three elements that are present in most human trafficking scenarios: 1) vulnerable victims, 2) exploitation, and 3) labor or commercial sex. If the exploitation of the vulnerable victim does not involve labor or commercial sex, it does not violate the TVPA.

It is critical to report suspicious activity even if human trafficking is not readily apparent. At first glance, we are more likely to recognize only indicators of human trafficking. In other words, initially, we are likely to discover only a piece of the puzzle. Most human trafficking situations will require thorough investigation to reveal the crime. Nonetheless, the pieces of the puzzle are crucial starting points. Even those who work daily to investigate and prosecute these cases must address the problem with humility, understanding that human trafficking continues to evolve, and remain willing to continue to learn and enhance their skills through advanced level training. Routinely conferring with others who work on human trafficking cases is incredibly helpful to successfully detecting it.

For law enforcement and prosecutors, utilizing a victim-centered approach, building rapport and gaining the victim's trust are key components of anti-trafficking efforts. This means that law enforcement and prosecutors must be patient, understanding and always focused on what is best for the victims. Furthermore, prosecutors and law enforcement must ensure that the victims' needs are met through community resources.

It is also essential that all law enforcement and prosecutors collaborate with the financial industry, nongovernmental organizations, medical professionals and community members. This collaboration is necessary to 1) educate others to more easily identify human trafficking and report it, 2) obtain leads and information about human trafficking schemes, and 3) provide for the victims' needs. Collaboration and community outreach leads to prevention and proactive investigation. Last year, the federal South Florida Human Trafficking Task Force participated in more than 100 community outreach events.

In looking for indicators of human trafficking and considering potential charges to be brought against offenders, we must not overlook other criminal activity. Offenders often engage in other crimes while committing human trafficking. Therefore, be mindful of the following criminal offenses that are often related to human trafficking: fraud in foreign labor contracting, visa fraud, extortion, money laundering, violations of false documentation and immigration laws, and any human trafficking-related offenses that have been included in the Racketeer Influenced and Corrupt Organizations Act.

Finally, do not underestimate the value of financial records in tackling human trafficking. Financial records not only provide indicators of trafficking that can lead to the identification of traffickers and the rescue of victims, but they also establish the traffickers' profit and serve as powerful evidence at trial. So you can imagine how pleased I was on September 11, 2014, when the Financial Crimes Enforcement Network (FinCEN) issued an advisory that provides guidance on recognizing activity that may be associated with human smuggling and human trafficking. In this advisory, FinCEN identifies red flags to assist financial institutions in identifying and reporting suspicious financial activity connected to both human smuggling and human trafficking. I urge you to read the report if you have not already.

Conclusion

Our anti-trafficking efforts must not be deterred by the complexities of this crime. I have had the opportunity to meet wonderful people who are now survivors of human trafficking. They have changed my life in profound ways and are always a reminder of the importance of working to end slavery. The survivors' courage and strength has inspired me to work harder, to try to be a better prosecutor and to be a better person. Still, I know that as hard as I may work, one person alone cannot end slavery.

Perhaps the most important thing that I have learned throughout the years is that partnerships and a collaborative effort are absolutely necessary to fight human trafficking. Many people play an important role in this cause. It takes much more than just law enforcement, prosecutors and government entities to put an end to slavery. It requires the assistance of the financial industry, nongovernmental organizations, teachers, religious organizations, victim advocates, medical professionals, private industries and community members.

Together, we can rescue victims and eradicate human trafficking.

To report suspected human trafficking, please call the National Human Trafficking Resource Center's 24-Hour National Hotline at 1 (888) 373-7888 or email NHTRC@polarisproject.org.

Barbara A. Martinez, chief, U.S. Attorney's Office, Miami, Florida, USA, ***barbara.martinez2@usdoj.gov***

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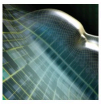

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