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A RESPONSE TO SEX TRAFFICKING CHICAGO STYLE:  
FOLLOW THE SISTERS, SPEAK OUT

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INTRODUCTION

In 1992, the Michigan Journal of Gender and Law hosted a symposium entitled *Prostitution: From Academia to Activism* at the University of Michigan Law School. As the title suggests, the goal of the organizers

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<sup>†</sup> Legal Director, Chicago Alliance Against Sexual Exploitation; J.D., University of Michigan Law School. The title of this Article acknowledges the groundbreaking work of women in Chicago, including Jody Raphael and many brave prostitution survivors, who conducted and published critical research on the real lives of girls and women impacted by the sex trade in the Second City. Anyone interested in thinking or talking about prostitution and sex trafficking in the United States should read what they have documented. See JODY RAPHAEL & DEBORAH L. SHAPIRO, CTR. FOR IMPACT RESEARCH, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO (2002), available at <http://www.impactresearch.org/documents/sisterspeakout.pdf>. I am grateful beyond measure to those survivors who expose and make knowable what abuse would hide—among them are Brenda Myers-Powell, Olivia Williams, and Christine Stark. I am also indescribably thankful for, and indebted to, Matt Hoffer Morris, Pam and Phil Hoffer, and Catharine MacKinnon. This Article is a somewhat expanded version of comments I made on the Sex Trafficking Panel at the *University of Pennsylvania Law Review's* recent Symposium on Trafficking in Sex and Labor: Domestic and International Responses.

was to support not just *thinking* about prostitution but *doing* something about it. I have long assumed that this commitment was relevant to Andrea Dworkin's decision to participate in the event, given that one of her contributions to the event was a speech in which she said,

The assumptions of academia can barely begin to imagine the reality of life for women in prostitution. Academic life is premised on the notion that there is a tomorrow and a next day and a next day; or that someone can come inside from the cold for time to study; or that there is some kind of discourse of ideas and a year of freedom in which you can have disagreements that will not cost you your life. These are premises that those who are students here or who teach here act on every day. They are antithetical to the lives of women who are in prostitution or who have been in prostitution.

If you have been in prostitution, you do not have tomorrow in your mind, because tomorrow is a very long time away. You cannot assume that you will live from minute to minute. You cannot and you do not. If you do, then you are stupid, and to be stupid in the world of prostitution is to be hurt, is to be dead. No woman who is prostituted can afford to be that stupid, such that she would actually believe that tomorrow will come.<sup>1</sup>

Ms. Dworkin went on to say that the premises of the prostituted woman were her premises, and she challenged as unacceptable—even unbelievable—what she saw as the premises of academic feminists who appeared to her to be content to treat prostitution as a subject worthy of thought and debate rather than action, opposition, and eradication.<sup>2</sup>

Ms. Dworkin's speech was a clarion call to eradicate prostitution. Her arguments put into words the truth lived by girls and women bought and sold for sex: prostitution and equality for women cannot exist simultaneously. For me, a law student at the time and now a lawyer for more than ten years, Ms. Dworkin's speech reads as a specific challenge to lawyers and academics seeking to use words and law to improve reality for women. While privilege, material comfort, and safety have always been the defining premises of my life, the premises underlying Ms. Dworkin's exposition of what prostitution is—confirmed time and again by other survivors from around the world—have been my adopted political premises. These premises compel me to seek ways to use words and law to end the abusive selling and buy-

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<sup>1</sup> Andrea Dworkin, *Prostitution & Male Supremacy*, Address at the Michigan Journal of Gender & Law Symposium: Prostitution: From Academia to Activism (Oct. 31, 1992), in 1 MICH. J. GENDER & L. 1, 1 (1993).

<sup>2</sup> *See id.* at 2 (criticizing "the feminism that says we will hear all these sides year after year, and then, someday, in the future, by some process that we have not yet found, we will decide what is right and what is true").

ing of girls' and women's bodies for men's sexual pleasure, rather than to seek ways to improve prostitution or protect men's access to it.

Sadly, since 1993, "debates" about prostitution have raged with particular passion inside the ivory towers of academia and with sporadic and superficial attention in the mainstream media. More sadly still, the premises and conclusions of those who do not see prostitution as violence against women frequently have had a disproportionate influence on the development of U.S. law and policy.<sup>3</sup> On the other hand, those activists (survivors, academics, and lawyers included) who seek to make the premises of prostituted girls and women their own—and always to end abuse rather than to make it more palatable—have made critical headway in exposing and opposing prostitution. Specifically, in 2000, the United Nations and most of its member countries adopted a definition of sex trafficking that covers *virtually all* third-party involvement in prostitution.<sup>4</sup> And despite national domestic trends to the contrary, survivors, activists, and academics in Illinois are working together to eradicate prostitution—a practice rarely distinguishable from sex trafficking—by ending the demand for it. Recognizing the irony of participating in a debate on which I believe the conclusive words were uttered more than a decade ago, and with inexpressible gratitude for the survivors whose words and spirits echo in my ears and propel me forward, I aim to expose and argue in support of these related developments.

#### I. THE PALERMO PROTOCOL

Since 2000, "trafficking" has had a very precise definition when applied to people. The definition is found in a document generally

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<sup>3</sup> Recent examples include efforts by the National Association of Attorneys General, the ACLU, and many others to protect from federal prosecution any trafficking in persons for sexual exploitation that is not accomplished through force, fraud, or coercion. See Letter from Alexandria House et al. to Senator Patrick J. Leahy, Chairman, Senate Judiciary Comm., et al. 2 (Jan. 23, 2008) (on file with author) (writing to object to a proposal that would "redefine all prostitution as trafficking, even in the absence of force, fraud, or physical or psychological coercion" and calling it an "unnecessary, confusing, and resource draining provision"); Letter from Nat'l Ass'n of Attorneys Gen. to Senator Patrick J. Leahy, Chairman, Senate Judiciary Comm., & Senator Arlen Specter, Ranking Member, Senate Judiciary Comm. 1-2 (Mar. 7, 2008) (on file with author) (arguing that the removal of the elements of force, fraud, or coercion from the definition of sex trafficking "blurs the line between conduct that implicates the despicable crime of human trafficking for sexual purposes, and ordinary pandering and pimping").

<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter The Palermo Protocol].

referred to as the “Palermo Protocol.”<sup>5</sup> The Protocol’s definition is widely regarded as the world’s standard trafficking definition, and many believe that U.S. law and policy follow the understandings of prostitution and trafficking embodied therein.<sup>6</sup> U.S. law, at both the state and the federal levels, *ought* to manifest the definition of trafficking adopted at Palermo, particularly because the United States is a party to the Protocol and to the Convention the Protocol supplements.<sup>7</sup> Unfortunately, most U.S. federal and state sex trafficking laws seem to be written or applied to directly contravene what lies at the heart of the Palermo Protocol: opposition to the exploitation, particularly sexual exploitation, of vulnerable human beings, even when the trafficked person has willfully participated in or “consented” to the forms of exploitation proscribed under the Protocol.<sup>8</sup>

The Palermo Protocol’s adoption in 2000 followed a multiyear struggle within the United Nations that was largely characterized by a battle between “supply side” countries (countries where poverty and desperation serve to “push” girls and women into emigration streams and the sex industry) and “demand side” countries (developed countries where financial profit encourages pimps and traffickers to “pull” impoverished foreign-born girls and women into their sex industries).<sup>9</sup> On the “supply side” were most of the United Nations’ mem-

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<sup>5</sup> See The Palermo Protocol, *supra* note 4, art. 3 (defining “trafficking in persons”).

<sup>6</sup> See Brief for the Coalition Against Trafficking in Women as Amicus Curiae Supporting Plaintiff, *Dart v. Craigslist, Inc.*, No. 09-1385, 2009 WL 3416106 (N.D. Ill. Oct. 20, 2009).

<sup>7</sup> See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, S. TREATY DOC. NO. 108-16 (2004), 2237 U.N.T.S. 319; U.S. DEP’T OF STATE, TREATIES IN FORCE: A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE ON JANUARY 1, 2009, at 419-20 (2009).

<sup>8</sup> The Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, §§ 101-113, 114 Stat. 1466, 1466-91 (codified as amended at 22 U.S.C. §§ 7101-7110 (2006)), provides the epitome of U.S. law’s undermining of the Palermo Protocol’s understanding of sex trafficking. Although the definition of “sex trafficking” in the TVPA, 22 U.S.C. § 7102(9), mirrors the Palermo Protocol’s definition, other subsections of the TVPA specifically limit the U.S. Department of Justice to prosecuting only “severe forms of trafficking”—those acts of trafficking that involve minors or are accomplished by force, fraud, or coercion. See *id.* § 7102(8) (defining “severe forms of trafficking”); *id.* § 7106(a) (setting minimum standards for prohibiting and punishing only severe forms of trafficking).

<sup>9</sup> That there are not enough domestically born women in well-off countries to meet the needs of the sex industry is but one fact suggesting that if every brothel, pimp, strip club, “massage parlor,” or “john” in the world lost access for one year to the bodies of girls and women who were previously sexually abused (including as children) or who emigrated into the sex industry because of a lack of access to education or employment

bers, including the majority of the world's underdeveloped or impoverished countries, which double as the countries of origin of most internationally trafficked girls and women. These countries—in collaboration with feminist abolitionists from within their countries and elsewhere—sought a definition of trafficking that would proscribe most pimping activities and that would not be limited to criminalizing those actors who use “force, fraud, or coercion” to obtain and keep people in prostitution.<sup>10</sup> The opposition was a much smaller, but very powerful group, of mostly “demand side” countries—including the United States, the Netherlands, and Germany—which formed alliances with nongovernmental organizations (NGOs) to promote the idea that antitrafficking laws should only be concerned with prostitution where pimps and other facilitators use force or fraud to stock and maintain their brothels. Most of these NGOs and countries—including representatives of U.S.-based NGOs and the U.S. government—fundamentally promoted the view that “nonforced” prostitution should be treated as a type of labor, rather than as a symptom and practice of abuse and inequality.<sup>11</sup> Ultimately, the “supply side” countries, in collaboration with feminist abolitionists, prevailed, making the Palermo Protocol the modern-day high-water mark of global efforts to internationally criminalize pimping and to shift attention from the “choices” of the prostituted to the actions of those who profit from the sexual consumption of girls and women.<sup>12</sup>

According to the Palermo Protocol, “[t]rafficking in [p]ersons” is the “recruitment, transportation, transfer, harbouring or receipt of persons . . . for the purpose of exploitation,” by certain specified means.<sup>13</sup> “Exploitation” includes not only forced labor, slavery, and servitude but also “the exploitation of the prostitution of others or other forms of sexual exploitation.”<sup>14</sup> The prohibited “means” include threat or use of force, fraud, and “the abuse of power or of a position of vulnerability.”<sup>15</sup> The Protocol says that the consent of a victim to

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that would have allowed her to survive in her home country, it is highly unlikely that *any* man interested in purchasing sex would be able to find a willing prostitute.

<sup>10</sup> 22 U.S.C. § 7102(8).

<sup>11</sup> See JANICE G. RAYMOND, GUIDE TO THE NEW UN TRAFFICKING PROTOCOL 3-4 (2001), available at [http://action.web.ca/home/catw/attach/Guideun\\_protocolENG.pdf](http://action.web.ca/home/catw/attach/Guideun_protocolENG.pdf) (describing the process that led to the definition of “trafficking”).

<sup>12</sup> For a discussion of the debates leading up to the adoption of the Palermo Protocol, see *id.*

<sup>13</sup> The Palermo Protocol, *supra* note 4, art. 3(a).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

the intended exploitation is *irrelevant* to the question of whether or not trafficking occurred.<sup>16</sup> The Protocol also gives critical substance to what is meant by “vulnerability,” by specifying that “States Parties shall take or strengthen measures . . . to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity.”<sup>17</sup>

This bears repeating: the Protocol, which nowhere demands that jurisdictional lines be crossed to traffic, says trafficking occurs when people abuse “power” or “position[s] of vulnerability” to recruit, transport, transfer, harbor, or maintain others in ways that exploit their prostitution or for the purpose of exploiting them through prostitution.<sup>18</sup> Further, it says that *poverty itself* constitutes a vulnerability to trafficking.<sup>19</sup> In language that is quite plain—particularly by United Nations standards—the Protocol says that even if or when people “choose” to engage in prostitution, those profiteers who take advantage of desperation and inequality to recruit, transport, transfer, harbor, or maintain girls and women into and in prostitution for their own benefit are traffickers and should be treated as criminals.<sup>20</sup> The Protocol intentionally shifts the focus of antitrafficking laws from the willingness of those whose bodies are sold for sex to the actions of those people who profit from the prostitution of others and who take advantage of poverty and other vulnerabilities to keep the sex industry staffed. Fundamentally, the Protocol is written to prevent pimps from having access to the “she wanted it” defense—a defense that has an all-too-familiar power to anyone who is attentive to the prosecution (or lack thereof) of crimes against women generally. Through this definition, which captures virtually *all* third-party involvement in prostitution, the Protocol challenges continuing complicity in the routine and systematic sexual harming of girls and women through prostitution. It says that whether or not a woman is smiling as she trades a blowjob for twenty-five, five, or five hundred dollars, whether she returns to the street or the brothel after being arrested and treated like a criminal, whether she has been raped never, five, or fifty times, whether or not she is complicit in her own sale as sex, whether or not she is lucky enough to avoid the violence and abuse that fall on most of her sisters, even whether or not she claims empowerment and liberation, she is a

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<sup>16</sup> *Id.* art. 3(b).

<sup>17</sup> *Id.* art. 9(b)(4).

<sup>18</sup> *Id.* art. 3(a).

<sup>19</sup> *Id.* art. 9(b)(4).

<sup>20</sup> *Id.* art. 3(b).

trafficked human being every time a third party abuses their power or her vulnerability to get her into, keep her in, or otherwise profit from, her exploitation through prostitution.

Some commentators have sought to undermine the success of the Palermo Protocol by suggesting that the definition of trafficking that it adopts is weakened by language contained in enforcement mechanisms drafted after the Protocol itself. But the clear language of the definition constitutes an obvious rebuke to laws and policies in the United States that explicitly or tacitly limit criminal justice attention to prostitution and trafficking that results from provable “force, fraud, or coercion.”<sup>21</sup>

## II. PROSTITUTION IN CHICAGO

The experiences of those in Chicago who regularly engage in prostitution reveal that substantial numbers are trafficking victims according to the terms of the Palermo Protocol. The life stories of girls and women who are prostituted in Chicago are stories that lay bare what the abuse of power looks like, that embody the abuse of positions of vulnerability, and that give real meaning to what is intended by the term exploitation. Fortunately, prostitution and trafficking laws and policies in Chicago and Illinois are developing, in contrast to most U.S. laws and policies, congruently with the Palermo Protocol and the antiprostitution arguments made in Vienna, Austria, and Palermo in the lead-up to the Protocol’s adoption. This development is due to a powerful combination of survivor leadership, grassroots organizing, nontraditional collaborations, elected politicians, and local research, all of which have revealed—and continue to reveal—the staggering cruelty of prostitution.

Most of the research that has been done in Chicago over the last decade has been guided by, assisted by, and led by women who spent significant amounts of time in prostitution in Chicago.<sup>22</sup> Their research documents the following: (1) around 16,000 girls and women are regularly involved in prostitution each year in Chicago;<sup>23</sup> (2) most

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<sup>21</sup> 22 U.S.C. § 7102(8) (2006).

<sup>22</sup> In collaboration with Jody Raphael—an established researcher on issues related to violence against women—the following self-identified survivors of prostitution have played critical roles in much of the research that is exposing truths about prostitution in Chicago: Olivia Howard, Brenda Myers-Powell, and Claudine O’Leary.

<sup>23</sup> CLAUDINE O’LEARY & OLIVIA HOWARD, CTR. FOR IMPACT RESEARCH, *THE PROSTITUTION OF WOMEN AND GIRLS IN METROPOLITAN CHICAGO* 30 (2001). The hidden nature of most prostitution makes it difficult and frequently impossible to make definitive assertions about figures, as it makes it impossible to clearly assert the

are first purchased for sex before they turn eighteen;<sup>24</sup> (3) significant numbers are first pimped out (frequently by a family member) before their fifteenth birthday;<sup>25</sup> (4) as elsewhere, most prostitution activity in Chicago takes place in “off-street” venues such as strip clubs, bars, massage parlors, or through escort services;<sup>26</sup> and (5) street prostitution is estimated to account for only between ten and twenty percent of the total,<sup>27</sup> with girls and women frequently engaging in prostitution activities in a variety of different venues—sometimes moving from the street to an indoor venue, sometimes moving in the other direction.<sup>28</sup> Once in prostitution, research shows that girls and women are subjected to substantial levels of violence, whatever the venue in which they are bought and sold: among women prostituting in drug houses, approximately 75% report being subjected at least once to forcible sexual penetration; 70% have been punched at least once; almost 80% have been threatened with a weapon; and 75% have been robbed—most on multiple occasions.<sup>29</sup> Women who mostly engage in street prostitution are subjected to an annual average of a dozen incidents of violence and three hundred instances of unprotected sex;<sup>30</sup> and more than 20% of surveyed women engaged in prostitution in their own homes reported having been raped *ten times or more*.<sup>31</sup> Half of the women prostituted through escort services report having been raped.<sup>32</sup> Customers are the most frequent aggressors against women in prostitution, followed by intimate partners and pimps.<sup>33</sup> Police and neigh-

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existence of representative samples for social research. With these caveats, O’Leary and Howard’s research suggests that a reasonable one-day snapshot of women and girls working in prostitution in Chicago would identify approximately 16,000 such girls and women, with the acknowledged possibility that the figure could be much larger if calculated across an entire year.

<sup>24</sup> RAPHAEL & SHAPIRO, *supra* note †, at 4, 13. The *overwhelming* majority of adult women in one Chicago sample of 222 women interviewed in 2002—more than sixty percent—were first purchased for sex as children. *Id.* at 13 & chart 3.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> O’LEARY & HOWARD, *supra* note 23, at 3.

<sup>27</sup> *Id.*

<sup>28</sup> RAPHAEL & SHAPIRO, *supra* note †, at 24.

<sup>29</sup> *Id.* at 19.

<sup>30</sup> Steven D. Levitt & Sudhir Alladi Venkatesh, *An Empirical Analysis of Street-Level Prostitution 3* (Sept. 2007) (unpublished manuscript, on file with author).

<sup>31</sup> RAPHAEL & SHAPIRO, *supra* note †, at 19. Again, it is important to note that it is supremely difficult to identify representative samples of girls and women working in prostitution. Much of the research done in Chicago, therefore, is appropriately qualified by the researchers as being definitive only for their samples.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*



bors of prostituted women are commonly reported aggressors as well.<sup>34</sup> Although much attention has been given recently to the suggestion that pimps are economically beneficial to women in prostitution and that women with pimps are less likely to be injured by their tricks than are women who do not have pimps,<sup>35</sup> even some of the proponents of these views acknowledge that pimps engage in such levels of violence that the total amount of violence or injury experienced by women in prostitution is equivalent between pimped and nonpimped women.<sup>36</sup> In fact, in 1993, as a participant in the same University of Michigan Law School Symposium referenced earlier, Professor Catharine MacKinnon pointed out that “[w]omen in prostitution attempt to set limits on what can be done to them. But nothing backs them up. Pimps supposedly do, but it shows how insecure prostitutes’ lives are that pimps can look like security.”<sup>37</sup>

Fundamentally, Chicago-based research on prostitution both confirms what other researchers have documented about prostitution elsewhere<sup>38</sup> and reveals as deeply true the analyses of prostitution offered many years ago by Andrea Dworkin and Catharine MacKinnon—prostitution is violence against women, both a symptom and a mechanism of sex inequality.<sup>39</sup>

Critically, and by design, the Palermo Protocol makes third-party involvement in prostitution a central concern: while it is arguable that individual “johns” engage in acts that constitute “recruitment, transportation, transfer, harbouring,” or (perhaps especially) “receipt”<sup>40</sup> of humans for the purpose of exploiting their prostitution, and while “johns” frequently do this by abusing their power and women’s vulnerability, the language of the Palermo Protocol reads like a descriptor of the term “pimp.” Once again, local Chicago research, when read

<sup>34</sup> *Id.* at 19-20.

<sup>35</sup> See STEVEN D. LEVITT & STEPHEN J. DUBNER, SUPERFREAKONOMICS 38 (2009) (examining the impact of working with a pimp, or “pimpact,” in a chapter entitled “How Is a Street Prostitute Like a Department Store Santa?”).

<sup>36</sup> See Levitt & Venkatesh, *supra* note 30, at 14 n.17 (“Pimps, however, hurt their prostitutes enough to roughly equalize the number of injuries.”).

<sup>37</sup> Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 14 (1993).

<sup>38</sup> See, e.g., MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS (2007) (analyzing sex trafficking and prostitution in Nevada).

<sup>39</sup> While arguments authored by Andrea Dworkin and Catharine MacKinnon continue to be lied about, intentionally misrepresented, and dismissively characterized as “controversial,” Chicago is fast becoming a place where the misogyny and inequality of prostitution is regarded as self-evident—the diametric opposite of controversial.

<sup>40</sup> The Palermo Protocol, *supra* note 4, art. 3(a).

against the Palermo Protocol's definition of trafficking, exposes the truth that in Chicago, as elsewhere, the vision of prostitution as being the province of self-actualizing, empowered women acting as truly free and independent contractors is worthy of nothing more than rejection as a despicable myth. Facts about third-party control of women and girls in prostitution in Chicago are striking: half of women prostituted through escort services give a portion of their earnings to a pimp, as do more than forty percent of women who engage in prostitution on the street and in drug houses; among these women, seventy-five percent fear that they would be harmed if they attempted to stop allocating a portion of their earnings to their pimp, while two-thirds of those women feel unable to leave prostitution.<sup>41</sup> Among women engaged in street-level prostitution, approximately "one in twenty tricks" are "freebies" that they are compelled to provide to police officers or to gang members to "avoid arrest or in return for protection from the gang."<sup>42</sup> Pimps intentionally seek girls from low-income communities, especially targeting for recruitment girls who are particularly vulnerable as a result of emotional, physical, and sexual abuse.<sup>43</sup> Pimps mostly groom girls into prostitution using a combination of false promises of love and protection, lies about what they are asking them to do, and various forms of coercion and force.<sup>44</sup> Pimps specifically seek to, and do, substantially control girls and women in prostitution by, for example, retaining all of their earnings.<sup>45</sup> Pimps also have well developed relationships with "legitimate" businesses, like escort services and strip clubs, to which they supply prostitutes.<sup>46</sup> Further, the longer a girl or woman is in prostitution, the more customers she is expected to service per day—among one hundred women in prostitution under the age of twenty-five, more than half reported having to have sex with more than ten men per day, while they mostly had to have sex with

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<sup>41</sup> RAPHAEL & SHAPIRO, *supra* note †, at 20-21 & chart 5.

<sup>42</sup> Levitt & Venkatesh, *supra* note 30, at 15.

<sup>43</sup> JODY RAPHAEL & BRENDA MYERS-POWELL, DEPAUL UNIV. COLL. OF LAW, INTERVIEWS WITH FIVE EX-PIMPS IN CHICAGO 4 (2009).

<sup>44</sup> See JODY RAPHAEL & JESSICA ASHLEY, ILL. CRIMINAL JUSTICE INFO. AUTH. & DEPAUL UNIV. COLL. OF LAW, DOMESTIC SEX TRAFFICKING OF CHICAGO WOMEN AND GIRLS 10-17 (2008) (recounting the ways in which women are coerced into prostitution).

<sup>45</sup> RAPHAEL & MYERS-POWELL, *supra* note 43, at 5.

<sup>46</sup> See *id.* at 5 (confirming, through interviews with men who sold sex, the roles played by "legal businesses" in Chicago that facilitate prostitution, mostly by supplying women for prostitution through strip clubs and escort services).

fewer than ten men per day during the early stages of their involvement in prostitution.<sup>47</sup>

Like other coercive third parties, drug addiction both propels women into prostitution activities and makes it difficult for prostituted women to find a way out. Local research conducted in 2001 estimated that almost 12,000 women and girls regularly engage in prostitution to access drugs.<sup>48</sup>

Along with the substantial research conducted in Chicago about girls and women in prostitution, the Second City has also been home to some of the first research that involves in-depth interviews with men who self-identify as having purchased sex.<sup>49</sup> The research revealed that 66% of participants believe that women become prostitutes out of economic necessity;<sup>50</sup> 27% think most prostitutes are homeless;<sup>51</sup> 57% believe that the majority of prostitutes were sexually abused as children;<sup>52</sup> 21% do not think it is possible for a woman in prostitution to be raped (one man specifically explained that “[s]he has no rights because you are paying for a sex act—she gives up the right to say no”);<sup>53</sup> 42% believe that prostitution is psychologically and physically harmful to women;<sup>54</sup> 75% have observed women in prostitution who have pimps;<sup>55</sup> 40% have purchased sex from women they believed were controlled by pimps;<sup>56</sup> and 19% have committed rape.<sup>57</sup>

Although it has been concluded, based on the best figures that research can provide at this point, that between 16,000 and 25,000 girls and women are regularly prostituted in Chicago,<sup>58</sup> comparatively little

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<sup>47</sup> RAPHAEL & ASHLEY, *supra* note 44, at ii.

<sup>48</sup> See O’LEARY & HOWARD, *supra* note 23, at 2 (reporting that sixty to one hundred percent of the women in area drug-treatment centers regularly traded sex for drugs or money).

<sup>49</sup> See RACHEL DURCHSLAG & SAMIR GOSWAMI, CHI. ALLIANCE AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 6 (2008) (concluding that the demand side of prostitution must be studied to end prostitution effectively and selecting Chicago as the subject city because of its strong commitment to ending the sex trade).

<sup>50</sup> *Id.* at 20.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 21.

<sup>54</sup> *Id.* at 22.

<sup>55</sup> *Id.* at 23.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 22.

<sup>58</sup> O’LEARY & HOWARD, *supra* note 23, at 30.

research has been done on the number of men whose actions put them in the “john” pool annually. A conservative number produced by Levitt and Venkatesh in 2007 estimates that at least 175,000 different men in Chicago consume the “services” of women and girls in prostitution every year.<sup>59</sup> While no other research offers a “liberal” or outside estimate of the number of Chicago men who purchase sex from prostituted women, the Levitt and Venkatesh figure is based on research that deals with street-level prostitution alone. It is worth reiterating that eighty to ninety percent of prostitution activities in Chicago occur in indoor venues.<sup>60</sup> When thinking about the number of men who pursue sex from women in prostitution, one should consider research based on a sample of one hundred girls under the age of twenty-five who were living and working under the control of a pimp, which documented that (1) sex is provided to an average of 6.82 different men per day, (2) thirteen percent were forced to serve more than ten men daily, and (3) both the number of men they had to serve, and the frequency with which they were subjected to rape, increased substantially over time.<sup>61</sup> Also, the research on Chicago men who purchase sex suggests that most act as johns once a month or less.<sup>62</sup> Even adopting Levitt and Venkatesh’s conclusion that half the men who pay for sex are “repeat customers”<sup>63</sup> who demand prostitution services on multiple days from the same girl or woman, it is likely that the population of male customers for prostitution in Chicago vastly outnumbers the population of girls and women who make up the supply side of the prostitution equation. It is hoped that future research will reveal more facts about the number of men who purchase sex in Chicago every year, but in the meantime, common sense alone suggests that the number is vast, given the available information: between 16,000 and 25,000 girls and women are regularly involved in prostitution, most men who purchase sex do so once a month or less frequently, and most women provide sex to more than six different men every day they are sold for sex.

Over the last decade, research on prostitution in Chicago has been critical in local advocacy for legal and policy change in Chicago and throughout Illinois. The quantitative data gathered is only one

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<sup>59</sup> Levitt & Venkatesh, *supra* note 30, at 25.

<sup>60</sup> RAPHAEL & SHAPIRO, *supra* note †, at 8.

<sup>61</sup> RAPHAEL & ASHLEY, *supra* note 44, at iii, 19, 41.

<sup>62</sup> DURCHSLAG & GOSWAMI, *supra* note 49, at 9.

<sup>63</sup> See Levitt & Venkatesh, *supra* note 30, at 15 (“Roughly half of the tricks are done for repeat customers.”)

small part of the story. Driven largely by the voices of prostitution survivors and empowered by local grassroots alliances of service providers and policy advocates,<sup>64</sup> Chicago (and Illinois more broadly) is now home to a powerful and growing network of activists—survivors, social-service providers, academics, policy wonks, nonprofit agencies, and elected and appointed government officials—who see and want to treat prostitution as a problem of violence, economic inequality, discrimination, and desperation. For them, prostitution is largely inseparable from “sex trafficking,” the victims of which are mostly girls and women who are bought and sold for sex with men.

### III. LEGAL AND POLICY DEVELOPMENTS IN CHICAGO AND ILLINOIS

Among the first successes achieved by local survivors and activists in Chicago was the establishment of a new civil rights cause of action for survivors of prostitution, which went into effect in 2006. The Predator Accountability Act (PAA)<sup>65</sup> allows prostitution survivors in Illinois to seek civil damages from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.<sup>66</sup> In addition to creating a means by which Illinois prostitution survivors can hold pimps, johns, and profiteers accountable for recruiting, maintaining, or harming them in prostitution, the process through which the PAA was introduced and established had certain other critical effects. On the one hand, many Illinois policymakers, legislators, and thought leaders learned about the realities of prostitution in their state, frequently through discussions with actual prostitution survivors.<sup>67</sup> Additionally, many prostitution survivors, with critical guidance from the PART and the Chicago Coalition for the Homeless, developed organizational, public-speaking, and advocacy skills. They have used those skills in other policy and legislative campaigns while work-

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<sup>64</sup> The Chicago Coalition for the Homeless has long played a key role in developing much of the grassroots survivor-led advocacy dealing with prostitution in Illinois, by creating and managing the Prostitution Alternatives Round Table (PART), a network of governmental and private nonprofit organizations and prostitution survivors. For more information, see Chi. Coal. for the Homeless, Creative Alternatives for Women in the Sex Trade, <http://www.chicagohomeless.org/what/prostitution> (last visited Apr. 15, 2010).

<sup>65</sup> 740 ILL. COMP. STAT. 128/1 to /99 (2007).

<sup>66</sup> Shay-Ann M. Heiser Singh, Comment, *The Predator Accountability Act: Empowering Women in Prostitution to Pursue Their Own Justice*, 56 DEPAUL L. REV. 1035, 1049-50, 1050 n.112 (2007).

<sup>67</sup> See Samir Goswami, *From Street Corner to Statehouse: Survivors' Struggle for Civil Rights*, in A GLOBAL PERSPECTIVE OF PROSTITUTION WITH IMPLICATIONS FOR RESEARCH, POLICY, EDUCATION, AND SERVICE (R.L. Dalla et al. eds., forthcoming).

ing with and training younger prostitution survivors. As a result, they have laid the groundwork for the development of multiple survivor-led nonprofits. Chief among them are the Dreamcatcher Foundation and the Women of Power Alumni Association.<sup>68</sup>

Although survivors and advocates were promoting the PAA in Springfield, they were also working with a community collaboration led by the Chicago Mayor's Office on Domestic Violence, which conducted a three-year assessment of prostitution and the systems with which prostituted people come into contact. Government departments, nonprofit organizations, and prostitution survivors worked together, and in 2006, the *Intersystem Assessment on Prostitution in Chicago* was published.<sup>69</sup> The *Intersystem Assessment* gathered data, made findings about the scope and nature of prostitution in Chicago, and made policy recommendations. Chief among them was that the demand side of the prostitution problem be more effectively targeted.<sup>70</sup> At the same time the collaboration of actors working with the Mayor's Office on Domestic Violence increased its focus on eradicating the demand for prostitution, there was growing recognition of the overlap between prostitution and "sex trafficking," a problem that was widely regarded as an obvious human rights violation but also frequently assumed to be about the crossing of international boundary lines.<sup>71</sup> The next year, the Cook County Commission on Women's Issues issued its own report.<sup>72</sup> Like the Mayor's Report, the Cook County Report concluded both that "there is a clear overlap between sex trafficking and prostitution"<sup>73</sup> and that demand is the root cause of the sex trade and sex trafficking, such that "unless police and law enforcement officials target pimps, traffickers, and the establishments that profit financially from the exploitation of trafficked human beings, the problem will not go away."<sup>74</sup> While many of the reports' specific policy recommen-

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<sup>68</sup> See The Dreamcatcher Foundation, <http://www.thedreamcatcherfoundation.org/index.html> (last visited Apr. 15, 2010); Women of Power Alumni Association, <http://www.womenofpoweraa.org> (last visited Apr. 15, 2010). For a fascinating documentary about the efforts of survivors to establish the PAA, see DVD: *Turning a Corner* (Beyondmedia Education 2005), available at <http://www.beyondmedia.org/catalogue.html#turningacorner>.

<sup>69</sup> See generally CITY OF CHI. MAYOR'S OFFICE ON DOMESTIC VIOLENCE, THE INTER-SYSTEM ASSESSMENT ON PROSTITUTION IN CHICAGO (2006).

<sup>70</sup> *Id.* at 45.

<sup>71</sup> See *id.* at 23-24.

<sup>72</sup> COOK COUNTY BD. OF COMM'RS, THE REALITIES OF HUMAN TRAFFICKING IN COOK COUNTY: STRATEGIES FOR ENDING THE EXPLOITATION OF WOMEN AND GIRLS (2007).

<sup>73</sup> *Id.* at 3.

<sup>74</sup> *Id.* at 10.

dations have yet to be pursued, both reports helped to create and to strengthen local alliances between survivor activists, government actors, and nonprofits and to foster a political climate in Chicago in which supporting legislation or legal action against pimps and johns is regarded as legitimate and much less controversial than it might otherwise be. For example, in 2008, Cook County Ordinances were passed to allow the Sheriff's Department to pursue johns and pimps more aggressively, and simultaneously to provide funding (through fines on pimps and johns) for programs for prostitution survivors.<sup>75</sup> In 2009, both the Illinois Attorney General and the Cook County Sheriff sought to hold Craigslist accountable for the ways in which its website promotes and profits from local prostitution. Although a lawsuit filed against Craigslist by the Sheriff was dismissed in October,<sup>76</sup> Craigslist increased the cost of advertising for "erotic services" on its site and publicly promised to direct those funds to charity.<sup>77</sup> Finally, 2009 saw the introduction of the "End Demand Illinois" Campaign, a policy and legislative campaign led by the Chicago Alliance Against Sexual Exploitation directed at increasing the ability of the criminal justice system to punish demand for prostitution, while simultaneously increasing services for girls and women at risk for, suffering in, or attempting to escape prostitution. Ultimately, the End Demand Campaign seeks to decriminalize sex acts by girls and women (and sometimes boys and men) who are purchased for sex, while also "re-criminalizing" all forms of purchasing and pimping through the de-

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<sup>75</sup> Cook County, Ill., Ordinance 09-O-08 (2008) (codified at COOK COUNTY, ILL., CODE § 46-5 (2009)); Cook County, Ill., Ordinance 09-O-09 (2008) (codified at COOK COUNTY, ILL., CODE § 58-167). According to the Director of the Division of Women's Justice Services for the Cook County Sheriff's Department, this particular ordinance was used to obtain at least \$500 each from more than fifty men seeking to purchase sex between September and December 2009 (picked up in stings conducted by the Sheriff's office). All of the money is being allocated to pay for services for survivors of prostitution. DIV. OF WOMEN'S JUSTICE SERVS. OF THE COOK COUNTY SHERIFF'S OFFICE, STATISTICS (2010) (on file with author).

<sup>76</sup> See *Dart v. Craigslist, Inc.*, No. 09-1385, 2009 WL 3416106, at \*7 (N.D. Ill. Oct. 20, 2009).

<sup>77</sup> See Press Release, Craigslist, Inc. et. al. (Nov. 6, 2008) (on file with author) (issuing a "Joint Statement" with the attorneys general of numerous states and the National Center for Missing and Exploited Children regarding ways to combat the use of Craigslist for illicit purposes); see also Letter from Lisa Madigan, Att'y Gen., Ill., to Craigslist, Inc. (Apr. 27, 2009) (urging Craigslist to comply with its promises and seeking to ensure that Craigslist donates the monies generated locally to Illinois-based providers of services to exploited women and children).

velopment and consistently aggressive use of more severe penalties for demand actors.<sup>78</sup>

Although the Palermo Protocol has rarely been invoked during discussions among activists in Chicago seeking to eradicate prostitution, the fundamental insight of its definition of trafficking has become central to virtually all activism and policy work in Illinois related to prostitution. Any meaningful effort to address the human rights violations endemic to prostitution requires a shift in focus from the “choices” of the exploited to the power and privilege abused by pimps and customers who profit from prostitution (whether sexually or financially) by selling and consuming the bodies and lives of girls and women—the raw and disposable materials of the sex trade.<sup>79</sup>

#### CONCLUSION

The arguments against broad definitions of trafficking and prostitution that were articulated in Vienna and Palermo in 2000 and at the *University of Pennsylvania Law Review's* 2009 Symposium frequently suggest that feminist opposition to prostitution should be disregarded as archaic and hysterical moralizing. A common theme continues to be that feminist abolitionists are themselves a problem with respect to prostitution and trafficking. Specifically, feminists who argue that prostitution is oppression harm women in the sex industry by “defining” them as victims, thus infantilizing and disempowering them. Feminist opposition to pimping and procuring is maligned as harmful to antitrafficking work. We are blamed for diverting attention and resources from “real” victims of trafficking. While I certainly believe that words matter, it is patently ridiculous to suggest that women in the sex industry are hurt not so much by the practices that are endemic to prostitution—like being raped with impunity by men—but rather by the efforts of women to describe those practices. Likewise, feminist efforts to expose and oppose prostitution as oppression—efforts that

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<sup>78</sup> For more information about End Demand Illinois, see End Demand Illinois, <http://www.enddemandillinois.org> (last visited Apr. 15, 2010).

<sup>79</sup> This constitutes a shift in focus to those (mostly) men who have excess money, food, or shelter and who condition the sharing of those goods with mostly poor, undereducated, desperate girls and women on their willingness to provide them with a blowjob, hand job, or vagina or anus to penetrate. This is not to say that girls and women in prostitution are without agency because they are taken advantage of and victimized. Rather, the shift emphasizes that their agency—which they are using to do whatever it takes to stay alive—does not, and cannot, excuse what people do to them.



are generally very *poorly* funded and have resulted in the allocation of very small amounts of money and resources toward the eradication of prostitution (which is, of course, the industry that is the root cause of all international sex trafficking)—are not contrary to efforts to eradicate other and all forms of slavery and indentured servitude. Perhaps if there was a finite amount of dignity to be doled out, or a set amount of justice and equality that could be obtained, we would be obligated to establish hierarchies of suffering so that we could prioritize the injustices and inequalities that would merit opposition. But as far as I know, there is no evidence that equality or dignity are like oil or natural gas. There is no danger that opposition to practices that diminish and harm the lives of women through prostitution will inhibit our ability to also oppose practices that keep poor people toiling in tomato fields or that prevent undocumented migrants from leaving houses where they are expected to serve as maidservants twenty-four hours per day, seven days per week.

Chicago is a place that is very much like the rest of the world in that the criminal justice system does virtually nothing to respond to common forms of sexual violence against women. Chicago is also like the rest of the world because its most-raped women are those in prostitution. Like in the rest of the world, they are women in prostitution because they were once girls in prostitution or because they were born into or abused into positions of extreme vulnerability such as poverty. They have found themselves in situations where letting any man rape them with impunity is preferable to starving, dying of exposure, or going through withdrawal alone and with no support.

What differentiates Chicago and Illinois from most other places, however, is that for the last ten years, we have had a growing and thriving community of people, led by survivors of prostitution, who are working together to investigate and expose what prostitution in the Windy City *is*. The survivors with whom we work, to whom we owe so much, are not working on this issue because they think that prostitution itself is an industry that needs to be tinkered with so that it can play a role in helping women escape poverty. They work with us because they do not want anyone else to experience what prostitution means. They want pimps to stop pimping, men to stop buying, safe and affordable housing, drug-treatment facilities, and places where abused children can escape abuse without having to endure more abuse.

We are not so naïve as to think that we are engaged in an easy fight. But for all the talk about prostitution being so ancient, and with all that the talk implies about prostitution's inevitability, I have yet to see any

research indicating that a majority of men purchase sex. And if most men—or even many men, or even some men, frankly—can spend their entire lives without once insisting that a woman in prostitution use her mouth, vagina, or anus to give them a bit of sexual pleasure, then purchasing a human for sexual use is not something that defines being male. And if engaging in sex with a woman in prostitution is not necessary to being a man, then no man needs to do it. And if no man actually needs to do it, then I can envision a world in which no man does it.

That is what we are talking about in Illinois. Ending demand for prostitution. Which would end prostitution. Which would end sex trafficking. Which would not be a complete victory in the fight against trafficking, but it sure would be something. That is what we are working on.