

John Caher: Welcome to Amici, News and Insight from the New York Judiciary and Unified Court System.

If you listened to our prior podcast, you know that on June 16, 2016 the Gender Fairness Committee of the 3rd Judicial District held an extraordinary program entitled "Human Trafficking: An Upstate Perspective." In the prior podcast, we presented the view from the bench. Today, we're bringing the view from law enforcement.

The speakers at the program included Albany County District Attorney David Soares, James Spero, a Special Agent with the US Department of Homeland Security, C.J. Boykin of the New York State Division of Criminal Justice Services and Albany Police Chief Brendan Cox.

We hope you find the program interesting and informative.

Judge Kretser: All right, now we've heard from the judiciary. Now it's time to hear the law enforcement perspective. Again, we have an all-star panel and one of our stars is missing! We just noticed that. Hopefully, he will return shortly. D.A. Soares, I'm sure will be here momentarily.

We have Special Agent Jim Spero of Homeland Security and C.J. Boykin from the Division of Criminal Justice Services and we have Albany Police Chief Brendan Cox. Shortly, we will have, here he is, District Attorney David Soares. It really is a wonderful panel, so I will turn it over to ... Let's see, who shall we start with?

Special Agent Spero. I think I'll start with you.

James Spero:

Thank you very much for having me. Thank you all for taking time out of your day to attend such an important event.

I am James Spero and I'm actually the Special Agent in Charge for Homeland Security Investigations for most of upstate New York. Before I get into my remarks, one thing I would just want to ask is, has anybody in the room already worked with Homeland Security Investigations in this area or any other?

All right, a couple of our victim advocate folks. Glad to see you, but not a lot of people in the room. Does anyone in the room know what Homeland Security Investigations is? All right. I'm glad that I didn't just automatically assume that. I usually don't. I just want to give a quick brief on what my agency is and what we're trying to accomplish.

Homeland Security Investigations is the primary or principal investigative law enforcement agency within the Department of Homeland Security. HSI is a part of DHS. What our main mission is is to combat transnational criminal organizations who seek to exploit America's legitimate trade, travel and financial systems. It's a big mission. We have about 8,400 employees. We're in about 200 cities throughout the country and we have 62 offices around the globe. It's that international footprint that really helps us with those transnational criminal organizations. I just want to remind everybody too, is that this particular area that we're talking about, human trafficking, is both a global issue and a very close to home domestic issue as well.

My area of responsibility within HSI, I'm based out of Buffalo. I'm the Special Agent in Charge in Buffalo, New York. I cover the upper 48 counties of New York which includes the 450 miles of New York and Canadian border. I have offices in Buffalo, Syracuse, Messina, Rouses Point and right here in Albany. We've got a big mission. We have essentially, what the agency's made up of, I forgot to let you know, it is the former US Customs Service agents and the former Immigration and Naturalization Service agents combined to become Immigration Customs Enforcement Homeland Security Investigations. That's where we get our authority. We're a cross-border border agency and we enforce over 400 statutes and regulations pertaining to Federal law enforcement.

It's a big mission. We have some five top strategic priorities for FY2016. They are: Counter-Terrorism and Homeland Security; Child Exploitation and Cyber Crimes; Human Trafficking and Human Smuggling; Narcotics and Transnational Banks. Hopefully, everybody got one of these reference sheets as a takeaway. These are four separate but equal columns and underneath, there's a bottom ribbon for our "Financial" and "Investigations," because every one of these categories that we investigate have a financial component. Essentially, all of these criminal networks that we're investigating, including human trafficking, are in it for profit. One of our goals is to deprive those criminal organizations of those illicit proceeds. That's the way that we think we're really going to be able to disrupt and dismantle all of these organizations, human trafficking included.

James Spero:

Speaker 6:

James Spero:

Speaker 6:

James Spero:

Human trafficking and human smuggling is a top priority for Homeland Security Investigations and we do, in some cases, we have them blocked together because some of the agents that work human smuggling also work human trafficking, but they are two very separate and very distinct crimes.

Human smuggling is a transportation-based crime. Essentially what it means is that somebody will contract with an organization to have them transported from Point A through Point B to Point C. A source country, a transit country, potentially, and then the destination country. You pay your money, you get transported. Sometimes human smuggling does have a violent element to it. There could be hostage taking. There could be violence. There could be extortion involved, but it doesn't necessarily rise to the level of human trafficking.

Human trafficking for the Federal Government kicks in an entirely different set of laws and those are very powerful tools. The Federal Government looks at human trafficking is an exploitation-based crime. One of our best tools is the Trafficking and Victim's Protection Re-authorization Act. That tells us that it comes in two main categories. It's either commercial sex or forced labor. In each case, the exploiters are intimidating their victims through the use of force, fraud or coercion. For us to charge human trafficking, that's what you have to have. In every case but one, we need to have those elements, force, fraud or coercion except for when it's commercial sex involving a minor, an under-age female. Then we can charge human trafficking and the human trafficking statute on the Federal level without having to prove force, fraud or coercion, but in most of those cases, we're going to have them anyway.

That's the definition of the problem and the tools that we have to use for it. A lot of times, people ask "What is the scope of the problem?" Sometimes statistics don't look that great or they're not that impressive and we know that it's a big problem, but we can't really scope it out. That's always been a problem for law enforcement and human trafficking is no different. One study that was done years ago by the US State

Department suggested that as many as 100 persons every hour of every day get trafficked or become victims of human trafficking across the globe. That's 800,000 people a year. That's just far too much.

What's Homeland Security trying to do about it? We have a strategy. We call it "ICETIPS." It's Immigration Customs Enforcement Trafficking In Persons Strategy. It's also part of the DHS Blue Campaign and what we're trying to do includes coordination with both our other Federal, our State and Local law enforcement partners, non-government organizations like the ladies up here in the front, the advocates, and the general public as well. The strategy includes outreach to the victims, outreach to the witnesses and other members of the public to raise awareness to the dangers of human trafficking.

HSI is committed to the victim-centered approach. What I mean by the "victim-centered" approach is that we place equal amount of effort and priority in identifying and rescuing the victims as we do prosecuting and investigating the exploiters and the criminals who are exploiting those victims. The same amount of effort goes into the two. We're very good at arresting, investigating and prosecuting, but where we need help and we're coming up short is identifying the victims that we can rescue. That's why I'm here—to make sure that everybody understands what our goal is and where we can work together.

Another thing I wanted to remind everybody is, in case you didn't know, not all victims are going to be US citizens. Some victims are going to be foreign-born nationals and not all of those foreign-born nationals are going to have immigration status. That is another thing that we can help with. We have different ways to grant either stays or relief from deportation, and in some cases even temporary immigration status, to victims of human trafficking. Keep that in mind when you're working with us.

Also, HSI has trained non-law enforcement, victim witness coordinators and they do an outstanding job. Our trained non-law enforcement victim witness coordinators are doing an outstanding job of working with our agents, other Federal agencies and in the community to make sure that victims are getting the services and care that they deserve. That's another resource that the Federal Government and my agency has to help with the victims. It's another reason why I want you to keep that in mind that we do have the resources and the ability to take care of these victims if we can show that they really are victims of human trafficking.

As I said before, human trafficking is often an international crime. What we have is it involves source, transit, and destination countries across the globe. We'll also see it, unfortunately, right here locally and some of the stuff that I'm seeing most recently and part of it is because those are the Victim Advocates who are coming forward. Those are the victims that are coming forward. We're seeing a lot of domestic, commercial sex cases. We still have the ability to do those cases. We still want to work with you. Some of the ways that we're seeing that is State and Local law enforcement and sometimes other Federal agents may first think that it's a pimp/prostitute relationship, it isn't necessarily a pimp/prostitute relationship. If there's minors involved or if it's force, fraud or coercion, we're going to take those cases and present them for Federal prosecution. That's what we want to work with you on. Whether it's international or domestic cases, we want to work those cases together.

I guess the last thing that I would want to leave you with is that the main challenge that we have as law enforcement officers on the Federal, State and Local level is getting victims and witnesses to come forward, for two main reasons. One is they're afraid of their exploiter. Two, especially with foreign-born victims, they're afraid of law enforcement and don't want to get sent home. That's where we really need the public and the victim advocates to understand the process, know what the resources are, and don't be afraid to come forward and work with us. Hopefully, everybody got one of the handouts for HSI. You can report victims of human trafficking through our website. It's www.ICE.gov or contact one of our local offices because I hope I did a good enough job explaining that this is a priority for us. We do have the resources. What we need is the ability to work together to have an impact on this crime.

Thank you very much.

Judge Kretser:

Thank you so much, Special Agent Spero.

This is one of the reasons why we're doing this program is to have a coordinated response and, of course, the Feds are very important in a coordinated response. Now, I will turn it over to C. J. Boykin who is going to tell us about human trafficking arrests and prosecutions state-wide and regionally.

CJ Boykin:

Thank you. That was the Fed perspective. In each of your packets, at the very last insert on the left side, I think, is a human trafficking referral form. On the left side, the very last insert. You guys all have that?

Okay. That's what begins the human trafficking confirmation process in New York State. We've talked about the statistics pretty much most of the symposium. Yes, they're pretty bleak. There are small numbers upstate of prosecutions and much larger numbers downstate. A lot of the reason for that, of course, is the concentration of the population, but this confirmation process is totally separate from prosecutions.

What this requires is, it used to be up until January that only law enforcement could submit referrals for confirmation, but that changed in mid-January, so now, basically most legal/social services agencies can also submit referrals to OTDA and DCJS for a victim confirmation.

We talked about the problems of prosecutions and that's what these stats go to, but the confirmation of victims are totally separate. When this form is submitted to us, all it requires is under the statutes and regulations is for the victim to reasonably appear to be a victim of human trafficking. What does "reasonably appear to be a victim of human trafficking" mean? It's a very broad standard. That standard is intentional because the New York State statute is a victim-center statute that's looking to encompass as many victims as possible.

Despite the lack of prosecutions, you're not going to have a good prosecution without witnesses who are prepared to testify in court. That's part of the goal of this procedure, to have victims confirmed as victims of human trafficking. What does that mean? Under the State law and under the regulations, my technical title is Director of Human Trafficking. The regulations make my authority very broad. I can consider a lot of different things and the list under the regulations isn't definitive, it's expansive. It says, "In addition to other things, the victim's age, what's the crime considered," all these sorts of things. Under those regulations, my ultimate ability to determine someone as a victim of human trafficking is very broad.

Now that law enforcement isn't the only entity that can do that, that's resulted in an increased number of referrals that we're getting. Initially, in 2007, when the law went into effect, the advocates' major complaint was "Only law enforcement is getting to do this. That's going to be a problem." That was an issue up until this year. Now, it's very broadened and many other entities can help us decide who becomes a victim.

Once that referral is submitted — it doesn't take a lot under that referral. You can see it's a very small document that can be filled out very cursorily — I get it along with Nora Cronin of OTDA. The law requires me to consult the referral source who is either the local law enforcement agency or a local advocacy agent. I consult that referral source and OTDA and after discussing it amongst the three of us, I have the ultimate determination as to whether the person becomes a victim of human trafficking. There is an appeals process in case I should deny that confirmation status, but nobody ever appealed my decision because I'm always right. That's pretty much how it works.

Although law enforcement sometimes seems a little disturbed that agencies other than law enforcement can make these referrals now, there's really no need for law enforcement to fret about this. No. 1, like I mentioned earlier, you're not going to get good prosecution cases without good witnesses who are able to testify. No. 2 although these witnesses don't testify and want to participate today, they may tomorrow. It takes all these things and concerted effort to getting these victims the services they need.

When Judge Camacho talked about the victim that he had in his court, you never heard about the prosecution. I don't know if there was a prosecution that was corollary to that scenario that he discussed, but what he talked about was the services provided that victim and how she was able to become actualized, essentially.

Confirmation is separate from prosecution and that's my role when it comes to this whole law enforcement scenario. Thank you.

Judge Kretser: Thank you, C. J.

All right, I think we're getting a very good picture of the problem and some of the resources available. I'm going to turn now to our all-important local law enforcement, and I will start with you, District Attorney Soares.

DA Soares:

How is everyone today? Thank you very much for being here. If I seem a little nervous, it's because I'm having a lot of flashback to the days where I was actually sitting right where you're sitting and Professor Hutter would be shouting his presentation to us and we would be sitting perfectly still,

not even breathing, to make sure that we didn't do anything to trigger him calling out our name and answering any questions.

We're here for a very important topic and one that's complicated. I'm hoping that by the time I'm through here talking about one of our human trafficking cases, it will help shed light as to the reason why the numbers of prosecutions appear in your records to be so low.

As another one of my famous professors, Professor Tyman, rest his soul, used to say when we would ask him a question, searching desperately for an answer, he would say, "Sir, there are fewer things that are as dark and yet so full of subtle difficulties" in responding to the particular subject matter. I would apply that same description here. There are fewer things in this world and in my office that are as dark and as complicated and so filled and charged with subtle difficulties.

It's been talked about here already. I think our judges had touched on this. Unlike most traditional cases which rely on the ability of your law enforcement community to gather evidence and our ability to withstand a lot of the challenges that many of you in this audience will raise during motion practice, these cases stand or fall on the shoulders of our victims. We cannot make these cases unless we have our victims on board and participating with us all the way. Even when they do, there really are no assurances as to our success.

I can say to you that we have probably more tools available to us to prosecute these cases, to find the defendant, to bring some defendants to justice. We probably have more manpower associated with the pursuit of these cases. We probably have more technology today than we did 10 years ago in our effort to prosecute these cases, but the most important thing that you need in these cases is one thing, and that is trust. Without trust, you have no case. I know we're supposed to be here to talk about practice and we're also here to talk about ethics, but with these cases in particular they succeed or they fail based upon the collective group of people here. The collective disciplines and the collective professions' ability to establish that important level of trust with that victim. If you can't do it, then you don't have a case.

What I'd like to do now, if I can, is just share with you the case that we did prosecute successfully and one of the most complicated cases that we've ever handled in my three terms as district attorney here in Albany County.

It's the People v. John Hammond, aka "Pupi." John Hammond started with our particular victims as she was leaving the visiting area at the Rhode Island State Prison Facility. She had been there to visit her former boyfriend, father of her child, and as she was coming out and heading to the bus. John Hammond seized upon this opportunity to give her a ride home, when he began to groom her. This young lady became one of his most trusted victims and soon she rose to the top of, call it his "administration."

Mr. Hammond had conducted business not only in Connecticut, New Hampshire, Rhode Island, but he also conducted a lot of business here in Albany, the Capital District area, specifically targeting our most festive summer event — that being the racetrack in Saratoga.

Our journey with Mr. Hammond begins in Colonie.

Let me take a break here by saying one other thing. In order to begin that trust, in order to begin developing that trust, it really starts with the very first person who has contact with our victim. What made this case possible for us to prosecute was the fact that that particular officer, who had spotted one of the transactions in the parking lot of that hotel, had set the perfect tone for the entire interaction with this group of people.

Let me take you back to New Hampshire. Mr. Hammond, this charming gentleman named "Pupi" had been in a New Hampshire hotel with a young lady he had doped up and was pimping her out. Mr. Hammond reached out to the young lady's sister and informed the young lady's sister that he was going to be hurting her if she didn't come up with the money that the young sister owed her. Let's take that back for a moment. I'll just use different names.

Amy is the current young lady that he's pimping and he reaches out to Amy's sister, Betty to inform Betty that Amy had a debt and that Betty needed to come and pay for that debt. Betty, in crisis, leaves her home in Rhode Island and comes to New Hampshire to see what's going on with the sister. Betty brings her child to that hotel at that point and this charming gentleman takes the two ladies, Amy and Betty, and leaves the child in the hotel and then decides to come to Albany to engage in this market.

If you know Central Avenue, there are number of hotels. Those are the prime locations for these perpetrators to carry out their trade. This particular officer who had been on patrol stumbled upon one young lady

doping up another. Also, there was an assault in the car. He stumbles upon this and begins his investigation. Before you know it, everyone's arrested. We have a young lady who was engaged in prostitution in the hotel who was arrested along with Mr. Hammond, along with the two associates that were in the car.

There are many who would think "Why would you make an arrest? We should have a very different philosophy when it comes to human trafficking," to which I would say, "Yes, I agree with that." However, in this particular instance, that arrest provided the moment of interruption that was so necessary in order for the victims advocates and in order for law enforcement to really go about doing their business.

It also provided a very unique situation where defense attorneys and prosecutors, the victim advocates, are all sitting at the same table having a conversation about how we go about addressing the issue at hand. I'm not going to take too much time, but just to identify a couple of concerns that were had here.

The successful prosecution of this case, as I said, started with the tone that was set by that police officer upon that initial interaction. We went at this for a long period of time with victim advocates from the office working very closely with the defense attorneys who were in turn communicating with their clients. The pimp, who happened be in the same jail, was already delivering messages and notes to his victims in jail. We had to move our victims to a different county, a different jail, just to have the separation, the isolation, to begin doing the work.

As I said, the most important quality to have in these cases are trust. The other is the ability to listen, even when they're shouting, because in the shouting they're articulating to you what their greatness needs and concerns are. I've never handled a case where I'm picking up the phone and calling CPS in another state, talking to the attorney in another state representing the particular victim in Family Court. We've never had a case where basically the office is managing every aspect of the victim's life in order to establish just the basic level of trust for them to cooperate in our prosecution of John Hammond.

The two gentlemen who just presented here, and I know that there was a lot that was said. These cases cannot be made unless you have a friend at Homeland Security. These cases cannot be made unless you have a friend at DCJS. These cases can't be made because most of the people that you are going to encounter have all of these collateral issues that to them is

more pressing and more urgent than the fact that they're being victimized every single day, 20 times a day, every single day of their lives. Unless you have a phone number, a person to contact, to call to address some of those issues, for example, the visa issues and the qualifications in that process of qualifying people as victims. If you don't have leverage and if you don't have these people on your side working hand-in-hand with you, these cases are impossible to make. Not only are these cases impossible to make, even for providing services and for getting them to open up to you to do what you have to do, if you don't have these people available to you, those cases are impossible. Your cases are impossible to handle as well.

Lastly, I will say this, over the last several years, this has been a hot topic. We've been discussing this. You're seeing PSA's. We are not doing nearly enough in terms of PSA's and public awareness. A few years ago the governor did a great thing in this state. Governor Cuomo had a human trafficking program at the rest areas, putting posters with phone numbers at rest areas. That was a great step, but we certainly need to be able to provide that sort of information to the places and environments that we find this population engaged in because we can't help them unless they know that there are people out there willing to help them.

I say this because we also need to educate the public. We put this case on. It took about three weeks to prosecute this case and we came back with a hung jury. The reason we came back with a hung jury is because when it's on television, when it's on Law and Order, when it's on Special Victims, it's usually a young lady who could be doing the Dove commercial on one day and she's playing a human trafficking victim the next day. That's not the reality. The particular young ladies that we had that we were helping in this case, when they were testifying and the things that came out of their mouths, made me blush. Not an easy thing to do! The jury, some of whom got it, but a lot of them who did not. Hung jury. We had a strong enough case. We had a lot of evidence that forced a plea from this particular defendant. He's not the only person out there doing this. There are so many more people out there doing this. In order for us to be able to hold people accountable, we have to get through the greatest barrier and that barrier is trust.

Thank you.

Judge Kretser: Thank you, DA Soares. I want to comment on one of the many points that you made and that is the people in my court and one of them is here today, the ADA's and my primary public defender is also here, they have

to work as a team when it comes to these cases. They have to step back from their usual role and I have encouraged them to do so in my court. They have done so. They are trying to work together to achieve what we all want, which is justice for the victim. Thank you for raising that issue. That is part of what we're trying to do here today. All work together as a team.

Thank you. Chief Cox?

Chief Cox: Thank you, Judge and thank you for inviting me here today.

Like the District Attorney, I spent a lot of hours in this building. It was not to learn, it was to break in and play basketball in the winter when I was a kid. As nobody arrests me, it's all good to go. I certainly wasn't in this room, but I was in the gym a lot.

Let me start off by getting myself in trouble, but that's okay. What the District Attorney just talked about, building trust, we have to do and I think we're recognizing that more and more. I say "we," the police. If you ever read a headline that the Albany Police Department has arrested a 12-year-old for prostitute, I'm going to expect that all of you join my wife and my sisters down at City Hall demanding that I be fired. I don't say that to criticize my colleagues from wherever that was that that occurred, but that's part of our problem. We have to understand, and this isn't just the police now, this is the entire state. We have to treat our kids like kids and that if we have 12-year-old who's prostituting, she's not doing that because she wants to do that. She's doing that because she's a victim. From the moment that we have contact with her, we need to make sure that we're treating her like a victim.

While I recognize that some 16 and 17-year-olds need to be treated like adults, the majority of them do not need to be treated like adults. When we put this in the mindset of folks that "16 and 17-year-olds and even 12, if they're out there prostituting themselves, that's their problem. That's not my problem." Then they were talking about folks' expectations and they do. People expect that what they see on TV as a victim and as soon as that's not the person that they see, then it doesn't matter. They can just throw that person away. We need to all stand together and make sure that we change the way that we do things in this state because it is pathetic to hear those stories and it's pathetic to find out that we arrest a 12-year-old for prostitution. I don't think a 12-year-old is culpable to

actually commit prostitution, not just under the Family Court Act, but overall.

In the Albany Police Department, some of the things we're trying to do—and thankfully I have a great partner sitting next to me—we're trying to look at when somebody's committing a crime, find out what's driving that crime and how we stop that and how we help that person. One of the things that we did is a few years ago, we looked at our prostitution issues, specifically along the Central Avenue corridor. We were getting a lot of complaints. We were having a lot of issues with a lot of business owners that were saying, "Hey, enough is enough. We've got to do something."

We sat down with our Community Response Unit, which is the investigative unit that oversees a prostitution case and basically got back from the detectives, "Hey, we don't want to arrest prostitutes. Same things happen over and over again. They end up coming in and out of court. We end up with bench warrants and having to treat them over and over again. We just want to have more and more arrests and nothing changes in the end." We said, "Okay, let's try something. What is driving it?" As we looked at the number of individuals who had been arrested for prostitution, men and women, we recognized there were really three prevailing things: There were folks suffering from addiction, folks suffering from mental illness and folks that were domestic violence victims.

We said, "Why don't we do this? Why don't we get everybody together and why don't we see if we can do some outreach and why don't we see if we cannot arrest them." We tried that. The first time we did that, I'm not going to tell you we were successful, because we weren't. Because as we sat down with all of our partners, there was nothing really holding us all together. When I say "partners," I include victim services at this point. There was nothing holding us all together. Nobody had ownership of anything. Ultimately, when we said "Hey, we need to meet at 2:00" and people said, "Okay, I'll see you after lunch." We said, "No, we mean 2:00 in the morning." That's when we have this and we got back from some people, good friends of mine, "Sorry, we're closed. We don't have anybody working." I said, "I don't have the ability to close. We have to be open 24 hours a day and we need to address this." We failed that time.

Then we were given an opportunity to really pull that failure up and succeed. We've been able to implement the Law Enforcement Assisted Diversion Program. That gets mentioned a lot when we talk about drugs, but we were able to widen the scope of that and recognize that we look at crimes that are driven by ultimately mental illness, drug addiction, victims

addressed in violence, poverty to look at those issues and to try to make sure that when we have contact with folks that, yes, by the penal law, they are breaking the law, but in reality, in order for us to make the public safe and actually help that person out, we can do different things.

It's my hope that we stop, at least in the City of Albany, arresting prostitutes. Just like the District Attorney said, there's sometimes where it's there's no other choice at this moment. If we're actually going to get this person out of this life, we may need to do that. We all recognize that, that we might need to do that. We also have to recognize that we have to do things a little bit differently. We have to start making sure that we're taking care of those folks because that's what happening.

There's a couple other things that are going on that are good. We have a partnership, hopefully, coming up with Equinox and In Our Own Voices where we're going to help and go do some street outreach. We had just done that not that long ago because, although we don't see the cases coming across with the human trafficking charges, what we know is that we do have that issue. We have that issue specifically with our runaways. We have a number of group homes in this city and we know that the young men and women that run away from those facilities become victims over and over again. A lot of them are already victims before they were put in that home.

We also know that from an immigration standpoint that we have an issue. We've had a couple of cases come to us where somebody has been trafficked into our area and victimized and we aren't able to break through those barriers. We do the best we can to try to help them out. We do sign a lot of the U-Visa paperwork to let folks know that this person was a victim. They need to be able to stay here, but we recognize that it's very difficult for us to break that barrier. If we can start changing the way we do things as a whole in society, I think we can start maybe start building that trust and helping those folks out. Because we're not doing any good by just arresting.

John Caher: 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.