



HOUSES OF PARLIAMENT

Joint Committee on Draft Modern Slavery Bill

Oral evidence: [Draft Modern Slavery Bill](#), HC [1019],

Wednesday 26 February 2014

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Members present: Mr Frank Field (Chair), Baroness Butler-Sloss, Baroness Doocey, Lord McColl of Dulwich, Fiona Bruce, Michael Connarty, Mrs Caroline Spelman and Sir Andrew Stunell

Questions [681-708]

Witnesses: **Luis CdeBaca**, United States Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, examined.

Q681 Chairman: Welcome to the Joint Committee. Would you identify yourself for the record?

Luis CdeBaca: My name is Luis CdeBaca. I am the United States Ambassador-at-Large to Combat Trafficking in Persons.

Q682 Chairman: Thank you. Luis, we are immensely grateful to you for coming. I have told our Committee members about your time scale, which means brief questions and maybe brief-ish answers for us, but might you begin with an opening statement on what you think a really good Bill has to cover, please?

Luis CdeBaca: Certainly. By way of background, before I was the Ambassador-at-Large to Combat Trafficking in Persons, I was the co-ordinator of investigating and prosecuting these cases for our Justice Department. In that role, in the 1990s, I held the title of Involuntary Servitude and Slavery Co-ordinator. That was what we called the programme. It was then renamed the Trafficking in Persons Program

after the Palermo protocol when this term “trafficking” came into vogue.

Our law of 2000—the Trafficking Victims Protection Act—and the Palermo protocol, which we negotiated simultaneously, and which came into force within a few weeks of each other, were both built around this notion of what we call the “3P” approach. As a prosecutor, one of the things that I had noticed in the 1990s was that prosecution alone was not a solution to this problem. The issue of victim protection is really care and safety; it is rehabilitation. When we talk about victim protection, we are not talking about changing their name and having them move to another city or something like that. We are talking about the entire set of victim care that can be provided to them, but also there is prevention and then prosecution. What we have found is that these are not divisible.

In looking at some of the broader sectoral approaches on the supply chain side, such as the Kimberley process, the cocoa process or the work that has been done in conflict minerals, many of those things have been done without an enforcement regime. Without prosecution, they fall flat, 20 years go by of having a lot of meetings and then nothing really changes without the enforcement.

Enforcement by itself simply takes the trafficker out of business but it doesn’t do anything to change the consumer mentality. It doesn’t do anything to restore the victims, because enforcement by itself simply sees the victims as witnesses for the purposes of the criminal prosecution.

Prevention by itself is a failed approach. Prevention by itself is the approach that the countries of the world could agree upon in the 1904 convention. The one thing that people could agree on in 1904 was that they should have advertisements and posters in steamship lines and railway stations saying, “Don’t be a victim”—in 1904. A century later, modern slavery continues to be a problem because prevention by itself doesn’t work.

For us, not just in our US law but as I look at all 190-plus countries that my office analyses every year under the minimum standards to address trafficking in persons, the successful laws are the ones that are built around the “3P”s. Any one of them that gets left out becomes the failure point. That is true if the thing that gets left out is victim care, prosecution or prevention. I certainly urge the Committee, as you look at the draft Bill before you and potential alternatives and ways to improve upon the draft Bill, to think about this “3P” approach and how it can be informed, whether in drafting or otherwise, as you do your important work.

I also simply want to thank the Chairman—I should have done that first—for inviting me. This is certainly a process that is important to my office. It is important to the United States Government, not simply because of the close and unique relationship between the United States and Great Britain, but also because of the recognition that if your work is completed and you get this right it will have a very positive effect, not

just on the Commonwealth countries around the world but on the countries of the world. So, too, if you get this wrong, it will have an effect as well. We want to try and work with you as much as possible to get it right.

Chairman: Thank you, Luis. The gratitude is really on our side.

Q683 Sir Andrew Stunell: Thanks very much. Maybe just to clear the ground first, does your office deal with trafficking internal to the United States as well as international trafficking?

Luis CdeBaca: We do. It is important to think about how our office was set up. It was set up in our first modern anti-trafficking law, the 2000 Victims of Trafficking and Violence Protection Act. Part of that law was meant to fix the criminal law problems that came from the fact that we were still using our post-civil war statutes. Part of the law came from a recognition that the victim protection scheme needed to be improved because of certain anti-immigrant measures and other things that it passed in the 1990s, and part of that law came from a recognition that there needed to be a structure in place.

I am the only ambassador who has domestic responsibilities. I am the head of the Inter-Ministerial Working Group on Human Trafficking. The annual cabinet meeting is chaired by the Secretary of State, but then I chair the day-to-day work of the Inter-Ministerial. We have a series of sub-committees and so on. It is very much a *primus inter pares* rather than me being able to order the other cabinet agencies around. Over the last 14 years, my predecessors—and now me in the Obama Administration—have been able to use moral suasion, a sense of camaraderie, a sense of shared values and, when necessary, going to the Cabinet Secretaries or even the White House, if necessary, to resolve things. As a result, we have been able to bring these standards that we talk about to the rest of the world into the United States. It is not just in cases involving international trafficking in persons but cases in the US of people who are being held in their own home towns.

Our office does not dictate prosecutions or guide the investigations. We leave that for the law enforcement. We bring together the NGOs, the state governments and the federal Government and guide the policy issues. We continue to be what I was before the Trafficking Victims Protection Act 2000 changed the title, which is that we are a slavery operation. We fight slavery and involuntary servitude in America under the 13th amendment to our constitution. The policy word for that in the modern era, however, seems to have become trafficking in persons. We have incorporated the term “trafficking in persons,” but we have not shifted our attention to the movement of people across international borders for exploitation. For us, it begins and ends with this idea that everyone has a right to be free from involuntary servitude.

Q684 Sir Andrew Stunell: You have already mentioned the Palermo protocol as being a core part of your approach to it. From what you have seen, do you think that is a suitable basis for us to work on in the UK?

Luis CdeBaca: I think so. To me, the two most important things of the Palermo protocol are the “3P” approach, which is a very good way to structure the anti-trafficking approach they are after, but the other thing that I think is so important is that it was the first time an international instrument required countries to criminalise internal trafficking.

One of the reasons the 1904 convention, which I mentioned earlier, broke down—and it was only about posters in train stations—was because the Japanese so bitterly resisted having to change the practice of geisha, in which the average age of purchasing those girls into the geisha houses was somewhere around six years old. For almost 100 years, you had a situation where most of the international law was on the trade of slaves across or between countries.

The Palermo protocol then moved it into the individual countries’ borders and said that there was a responsibility to deal with it within their own borders. So, to me, it is those two things and looking at all three of the aspects—prevention, protection and prosecution—and the duty to deal with it at home rather than simply as part of a transnational movement.

Q685 Baroness Doocey: Could you tell us how US legislation deals with child trafficking?

Luis CdeBaca: Our sex trafficking statute is 18 USC Section 1591, and I am going to make sure that the staff have copies of our entire anti-trafficking chapter. It is actually the peonage chapter of our criminal code that has been updated throughout the years. It says that force, fraud and coercion is necessary to prove a trafficking case when there is an adult as the victim, but when there is a child as the victim you don’t need to prove that. You can also prove that the child is held through force, fraud and coercion, and then it ends up being a more serious crime.

We don’t have a totally separate child statute. Section 1591 applies to both adults and children, with that one carve-out for children, but then some of the things get picked up in sentencing. Last night I printed out a copy of our sentencing guidelines. Again, I am going to leave that with your staff. They are kind of archaic, probably as any sentencing guideline is, but I am happy to talk through exactly how that works—in an informal session, probably.

The other thing that is important is on the victim protections. We try not to do anything just on prosecution. We also then have the rules on

child victims. Our statute basically says that for adults to get the trafficking victim benefits, to get certified by Health and Human Services, and to be able to get the immigration benefits, they need to not have refused a reasonable request for co-operation from law enforcement. It is phrased that way so that the burden is not on the victim; the burden then is on law enforcement to say, "What I asked them to do was reasonable," and they either did or did not comply with it. That does not apply for children. Children do not have to co-operate with law enforcement to be able to have access to the victim benefits. Those are the two places that we look at as far as a lower burden for children. It is not having to prove force, fraud and coercion, on the one hand, and not having to co-operate to be able to access services.

Q686 Baroness Doocey: How do you deal with the definition of a child if the child has no papers? How do you define a child? What tests do you use?

Luis CdeBaca: It is a bright-line test of 18 years old. What we have seen in countries around the world is that the interplay between the age of consent for sex, which is not 18 in the United States but often 14 or 15, often gets bogged down. We do have a couple of tweaks. There are some intricacies of our sex trafficking statute for when it is a child under 14 who is enslaved as opposed to a child between 14 and 18.

Q687 Baroness Doocey: But if a child doesn't have any papers to prove their age, how do you deal with that?

Luis CdeBaca: Typically, what we do is a combination of radiology as well as trying to go to the embassies and otherwise. We depend on the hand-wrist bone analysis as the hallmark of what we do with an unaccompanied child to try to figure out where that age is.

Q688 Baroness Doocey: Several of the US states have passed non-prosecution statutes for child victims of trafficking. Has this proved successful? Do you think there is any merit in extending the legislation to adults who have been forced to commit crimes?

Luis CdeBaca: It is something that we are looking at right now. At the federal level we are letting the states drive this. Most of the criminal laws in the United States are state laws and not federal laws. Looking at the non-prosecution angle of this, we recognise that most of the things that trafficking victims would be prosecuted for are state rather than federal offences. Most trafficking victims are not going to be subject to the mafia laws, the big money-laundering statutes or the criminal civil rights statutes that are federal in the US. We have seen 14 states now do this.

What I am excited about is not simply that. I think you are going to see a lot of states come online with these non-prosecution statutes. Simultaneously, there is the notion of how do you expunge offences for adult victims who may have had 10 or 20 prosecutions against them for prostitution or drug offences? How do you expunge those offences on the basis of them having been done incident to their enslavement? New York has started doing this. We are looking very attentively to see how that works. I think it is critical, though, because so many of the things that trafficking victims can do—and, to us, jobs are one of the most important parts of the victim protection and the restoration of the victim, whether it is haircutting, massage, nails or those kinds of entry-level jobs for immigrant women or women from poor areas—require some type of state certification. If they have a criminal record, they are not going to be able to get that. Looking at getting rid of the criminal record post hoc is something that we are looking at very carefully.

Chairman: Ian, might you ask your question at this point because it follows on, doesn't it?

Q689 Lord McColl of Dulwich: As far as radiology is concerned, the fusion on the ends of bones varies so enormously. You are going for biological age rather than the actual age. That works, does it?

Luis CdeBaca: It works to the degree that it is something we can look at. We try to verify age in all of the other ways possible. Most of the unaccompanied minors whom we get and with whom we have to do this are from Mexico or central America. We work very closely with the Mexican consulate and with the consulates of Guatemala, Honduras and so on, recognising that it takes time. We try to make sure that someone who we think is a child gets routed out of immigration detention and into the programme that we have for unaccompanied alien minors. It may be that we then later verify that they are maybe not a child. That person would then probably go back into the immigration procedures, but if we can verify their age—and we try to give the benefit of the doubt to them being children—they then go into a series of programmes that Health and Human Services does for unaccompanied alien minors, which includes trying to get them with a family and into school. Basically, it tries to get them to be able to be a kid again.

Q690 Chairman: Might we have some written evidence on that as to how you have built up that expertise?

Luis CdeBaca: Certainly.

Chairman: Thank you very much.

Q691 Lord McColl of Dulwich: We are very, very keen on the idea of a guardian to look after these children because they are totally at sea. They have to go to court; they don't speak English; they don't know their way around. The idea is to have a guardian. Do you have that system in the States?

Luis CdeBaca: We have guardians ad litem appointed by the courts. They can advocate for the best interests of the children. As Mr Field suggested, it is fairly technical and I would want to consult with our folks over at Health and Human Services and the Immigration Service, because they, more than my office, have really developed what the regulations and guidance are on that. We could try and get something back to you very quickly.

Q692 Fiona Bruce: Good morning. I want to probe a little further about victim support. First, to what extent are victim services and care enshrined in legislation in the States? What would you say are the characteristics of successful victim support legislation? Although you have touched on it, is there anything else you would like to talk about regarding particular protections for child victims?

Luis CdeBaca: One of the things that we find important is that it is enshrined in legislation. I do want to reiterate that. Again, I will leave it for your staff, but we are very proud of what we have just completed and just announced to the White House a few weeks ago, which is our victim services strategy for the next five years or so. That is a policy document that flows from the law. It very much roots itself in the structures of the TVPA and why we have the TVPA. We very much understand that this is something that another Administration could move away from if they felt that there needed to be a different approach, or it may be that they did not want to work on human trafficking at all.

One of the reasons that we were able to successfully transition the anti-trafficking fight from President Clinton to President Bush, and from President Bush to President Obama, was because it was in statute. That allowed those of us who were in Government—I was a civil servant at the time—to continue to do the work in a unified way and to bring the new Administrations in because the law applied to them in a way that a policy of the previous Administration might not have.

There are a few characteristics of successful legislation that I want to tick off very quickly. The first is the idea of moving the victims to self-sufficiency and independence, to restore their agency. If we are really looking at this as a slavery or an involuntary servitude model as opposed to an illicit movement model, then the notion of their agency having been stolen from them by the trafficker is something that we, as the state, can

do something about by helping restore that agency. That means living and working options.

We do not call it a national referral mechanism, but in our victim care scheme one of the first things that we do for the victims is to give them a work authorisation card if they are illegally in the United States. Usually, they came to work. Even the children came to work because they are trying to make a better life for their families. We want to make sure that the adults can get into the working public as soon as possible. Hopefully, the children go to school. Equally important are caseworkers.

Q693 Chairman: Luis, before you go on, given the lobby against making further concessions to people who may be illegal immigrants in the US, how has that lobby reacted to the proposal that you should issue people with work permits?

Luis CdeBaca: They actually were co-sponsors of it.

Q694 Chairman: How did you get them to do that, please?

Luis CdeBaca: I think that the church helped, and specifically the Evangelical churches as much as the Catholic church. Frankly, people's hearts went out to the sex trafficking victims. Even though some people's motivation was specifically because of how moved they were by the child sex trafficking victims, we were able to write a Bill in 2000 that applied to all trafficking victims: adult, minors, sex, labour, US citizens and foreigners alike. The compassion that these members of Congress felt towards this victim class overrode their fears.

There were certainly fears that we had to overcome. We had to talk to them about it. Many of the same people who were concerned about illegal immigration are also the people concerned about people becoming public charges. Talking to them about how much these people wanted to work and how good contributors to society they would be carried the day in the end.

One of the things that we realised is that, instead of just having people warehoused in shelters, you could have caseworkers. The notion of a caseworker, much like you talk about the guardianship, is somebody who can walk someone through not only legal assistance, representation and presence throughout the criminal justice proceeding, but also in the many other areas of their life that they need. One of the things that we have seen with both US citizens and foreign victims is that many people need family law advice because there are child custody issues. Sometimes the children are being held hostage by the trafficker's family in the home country because the trafficker and the victim were in a common-law marriage, as part of the scheme to recruit her. We have had individual traffickers who had five or six common-law wives, all of whom had their children stashed with his parents back in Mexico. Getting them a lawyer

to be able to help with child custody issues is as important to them as having a psychologist or anything else.

I mentioned earlier the idea of a light-touch co-operation requirement and not a heavy-handed one. It is not conditioning it on a conviction or leaving it for law enforcement to make the decision as to whether somebody is a victim, but rather that notion of being available, because, otherwise, you set up a protection scheme and you don't take the traffickers out. You have to walk that line and figure out how much co-operation to have, while at the same time not making it so onerous that it then places the burden on the victim.

I have a couple more points concerning the characteristics. For us, family reunification has been one of the most effective things. Again, this is for foreign victims. Getting the family out of the home country and out of harm's way, out of the threat from traffickers, and getting them into the United States settles everybody down; it protects them and helps everybody get back to some kind of normality.

What we have seen is that the long-term immigration status has made the biggest difference in the United States. Victims in the United States, and more importantly the lawyers and the advocates who work with the victims, know that we are not simply looking at the victim as a temporary presence who is going to give evidence on our behalf and then we are going to get rid of them. They know that we are in it for the long haul with their clients. There is an ongoing relationship between the FBI, IS agents, police, lawyers and the victims—now survivors—whom they helped. I continue to have a relationship 10 years on with some of the survivors, and, in fact, they have become advocates. They have become leaders in the anti-trafficking movement. To see people whom I knew on the day they were rescued from slavery being able to sit down with the President of the United States and talk about what trafficking victims need is something that we would not have if our system was predicated on, "Stay for a year; testify; we'll use you and then we'll send you home." For us, the notion of being able to absorb, frankly, just a few thousand people over the course of a decade in a country of millions is something that we were willing to do and our anti-immigrant Congressmen were willing to sign off on because of their compassion for the trafficking victims.

There are two other things, and I have mentioned one of them already. One of the other characteristics of successful victim support legislation is the notion of some kind of remuneration, whether that is mandatory restitution as part of the sentence, the ability to bring a civil action under the law, access to compensation schemes or whether it is remission or restitution being paid out of seized assets. I think we will talk about this a little bit later in the hearing, but, when we seize assets through our criminal forfeiture, the victim and their lawyers can then apply to the Treasury to be paid out of that. It is not simply that we are buying new

computers, new police cars or putting it into the general fund, but we are paying it out to the actual victim.

I apologise for such a long answer, but, when you ask what the characteristics of successful victim support legislation are, I think that there are several different aspects of it. Because you guys have national health, one of the things that have been a problem in so many parts of the world is not a problem here in the same way. One of the things that we have seen with trafficking victims is that it is not STDs—sexually transmitted diseases—that we have to worry about. It is not even necessarily the effect of the beatings or things like that. Typically, the first thing that needs to be done when somebody comes out of slavery is they need to go to the dentist. It is those kinds of things, and when you work on this you realise that we often ask the wrong question. I do think that because of national health there are some problems that other countries have to grapple with that you, hopefully, don't have to, and, again, I apologise for such a long answer.

Q695 Fiona Bruce: No; please don't apologise. Your evidence is extremely interesting and informative, but I do have about four or five questions which are procedural, to an extent. First of all, we understand from other evidence that safeguards for trafficking victims are not consistent between states. Could you tell us how you tackle that, and which agency in the US ultimately has responsibility for the identification and welfare of victims?

Chairman: I am really conscious of the time. Could you ask all of the questions?

Fiona Bruce: Certainly; right. I already know that the Ambassador has a marvellous memory; I have noted that, so here goes. He has remembered the detail of other questions.

Does the system of T visas offer adequate protection and certainty to victims of trafficking? Has there been any abuse of the system by individuals falsely claiming to have been trafficked? Are the immigration authorities the best placed to determine whether or not a person is a victim? The UK does not share the US legal tradition of pre-trial hearings. Given this fact, would a similar visa system be workable in the UK?

Luis CdeBaca: I will try to do that backwards. First of all, as far as pre-trial hearings are concerned, typically, the victims don't testify at any of the pre-trial motions practice. If we have a grand jury indictment that has probable causes found, we don't then have to have an evidentiary hearing for the judge to decide to hold something over for trial. A victim might testify in front of a grand jury, which is a non-contested proceeding, but even that is very rare. Frankly, we are much more likely to use the grand jury to bring in the testimony of low-level members of an organisation who are giving testimony against their

cohorts, because at that point you fix their testimony by having them testify under oath, so they are not going to be able to back off of what they are saying against their counterparts.

Typically, the time that the trafficking victim needs to testify is at the trial itself. One of the things that we have seen is that we often have steps-of-the-courthouse guilty pleas from defendants who realise that the women are willing to go through with it. This is not new. We have learned this from domestic violence prosecutions historically as well. When the batterer suddenly realises that the woman that he thought he had all this power over is going to go through with the case, he will back off at that point. It is that notion of being ready to testify.

The way that we get them ready to testify is by doing all of the victim care, by meeting with them and being part of their lives but not running their victim care. That is for them and their advocates, but the prosecutors and the police continue to have that contact in the months and sometimes even years going towards trial.

As to the immigration authorities, one of the things we have seen is that the focus is on the enslavement. Again, we just got this word “trafficking” foisted upon us by the international community, but, since we have focused on the enslavement, we have recognised that most of what we see is actually because of interior enforcement rather than border interdiction. I think that is correct even in other countries where the law is more focused on transnational movement. You find out that somebody was moved for exploitation because you find them in the exploitative place. I fear that, when you have a system where it is all on the immigration department to identify the victims, first of all, they are not going to identify UK victims because it is not in their mandate, and they may not necessarily be able to identify EU victims because they are not thinking about them. What they are thinking about for non-EU immigrants is their duty to stop them from coming in.

I fear that there is this notion of having a lot of border agents looking outward to try to stop the trafficking victims from being brought in. Meanwhile, there is a farmer right behind them who has slaves and is not being noticed because the resources get put on the border. That is something that we have wrestled with in the United States, but then again we are building on 140 years of doing these cases. We didn’t start doing these cases in the last 10 years. Much of the case law that we use in our prosecutions is case law from the late 1880s and the early 1900s. We have updated that, but our courts have been very good at accepting these long-standing rules. It was always about the slavery and the exploitation.

You mentioned the T visas and whether that is sufficient. By itself, it is not sufficient but it opens up a possibility for the victim. The victim knows that they are not on a fast track to deportation. We work with the IOM. We have a grant—it’s not huge—of about \$250,000 which we give to the

International Organization for Migration to be able to bring in the family members. Being there at the airport to see somebody see their child for the first time in three years is when you know it is going to be all right. The rest of what we do is important, but at that moment they are then able to start to cope because they know that their family is safe.

You also asked the question about who is responsible. In the United States, the Health and Human Services is the agency that issues the certification letter that says that somebody is a trafficking victim and eligible for services. Again, that was set up largely because welfare reform laws in the 1990s had said that illegal migrants were not eligible for federal services. Having the Health Department issue this letter allows them to go to their state welfare offices and get services as though they were US citizens.

For the US citizen victims we don't have something quite that formal. Right now we have a number of pilot projects which are being funded by the Justice Department that allow NGOs to get reimbursed for their work with US citizen victims, but there is not necessarily a letter or a card that goes to the US citizen victims. Frankly, they don't need it; they can go down to their local welfare office and get medical. They can get aid to families with dependent children. They can get jobseeking assistance and other things by virtue of being US citizens. We are trying to make sure that they also have caseworkers, because we have realised how powerful caseworkers have been for the foreign victims and we want to make sure that the US citizen victims are allowed that same access. That is why our law last year—the amendments of March 2013—opened up some space in the Justice Department's funding for that type of pilot programme. We are very excited about that because we think caseworkers are something that any trafficking victim should have rather than simply the foreign trafficking victim.

Q696 Baroness Butler-Sloss: I have your TVPA in five colours in front of me. It is extremely interesting. There is a prerequisite for victim services which is a certification, isn't there? The certification requires the person to be willing to assist in every reasonable way in the investigation and prosecution of the severe form of trafficking or being unable to do so. We do know that a lot of people are very frightened of the police, authority and so on. How do you get people to be prepared to go through the certification process?

Luis CdeBaca: By funding the NGOs for what we call pre-certified victims.

Baroness Butler-Sloss: This is just what I wanted to hear.

Luis CdeBaca: We were doing it in a very unofficial way. The Justice Department and the HHS had the grants out to the service providers. They were capacity-building grants. The HHS switched over to doing

per capita reimbursement because that is how HHS had handled the refugees. It was per capita reimbursement. The problem that we found was that per capita reimbursement was for victims, and we needed to come up with something for the not-quite-identified-as-a-victim human being that the NGOs were working with. That notion of pre-certified work was a good workaround. Now it is official. It had been that there had been a little bit of a wink and a nod, frankly, to let people continue to work with that population.

Typically, the NGOs are in their local offices of investigation and their local health offices. We have 42 task forces around the country. To apply for the federal money, the task forces have to show that they are applying as an NGO and a law enforcement entity together. If a police unit applies for the funding and they don't have an NGO as the co-applicant, they don't get the funding. So it forces everybody to work together or else they won't get it.

Q697 Chairman: We have a real problem, you see, with NGOs registering with the national referral mechanism. What I am taking from you, Luis, is that we should just bribe them.

Luis CdeBaca: I don't know if I would call it that because it's a little bit more—

Chairman: A little bit of old-fashioned bribery.

Luis CdeBaca: I think it is "bribery" to the degree that one would call it that. I want to make sure that the quotation marks are very much in the text.

Chairman: If I was the American Ambassador I would have another euphemism for that.

Luis CdeBaca: Exactly. If it is an incentive to do this, we are actually incentivising the police to work with the NGOs rather than incentivising the NGOs to work with the police.

Q698 Sir Andrew Stunell: I want to pick up one of the points you did not catch from Fiona, which was about false claims of trafficking. That is one of the concerns that we expect to encounter with our proposals.

Luis CdeBaca: What we have tended to see are not false claims. The Chinese Snakeheads will coach their people to claim that they are fleeing the one-child policy and that they have turned up in the United States because they are fleeing the forced abortions of the Chinese Government. Typically, what happens there is that the person then gets a notice to appear. They don't get put into detention because they are

fleeing oppression. Then they never appear because suddenly they are in New York city working in a restaurant.

We have not seen that with human trafficking. Part of it is because there is this light-touch co-operation requirement. It is not saying that they have to testify to be able to get benefits. It is not saying that they have to do really anything other than get interviewed. The adjudicators will issue the T visa, and the certification is issued when the person has signalled that they stand ready to be interviewed. What we are really talking about is being interviewed by law enforcement. That has been enough to scare the Snakeheads away from it because it puts you right into the FBI or the IS office, which is where they don't want to be. It is much easier for them just to coach people to say that they are fleeing forced abortions.

We will have some applicants who get turned down articulating something bad, but they are not articulating trafficking. We often see that with folks on guest worker programmes who have had wage and hour violations but things that do not rise to the level of compelled service. We will try to work with their attorneys to come up with another way for them to apply for immigration relief. Many of the denials that we see in the system are not because fraud was detected but because somebody who was applying in good faith was simply not making a case of human trafficking.

Q699 Michael Connarty: Can I first commend and compliment you on the work you have done? I read your evidence in the review group. I thought it was very perceptive, particularly your quote from Wilberforce after the Act was passed. As you said, you can never say you don't know, after today, once the legislation is passed.

The question from me, having tried to pass a transparency Bill in this Parliament, is how effective has the California Bill been? I will give you some sub-clauses because you are short of time. Has it been supported by businesses? Should the UK seek consistency with the California legislation? The big question is, where do you stand on a voluntary code of practice versus a mandatory code of practice? I think that is probably enough for you to tackle at the moment.

Luis CdeBaca: One of the things we have seen on voluntary codes of practice is that they end up being in a corporation in a different place. Voluntary codes of practice in corporations typically get done by their corporate social responsibility people, whereas mandatory regulations end up being handled by their general counsel and even their directors because they are part of a filing requirement. No offence to our friends in corporate social responsibility, but they are then over to the folks who are at the heart and the seriousness of the corporation. I do think that mandatory trumps voluntary.

As I said earlier, we have also frankly seen, whether it is the Kimberley process or some of these other good processes, that processes which have just become processes, as opposed to effecting the change that we had all hoped for, is because of their voluntary nature.

I do think that there is a place for voluntary codes. It does help with norm setting and so on, but, when the CEO who agreed to that or the executive vice-president who pushed it goes to another company, the air goes out of that effort, and the next person who comes in may want to work on the rainforest, early childhood education or other things that are also very worthy. If it is a mandatory reporting requirement, as I said earlier about carrying it through our different Presidencies, then it will carry through whatever the changes in the C-suite are.

The thing that is interesting to me about the California legislation is that it has only been about 14 months, I guess, since it kicked in. Some of the disclosures are very interesting. I would be shocked if Subway Sandwiches—a sandwich shop in the United States—have the kind of revenue that would require them to file; \$100 million a year is a lot of sandwiches—but maybe they do. Their disclosure is very interesting because it doesn't just say, "Here is our trafficking policy." It says, "Here is what we are doing to actually come up with a trafficking policy and here is what we are working on." You can tell that they are going to be amending that over time. It evinces an engagement on the part of that company that just would not have happened without that.

I get surprised when I go online. We were renovating our house and I had to get some light fixtures. I went on lamps.com, which again I don't think makes enough money to have to mandatorily disclose, but they are a supplier to enough mandatory disclosers that they have started disclosing. I was looking at the frequently asked questions as to whether I could return something. The return policy question was the second FAQ. The first FAQ was, "Here is our disclosure under the California Supply Chain and Transparency Act." I think that that not only has an impact on the company but it has an impact on the customer. Again, it is only 14 months in and we have not really seen an analysis. I know that some of the academics are going through it. Frankly—and I have said this at the American Bar Association and other forums as well—I kind of hope that some of the plaintiffs' lawyers are going through this. Until we have Government regulation, but also until the plaintiffs' lawyers are involved and companies feel that they have exposure, then we won't see the kind of systemic change.

What is good about California is that it allowed people to get out and to start working on these issues and policies, ameliorative work and so on, not simply because they had been sued successfully. I do think that that is coming. I don't think there is any way to avoid that. Companies, though, would rather have something that is not the plaintiffs' lawyers that drive them that way. We have seen that companies in the United States have welcomed the California Supply Chain and Transparency Act,

in no small part because I think they know what the alternative is. I am not sure where the business community here in the UK is—and I probably should not be asking you questions during the hearing—but it is something that I will look forward to continuing the conversation on. If there are companies that you think we could weigh in with or that we could talk to here about the US experience, we would be more than happy to do it.

Q700 Chairman: It is really quite interesting. We have a nuance here between having a mandatory system for larger players, which you find smaller players then wish to do in a voluntary way. Because the California Act has been in force now for this short period of time, there must be British-based multinationals who comply with it because they trade in California. We might get our Library to find out who is already signing up in this country, and, if there is any opposition, to get them to realise that the argument has already moved.

Luis CdeBaca: Exactly.

Q701 Michael Connarty: I have a small supplementary question. One of the things I read in your evidence, which struck me as being very allusive, was the fact that because it is mandatory and everybody is doing it no company has to stand up and say, “We are doing this voluntarily.” People think, “You must have had supply chain slavery in your products before because you are saying you are doing it now voluntarily,” whereas, if everyone is doing it, everyone is protected by the idea that it is not marking any company out as being a particularly bad supply chain user.

Luis CdeBaca: Exactly. One great example of that is a large car manufacturer who had a wonderful clause in their contracts that said, “No recruiting fees, and we will cancel your contract if we find out that you are charging recruiting fees.” That is one of the biggest and most important things to us. Part of President Obama’s executive order on Government procurement is that no recruiting fees are appropriate. This company had that in their contract, and I called them and said, “We would love to do something very artsy with tearing the page of the contract and having it in our annual report as an example of best practice.” They said, “Please do not do that because we don’t want folks to know that we have this contract.” Three years later now, with the California Transparency Act, this company is very comfortable talking about what they are doing. When they thought they were the only one doing it, they thought they would become a target and that, even if we did it in a way that was laudatory, we would be putting them in harm’s way.

Q702 Chairman: Given that some of our companies are already complying with the Californian legislation, would you think it would be sensible for us to look seriously at just picking that up and putting it into our Bill, given that it already applies to British companies?

Luis CdeBaca: As you know, I worked on the staff of our Judiciary Committee in our House of Representatives. In fact I worked on the 2008 law from that perspective as opposed to the other laws which I have networked on from the Government side. My set point, certainly when I was writing legislation and working with the members that I worked with, was to open the bidding a little bit higher and then have a fall-back. If I was looking at what you suggest and I was still a congressional staffer, I think that that would be my fall-back position. Why not try for a little something better?

Chairman: Very good; thank you.

Q703 Mrs Spelman: I want to move to asset recovery and compensation. Is there evidence that greater steps to recover assets from traffickers are having a noticeable deterrent effect on criminals? At what point in the process are the assets frozen and how is the revenue from the asset recovery used?

Luis CdeBaca: Right now what we have seen is that it is a little unclear. There has been good public attention when there is a high profile seizure—typically, when it is an atypical seizure. For instance, in *US v Calimlim*—a case of a Filipino woman who had been held by a family of doctors for, I think, 19 years as their domestic servant—when we seized the house from them, it had a huge impact across the entire Filipino community in the US and even back in the Philippines, because those were not seen as criminals; they were doctors. They were doctors who had committed a crime, but the fact that we would then use the organized crime statutes in conjunction with the trafficking statutes to take their house and give the money to the victim was a big deal.

We have had less attention when we have done seizures and forfeiture from sex traffickers because, even though we think it is amazing that we were able to seize a \$160,000 watch—I was amazed that there is such a thing as a \$160,000 watch; you can put a lot of diamonds on something that big—unfortunately, the public typically looked at that and said, “Oh well, he’s a pimp. He has a Mercedes and a fancy watch.” We have not necessarily seen the cases yet, but we have end user liability and the ability to apply our forced labour statute against those who profit.

For instance, if a hotel chain that is using a janitorial service which is bringing in eastern Europeans, and fanning them out to clean at night through force and threat of force, is looking the other way at what their

contractors are doing, they could be prosecuted. This has not happened yet but I am just saying that it is possible. They could be prosecuted; it is not just the guys who were holding the gun or the passport, but the folks who were wilfully blind to what was going on in front of them. That is the seizure that is going to get people's attention. It is when we take a hotel. It is when we take a shipping container full of garments at the port. Those are the seizures that will really get people's attention.

Q704 Mrs Spelman: When exactly do you take them, though? One of the things we have been finding with our own police is that, often, there is interest in a waiting game to try and gather as much evidence as possible. If the criminals get an inkling that they are about to be caught, they get away with their assets. So when do you seize assets?

Luis CdeBaca: It is tough. You have to try to figure out for how long you do the investigating versus when you move in. We tend to try to move in with both a forfeiture order and a criminal complaint for the arrest simultaneously. We don't do it afterwards. In fact, the initial searches are not only for evidence from the case but also for where the assets are. We have tended to see that Russians like cash and they like air ducts. If you have a Russian case, you can usually find some cash in the air ducts because that is where—

Mrs Spelman: In the air?

Luis CdeBaca: In the air ducts—in the walls. We would much rather seize cash because you can condemn the cash that much more quickly as opposed to condemning real property or other types of assets like that. For us, it is that notion of "seize quickly." We have a parallel process to the criminal prosecution of the trafficker that is the forfeiture claim. The proceeds often get forfeited before we even go to trial on the guilt or innocence.

What we always do, though, is to work with the judges. We have this mandatory restitution scheme where the judge must order restitution to the trafficking victims. We can then pay out their restitution order from the assets. That is something that is very important to us—to be able to try to make the victim as whole as possible, and to do so with the assets that we have seized, rather than us using it for general Government purposes.

Q705 Mrs Spelman: Do you make it a pre-condition that the victim has to give evidence in the prosecution for them to benefit from the received assets?

Luis CdeBaca: Not at all; not at all. They do have to be a victim. We will typically charge a conspiracy and substantive counts. I am just

thinking about cases that I did when I was a prosecutor. If you have a dozen victims, you might do a conspiracy to enslave the dozen of them, and then you would charge the three or four of them that are the best evidence that we have. Maybe somebody is not available; maybe somebody has gone home; maybe somebody's story, for whatever reason, is just different enough.

Typically, if you don't have them ready to come into court, the defence will want them to come to court under the theory that, if you don't want them, they must have been good for the defence. Sometimes that works out very badly for the defendant because he is assuming that they will help him, even though they won't. For us, it is that notion of the victim class as opposed to everybody who is a victim has to be in court giving testimony to be seen as a victim.

I did a case one time with more than 300 victims. We only had about 12 of them testify, but when you collected what we had seized and then divided it by 300 there was not very much. But everybody got victim services; everybody got family unification; everybody got the full panoply of victim protections, even though only a handful of them were the ones who testified in court. The judge definitely did not want all 300 of them testifying. We would still be in trial.

Mrs Spelman: I'm sure; absolutely.

Q706 Baroness Butler-Sloss: We are running out of time but I want to slip in one final question. We have an Anti-Slavery Commissioner proposed in the Bill. What is your reaction to that? If you feel that you would like to reflect on that, perhaps you would give us a short answer now and look at it a little further, and, if you had the time, give us some views on it.

Luis CdeBaca: I was re-reading the draft Bill last night. One of the things that struck me about the Anti-Slavery Commissioner was the idea that that person would have to be basically negotiating the terms of their mandate with the Secretary of State every year. With regard to what I said earlier about my mandate, it works for the reporting and the co-ordinating that I do across the United States because I do not have to renegotiate it with anybody. If, in the United States, a new Secretary of State or a new Attorney-General comes in, which I think is even more important—a new Attorney-General or a new Home Secretary—we don't have to go and convince them that they need to listen to some guy in the State Department, because the statute says that it needs to be done. It was something that just jumped out at me. It seemed like it was going to be a stumbling block—or a potential stumbling block.

We have been able to carve out independence in our office, being able to criticise problems that we have within the State Department but also

within our immigration laws. Maybe our Department of Homeland Security was not thrilled that we would put things in the report about local law enforcement not recognising victims, when they were trying to do immigration work at a local level, and that was having an effect on scaring the immigrants from coming forward to report crimes. Yet our Department of Homeland Security was willing to see us put that into print because they knew that the independence of my office and the independence of the report was statutorily based.

Looking at that, you should try to think, as the Committee, how that Commissioner can be going not hat in hand to the Cabinet Secretary for their powers at any given time. Not to attribute malfeasance to anyone, but it does become very tempting for a Ministry to try to defend itself. It is just the bureaucratic inertia.

There is one other thing I would say. You can see the clock but I can't.

Chairman: We are in injury time now.

Sir Andrew Stunell: You need that watch!

Luis CdeBaca: On this concept of human trafficking as opposed to modern slavery, we have a slavery approach in the United States, but we have inherited this term "human trafficking" from the internationals. The Bush Administration decided to call our programme the Human Trafficking Program as opposed to the Involuntary Servitude and Slavery Program. What people get charged with is the forced labour offence, involuntary servitude or sex trafficking. Those are the three things that we charge. It is pretty much the forced labour or sex trafficking charge. The sex trafficking charge does not require that people get moved; it is just a forced labour charge where the underlying service is sex as opposed to labour. That is because a lot of folks in the United States were having arguments as to whether, if you kept sex trafficking in the involuntary servitude statute, you were then somehow saying that prostitution is a valid form of labour. They wanted it split out so that you could say forced prostitution and forced labour are different, because they did not want to say that prostitution should be legalised as a form of labour.

That was why we have these two different things, but the term "trafficking" is something that we absorbed without changing to focus only on movement. That is something that is important because you are in a situation now, with the European directive, where what you pass will be the trafficking statute, even if you call it the modern slavery statute. It will be the trafficking rapporteur and equivalent mechanism under the European way of describing it. Your modern slavery commissioner will be the trafficking rapporteur for the Europeans. Could there be some kind of chapeau language in the Bill that makes it clear that these are indivisible

concepts? This is not trafficking here and slavery there. There are about seven or eight terms that keep getting used in the international context. There is debt bondage; peonage; contemporary forms of slavery; slavery-like practices; practices similar to slavery; slavery; involuntary servitude; human trafficking; sex trafficking; and forced labour. All of those terms describe the exact same thing, which is somebody being held in compulsory service.

We tend to use the term “human trafficking” now with the caveat that it is an umbrella term for all of the activities involved in reducing someone to, or holding them in, a condition of compelled service. That allows us to have a slavery law with a trafficking flag for the purposes of what we need to do in the international community under the TVPA, the Palermo protocol and article 4 of the Universal Declaration of Human Rights and so on. Again, it is a slavery law but it might have a trafficking flag flying above it.

Q707 Chairman: Historically, Luis, we are coming from the opposite direction to you. You have had a tradition about fighting slavery and then bringing it up to date with trafficking. There is a disbelief about slavery in this country but a knowledge about trafficking. The whole emphasis is on the movement rather than on the major crime of exploitation. We are meeting in mid-Atlantic now.

Baroness Butler-Sloss: I think you are speaking to the converted, because we do want an umbrella phrase to cover all aspects of slavery and trafficking, and it does not have to have movement. We have learned that, but it is very helpful to have you say that.

Luis CdeBaca: To those of you who were here, responsible for and able to vote for the Coroners and Justice Act 2009, you have our sincere thanks for that. It has enabled us to go out to Commonwealth countries around the world and say, “Look, the Coroners and Justice Act 2009 is what this is all about—not the White Slave Traffic Act 1880 of moving prostitutes.” We have had to have this conversation with Commonwealth countries around the world. The 2009 Coroners and Justice Act, which was the first thing that focused upon the enslavement, was a huge step. What you are working on now has the possibility of being tectonic.

I have been able to use the report of the first inquiry in talking to folks in Hong Kong and Barbados. Barbados had always said that they did not have a trafficking problem and that they would not do anything to update their perfectly good statutes of the 1880s. Because of the conversations that I was able to have with them in January, and leaving them a copy of the report of the first inquiry, they have now notified us that they are going to start working on revisions to their law. I think you have already

had an impact and, hopefully, that impact will continue throughout the process. Again, I want to thank you. I know that time is short.

Q708 Chairman: Luis, can we thank you? Maybe we will come back to you with some further points as we are doing our Bill.

Luis CdeBaca: Definitely—anything you need.

Chairman: I am immensely grateful to you, but I don't want to be responsible for charging American taxpayers for a second ticket should you miss your flight.

Luis CdeBaca: And an extra night in an hotel. Thank you everyone.

Chair: Thank you very much.