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TRANSCRIPT^o

CONVERGE! REIMAGINING THE MOVEMENT TO END GENDER VIOLENCE

Panel on Sex Trafficking

UNIVERSITY OF MIAMI SCHOOL OF LAW

*Cyra Choudhury (moderator)**

Aziza Ahmed

Sienna Baskin

Sandy Skelaney

CHOUDHURY: My name is Cyra Choudhury. I teach at Florida International University and it is a pleasure to be here at Miami Law at this incredibly important conference on violence, specifically gender violence. Our panel is on sex trafficking and our speakers will run the gamut with regards to approaches to sex trafficking both globally and locally, with children as well as adults. We have a nice mix of speakers both from practice and from academia and so I think it will be a very fruitful conversation.

SKELANEY: My name is Sandy Skelaney. I am currently a Social Venture Consultant working on the issue of program development and human trafficking. I was formerly the Program Manager and Founder of

^o This transcript has been edited from its original transcription for clarity.

^{*} Cyra Choudhury is an Associate Professor of Law at Florida International University. Aziza Ahmed is an Associate Professor of Law at Northeastern University School of Law where she focuses on the areas of health law, human rights, property law, and development. Sienna Baskin is the Co-Director of the Sex Workers Project of the Urban Justice Center where she directs legal services and policy advocacy. Sandy Skelaney has dedicated her career to eradicating the sex trafficking of children and helping survivors find a path to healing. As a result of Skelaney's vision and expertise, Kristi House led the charge to create specialized programming, a safe house, and changed legislation in Florida.

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Project Gold at Kristi House.¹ We were the first program in the State of Florida to work specifically with children who were being sexually trafficked. In Kristi House I worked directly with over 300 girls, some of the girls were foreign born but most were domestic, who had been sexually trafficked between the ages of eleven and eighteen years old. We provided comprehensive case management, therapy services, across the board advocacy in all areas, and we also did street outreach. We also wrote Florida's Safe Harbor Act,² advocated over three years to get it passed into law, and opened a safe house, which is now a drop-in center. I want to tell you about the universal thinking that connects all trafficking victims, even if you are talking about labor, adult, child, or sex trafficking. That universal thinking is the issue of vulnerability. Some of the issues that people have when I go out and do presentations are whether sex work is a choice or not. That question was what kept that legislation from being passed for three years. The root issue, though, when you are dealing with trafficking victims is vulnerability. So, there is a continuum of choice that we are looking at. On the one hand, I have worked with girls who were literally kidnapped off the street, handcuffed to a radiator, and forced to have sex with men for money that was given to somebody else. On the other hand, I have also worked with teenage girls who told me that they were curious about it so they went to the strip club with their friend and tried it out. Many times even if that is how it started, they ended up falling into the hands of pimps who then were abusive towards them. So, the issue of vulnerability is really important to understand because it informs choice.

So what makes somebody vulnerable to being sexually trafficked? We are all living in this world in which we are sexually objectified, this is especially true for women and children growing up in abusive situations. About 80% of the girls that I have worked with had experienced past sexual abuse. That makes them much more likely to be sexually trafficked than their non-abused peers. We also have a lot of unaddressed mental health issues in this population. Vulnerability to trafficking is not just a poverty issue, but it can be a poverty issue, as well. We have kids that are running away from home, often times because of abuse or neglect or some kind of dysfunction in the home. So, a lot of what happens with this continuum of choice is happening in the middle where there is this coercive/abusive gray area and that is not what you hear about when you are getting articles sent to you on FACEBOOK

¹ KRISTI HOUSE, *Gold Project: Girls Owning Their Lives & Dreams*, <http://www.kristihouse.org/project-gold/> (last visited May 22, 2015).

² Florida Safe Harbor Act, ch. 2012-105, 2012 Fla. Laws 1199.

and things like that. You are seeing the picture of the little twelve-year-old girl, crying, in a fetal position, in handcuffs. But most of what we are seeing with trafficking happens in this kind of middle, coercive, gray area where you have a lot of vulnerability as a backdrop. When you are growing up with a history of sexual abuse, you are identifying this feeling of love with sex, attention, and abuse, and so you are not really mentally prepared to make good, healthy decisions for your life at sixteen years old. If you are running away from a house and you are going out to the store or to the park just to get away from whatever is going on in your house, and then somebody approaches you—likely an older person, likely a male but also sometimes female, or sometimes your friends—they are offering you different solutions and that is appealing. A lot of times we think that there is such a huge difference between international and domestic trafficking. I like to blur that line a little bit because just like we say foreign born trafficking victims get false promises for a better life, so do domestic trafficking victims. These sixteen year olds are getting promised spots in videos, they are getting promised a boyfriend that is going to take care of them, they are getting promised a better life, or they are getting promised to be taken away from their abusive stepfather. That vulnerability leads them to take these steps, make these decisions, which are actually, ways that they find they can cope. They are adaptive choices. They are trying to make better choices, but without all the information, and so they end up in these situations that escalate with the violence that occurs. For example, a lot of girls that I have worked with have gotten involved with traffickers, who they think are very benign or maybe their boyfriend, and then he offers them a place to stay, a get away from their family, whatever. Then, he starts demanding things of them, telling them, “You’re going to strip in the club for a little while.” if she complains, he says, “Well, who’s going to pay the rent? I have been spending all this money on you, getting your hair and nails done.” So then it escalates to the point that if she is forcefully saying “no” or trying to defy him, there are going to be repercussions, and it becomes a cycle of violence. So, you are going to see a lot of the same kind of dynamics that you see in domestic violence, with the honeymoon cycle and the explosion. Now, I would say not every single kid that I have worked with has had a pimp, but probably about 90% of the girls that I have worked with have had a pimp at one point.

If I am going to impress anything upon you, it is to encourage you to individualize how you are seeing survivors of trafficking. I see a lot of media, a lot of propaganda, depicting every single trafficking victim as a girl (a child), and every victim is being held against her will. This image misses a lot of nuance in the circumstances. The way that we can help

trafficked victims is to understand the *individual* situations. We also need to understand teenagers, in general, and help them become more empowered to make better choices for themselves. Because, let us face it, if the adults in their life were reliable, they would not be in this position. So, we are trying to become a more reliable support system for them, by being advocates that are consistent and caring. What we see is trafficked teens coming in and out of foster homes, in and out of programs, and if they run away and are gone for more than a week, they get dropped from a program. And they are repeatedly interviewed about really sensitive things. I mean, honestly, at fifteen years old would you really want to be interviewed extensively about all the sexual things that you have ever done? No. But this happens with every single person they deal with in the system. So they learn to adapt to that situation, which is why it is challenging to work with them. What they need is consistent, supportive people in their lives; they need advocates. They need people who are going to stay with them from day one, from the point of identification, and help them through the system until they are eighteen or nineteen years old.

We have to remove their vulnerability. It is not enough to remove the “John” or the trafficker, because they are just going to get replaced. We should not remove the kids. This occurs in system; we remove the kids to a location that is three hours from home, away from their supports. This occurred in our program. We would form very strong relationships with these kids, and then the system would take them away from Miami and move them to Tampa. Instead of removing the child and focusing on removing the “John” and the trafficker, we have to remove the vulnerability. That occurs when we are being supportive, looking at them as individuals, identifying what their needs are as individuals, what their situation is, and what their vulnerabilities are as individuals.

BASKIN: I am an attorney and Co-Director of the Sex Workers Project at the Urban Justice Center in New York.³ We were founded in 2001. We provide legal and social services to anyone who has been involved in commercial sex or the sex trade. We operate from a human rights and harm reduction perspective. This means we come to the work with the assumption that everyone has rights no matter what they have done or have experienced, and that we should be meeting people where they are at—letting them identify the harms that they are experiencing in their lives and trying to reduce those harms. We work with all sex workers, including people that have done prostitution, or traded sexual

³ SEX WORKERS PROJECT OF THE URBAN JUSTICE CENTER OF NEW YORK, <http://sexworkersproject.org/> (last visited May 22, 2015).

conduct for a fee or something of value, and people that have worked in exotic dancing, fetish, or porn. We work with people of all ages and genders. Our clients engage in sex work for a variety of reasons. We look at that as a spectrum of choice, circumstance, and coercion. So, we work with people who choose to do sex work, we work with people who did not really have any other options—their circumstances were such that sex work was the only way they could make ends meet—and we work with people who were coerced or forced into commercial sex. Many of our clients have been at various points on that spectrum at different times in their lives.

We work with survivors of trafficking into commercial sex. I like to use this term instead of “sex trafficking,” because sexual violence is common in trafficking that occurs with other forms of labor, so I think that the term “sex trafficking” is confusing. The definition of trafficking into commercial sex under federal law is different if you are an adult or a child. If you are an adult, you are trafficked if you are forced, coerced or defrauded (tricked) into engaging in a commercial sex act. If you are a minor, then you are trafficked if you are induced into engaging into a commercial sex act. What I have come to realize through doing this work and working with this definition, is that trafficking is both a very real phenomenon, and it is also a construct. It is a real form of abuse that people suffer. I carry a lot of those stories with me after doing this work for seven years. But it is also a construct that we have created. We have put certain things inside the definition, we have left certain things out, and we have made some political decisions in doing that. I just want you to keep that in mind as we talk further about trafficking.

When we work with survivors of trafficking, we pursue the legal remedies that are available to them. If you are an immigrant survivor of trafficking, and you do not have immigration status, that might mean pursuing a T visa. A T Visa is a special visa for victims of trafficking which requires that you cooperate with reasonable requests from law enforcement in the investigation of your trafficker. So, it is actually part of the structures around violence against women that we have been talking about today; it is a law enforcement tool but it also gives someone something they desperately need—immigration status. We also work with survivors on the collateral consequences of their own criminalization, their own criminal records of being arrested and prosecuted—mostly for prostitution, but sometimes for a lot of other things as well.

In our work with sex workers, we work on a range of legal issues. Sex work comes up in many areas of law, not just criminal law. Sex workers are just generally excluded from everything. Sex workers come to us and say, “You know, I’m actually doing a legal form of work. I’m

working at a strip club, but I have no labor rights as an employee. How do I pursue those?” Or they say “I don’t know how to pay my taxes,” or “I don’t know how to respond to the fact that I’ve been victimized and I want to get help from the system but I know that I will then be arrested.” So, we work on all of these ways in which people who have engaged in commercial sex are excluded from rights that others have. We also provide social services; clinical therapy and case management. Our clients can receive free therapy and talk about whatever they want to talk about.

I wanted to talk about the topic of sex work and human trafficking in the context of this conference. We have been talking about all the traps we have fallen into in pursuing remedies for gender violence. And the traps in the area of human trafficking are deep and wide. Partly, that is the case because we see the sex trafficking survivor as this most victimized victim. Just hearing their stories creates an emotional response, especially for women, and this desire for some kind of swift justice, and a need to find some enemy upon which to exact punishment. Justice is important. We need a rule of law around human trafficking, and my work would be impossible without some rule of law including consequences for traffickers and remedies for victims, however, I have also seen that the desire to punish traffickers has led to a lot of bad policy. So much so that we probably spend as much time responding to bad anti-trafficking policy as we do responding to trafficking.

I want to give some examples of policies that I think have been really harmful, even if the supporters were well-meaning. The first kind of policy is based on the idea that if we can just eliminate prostitution, then we can eliminate trafficking. There is this idea that we just need to arrest everyone involved in sex work, and then trafficking and abuse that happens within sex work will go away, too. For example, every time there is a Super Bowl or another large sporting event around the world, there is a lot of talk about it being a magnet for sex trafficking—that people are going to be forced and coerced and physically brought to this location to service all of these sports fans.⁴ I have read the research, and this is just not true. There is human trafficking going on all the time in a lot of different places. There is also sex work going on all the time in a lot of different places.⁵ But the research has not born out a huge increase

⁴ See, e.g., Eleanor Goldberg, *Super Bowl Is Single Largest Human Trafficking Incident in U.S.: Attorney General*, THE HUFFINGTON POST (Feb. 3, 2013, 9:04 AM), http://www.huffingtonpost.com/2013/02/03/super-bowl-sex-trafficking_n_2607871.html.

⁵ See POLARIS PROJECT, *Human Trafficking is a Problem 365 Days a Year*, <http://www.polarisproject.org/take-action/365-days> (last visited February 6, 2015); GIRLS EDUCATIONAL & MENTORING SERVICES (GEMS), *365: How the Focus on the Super Bowl*

in sex trafficking around this particular thing—the Super Bowl. This year, in New Jersey, the media attention led to a huge increase in prostitution arrests that were framed as “cracking down on trafficking.”⁶ There are normally around 300 arrests in a whole year for prostitution in Manhattan; in Manhattan in January, there were 100.⁷ It might seem very obvious that we do not want to arrest sex workers or people that may possibly even be victims of trafficking in an effort to crack down on or prevent trafficking, but that is exactly what happens.

Another problem is policies that promote efforts to “rescue” trafficking victims that are very harmful to both trafficking victims and sex workers. The “raid and rescue” model is in operation in the United States but it is also a model that the United States promotes around the world. It is basically a law enforcement operation that combines the law enforcement tactic of a “raid” or a surprise attack on a location to find criminals, with a goal of “rescuing” the victims of crime. Law enforcement already does raids to find undocumented immigrants in homes or workplaces, and raids of brothels to arrest sex workers. But they also do raids to find trafficking victims and rescue them. In our research we have found that these operations cause so much trauma to the survivors, that in some cases they find the raids more traumatic than the trafficking itself.⁸ Unfortunately, law enforcement is not necessarily well equipped to handle these situations in a way that is sensitive, let alone, leading to some kind of empowerment or healing.

A third kind of policy that is really problematic is more complicated to describe. I think that the desire to end trafficking, which is genuine and important, has led to a de-investment in sex workers rights. It is very sad because in every other industry there is a general understanding that improving the working conditions and human rights status of everyone in that industry is going to help people that are being the most abused. But for some reason this has not been applied to sex work. The struggle for sex workers’ rights is so important for trafficking survivors. I know, for example, that many of my clients who were survivors of trafficking were helped out of their trafficking situations by sex workers. Sex workers

Hurts Trafficking Victims (Jan. 21, 2014, 12:04 PM), <http://www.gems-girls.org/shifting-perspective/365-how-the-focus-on-the-super-bowl-hurts-trafficking-victims>.

⁶ Marina Lopes, *45 Arrested, 16 Juveniles Rescued in Super Bowl Prostitution Bust*, REUTERS (Feb. 4, 2014, 2:19 PM), <http://www.reuters.com/article/2014/02/04/us-nfl-superbowl-prostitution-idUSBREA131BB20140204>.

⁷ Kate Mogulescu, *The Super Bowl and Sex Trafficking*, N.Y. TIMES, Feb. 1, 2014, at A23, available at http://www.nytimes.com/2014/02/01/opinion/the-super-bowl-of-sex-trafficking.html?_r=0.

⁸ See SEX WORKERS PROJECT, *THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS* (2009), available at <http://sexworkersproject.org/publications/reports/raids-and-trafficking/>.

who are working by choice, or who have more agency are well placed to find people who are in really bad situations and help them, but this is true only if sex workers are supported and have access to rights themselves. Unfortunately, there is little understanding of the linkage between the rights of sex workers and the rights of trafficking survivors.

The final policy which I wanted to raise is the growing focus on and heightened criminalization of men who purchase sex. These campaigns often go under the rubric of “End Demand” and rely on the idea that (a) only men pay for sex and only women or girls sell sex; and (b) men who pay for sex are fundamentally deviant and are probably pedophiles or rapists. The basic premise behind these ideas is that to end human trafficking, we must make sex work itself unthinkable. The reason that is that is so problematic is because the stigma against sex workers is often what keeps trafficking survivors in trafficking situations. Traffickers use that stigma against their victims. I was just reading an affidavit by one of my clients and she quoted her trafficker saying, “Once a ho, always a ho.” The stigma against sex work allows traffickers to say, “You can never get out; you can never be whole; you’re broken and you’re ruined.” So while the goal of increasing the stigma against sex work may be to keep people out of the sex industry, it can also keep people in bad situations because the stigma suggests that you cannot go from being a sex worker or survivor to being anything else.

I want to propose some other premises we can be working from, instead of these premises that have been harmful. In one of our most recent reports, we looked at people who are trafficked into commercial sex from Mexico, which is a large portion of our clients. We asked them in our interviews, “What would have made the difference for you? What would have helped prevent you from getting into this situation in the first place?” We were curious what they thought about that question, because there has been a lot of money spent to try to find prevention techniques. All those who answered the question said the same thing: “As a child I needed more knowledge about the world, and more education about sex. I needed to know more about sex and about violence and about drugs and about how the world operates. I was very naïve.”⁹ Obviously there are other factors that made these people vulnerable to trafficking, but that is the one they identified. This is very different from the idea that we need to stigmatize sex work so that no one will do it. Survivors said they actually needed to know more about it so that they were prepared for these potential abusive people that were coming into their lives.

⁹ See SEX WORKERS PROJECT, THE ROAD NORTH: THE ROLE OF GENDER, POVERTY AND VIOLENCE IN TRAFFICKING FROM MEXICO TO THE U.S. (2012), available at <http://sexworkersproject.org/publications/reports/the-road-north/>.

To end human trafficking we need to stop looking for these nice, quick, easy solutions that we wish were there. It is these more complicated, less sexy, more long term solutions that will get us there. It is about understanding how human trafficking is intertwined with poverty; with the stigma and degradation of LGBT people, women, young people, and people of color; about the relationship between human trafficking and other forms of violence; and about the relationship between human trafficking and the lack of any other immigration option for people who are trying to leave their home country. We need to talk about these ideas. We also need to create a safe space for sex workers. I hope that this is what we have done with our organization. Anyone involved in commercial sex for any reason is welcome and I think this is why we have been able to do the work that we do.

AHMED: I am going to speak today about how anti-trafficking efforts are undermining HIV best practices. I hope to explore a series of questions: Why has the anti-trafficking movement become so counterproductive for sex workers? Finally, how do debates on trafficking travel and impact women in countries heavily impacted by HIV?

I thought I would begin by giving a little bit of history and context on the issue of feminism, sex work, and HIV. When HIV was first discovered in the 1980s, the initial response was almost universally coercive and stigmatizing towards the communities that were at high risk for contracting HIV. In the United States HIV conservative politics and perspectives silenced an effective HIV response.

Sex workers were a group impacted by the HIV epidemic and were seen to be a “vector” population in the context of HIV. Building off of earlier activism, sex workers organized in response to this characterization. One of these early efforts included the founding of COYOTE¹⁰ (Call Off Your Old Tired Ethics) in the 1970s in San Francisco. As HIV increasingly impacted sex workers, activists began to ask “How can we make sex work safer?” This drew on philosophies from “harm-reduction” which did not seek to eradicate the risky behavior (i.e., drug use or sex work) but instead work to minimize its harm.

Global Network of Sex Worker Projects¹¹ (NSWP) was founded in 1990. NSWP advocated for sex workers rights in various international institutions including the United Nations. They actively sought to reframe sex workers as victims of, as opposed to vectors, the HIV

¹⁰ See, Aziza Ahmed, “Rugged Vaginas” and “Vulnerable Rectums”: *The Sexual Identity, Epidemiology, and Law of the Global HIV Epidemic*, 26 Colum. J. Gender & L. 1 (2013).

¹¹ *Id.*

epidemic. Further, they sought to acknowledge the important role that sex workers played in curbing the HIV epidemic, through acting as peer educators and building collectives of sex workers.

For example, the Brazilian government had a very successful response to the HIV epidemic in part because they supported sex worker organizations. Because of HIV prevention funding, many sex worker led groups were able to coalesce and come together and really work to develop a more powerful sex worker movement. You see this in India with organizations like Durbar Mahila Samanwaya Committee (DMSC)¹² in Calcutta and Sangram in Sangli.¹³

While individual feminists were engaged in the HIV response, feminist ideas were not shaping the response in a large way at the start of the epidemic. It was seen as a gay man's illness and, in turn, it was not a movement issue for feminism until the 1990s. In fact, in the early part of the HIV epidemic it was believed that women could not contract HIV at all. This is perhaps exemplified in a Discover magazine article from 1985 that described women's vaginal walls as "rugged" and resistant to contracting HIV, while men's rectums and urethras were described as vulnerable and fragile respectively.¹⁴

This changed, however, when women began presenting with HIV. Feminists began to engage more—both trying to get services for women who had HIV, and attempting to understand the increasing "feminization" of the HIV epidemic. The precursor to the feminist response to HIV was the feminist women's health movement.

But the question of sex work was a much more complicated question for feminists. At the risk of oversimplifying what is a long and contentious debate in feminism, I will try and describe the contours of this feminist engagement.

Dominance feminists view sexuality as the crux of women's subordination to men. This means the sex industry is a manifestation of women's oppression to men. *All* sex workers are understood to be "trafficked" or "prostituted" women. In turn, these dominance feminists, also called abolitionist feminists in the trafficking context, pushed for decriminalizing only the selling of sex and penalizing the purchase of sex.

This "abolitionist" position was opposed to the pro-sex feminist position that supported sex workers (and included sex workers). This position looked towards labor rights. In other words, sex workers were

¹² DURBAR MAHILA SAMANWAYA COMMITTEE (DMSC), <http://durbar.org/> (last visited May 22, 2015).

¹³ SANGRAM: SAMPADA GRAMIN MAHILA SANSTHA, <http://www.sangram.org/> (last visited May 22, 2015).

¹⁴ Ahmed, *supra* note 10.

workers and they should have worker's rights. Most importantly with regard to the feminist debates, pro-sex feminists felt that there was the potential for agency in these diverse forms of sexual expression and labor. Thus, the legal prescriptions differed. Those legal prescriptions are not only to decriminalize selling sex but often to decriminalize buying sex as well.

The anti-trafficking movement has many supporters which includes celebrities, the Christian right, and abolitionist feminists. This strong coalition supports carceral interventions. Many of these interventions use the language of "raid, rescue, and rehabilitate." The raid, rescue, and rehabilitate models undermine programs that seek to empower sex workers and change the balance of power between police and sex workers.

The abolitionist position was crystalized in the response to HIV with the 2003 President's Emergency Plan for AIDS Relief¹⁵ (PEPFAR). The Bush administration passed PEPFAR in 2003. The act conflates sex work and trafficking and reflects the abolitionist position on sex work. PEPFAR contains what is known as the "anti-prostitution loyalty oath" (APLO) which required that organizations getting funding through PEPFAR have a policy explicitly opposing prostitution and do not promote or advocate the legalization or practice of prostitution or sex trafficking.

In the litigation leading up to the Supreme Court case challenging APLO, feminist organizations filed briefs on both sides. For example, Coalition Against Trafficking in Women and Equality Now filed briefs advocating for the anti-prostitution loyalty oath. Other organizations filed briefs arguing against the APLO including the Center for Health and Gender Equity, Planned Parenthood, the Center for Reproductive Rights, and the ACLU Women's Rights Projects. In 2013, the Supreme Court found that the pledge requirement was unconstitutional for United States based organizations.¹⁶

These battles replicate themselves in international institutions grappling with issues of trafficking and sex work time and again. We have seen anti-trafficking organizations push back on Amnesty International for suggesting that they may support the decriminalization of sex work and against major international HIV institutions as they

¹⁵ United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Pub. L. No. 108-25, 117 Stat. 711 (2003).

¹⁶ Agency for Int'l Development, et al. v. Alliance for Open Society International, Inc., et al., 133 S.Ct. 2321 (2013) (holding that a federal requirement that organizations receiving funding under U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act expressly oppose prostitution violated the First Amendment rights of organizations affected).

advocate for decriminalization on harm-reduction grounds. These debates pit feminist organizations against HIV best practices. It is time that feminist organizations that oppose the decriminalization of sex work begin to consider the detrimental impact they are having on HIV programs, on marginalized women, as well as the activists and health educators working on their behalf.