John Caher: Welcome to Amici, news and insight from the New York judiciary and Unified Court System.

In today's program we present a segment from Susan Arbetter's award winning radio show, Capitol Pressroom, a news and analysis program aired daily from the New York State Capitol. For her June 15, 2016 show, Susan interviewed three experts on human trafficking: Albany City Judge Rachel Kretser, the chairperson of the Third Judicial District Gender Fairness Committee; Cohoes City Judge Andra Ackerman, a member of the committee; and Albany Law School Professor Melissa Breger, who has written extensively on this issue. We think you will find today's discussion interesting, illuminating, enlightening, and disturbing. Forewarning: You will not find it entertaining.

Susan Arbetter: In preparing for the conversation you're about to hear, Alyssa and I were sent examples of internet ads that depict photographs of half-naked, suggestively posed, children, being trafficked for sexual exploitation. Some of the ads mention a location like the Albany Airport, or Colonie Center Mall, and say the child is available for one day only, like a fire sale. This is human sex trafficking, and it's happening right here in our backyard.

Yet listen closely to some of these statistics.

While 41 of the 62 counties in New York State have not reported a single sex trafficking arrest since New York enacted its anti-trafficking law in 2007, almost 19,000 have been arrested for prostitution during the same period.

Outside of New York City there has been 61 arrests for sex trafficking, and four convictions—four! Something is wrong with how we're dealing with human trafficking in Upstate New York. On Thursday June 16th, there is a continuing legal education program at the Albany Law School to address the issue. It's titled, “Human Trafficking: An Upstate Perspective,” and today we're going to preview the program with three guests who will be at the CLE program.

Judge Rachel Kretser was appointed to the Albany City Criminal Court in 2005, she is the chairperson of the Gender Fairness Committee of the Third Judicial District. Before becoming a judge Rachel Kretser was an assistant attorney general for more than 25 years. It's good to see you, thank you.

Judge Kretser: Thank you.

Susan Arbetter: We have Cohoes City Judge Andra Ackerman here. She is the former deputy division chief of the Special Victims Trial Division at the Monroe County District Attorney's Office. There she supervised 13 attorneys while handling her own case load that included child homicide and serial rape trials. She's also the former director of the Office of Human Trafficking Prevention and Policy for the State of New York. Judge Ackerman thank you so much for being here.

Judge Ackerman: Thank you for having me.

Susan Arbetter: Also here is Albany Law Professor Melissa Breger. She is an expert on dealing with the victims of human trafficking. Prior to coming to Albany Law to be a professor, she taught at the University of Michigan Law School, and co-authored New York Law of Domestic Violence, a two-volume treatise publish by Reuters Thompson West. Thank you so much for being here professor.

Prof. Breger: Thank you for having me.

Susan Arbetter: This is going to be a difficult conversation, I just want to alert you to that before we begin.

Judge Kretser, I want to start with you. One of the reason there's a misperception that human trafficking is a downstate issues is that there have been very few convictions for sex trafficking in upstate New York. I think there's been one in Albany County, none in Rensselaer County, four in the rest of the state. Why is that?

Judge Kretser: Well, I see a steady stream of prostitution cases in my court.

Susan Arbetter: As a judge.

Judge Kretser: As a judge, yes, and I see the desperation and devastation in their eyes.

Susan Arbetter: In the eyes of the prostitutes who are come before you?

Judge Kretser: Exactly. They're bought and sold like pieces of merchandise, sometimes 10 to 30 times a day, they're bought and sold. They lack any sense of human dignity, and so forth. And although I see a steady stream of prostitution cases, I have had exactly one case involving a john patronizing

prostitution, and I have had no human trafficking cases at all, in my court. This is not just my experience as a criminal court judge, I checked with my colleagues, and it is also their experience. There are many reasons for that, and I'm going to defer to my colleague.

Susan Arbetter: Judge Ackerman, in 2007 New York enacted what was arguably one of the toughest anti-trafficking statutes in the country, but there is this problem, as Judge Kretser has started to detail for us, that it's just not prosecuted. Why?

Judge Ackerman: There are many reasons. One of the big reasons is failing to identify victims of trafficking. You have to look beneath the surface. Even the ads that you saw that were taken from BackPage, on their face, without ...

Susan Arbetter: At BackPage.com.

Judge Ackerman: BackPage.com, without the proper training, experience, and professionals, often times law enforcement will see this as a teenage criminal, instead of an underage victim, and it really has a lot to do with training, and having a coordinated effort to look beneath the surface. It's much easier, and old school, for law enforcement to set up a sting, for example, at a hotel, where you have a trafficker who may have four or five girls at the Red Roof Inn, for example, making $1,000 a day off of each girl. It's easier going in there and arresting the girls for prostitution, and not looking deeper to see who is in the background.

Susan Arbetter: Is it simply a matter of the police not knowing to look deeper? Or is it just that it's just easier not to.

Judge Ackerman: There is lots of layers here. First is getting them to even look beneath the surface. Then, you have a situation where you have a traffic victim who has been told not to trust the police, had fear instilled in them that they could be harmed, or their family could be harmed, and then you have a law enforcement office approaching them as a teenage criminal, not as an underage victim. That initial contact is not opening the dialogue as to what's really happening to her. It's a lack of training in this area, it's a lack of having a specialized unit to deal with this unique situation. The sad thing is, is we live in a reality in upstate New York, that if ... Let's take a man who is 40 years old. If he is caught having sex with a 14 year old that he meets down the street in his neighborhood, that is at minimum statutory rape, and he is going to be a registered sex offender. However, if it's something like a sting at the Holiday Inn, and there is money exchanged between the two, and she's 14 and he's 40, you're more than

likely to see her being arrested for prostitution, and not doing much investigation as to who the individual is who perpetrated against her.

Susan Arbetter: What happens to the statutory rape charge? She's still 14.

Judge Ackerman: I completely agree with you. That's, again, it's a perception that needs to change through a coordinated effort. It's seeing that we have this problem of seeing these girls as teenage criminals, without looking deeper. It takes time, and it takes patience. Yyou can't just go up to a victim, and say, "Hey are you being trafficked?" and she's going to say, "Absolutely, there he is." She needs services.

Susan Arbetter: Professor Breger is here, and you've looked into this. What are some of the services that could help these women? Girls, frankly.

Prof. Breger: Well, let me just step back for a moment, if I could, and just talk about what I think is a misconception that this is somehow a choice, that these children want to be prostituting. Especially when we're talking about children, it's hardly a choice, and it's really not. It's near impossible for these victims to escape their traffickers. Not only are they afraid, but it's not uncommon to have what we call trauma corresponding, where the victim bonds to the trafficker over time, similar to the idea of Stockholm Syndrome. A lot of it can relate back to poverty, but remember also that if we look back at the early lives of these folks, all too often there is some kind child abuse in the early lives, lack of parental love, unconditional love, and they sometimes ... It's a complicated and somewhat perverse way of seeing their traffickers as their protectors.

What Judge Ackerman said, is one is identifying the victims, but two is convincing the victims that they are victims.

Susan Arbetter: Where do these children come from? How are they lured into this life?

Prof. Breger: There's a number of different ways, and there's certainly what many think of as international child trafficking, where children and their families are sort of lured into thinking there's opportunities in America, come with us, and they're trafficked illegally, but it also happens with our own American citizens. A lot of our teenagers who run away from their homes, from foster homes, who are thrown away by parents, end up ... they are often picked up within the day, within 24 hours, of leaving their home, traffickers find them. Unfortunately, again, because of that complication, it just becomes just a very negative relationship.

Susan Arbetter: How predominate is this here in New York?

Prof. Breger: I don't have the statistics for New York specifically, but there are stats that say two children are sexually enslaved every minute across this globe.

Susan Arbetter: Across the world?

Prof. Breger: Across the world.

Susan Arbetter: Let's go back to Judge Kretser, you mentioned that there are very few pimps, and johns, who are prosecuted. I can see the johns maybe not being prosecuted because of so many misconceptions, and our perceptions, of men and women, but the pimps are right there, typically, in the courtroom. Why aren't they prosecuted?

Judge Kretser: No they're typically not in the courtroom, unfortunately. It's a question of encouraging the people standing before me as prostitution defendants, to turn in their trafficker or their pimp.

Susan Arbetter: The one that they have acquired a relationship with, that Stockholm Syndrome.

Judge Kretser: That's right, exactly, and one they're afraid of. That's where it becomes complicated. It is more difficult ... The prostitutes are the low hanging fruit when it comes to law enforcement. They're out there, they're easy to get, it's much harder to get the traffickers. They hide in the shadows, but it is very important that we expend the time, and resources, to go after both the traffickers and the demand side.

Susan Arbetter: The johns.

Judge Kretser: If the demand dries up, then the supply dries up. If you can shame the johns, and there are a variety of ways that this is done across the country.

Susan Arbetter: How?

Judge Kretser: Well they can publish the names, and if names are published, I guarantee you the supply will quickly ... The demand ...

Susan Arbetter: Publish where?

Judge Kretser: Well if the ... If law enforcement were to publish those names, I think that the ...

Susan Arbetter: Why don't they?

Judge Kretser: Perhaps they are considering it. I think that ... Let me say, the reason we are holding this program is that this is a human rights issue. By shining a light on the most vulnerable of our population, we hope to encourage an integrated approach when dealing with human trafficking cases. We hope to educate judges, attorneys, law enforcement personnel, and victim's advocates, about the powerful tools available to them, to prosecute and handle human trafficking cases.

Susan Arbetter: Judge Ackerman, you said that these ads that we saw were from a place called BackPage.com. Is that where most of the ads are published? What is this, an online place?

Judge Ackerman: Predominately, in upstate New York, it use to be Craigslist, it's now Backpage. Craigslist backed off when they received a lot of pressure from our governor a few years back. BackPage has really taken over, and the stats out there, they're making about $22 million, nationally, on just the selling sex for money ads on ...

Susan Arbetter: I realize there's a free speech issues, but there's nothing that can be done about this?

Judge Ackerman: They're working on it, but right now it's out there. It's out there now, if you went on there. What's very frustrating is you have perpetrators and this is a very lucrative business for them. For them, when they go on BackPage, and they take a couple of pictures of each girl, and they have a location ... I want to go back from it, when you talk about 1 day only. They're moving them around. A lot of them start downstate, and they know it's easier upstate, because the prosecutions are less, and they move them around up here. What they do is they ... When you put an ad on BackPage, I guarantee you within minutes, you have perpetrators looking for these girls online, and will set up a meeting at the hotel.

This perpetrator knows he's got a vulnerable individual, who wants that initial attention, he starts out with attention, and manipulating her, and lying to her, and then it goes to beating, and fear, and threats. Within 24 to 48 hours, he can have her working for him in a hotel, have people calling to get with these girls, making this money from her. Then, when she can't produce any more, he throws her away in the street, and says, "You know something? Law enforcement is not going to believe you

anyway, and they're not going to want deal with you." It's more profitable for them to do this than it is drugs, selling drugs.

Susan Arbetter: We have about a minute left in this particular segment Professor, but there seems to be a real disconnect between male law enforcement, and looking at these people as victims, these primarily female victims. Why is that?

Prof. Breger: I can't speak to why that is, other than to acknowledge that, yes, there is a disconnect there, and I think it's easier to see these children as prostitutes, as if that were somehow a choice, something that they have chosen to do, as opposed to being trafficked, and coerced, and manipulated, and threatened, and intimidated over time. I can't speak to the law enforcement aspect of it, other than to say our society needs to change, and our culture needs to change.

Susan Arbetter: We're going to take a break, we'll be right back.

We're talking about human trafficking. On Thursday the 16th of June there is a CLE — I believe that stands for Continuing Legal Education program —at Albany Law School, dealing with human trafficking, and specifically Upstate New York, which is an issue. Is it clear in the law that these children are victims and shouldn't be prosecuted? Or is there some sort of need for more clarity?

Judge Kretser: Well, the law itself is not the problem. That's why I'm glad we're educating people about the law. We have one of the strongest, broadest laws in the nation. The law is not the problem. We're just trying to get the word out. In New York, they had a national summit on human trafficking, which Judge Lippman, our then Chief Judge, chaired. We're just hoping to bring a smaller version of that upstate, so that we can get out the word. If prostitution is the world's oldest profession, as they say, well if that's the case then I would say human trafficking, or pimping, is the second oldest profession.

Susan Arbetter: You wanted to say something Professor.

Prof. Breger: I just wanted to acknowledge that New York has a great, what we call, “Safe Harbor Act,” which almost all states have. If you are a child, rather than being brought in as a juvenile delinquent, you can be brought, rather than to criminal court, to family court. One of the things that I've been researching, and recommending is that once that child is in family court, we have services available to them in family court that they might not

otherwise have in criminal court, such as therapeutic foster homes, and counselling, that can be ordered by the family court judge. We do have something, a mechanism, in place for treating these children as children.

Susan Arbetter: Isn't there a systemic problem with the law enforcement? Even just the criminal justice system, seeing somebody who might once been before them as a prostitute, as always a prostitute?

Prof. Breger: Yes, and I think a lot of it again goes back to changing the culture. Judge Kretser talked about shaming the johns, and if you look at countries like Sweden, and Finland and so forth, they have really changed the culture so that it is shaming the johns, to work on the demand issue and to focus less on the victim, who is being trafficked, and more on who is buying her "services."

Susan Arbetter: Because if the demand is no longer there, then you don't have the issue, and human trafficking would come to an end. It's all about the demand.

Prof. Breger: It's demand.

Susan Arbetter: Is there an education element here?

Prof. Breger: I believe so, I believe so, and Judge Ackerman talked about the financial incentives here, the human trafficking industry generates over $32 billion in profits each year, so there is a tremendous demand. Often times it's connected to organized crime. These are very sophisticated networks, often times, so we really have to work coordinated with law enforcement, and also enforcing, and also educating the public about the situation.

Susan Arbetter: We're talking about a difficult topic here, but one that must be talked about, it's human trafficking. We'll talk about some specific cases that, not naming names, but some cases that these judges have had before them in the past. We'll be right back.

Judge Ackerman, you have dealt with these cases for a long time. You have a story to share with us.

Judge Ackerman: I do, it was the first human trafficking case that came across my desk when I was at the Special Victims Unit in Schenectady County. It was right when the law had passed, but not started yet. It was right in this in between stage. What it taught me, very early on in my career in this area, is how amazingly easy it is to manipulate a young girl.

This case was a 14 year old who ran away from her home a number of times, and it's fully believed by us that there was abuse going on in her home, which precipitated her running away in the first place. She had taken a bus to Albany, and ran out of money, so had to get out at Schenectady, and was walking down the streets. There was a guy sitting in front of his house, and he lured her with a cocktail and a cigarette saying she must be cold. Again, it was getting dark outside. While she's sitting at the bar, he goes and calls about four of his friends saying, "Hey there's a girl here. She looks like she may be willing to party. Why don't you come on over?"

Now she's in a situation. She's 14 years old, and she has five men in this bar. One tries to lead her up to the apartment, and attacks her in the stairwell, another individual comes and saves the day for her, punches this guy in the face, drags her out, says, "Don't touch her."

What's happening now is he's becoming a savior to her. He says, "You need to come home with me, you're not safe here."

He brings her to his house, puts her in a bed in the basement down there, finds out her favorite color is pink, she loves pizza, and macaroni and cheese, he goes out and buys her pink towels, pink toothbrush, all the food she likes. Again, this is the manipulation. She's falling for this guy who is going to save her from a world that's very unpleasant for her, and scary, and unsafe.

Within a week’s time, he was sleeping with her, telling her he loved her, and then telling her he does construction for a living, and since it's winter time, and there's no money coming in, she needs to participate in the finances of this “family” that they are now. She's not going to like it too much, but since she can't be found, she doesn't want to go back home, and she's not of age, he thinks that they could make some money, but she has to agree to trust him, and to have sexual contact with individuals that he promises her are safe, starting with his friends for $10 here, $20 there. He then took her to bars and would have her in the car. Within a three week period of time she has so many lifelong health problems from this, and mental health problems, she was just a mess.

What happened, how she was found, was her family was putting up pictures of her, and her age, her date of birth is on there. One guy who paid money to be with her started, basically, choking on his hard roll and coffee in the morning, because he's looking saying, "Oh my god, she's 14 years old." He called his attorney, and said, "I want to tell you where she

is, but I don't want to be prosecuted." We ended up working out a deal with him, where he ended up wiring himself up.

I can tell you the perpetrator's name, by the way, it's David Tittensor wired himself up, and got admissions from everybody that he knew that she had been sold to. Here's the interesting thing that we can all relate to here, it took her six months to turn David Tittensor in. She was in love with him. She thought that he was doing this for her, so that they could be a “family.” He shipped her $30 when he got a phone call from his friend, and sent her back to Charlton School for Girls in Saratoga.

That started a process where it took six months of counselling with her to be able to come to terms with what really happened to her, and to get services for her, and for her to cooperate. It was in this short period of time ... Oh also, a piece of it was when she didn't want to do it any more, he said, "Well you have to. You owe me now. You owe me for the rent, you owe me for the food I bought you. You owe me for the clothes I bought you." In her young mind she's thinking, "I owe him. I have to continue to do this." This was part of that manipulation that was going on with her. It happened within a week he is selling her, within a week. It can be as short as 24, 48, hours. This case was right in Schenectady County, and he was prosecuted at 5 to 15 on an aggravated promoting prostitution, which was the maximum he could by law then.

Susan Arbetter: How come that isn't human trafficking?

Judge Ackerman: It is human trafficking. The problem is that the law wasn't passed in New York yet. Then New York law came to fill the gap from the federal system. The federal system didn't want to take this on because it was one person. When their caseload is so high, New York law was made, created exactly for this purpose, to fill the gap. If that law would have been in effect when this happened, we were just months shy of it, he would have been convicted of sex trafficking, hands down.

Susan Arbetter: Say that one more time.

Judge Kretser: A B felony.

Susan Arbetter: What does this mean? A B felony?

Judge Kretser: Well that's the second highest level of felony.

Susan Arbetter: Rather than a highest level because he's ...

Judge Kretser: No, a B felony is a very severe ...

Judge Ackerman: Up to 25 years.

Judge Kretser: Up to 25 yeasr. Rather than the patronizing statute.

Susan Arbetter: Which is lesser.

Judge Kretser: Much less.

Judge Ackerman: Or it's aggravating, promoting, prostitution.

Susan Arbetter: What else could New York do with its law? I mean you keep saying, all of you, that this is such a strong law.

Judge Kretser: There is a rape shield law that protects victims of rape from having to disclose their prior sexual history when they're being cross examined on the stand. We need something similar in the human trafficking statute, because these cases are hard enough to prosecute. You don't need to put additional impediments, and you don't need to subject the victims, and that's what they are, to this kind of cross examination.

Susan Arbetter: What else should we know about these victims?

Prof. Breger: For children who have run away from family homes, where often there is some kind of abuse as well, sometimes they see in their exploiters the promise, and the structure, of a home that they've never had, right? This child is maybe getting more food from her exploiter than she's getting in the house. What's critical to remember is that trafficking victims are highly likely to sustain a chronic lifelong post traumatic stress disorder, the PTSD we see in our war veterans, our combat veterans. The psychological and physical trauma endured by these victims is incalculable and often untold.

Susan Arbetter: What else should we know? What else can we expect from this CLE?

Prof. Breger: I think also that it's everywhere, as much as we want to think it's only in other countries, it's only in large cities. It's rural, it's urban, it's suburban, it's in our massage parlors, our truck stops, our restaurants, our motels, everywhere in this state, everywhere in this country.

Susan Arbetter: It's right in our own backyards. Is there anything ... I realize the CLE is for attorneys, right?

Judge Kretser: Well no, not just attorneys.

Susan Arbetter: Okay, because I was going to ask about, what about people who are in the criminal justice system who might not be attorneys?

Judge Kretser: Well it's for judges, it's for anyone involved in the criminal justice system —victims advocates, attorneys on both the defense and prosecution side, and most importantly, or equally importantly, law enforcement personnel.

We've invited law enforcement personnel to be part of this. I will say, one thing that's very encouraging is that we've had a good response from Attorney General Schneiderman, the top law enforcement official. David Soares, DA Soares, is the panelist.

Susan Arbetter: From Albany County.

Judge Kretser: Right. Brendan Cox, Albany police chief, is a panelist. We have had a good response from law enforcement, and they are participating.

Susan Arbetter: Will this kind of thing happen across the rest of upstate, or is this just specific to Albany Law School.

Judge Kretser: Right now it's the only program to my knowledge upstate. I do believe that they may have had one in Buffalo, but within this upstate area it's the only program of its kind.

Susan Arbetter: Again, the CLE program about human trafficking, an upstate perspective, is taking place Thursday June 16th, Albany Law School. For more information, or to sign up, you can visit AlbanyCountyBar.org/humantrafficing. I want to thank my great guests today, Judge Rachel Krester, Professor Melissa Breger, and Judge Andra Ackerman. Thank you all.

Judge Ackerman: Thank you.

Judge Kretser: Our pleasure.

Speaker 1: Thank you for listening to this edition of Amici. If you have a suggestion for a topic on Amici, , call John Caher at 518-453-8669, or send him a note at JCAHER@NYCOURTS.GOV. In the meantime, stay tuned.