

Innocent Traffickers, Guilty Victims: The case for prosecuting so-called ‘bottom girls’ in the United States

Alexandra F Levy

Response to ATR Debate Proposition: ‘Prosecuting trafficking deflects attention from much more important responses and is anyway a waste of time and money’

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In January 2013, two 14-year-old girls reported to police that Derrick Hayes and Keosha Jones were forcing them to sell sex.¹ Jones was in charge of most of the logistics: she advertised the victims’ services on [www.backpage.com](http://www backpage.com), coordinated meetings between the victims and customers, and collected the \$100 to \$200 per day that the victims earned. She was also instrumental in keeping the girls compliant. One victim told the police that she believed, quite simply, that Jones would kill her if she stopped making money.

Hayes and Jones were both charged with human trafficking in federal court, and both pleaded guilty. However, there was a significant difference between their sentences: while Hayes got 30 years in prison, Jones was put on supervised release. The judge noted that although Jones was, by her own admission, a human trafficker—although she had, in stark terms, facilitated the rape of children for money—she was also a victim. Indeed, her initiation into the sex industry had taken place when she was just one year older than her own victims and, furthermore, it had occurred at the hands of Hayes, her co-conspirator (he beat her, drugged her, and forced her to have sex for money). The clear and direct link between Jones’s crime and Hayes’s brutality—along with her willingness to testify against Hayes, and her overall commitment to self-reform and rehabilitation—convinced the court to be lenient.

Jones occupied an organisational position well-known to law enforcement officials across the United States: she was, in industry terms, Hayes’s ‘bottom girl’. As defined in one federal criminal complaint:

‘Bottom Girl’ is the street term for a woman who sits atop the hierarchy of prostitutes working for a particular pimp. A bottom girl is usually the prostitute who has been with the pimp the longest and consistently makes the most money. Being the bottom girl gives the prostitute status and power over the other women working for the pimp; however the bottom girl also bears many responsibilities. In *US v. Pipkins*, 378 F.3d 1281 (11th Cir. 2004), the Eleventh Circuit described the bottom girl’s duties as ‘work[ing] the track in [her pimp’s] stead, running interference for and collecting money from the pimp’s other prostitutes, [and] look[ing] after the pimp’s affairs if the pimp was out of town, incarcerated, or otherwise unavailable’.²

Like many women in this role, Jones had significant responsibilities: for example, she recruited other girls into the sex trade, managed day-to-day operations, and delivered all profits (including, notably, those from her own commercial sexual activity) to Hayes. In cases (such as Jones’s) in which commercial sex is procured through trafficking (i.e. the sex work is performed by minors, or is compelled through force, fraud, or coercion), ‘bottom girls’ often occupy two dissonant roles: they are both traffickers and trafficking victims. This presents a vexing legal question, one at odds with criminal law’s affinity for clear boundaries between guilt and innocence: how should the law treat innocent traffickers, guilty victims?³

The status quo is to prosecute such women as traffickers—usually as co-defendants with the men who have allegedly trafficked them. It is tempting to reject this approach out of hand, tempting to object to the underlying

¹ See generally *US v. Jones*, 13-cr-00442 (M.D.Fla.)

² Criminal Complaint at 4, *United States v. Eric Antwan Bell*, 8:12-cr-00124-JSM-EAJ (M.D.Fla., Jan. 3, 2011), ECF No. 1. See also Criminal Complaint at 1, *US v. Christopher Tyrone Young*, 8:09-mj-00158-DUTY, (C.D.Cal., Apr. 13, 2009), ECF No. 1 (‘Based on my training and experience, “bottom girl” is a title given to a prostitute who is the most trusted by the pimp. The bottom girl may be assigned tasks such as recruiting other prostitutes, transporting other prostitutes to and from areas where they work, and other tasks...’), Second Superseding Indictment, *US v. Derwin Samuel Smith* at 1, 1:10-cr-00583 (D.Md., Feb. 1, 2011), ECF No. 35 (‘A “bottom girl” is considered to be an individual who works closely to the pimp and is typically in charge of the stable of girls that work for him.’).

³ Common law defences, such as necessity and duress, generally require a threat of immediate harm, and therefore are not applicable to many human trafficking situations.

premise that trafficking victims have enough self-determination to be guilty of *anything*, much less voluntary acquiescence to their traffickers' demands. Punishing them seems both unjust as a matter of principle and impractical as a matter of policy: people who have no choice but to break the law cannot be deterred, so why bother?

One outspoken critic of the prosecutorial approach is Shamere McKenzie, a trafficking survivor and self-identified former 'bottom girl'.⁴ She has publicly called for the cessation of prosecutions of women in this situation for trafficking and related offences, challenging prosecutors to 'understand that [the] bottom girl is the one who's the most victimized; [that's] why she's even in the position...in the first place'.⁵ In other words, the fact that these women have power and status *within* the organisation is not incompatible with the notion that they are actually unable to leave; to the contrary, traffickers can seek to maintain control by strategically meting out power and status to those who are most submissive. Though the intuition may be that more participation in the enterprise means more actual agency—and thus more grounds for punishment—McKenzie argues that the opposite is actually true.

McKenzie accurately described Keosha Jones's plight: the intensification of Jones's involvement with Hayes sounded in capitulation, not empowerment. But an analysis of more federal cases against women in these positions suggests that McKenzie's theory cannot be fully generalised. In *US v. Robinson*, for example, the defendant who was a 'bottom girl'—Anniesha Whitt—allegedly got the male defendant involved in the sex trade; she also exerted significant control over their operations.⁶ Though Whitt and Jones had the same basic job, their different levels of actual agency call for different legal responses.

What becomes clear is that there is no single solution to this issue. Some women involved in trafficking operations in these ways deserve leniency, like Jones; others are no less autonomous and culpable than traffickers who entered the trade voluntarily. But the fact that some people are not guilty of trafficking does not make prosecution the wrong approach: to the contrary, it suggests that prosecution is important. A criminal action, with its procedural safeguards and fact-intensive inquiry, is the appropriate context within which to make a determination of culpability. When women in these positions are on trial, courts must take care to consider voluntariness—and must use their discretion to deviate from sentencing guidelines, order treatment, or find other ways of accommodating the 'unusual situation in which the defendant was herself, a victim as well as a perpetrator, of the same types of crimes'.⁷ Complexity in such cases is inevitable. The answer is not to avoid prosecution, but rather to use the courtroom as a forum for the thorny, fact-specific question of how to treat guilty victims under the law.

Alexandra F Levy is an adjunct professor at Notre Dame Law School and an affiliate of Notre Dame's Center of Civil and Human Rights. She created and teaches the law school's first class on human markets, and speaks regularly on issues relating to victimhood, criminality, and the economics of black markets. Email: alevy@htprobono.org

⁴ See: S McKenzie, 'Unavoidable Destiny | Legally a Criminal, Legally a Victim: The plight of the bottom', Shared Hope, 24 May 2012, available at <http://sharedhope.org/2012/05/24/unavoidable-destiny-legally-a-criminal-legally-a-victim-the-plight-of-the-bottom/> (referring to "bottom girls" who are charged...like I was'), retrieved 3 April 2016.

⁵ 'Restorative Justice and Human Trafficking—from Wisconsin to the World', panel presentation, <https://law-media.marquette.edu/Mediasite/Play/9da2e13c4b4c481da48c89c3e31e98151d>, retrieved 16 April 2016.

⁶ See generally: *US v. Reynolds*, 10-cr-00463 (N.D. Ohio).

⁷ Government's Sentencing Position; Response to Presentence Report, *US v. Alberti*, 12-cr-00057 (C.D. Cal., Document 170).