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Selma Moidel Smith Award Winner

*How the United States
implicitly violates federal
law and empowers
ISIS to commit human
trafficking crimes*

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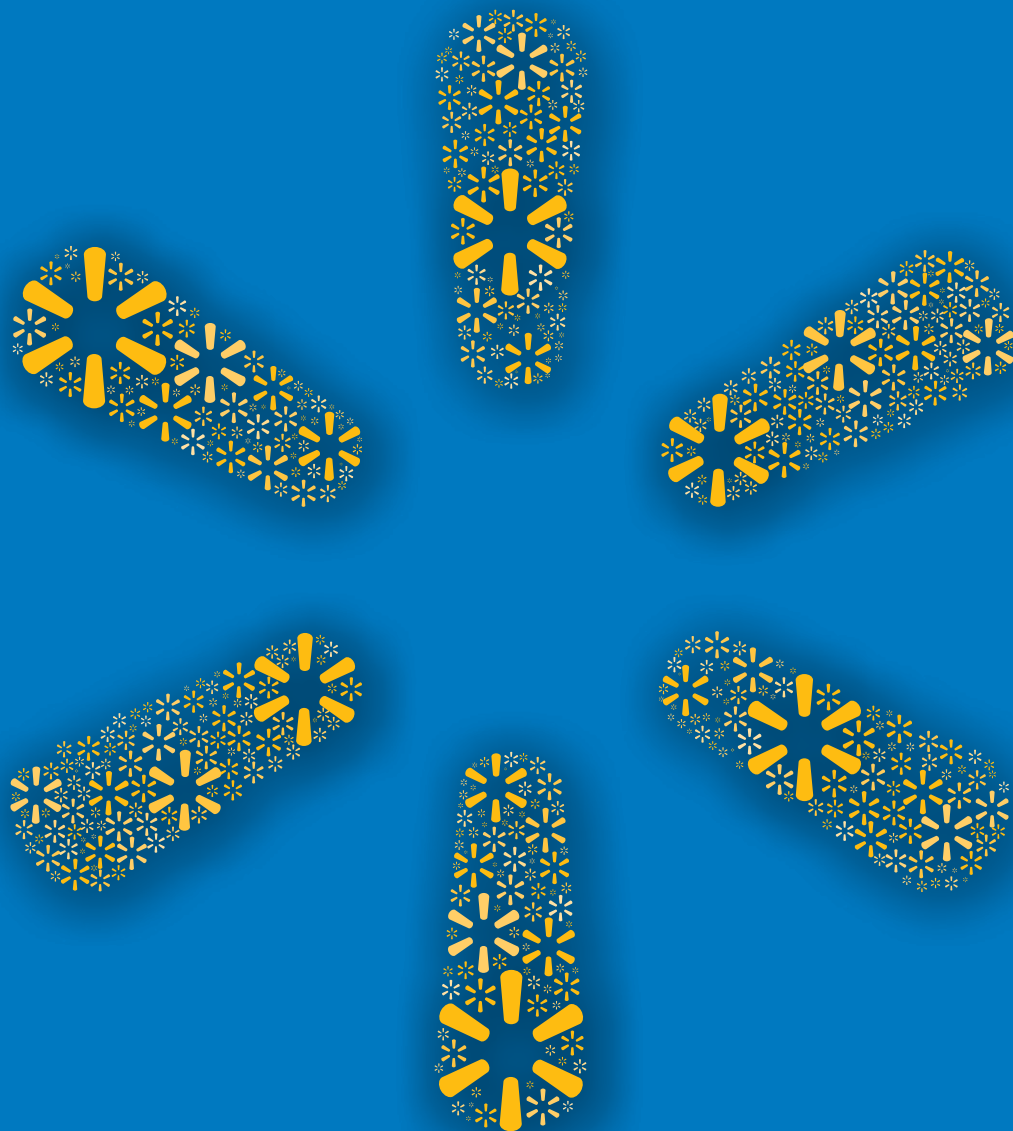
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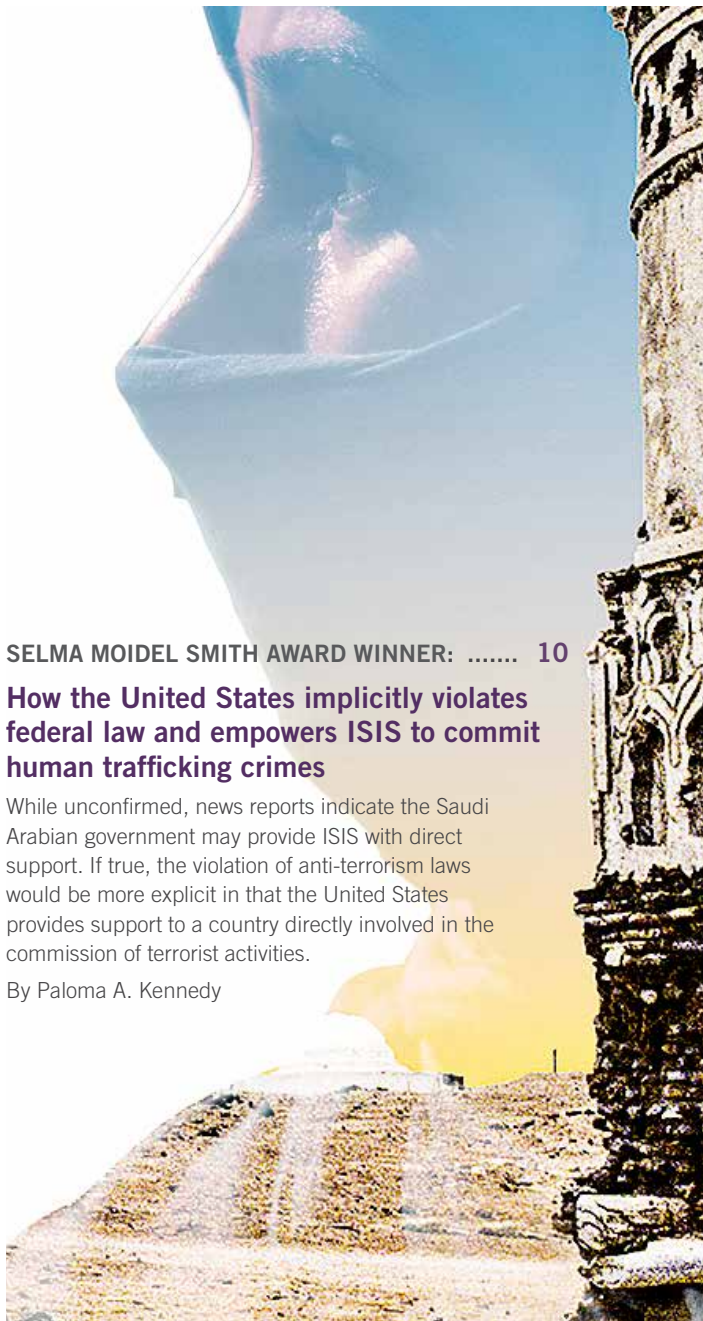
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Articles about current legal issues of interest to women lawyers are accepted and may be edited based on the judgment of the editor. Editorial decisions are based upon potential interest to readers, timelines, goals and objectives of the association as well as the quality of the writing. WLJ also accepts book reviews related to the practice of law. We reserve the right to edit all submissions.

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Frommer Lawrence & Haug LLP, a leading national intellectual property law firm with headquarters in New York and an office in Washington, D.C., recognizes that a noteworthy component of its success is its team of extraordinary women attorneys. Accordingly, FLH is excited to announce the election of two new female partners: Laura Chubb and Elizabeth Murphy.

Ms. Chubb is a registered patent attorney who focuses her practice on patent and trademark litigation involving software, medical devices, food products, consumer goods, and mechanical devices. With experience in trade secret and licensing litigation, patent and intellectual property licensing, and disputes related to such agreements, she advises clients on developing, enforcing, and maintaining patent and trademark rights in the U.S. and internationally.

Ms. Murphy's expertise lies in pharmaceutical litigation, where she has helped the firm achieve key victories in numerous cases for innovator clients. Her particular interests lie in the intersection of science, technology, and law and how these three areas influence the evolution of the pharmaceutical industry.

Ms. Chubb and Ms. Murphy join two women partners who currently lead FLH practice groups. Dr. Sandra Kuzmich heads the firm's life sciences practice and is a leading member of the firm's partnership. She also sits on the Federal Circuit Bar Association's International Series Committee and, most importantly, serves as a mentor to the firm's women associates. Marilyn Matthes Brogan heads the trademark group and dedicates her time to recruiting new talent. She is an active member in the International Trademark Association.

Dr. Kuzmich sums up the special contribution that FLH's female lawyers make to the firm and its clients: "The women attorneys at FLH are unique in that not only are they experts in the practice of intellectual property law, but they also have training—and in many cases practical experience—in a diverse range of scientific disciplines."

FLH proudly supports the professional development of its women attorneys as well as their involvement in the firm's management and in the legal community, as evidenced by its participation in and leading sponsorship of organizations such as the National Association of Women Lawyers.

ABOUT THE FIRM

All of FLH's attorneys and scientific advisors have the necessary advanced degrees, technical prowess, and legal experience to not only recognize and understand each client's unique business goals but also to set a realistic and effective strategy to achieve the desired results. Our practice areas include antitrust, appellate, corporate transactions & due diligence, IPR & post-grant review, ITC practice, life sciences & biosimilars, and FDA/regulatory.



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About NAWL

The mission of the National Association of Women Lawyers is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success.

BENEFITS OF MEMBERSHIP

- Access to career development and continuing legal education programs at reduced member rates.
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- Advocacy via NAWL's Amicus Committee, which reviews requests for participation as *amicus curiae* in cases of interest to NAWL members.
- Community outreach through Nights of Giving.
- Continued learning with the *Women Lawyers Journal*®.

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Lessons learned from NAWL award winners

NAWL is committed to leading so that the profession will achieve gender balance and diversity at every level.

By Kristin L. Bauer

The Meeting the Challenge program is designed to provide a forum for individual and organizational development, including best practice sharing and thought leadership.

RECENTLY A FRIEND – a highly accomplished man of color in a professional services firm – shared his perspective on a diversity initiatives meeting, which he described as “sending the militia to fix the general’s problem.” His words stayed with me because they so simply captured a complex issue

and the importance of top down leadership and engagement on gender and diversity issues.

This July, at NAWL’s annual meeting and awards ceremony, the awardees inspired us through their leadership, which you will read more about in this issue of the Women Lawyers Journal. In his acceptance remarks, Alan Bryan, senior associate general counsel of Wal-Mart Stores Inc., urged the profession to do better for women

not because it is the “right thing to do,” but because it is the “best thing to do,” noting practices that benefit women are not “zero sum,” but rather benefit men, women and the organizations we support. As Forbes Magazine noted, his “powerful” and moving remarks are “worth 19 minutes of your time” (you can find them at <https://youtu.be/jYYVIqp8L18>). Sheri Lynn Johnson, associate dean for public engagement and the James and Mark Flanagan Professor of Law at Cornell Law School, humbly noted that when it comes to matters of race, “I understand only a little, but I do study a lot, and I learn, albeit slowly.” Vanita Gupta, principal deputy assistant attorney general and head

of Civil Rights at the U.S. Department of Justice, was recognized for a career of public service and civil rights advocacy. And Facebook was recognized, among other things, for its meaningful representation of women attorneys in the highest levels of its legal department.

NAWL is committed to leading so that the profession will achieve gender balance and diversity at every level. In 2016, NAWL issued its One-Third by 2020 Challenge, which urges the legal profession to increase the percentage of women attorneys to one-third by 2020 – including one-third of general counsel of the Fortune 1000, one-third of law school deans, one-third of entering partner equity classes, one-third of entering law firm lateral classes – and to increase by a third the number of diverse female attorneys (including women of color and LBTQI attorneys) in every segment of the legal profession. By the time this installment of the Women Lawyers Journal goes to print, NAWL will have convened its first annual Meeting the Challenge program in Austin, Texas. The program is designed to provide a forum for individual and organizational development, including best practice sharing and thought leadership.

NAWL has a rich history that started with women who became lawyers before women could vote, and who fought for the right to vote. The challenges of the profession that remain today may seem small in comparison, but they are not insignificant. NAWL will continue to lead. We hope you will join us. ■



Kristin L. Bauer is a principal with the Dallas office of the national workplace law firm Jackson Lewis PC. Bauer represents management exclusively in workplace law and related litigation. In addition to handling an active employment litigation docket, she counsels management on preventive strategies, including termination decisions, investigations, employment agreements, non-compete and non-solicitation agreements, wage and hour laws, policies and handbooks, and other issues affecting the workplace. In addition to her current role as a board member for the National Association of Women Lawyers, Bauer has served as pro bono general counsel to The Family Place — a nonprofit agency serving the victims of domestic violence and their families—since 2005.



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Keep pushing toward gender equality

True to the legacy of the suffragettes, NAWL will lead the way toward gender equality in the legal profession.

By Leslie Richards-Yellen

I AM DELIGHTED AND PROUD to be the incoming president of this wonderful organization of ours! After 117 years, the National Association of Women Lawyers is more committed than ever to advancing women in the legal profession.

Beginning in the era of the suffragettes, NAWL has been an impactful organization on issues of importance to women. This legacy has been assured by an unbroken line of strong leaders. Marsha L. Anastasia, the outgoing NAWL President, is one of the most gifted of these remarkable women. Although Marsha has a huge job as vice president, deputy general counsel-The Americas for Pitney Bowes, she works unceasingly

toward gender equality. It is a great honor to succeed Marsha and to continue the upward trajectory for NAWL that she was instrumental in plotting.

Regardless of your political orientation, it is an important indicator of progress for women that Hillary Clinton is the presidential nominee of a major political party. It is a victory for all women that the nouns mother, grandmother and wife are now associated with the titles lawyer, senator, secretary of state and presidential nominee. Step by step, the frontier of “the first woman to...” is steadily being populated.

This does not mean, of course, that gender equality is at hand. Just as the election of President

Obama, while historically and culturally important, did not usher in a “post-racial era,” Hillary Clinton’s nomination – or even election as president – will not end gender discrimination. Any declaration of “VW Day” (Victory for Women) would be premature.

Specifically, we should not lose sight of the reality for most women lawyers. For example, according to NAWL’s Ninth Annual Survey, at the current rate, women will not make up 30 percent of law firm capital partners until 2181. Women lawyers in other sectors, such as corporate general counsel of Fortune 500 companies (23 percent) and tenured law faculty (37.5 percent), are doing better; however, even these percentages are not reflective of the female population in the United States.

We must redouble our efforts toward gender equality; otherwise the status quo army will advance. True to the legacy of the suffragettes, NAWL will lead the way toward gender equality in the legal profession with modern, as well as time-honored, strategies. Among these strategies are: the NAWL one-third by 2020 Challenge to increase the number of women in leadership positions; the NAWL Challenge Club, which connects corporations with talented women on track for equity partnership; and the NAWL Survey, which holds the legal profession accountable for advancing gender diversity (while highlighting best practices to achieve the goal).

Please join NAWL on this journey. Through the efforts of many women and men, we are close to the time when there will be a swell and the inevitable tide will rush in to propel women to equality.

It will be a pleasure to work with you and do our part. ■



Issued in February 2016, the NAWL One-Third by 2020 Challenge urges the legal profession to increase the percentage of women attorneys to one-third by 2020 – including to one-third of general counsel of the Fortune 1000, one-third of law school deans, one-third of entering partner equity classes, one-third of entering law firm lateral classes – and to increase by a third the number of diverse female attorneys (including women of color and LGBTQI attorneys) in every segment of the legal profession.

Leslie Richards-Yellen is Hogan & Lovell’s director of Inclusion – Americas. She previously served as Hinshaw & Culbertson’s chief diversity and inclusion officer, in addition to her public finance practice, for almost a decade. Richards-Yellen has more than 30 years of experience as in-house counsel and in private practice. She was a member of the National Association of Bond Lawyers’ Steering Committee. In 2014, she was appointed to the Illinois Supreme Court Commission on Professionalism and serves as the chair of the ISCCP’s Diversity Committee. She is on the Boards of the Chicago Committee on Minorities in Large Law Firms, Cornell Black Lawyers Alumni Network, the Delta Dental of Illinois Foundation, as well as the Advisory Board of the Institute for Inclusion in the Legal Profession.

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Selma Moidel Smith Law Student Writing Award Winner



Paloma A. Kennedy attended Washington University School of Law where she was an executive notes editor for Global Studies Law Review. She received her Bachelor of Arts in psychology and communication from the University of Wisconsin-Madison. Through her research, Kennedy endeavors to reveal legal complexities that emerge when globalization, transnationalism and international law transcend women's global rights.



Selma Moidel Smith, in whose honor the competition is named, has been an active member of NAWL since 1944. Smith is the author of NAWL's Centennial History (1999), and recently received NAWL's Lifetime of Service Award. In the ABA Senior Lawyers Division, she was appointed the chair of the Editorial Board of Experience magazine (the first woman to hold that position) and was elected to the governing council for four years, also serving as chair of several committees and as NAWL's Liaison to the ABA's Senior Lawyers Division. Smith is a member of the board of directors of the California Supreme Court Historical Society and is publications chair and editor-in-chief of the Society's annual journal, California Legal History.

Human trafficking waivers

How the United States implicitly violates federal law and empowers ISIS to commit human trafficking crimes.

By Paloma A. Kennedy

The United States has been fighting terrorist organizations since the late 1700s; however, the treatment of terrorism as a law enforcement matter is relatively new.¹ In the 18th century, Barbary Corsair pirates roamed the Mediterranean conquering ships in hand-to-hand battle with pistols, daggers and cutlasses.² While the Barbary pirates may seem completely unlike 21st century ISIS,³ both have relied heavily on human trafficking to finance their activities.⁴ For ISIS, human trafficking,⁵ which includes organ harvesting⁶ and the selling of women and girls as sex slaves,⁷ generates the group \$3 million per day.⁸ In 2014, ISIS captured an estimated “3000 women and girls in Iraq alone.”⁹ While the number of organs trafficked by ISIS is unknown, reports from the Middle East claim “more than 25,000 women and children have been imprisoned, sexually violated and sold by IS.”¹⁰

The United States has taken measures to fight both human trafficking and the financing of terrorism, albeit separately, as two non-related initiatives: the Trafficking Victims Protection Act of 2000 (TVPA)¹¹ and Violent Crime Control and Law Enforcement Act of 1994 (“Violent Crime Act”).¹² The United States also publishes an annual Trafficking in Persons (“TIP”) Report that is used, pursuant to the TVPA, as a diplomatic tool to engage foreign governments.¹³ Combined, the TPVA and Violent Crime Act should, in theory, provide all the means necessary for the United States to impede ISIS in its human trafficking efforts and thereby drastically reduce its available funds. On the contrary, this Note will argue these Acts have led the United States to violate its own anti-terrorism laws by providing support to a country it knows, or should know, permits its citizens to actively partake in terrorist trafficking efforts.¹⁴ While unconfirmed, news reports indicate the Saudi Arabian government may provide ISIS with direct support.¹⁵ If true, the violation of anti-terrorism laws would be more explicit in that the United States

ISIS published a controversial pamphlet titled 'Questions and Answers on Taking Captives and Slaves'²⁷

provides support to a country directly involved in the commission of terrorist activities.

On Sept. 18, 2014, President Obama released a memorandum waiving sanctions against specific Tier 3 countries¹⁶ – including Saudi Arabia, which plays a key role¹⁷ in the ISIS trafficking network.¹⁸ This Note will argue that, by not penalizing Saudi Arabia for its failure to make significant efforts to eliminate or reduce trafficking within its borders, the United States implicitly violates federal law that prohibits the financing of terrorism.¹⁹ In support of this theory, Part I examines how ISIS uses human trafficking to finance its activities, which countries play a key role and how the United States promotes anti-trafficking efforts. Part II discusses how the President waived penalties against Saudi Arabia and why this is problematic. In Part III, the Note examines United States' anti-terrorism laws,²⁰ their application in the past and their subsequent inadvertent violation by the United States today. In Part IV, the Note suggests ways the United States may use sanctions to better combat human trafficking

and control the spread of ISIS around the world. Last, in Part V, the Note concludes detailing the current human trafficking problems, its relation to terrorism and how the United States has failed to use the policies it already has in place to take a stronger stand against ISIS. It is important to note that foreign sources have shown a stronger link between Saudi Arabia, its citizens and government to ISIS; however, these sources have not been used to support this Note's theory due to their questionable reputability.

I. The human trafficking and terrorism nexus

Human trafficking²¹ serves three purposes for terrorist organizations: "generating revenue, providing fighting power and vanquishing the enemy."²² Financing is of critical importance for terrorist organizations to maintain broad infrastructures and remain effective,²³ which means finding ways to "quickly and securely raise, launder, transfer, store and gain access to funds remains a top priority."²⁴ Putting an end to these transactions can be tricky since the small amount of funds required to carry out most activities make it almost impossible to trace.²⁵ For this reason, human trafficking remains an effective business opportunity because those involved are rarely prosecuted.²⁶

Clearly lacking fear of prosecution or legal consequence, ISIS published a controversial pamphlet titled "Questions and Answers on Taking Captives and Slaves."²⁷ It condones the enslavement of any "unbelieving" "Al-Sabi," which is any woman from "*ahl al-harb* [the people of war]."²⁸ Each captured city has presented ISIS a barbaric opportunity to enslave young women and children.²⁹ One such opportunity occurred in August 2014 when ISIS fighters swept into the Yazidi village of Maturat.³⁰ ISIS captured and transported the village women and girls³¹ to Syria "either to be given to ISIL³² fighters as a reward or to be sold as sex slaves."³³ Sex trafficking³⁴ victims are typically sold in the street like livestock³⁵ to fighters from Syria, Saudi Arabia, Qatar, Chechnya and Afghanistan.³⁶

ISIS also makes large sums of money through its organ trafficking operation in which doctors are hired to remove hostages' organs – both dead and alive.³⁷ Organ harvesting is a human trafficking violation when persons are transported, harbored, or recruited "for organ removal through coercive means, including the 'abuse of a position of vulnerability.'"³⁸ Once organs are harvested, ISIS traffics them into a global market through Turkey and Saudi Arabia.³⁹ The sale of organs on the black market



Despite the unspeakable
atrocities aided by
Saudi Arabian citizens,
and a failure by the
Saudi government to
implement stronger
anti-trafficking
measures, President
Obama waived the Tier
3 country's penalties
under the TVPA.⁶⁶

is highly lucrative⁴⁰ prompting ISIS to create a special “smuggling division” responsible for selling only human hearts, livers and kidneys.⁴¹ In one recent account, a doctor from Mosul recounted how kidnapped individuals are brought to a hospital for organ harvesting.⁴² He further asserted that the entire operation requires coordination with medical institutions, specialized mafia and outside countries.⁴³

II. Saudi Arabia receives presidential waiver

In 2000, to combat human trafficking's affront to human dignity,⁴⁴ the United States passed the Trafficking Victims Protection Act⁴⁵ (“TVPA”), and it has since passed several other Acts⁴⁶ to better coordinate anti-trafficking efforts.⁴⁷ In addition to the TVPA, the United States publishes an annual Trafficking in Persons Report (TIP Report), which is used to assess human trafficking worldwide.⁴⁸ In this report, the Department of State ranks countries using a three-tier system⁴⁹ based upon the extent they comply with section 108 of the TVPA, which sets the minimum standards for eliminating trafficking in persons.⁵⁰ Pursuant to the TVPA, the United States, through sanctions,⁵¹ may penalize countries that fail to take sufficient steps to reduce or eliminate trafficking within their borders.⁵² The President has the power to waive these sanctions if assistance “would promote the purposes of the statute”⁵³ or it is “otherwise in the national interest of the United States.”⁵⁴

The 2014 TIP Report ranked Saudi Arabia, a key country in ISIS' trafficking network, as a Tier 3 country.⁵⁵ During the 2014 reporting period,⁵⁶ the Department of Justice found some Saudi nationals participated in sex tourism with children or used “legally contracted ‘temporary marriages’”⁵⁷ to sexually exploit young girls and women in neighboring Middle Eastern countries.⁵⁸ While the TIP Report makes no mention of a more direct Saudi-ISIS connection, a video posted to YouTube⁵⁹ shows a group of men, believed to be from Saudi Arabia based upon their accents, joking and laughing about receiving their “share” of Yazidi slave girls.⁶⁰ The TIP Report also fails to mention Saudi Arabian citizens have provided critical services to ISIS in re-selling harvested organs to buyers all over

the world.⁶¹ Generally, Saudi Arabian citizens can participate in both forms of trafficking with little or no consequence.⁶² The Iraqi ambassador to the United Nations, Mohamed Alhakim, has asked the Security Council to investigate “whether ISIS is harvesting and selling organs of those it executes” claiming bodies continue to turn up in “mass graves bearing surgical incisions and missing organs such as kidneys.”⁶³ Beyond these reports, not much

more is known about the working relationship Saudi Arabia has with ISIS. Besides the illegality of these trafficking activities, individuals who are able to shed light on the horrors of trafficking are typically victims who belong to a “hidden population,”⁶⁴ which makes unveiling details about ISIS' criminal activities almost impossible.⁶⁵

Despite the unspeakable atrocities aided by Saudi Arabian citizens, and a failure by the Saudi government to implement stronger anti-trafficking measures, President Obama waived the Tier 3 country's penalties under the TVPA.⁶⁶ He stated that, pursuant to section 110(d)(4),⁶⁷ Saudi Arabia will continue to receive “non-humanitarian, nontrade-related and multilateral assistance.”⁶⁸ This type of waiver is discretionary,⁶⁹ which is problematic since the President can grant it for largely undefined reasons, and the impact can be felt not just nationally, but globally.⁷⁰ This waiver raises an important question: will the failure to properly sanction Saudi Arabia leave its government unmotivated to take steps to become compliant with the TVPA?

Historically, countries have obeyed international law despite its rare enforcement.⁷¹ Economic scholars argue that it is not the fear of sanction that typically brings a country into compliance with international law, but rather the fear of diminution of status through loss of reputation.⁷² This is logical since studies of individual conduct show fear of “interpersonal loss of respect” is one of the greatest predictors for behavioral conduct regulation.⁷³ Another important question then is whether the United States has lost the opportunity to globally embarrass Saudi Arabia with the use of human trafficking-

Without sanctions, Saudi Arabia remains extremely well funded by the United States⁷⁸

related sanctions, or is it that the United States should be embarrassed for its failure to impose these sanctions?⁷⁴ Without sanctions, Saudi Arabia remains extremely well funded by the United States.⁷⁵ From 2010 to 2014, the United States sold roughly \$90 billion in defense systems to Saudi Arabia.⁷⁶ It also provided International Military Education and Training assistance education worth \$10,000.⁷⁷ Saudi Arabia staunchly denies accusations that it funds ISIS, and it lacks a direct state policy that would indicate such activity, yet Saudi Arabia has made poor choices in the past backing Turkey's border enforcement, which has allowed "weapons and money" to flood into Syria.⁷⁸ Regardless of whether Saudi Arabia seeks to hide its involvement with ISIS by subterfuge, it is clear the United States has failed to sanction Saudi Arabia for its failure to control human trafficking within its borders – activities that have been directly linked to ISIS.⁷⁹

III. How the United States violates anti-terrorism laws

In an attempt to bolster the war on terrorism, the United States enacted 18 U.S.C. section 2339A⁸⁰ as part of the Violent Crime Control and Law Enforcement Act of 1994 ("Violent Crime Act").⁸¹ Just two years later, Congress amended this section and added section 2339B.⁸² Both sections permit the prosecution of terrorist supporters by criminalizing the "act of knowingly providing support and engaging in financial transactions with terrorists" with the knowledge *or* intent that such funds are to be used in

full or part to carry out terrorist activities.⁸³ Section 2339 criminalizes this "material support"⁸⁴ given in preparation for or in carrying out specified crimes of terrorism (section 2339A) or directly to terrorist organizations (section 2339B).⁸⁵ In addition to these charges, it is plausible the Government could add a conspiracy charge when it is able to prove defendants knowingly provided substantial aid to an individual or group, in one of the forms listed in section 2339A, with knowledge the individual or group had purpose to commit one of the proscribed terrorist activities.⁸⁶ A third section of 2339 prohibits the financing of terrorism making it an offense to "directly or indirectly, unlawfully and willfully" provide or collect funds with the "intention that such funds be used, or with the knowledge that such funds are to be used" to cause death, serious bodily harm, intimidate a population, or compel governments "to do or abstain from doing any act."⁸⁷

Since knowledge can be the sole requisite mens rea⁸⁸ under all three sections of 2339, questions remain as to what or which actus reus elements this knowledge must pertain.⁸⁹ The Supreme Court, in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), sought to provide some clarity.⁹⁰ It explained that a section 2339B violation requires knowledge of "the foreign group's designation as a terrorist organization or the group's commission of terrorist acts."⁹¹ The Second Circuit of the United States Court of Appeals further clarified, in *United States v. Stewart*, 590 F.3d 93 (2d Cir. 2009), that section 2339A's conjunction "or" permits extension to both the "support itself, and to



Applying section 2339 to the United States' interactions with Saudi Arabia, it becomes apparent that we, as a nation, have violated our own anti-terrorism laws.

the underlying purpose for which the support is given.”⁹² Since section 2339C has this same conjunctive phrase, it can be assumed that *Stewart's* assertion applies to it similarly. In addition to knowledge or intent, section 2339C requires the provision of funds be both “unlawful” and “willful.”⁹³ The Supreme Court also noted Congress removed a section 2339A exception permitting material support in the form of humanitarian assistance, which shows Congress “considered and rejected the view that ostensibly peaceful aid would have no harmful effects.”⁹⁴

Applying section 2339 to the United States' interactions with Saudi Arabia, it becomes apparent that we, as a nation, have violated our own anti-terrorism laws. The United States and Saudi Arabia are not the typical actors involved in applying sections 2339A and 2339B;⁹⁵ the Seventh Circuit of the United States Court of Appeals has held both a foreign state and foreign government may be sued in United States courts for violating sections 2339A and 2339B when the claimant has federal jurisdiction.⁹⁶ The United States has never been sued under either of these sections, but a failure to include the government under the doctrine of sovereign immunity would stand against the “essence of civil liberty” that “[j]udicial remedies not only protect individual rights, but can function as an important mechanism of governmental accountability.”⁹⁷ As stated earlier, the United States continues to provide training,⁹⁸ equipment, tangible property and weapons to Saudi Arabia.⁹⁹ While there is no evidence that United States assistance is used directly “in preparation for” or the “carrying out”¹⁰⁰ of terrorist activity, reports that Saudi Arabian citizens have aided ISIS in trafficking efforts,¹⁰¹ and that its government *may* be providing ISIS more direct support,¹⁰² charges the United States with knowingly providing material support to a country that permits its citizens, and perhaps government officials, to directly participate in terrorist activities. Clearly there is enough public concern to warrant further investigation by the United States.

IV. Putting an end to trafficking: using sanctions to fight terrorism

Startling as this assertion seems, it is undeniable the United States has implicitly provided vital assistance to a

country that has permitted its citizens to aid the most heinous terrorist group to plague the 21st century. The “international obligation to respect human rights is an obligation *erga omnes*”¹⁰³ and therefore binding on all states” regardless of whether the obligation is enforced via international or customary law.¹⁰⁴ The use of sanctions has been hotly debated since the Clinton Administration decided

to implement new anti-trafficking measures in the 1990s.¹⁰⁵ However, Professor Sarah Cleveland believes unilateral sanctions play an important role beyond that of punishment or the modification of a “foreign state’s behavior.”¹⁰⁶ Unilateral sanctions can assist foreign states’ definition, recognition, promulgation, and “domestic internalization of human rights norms.”¹⁰⁷ This perspective builds on Harold Koh’s “transnational legal process theory,” which argues a “government-to-government horizontal process” exists where “nation-states interact in intergovernmental fora, with the main goal of promoting compliance with international norms.”¹⁰⁸ The process of unilateral sanctions is not “inherently hegemonic.”¹⁰⁹ The act and process of “imposing, reviewing and revoking sanctions” can be complimentary rather than competitive with “government-to-government interactions” facilitating open communications, clarification and internalization.¹¹⁰

One way the United States can help fight the war on terror is to *use* the sanctioning powers it created through the TVPA.¹¹¹ The United States has slowly lost respect among world powers for its failure to take a leadership role in the Middle East.¹¹² In the Arab world, the United States is viewed as “increasingly irrelevant” for its failure to take decisive actions.¹¹³ To many, it appears the United States supports whoever is the “least-scary option.”¹¹⁴ These sentiments are only strengthened when the U.S. government fails to stand up for human rights and refuses to issue Tier 3 sanctions as motivation to comply with the TVPA.¹¹⁵ Many claim United States sanctions result in the recipient countries’ population suffering, rather than its government.¹¹⁶ After all, the TVPA permits the president to waive sanctions when it would promote the provisions therein.¹¹⁷ This means waiving sanctions against Saudi Arabia could have been to promote anti-trafficking efforts, but Saudi Arabia has been a Tier 3 country since 2007.¹¹⁸ As a Tier 3 country, it has spent eight years failing

Saudi Arabia staunchly denies accusations that it funds ISIS, and it lacks a direct state policy that would indicate such activity

to make any concerted effort to become more compliant or to take any overt action to seriously combat widespread trafficking problems within its borders.¹¹⁹ Despite this, it has received a full sanction waiver every year since 2009.¹²⁰ Since the United States provides assistance in the form of training and military technology, what, if any, benefit to the people of Saudi Arabia can come from what appears to be a permanent waiver?¹²¹ By allowing Saudi Arabia to habitually operate without global human rights standards, thereby permitting the country to play a large role in financially assisting ISIS, the United States has implicitly approved terrorist human trafficking objectives while, at the same time, projected a weak global image.¹²²

To use sanctions more effectively, Professor Janie Chuang proposes a number of conditions that should be met to achieve consistency in the United States' sanction regime.¹²³ One of these conditions would require "documentation and condemnation of violations to be as even-handed¹²⁴ as possible."¹²⁵ Only once these conditions, and potentially others,¹²⁶ are fulfilled do legal and financial scholars believe United States sanctions will be more respected and increasingly enforceable.¹²⁷ For this reason, the United States should review its inconsistent use of Tier 3 sanctions and aim to make their application more meaningful.¹²⁸ Tier 3 countries should either be uniformly sanctioned or, if it is absolutely necessary to issue a waiver, the presidential memorandum should provide justification and the underlying reasoning for issuing such a waiver (e.g. foreign relationship, human rights, etc.). This could also dispel widespread confusion regarding Tier 3 countries receiving the waiver.¹²⁹ While ideal, this solution may not be feasible since it will require a new initiative or amendment to current legislation. Further, the President may not want to explain a waiver for fear it may communicate the United States' political policy surrounding sensitive world issues.

Regardless of the action taken, waivers must be considered as seriously as sanctions to ensure human rights are placed above other self-serving priorities.¹³⁰

The United States itself has a long history of human trafficking problems.¹³¹ And while the United States' involvement in funding terrorism is arguably tenuous, it is important for the seriousness of our sanctions that we, as a nation, begin to take a more proactive stand against human trafficking. The TIP committee may work closely with nations to seek compliance,¹³² but the fluctuation of serious offender countries between the second and third tier should make the United States suspect that its methods are seriously flawed.¹³³ The human trafficking terrorism nexus is so great that the failure to reassess the TIP committee's methods would be a grave mistake. The legislature should undoubtedly consider amendments to the current policies that dictate both the TIP reporting and its committee, but it should also reconsider whether neighboring nations that are making concerted efforts can be used to aid in the reform.¹³⁴

Besides these recommendations, the United States could take an entirely different approach and implement a new program that promotes compliance.¹³⁵ The program would reward rather than sanction countries that make concerted efforts to reduce or eliminate trafficking within their borders. While some countries may enjoy increased humanitarian aid from the United States in exchange for its efforts, this approach will not work with countries like Saudi Arabia where officials have the means to help its citizens living in third-world conditions.¹³⁶ In these instances, rewards would need to be politically based. For example, the United States could issue a global proclamation commending countries that have moved from Tier 3 to Tier 2 Watch List.¹³⁷ This would not require a legislative overhaul or new implementation and could be used in place

of sanctions as a way to foster stronger global relationships without ruining those currently in place.

V. Conclusion

The President's unwillingness to sanction Saudi Arabia in 2014 has unequivocally led the United States to violate our own anti-terrorism laws and assist in the conflagration that is ISIS.¹³⁸ The annual TIP Report provides the United States the opportunity to

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sanction countries that fall below the TVPA's Minimum Standards for the elimination of trafficking in persons.¹³⁹ Saudi Arabia, a Tier 3 country for eight years in a row,¹⁴⁰ has documented involvement with ISIS' human trafficking efforts. In

particular, it facilitates the brokering of organs removed from individuals – both dead and alive – and the selling, purchasing and trading of women and girls as slaves.¹⁴¹ The impetus for issuing sanctions clearly exists and it is a lawful and justifiable action by the United States to withdraw or moderate the assistance currently being provided.¹⁴² This would, in effect, provide a broader message to the world that the United States will not stand idly by as the horrific treatment of women, children

and non-Muslims persists and continues to put money directly in ISIS' war chest.¹⁴³ More importantly, sanctioning Saudi Arabia would prevent the United States from violating sections 2339A and 2339B, which it currently does by knowingly

providing training and war technology to a country that permits its citizens to continue participation in terrorist activities – namely, the financing of terrorism.¹⁴⁴ In order for the United States to reinstate itself as the global sheriff of human rights, it is necessary that we not only use our sanctions more wisely, but implement new programs that will facilitate stronger compliance with the TVPA and thereby reduce pivotal Tier 3 country involvement with ISIS and terrorism in general.¹⁴⁵ ■

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Endnotes

- 1 U.S. Dep't of Justice, *Terrorist Financing*, 51 U.S. ATTORNEY'S BULLETIN 1, 2 (July 2003), available at <http://www.justice.gov/sites/default/files/usao/legacy/2006/02/14/usab5104.pdf> [hereinafter *Terrorist Financing*].
- 2 *Piracy: A Brief History of Piracy*, NAT'L MUSEUM OF THE ROYAL NAVY (2002), http://www.royalnavalmuseum.org/info_sheets_piracy.htm.
- 3 ISIS stands for Islamic State in Iraq and Syria. *ISIS Fast Facts*, CNN (Feb. 16, 2015, 5:27 PM), <http://www.cnn.com/2014/08/08/world/isis-fast-facts/>. In 2006, al Qaeda leader Abu Ayyub al-Masri announced creation of Islamic State in Iraq ("ISI"). *Id.* Seven years later, ISI declared absorption of an al Qaeda-backed militant group in Syria. *Id.* New leader, Abu Bakr al-Baghdadi, renamed the group ISIS. *Id.* Al Qaeda rejected this absorption leading to months of infighting. *Id.* In early 2014, al Qaeda renounced its ties with ISIS allowing the group to begin carrying out organized terrorist activity. *Id.* ISIL is an alternate acronym for ISIS commonly used by the U.S. State Department and President Obama. Ishaan Tharoor, *ISIS or ISIL? The debate over what to call Iraq's terror group*, WASH. POST (June 18, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/06/18/isis-or-isil-the-debate-over-what-to-call-iraqs-terror-group/>. It stands for Islamic State of Iraq and the Levant. *Id.* The terrorist group wishes to be called the "Islamic State;" however, this blurs state borders denoting it has created a new caliphate. Adam Taylor, *France is ditching the 'Islamic State' name – and replacing it with a label the group hates*, WASH. POST (Sept. 17, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/09/17/france-is-ditching-the-islamic-state-name-and-replacing-it-with-a-label-the-group-hates/>. In an effort to "poke the bear," France has begun calling ISIS "Daesh," which is a transliteration of the Arabic acronym for al-Dawla al-Islamiya fi al-Iraq wa al-Sham. *Id.* This word may also be seen spelled "DAISH," "DAAS," "DAIISH," and "DAISH." *Id.* The terrorist group despises this acronym and has threatened to cut the tongue from any person who speaks it. *Id.*
- 4 See *ISIS makes \$3M per day from oil smuggling, human trafficking*, ASSOCIATE PRESS (Sep. 15, 2014, 10:36 AM), <http://nypost.com/2014/09/15/isis-makes-3m-per-day-from-oil-smuggling-human-trafficking/> [hereinafter *ISIS makes \$3M*]; *Piracy*, *supra* note 2 (explaining Barbary pirates captured individuals and sold them in slave markets); William O'Connor, *Before War on ISIS, There Was America's Second Barbary War*, THE DAILY BEAST (Mar. 3, 2015), <http://www.thedailybeast.com/articles/2015/03/03/before-war-on-isis-there-was-america-s-second-barbary-war.html> (showing Barbary pirates, like ISIS, solicited America to pay ransoms for its enslaved citizens); *ISIS Demands \$6.6M Ransom for 26-Year-Old American Woman*, ABC NEWS (Aug. 26, 2014, 10:06 AM), <http://abcnews.go.com/Blotter/isis-demands-66m-ransom-26-year-american-woman/story?id=25127682>.
- 5 Human trafficking, or commonly referred to as "trafficking in persons," is defined as:
[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- G.A. Res. 55/25, at 42, U.N. Doc. A/RES/55/25 (Nov. 15, 2000). Exploitation includes prostitution "or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." *Id.* See also 2014 TIP REPORT, *infra* note 13, at 32 (defining organ trafficking).
- 6 Blake, *infra* note 37 (explaining ISIS' financial reliance on organ trafficking); Hathaway, *infra* note 42 (shedding light on ISIS organ trafficking methods).
- 7 Lynch, *infra* note 29 (explaining ISIS sex trafficking); *infra* text accompanying note 35 (showing prices at which women and children are typically sold by ISIS).
- 8 *ISIS makes \$3M*, *supra* note 4.
- 9 Emma Batha, Iraqi women trafficked into sexual slavery – rights group, REUTERS (Feb. 17, 2015), <http://www.reuters.com/article/2015/02/17/us-iraq-trafficking-women-idUSKBN0LL1U220150217>.
- 10 Nassir al-Hassoun, *Islamic State reaps profits from organ trafficking*, ALMONITOR (Dec. 5, 2014), <http://www.al-monitor.com/pulse/contents/articles/security/2014/12/islamic-state-financing-funding-human-trafficking-extortion.html#>. IS stands for Islamic State, which is simply another acronym used for ISIS. *Id.* *supra* text accompanying note 3 (defining ISIS acronyms in greater detail).
- 11 Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in various section of the U.S.C.).
- 12 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.
- 13 See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2014), <http://www.state.gov/j/tip/rls/tiprpt/index.htm> [hereinafter 2014 TIP REPORT].
- 14 *Supra* text accompany note 64 (stating the Saudi King has yet to utilize decrees instated to limit Saudi Arabian participation in terrorism); Saudi Arabia failed to provide the TIP committee with law enforcement data regarding trafficking crimes during the TIP reporting period. 2014 TIP REPORT, *supra*, at 333 (indicating the reporting period was from April 1, 2013 to March 31, 2014). It also did not report "any investigations, prosecutions, or convictions of government employees complicit in human trafficking. *Id.* Even worse, Saudi Arabia's "government did not demonstrate overall progress in victim protection . . . [and] exhibited diminishing efforts in reporting on its efforts to identify and protect trafficking victims among vulnerable populations." *Id.*
- 15 Steve Clemons, *'Thank god for the Saudis': ISIS, Iraq, and the Lessons of Blowback*, THE ATLANTIC (June 23, 2014, 11:40 AM), <http://www.theatlantic.com/international/archive/2014/06/isis-saudi-arabia-iraq-syria-bandar/373181/> (claiming a senior Qatari official stated "ISIS has been a Saudi project" and Iraqi Prime Minister Nouri al-Maliki alleged "[Saudi Arabia] has directly supported ISIS."); Yousaf Butt, *How Saudi Wahhabism Is the Fountainhead of Islamist Terrorism*, HUFFINGTON POST (Jan. 20, 2015 7:01 PM), http://www.huffingtonpost.com/dr-yousaf-butt/-saudi-wahhabism-islam-terrorism_b_6501916.html (claiming Hilary Clinton stated Saudi Arabia continues to be "a critical financial support base"

- for many Middle Eastern terrorist groups and that Florida Senator Bob Graham suggested ISIS receives Saudi Arabian money and organization support).
- 16 The President waived penalties against Algeria, Thailand, Central African Republic, Saudi Arabia, the Gambia, Kuwait, Uzbekistan, Papua New Guinea, Malaysia, Libya, Guinea-Bissau, Mauritania, and Yemen all received a full presidential waiver. Press Release, Presidential Determination – Foreign Governments' Efforts Regarding Trafficking in Persons (Sept. 18, 2014), *available at* <http://www.whitehouse.gov/the-press-office/2014/09/18/presidential-determination-foreign-governments-efforts-regarding-traffic> [hereinafter Presidential Determination 2014]. Refer to text accompany note 49 for an explanation about the tier system.
 - 17 Batha, *supra* note 9 (explaining that ISIS sells sex slaves to Saudi Arabia); Blake, *supra* note 37 and accompanying text (explaining Saudi Arabia's involvement with ISIS organ trafficking efforts).
 - 18 Presidential Determination 2014, *supra* note 16.
 - 19 See generally Doyle, *Terrorist Material Support*, *infra* note 84 (detailing applicable federal anti-terrorism laws).
 - 20 18 U.S.C.A. §§ 2339A, 2339B, 2339C (West 2002).
 - 21 *Supra* text accompanying note 5 (defining human trafficking).
 - 22 Louise I. Shelley, *ISIS, Boko Haram, and the Growing Role of Human Trafficking in the 21st Century Terrorism*, DAILY BEAST (Dec. 26, 2014), <http://www.thedailybeast.com/articles/2014/12/26/isis-boko-haram-and-the-growing-role-of-human-trafficking-in-21st-century-terrorism.html>.
 - 23 Matthew Levitt & Michael Jacobson, *The Money Trail: Finding, Following, and Freezing Terrorist Financing*, 89 POLICY FOCUS 1, 1 (Nov. 2008), *available at* <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus89.pdf>.
 - 24 *Id.*
 - 25 *Terrorist Financing*, *supra* note 1, at 7. The September 11 attacks only cost \$303,672. Eric J. Gouvin, *Bringing Out the Big Guns: The USA Patriot Act, Money Laundering, and the War on Terrorism*, 55 BAYLOR L. REV. 955, 974-75 (2003), *available at* <http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1075&context=facschol>. This is small considering how much ISIS is able to make in just one day. See *ISIS makes \$3M*, *supra* note 3.
 - 26 Louise Shelley, *Human trafficking as a form of transnational crime*, in HUMAN TRAFFICKING 116, 117 (Maggy Lee ed., Willan Publishing 2007) (2011). Lack of prosecution stems from the groups' ability to "neutralize law enforcement" with intimidation or bribes, and state based controls. *Id.*
 - 27 *Islamic State (ISIS) Release Pamphlet On Female Slaves*, MEMRI JIHAD AND TERRORISM THREAT MONITOR (Dec. 14, 2014), <http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html> [hereinafter *Pamphlet On Female Slaves*].
 - 28 *Id.*
 - 29 Colum Lynch, *How ISIS sells women and children*, THE WEEK (Oct. 31, 2014), <http://theweek.com/articles/443272/isis-sells-women-children>.
 - 30 *Id.*
 - 31 When children under the age of 18 are "recruited, enticed, harbored, transported, provided, obtained or maintained to perform a commercial sex act," proof of "force, fraud, or coercion" is not required for it to be considered human trafficking. 2014 TIP REPORT, *supra* note 13, at 29. All prostituted children are trafficking victims regardless of cultural or socioeconomic rationalizations. *Id.* This definition should be broadened to include religious rationalizations since ISIS has relied on the religion of Islam to qualify their enslavement of young girls. See *Pamphlet On Female Slaves*, *supra* note 27.
 - 32 ISIL is the alternate acronym for ISIS commonly used by the U.S. State Department and President Obama. See *infra* text accompanying note 3 (detailing acronyms used for ISIS).
 - 33 Lynch, *supra* note 29.
 - 34 Sex trafficking is "a commercial sex act . . . induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age" 2014 TIP REPORT, *supra* note 13, at 9.
 - 35 ISIS has a fixed price list selling Yazidi or Christian women for anywhere from "\$40 for older women to \$170 for children." *ISIS introduces 'price scheme' for selling enslaved women and girls*, RT (Nov. 4, 2014, 11:55AM), <http://rt.com/news/202071-isis-slaves-girls-prices/>.
 - 36 Batha, *supra* note 9.
 - 37 Matthew Blake, *Blood money: How ISIS is selling human organs harvested from living hostages and its own dead soldiers to fund terror across the Middle East*, DAILY MAIL (Dec. 19, 2014, 11:12 AM), <http://www.dailymail.co.uk/news/article-2880815/Blood-money-ISIS-selling-human-organs-harvested-living-hostages-dead-soldiers-fund-terror-Middle-East.html> (explaining ISIS harvests organs, which are then smuggled out of Syria and sold by criminal gangs in Saudi Arabia to buyers all over the world).
 - 38 2014 TIP REPORT, *supra* note 13, at 32.
 - 39 Blake, *supra* note 37 and accompanying text (explaining Saudi Arabia's involvement with ISIS organ harvesting efforts).
 - 40 *How Much Is Your Body Worth on the Black Market?*, FINANCE DEGREE CENTER, <http://www.financedegreecenter.com/black-market-body/> (last visited Feb. 20, 2015). On the black market, a heart is worth \$119,000, livers \$157,100, and kidneys cost anywhere from \$15,000 to \$262,900 depending on the country. *Id.*
 - 41 John Hall, *UN urged to investigate ISIS's bloody trade in human organs after Iraqi ambassador reveals doctors are being executed for not harvesting body parts*, DAILY MAIL (Feb. 18, 2015), <http://www.dailymail.co.uk/news/article-2958220/UN-urged-investigate-ISIS-s-bloody-trade-human-organs-Iraqi-ambassador-reveals-doctors-executed-not-harvesting-body-parts.html>.
 - 42 Jay Hathaway, *Here's What We Know About ISIS's Alleged Organ Harvesting Operation*, ANTIVIRAL GAWKER (Feb. 18, 2015), <http://antiviral.gawker.com/heres-what-we-know-about-isis-alleged-organ-harvesting-1686533125>.
 - 43 *Id.*

- 44 April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 233 (2007).
- 45 Victims of Trafficking and Violence Protection Act of 2000.
- 46 These Acts include the “Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311).” *U.S. Law on Trafficking in Persons*, U.S. DEP’T OF STATE, <http://www.state.gov/j/tip/laws/index.htm> (last visited Feb. 20, 2014); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. 109-164, 119 Stat. 3558; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044.
- 47 *U.S. Law on Trafficking in Persons*, *supra* note 46. The United States passed these laws in response to increasing political pressure. Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437, 441 (2006). The women’s rights movement in the early 1990s was the first to draw attention to the growing problem of human trafficking. *Id.* With increasing levels of poverty, many individuals migrated abroad in an attempt to find a better life; however, this sharply increased the number of individuals trafficked sexually, and non-sexually, for which the world was largely unprepared. *Id.* at 441-42. Many nations did not have the legal framework necessary to properly prosecute traffickers nor the means to provide victims with appropriate protections and remedies. *Id.* at 442. After the United Nations drafted the UN Convention Against Transnational Organized Crime (“UN Convention”), which criminalized trafficking, the General Assembly adopted the Palermo Protocol, which aimed to suppress and punish trafficking crimes – especially those involving women and children. *Id.* at 438 n. 2, 442. This drafting period became known as the “Vienna process” and created strong debate about what actions, voluntary and involuntary, should be considered a trafficking crime. *Id.* at 442. These debates, which prompted important questions, such as whether voluntary prostitution should be criminalized under the new legal framework, highlighted the issue’s “complexity and divisiveness.” *Id.* at 443. Together, the UN Convention and Palermo Protocol established “concrete measures to improve communication and cooperation between national law enforcement authorities, engage in mutual legal assistance, facilitate extradition proceedings, and establish bilateral and multilateral joint investigative bodies and techniques.” *Id.* at 448. This pushed the United States, “which was quickly becoming a major destination for human trafficking,” to enact legislation that would permit the prosecution of “high-level trafficking” in the ‘90s. *Id.* at 449. The Clinton Administration issued a Presidential Directive that aimed to prevent, protect, and prosecute traffickers (“the three P’s”). *Id.* This Directive led to the passing of the Trafficking Protection Act in 2000. *Id.* at 450.
- 48 See generally 2014 TIP REPORT, *supra* note 13.
- 49 Tier 1 countries are fully compliant “with the TVPA’s minimum standards for eliminating trafficking in persons” (“Minimum Standards”); however, this does not mean the country has completely eliminated trafficking or has sufficiently addressed the problem. *Id.* at 40, 43. Tier 2 countries are not fully compliant with the Minimum Standards, but make a concerted effort to become more compliant. *Id.* Some Tier 2 countries are ranked as “Tier 2 Watch List” indicating one of the following: the number of trafficking victims is significant or increasing, there is a lack of evidence the country has increased efforts to fight the most severe forms of trafficking, or the country’s ranking as Tier 2 is contingent upon its commitment to take additional steps to become compliant within the next year. *Id.* Last, Tier 3 countries do not comply with the TVPA’s Minimum Standards and do not make “significant efforts” to become compliant. *Id.* Any country that is ranked Tier 2 Watch List for two consecutive years, and would be ranked as such for a third year, is automatically ranked Tier 3 in that third year. *Id.* Unlike Tier 3 sanctions, the Secretary of State is the only one authorized to waive this automatic downgrade. *Id.* at 43-44. This waiver requires the country’s government to show it is “devoting sufficient resources” in developing a plan that, if implemented, constitutes a significant effort to comply with the TVPA’s Minimum Standards. *Id.* at 43.
- 50 See *id.* In making a determination regarding compliance, the following factors are considered: whether the government of the country “vigorously investigates and prosecutes severe forms of trafficking,” “protects victims of severe forms of trafficking” while encouraging governmental assistance in the investigation and prosecution of trafficking, “adopts measures to prevent severe forms of trafficking” including public education protocols, “cooperates with other governments in the investigation and prosecution of severe forms of trafficking,” extradites those “charged with severe forms of trafficking,” and “vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking.” Victims of Trafficking and Violence Protection Act of 2000 § 108(b)(1)-(7).
- 51 Sanctions allow the United States to take action with the “least risk.” Raymond Tanter & Meghan O’Sullivan, *Sanctions and U.S. Foreign Policy*, THE WASH. INST. (Mar. 13, 2001), <http://www.washingtoninstitute.org/policy-analysis/view/sanctions-and-u.s.-foreign-policy>. They cost less than military intervention and are often better than “doing nothing at all.” *Id.* Sanctions are typically issued against a state to “express disapproval (retribution) and/or change the behavior of the target state (rehabilitation).” *Id.* Rehabilitative sanctions rarely satisfy their ambitious goals; however, they are effective in “promoting ‘deterrence by denial.’” *Id.*
- 52 Tier 3 countries should, according to the TVPA, face United States opposition when seeking assistance from “international financial institutions” like the World Bank and International Monetary Fund. *Id.* The United States government may also “withhold or withdraw non-humanitarian, non-trade-related foreign assistance” and funding for educational and cultural exchange programs. *Id.* Sanctions may only be given to Tier 3 countries that do not bring themselves into compliance with the TVPA within 90 days. Chuang, *supra* note 47, at 454. The TIP Office works closely with Tier 3 governments during this grace period in an effort to develop action plans necessary to achieve compliance. *Id.*
- 53 The Act also promotes presidential waiver when it is “necessary to avoid significant adverse effects on vulnerable populations, including women and children.” Victims of Trafficking and Violence Protection Act of 2000 § 110(d)(4).
- 54 *Id.*
- 55 Blake, *supra* note 37 and accompanying text (explaining Saudi Arabian citizens play a large role in aiding ISIS trafficking efforts); 2014 TIP REPORT, *supra* note 13, at 332, available at <http://www.state.gov/documents/organization/226848.pdf>. Tier 3 countries are

- those who do not fully comply with the Minimum Standards and fail to make significant efforts to become compliant. *Tier Placements*, U.S. DEP'T OF STATE, available at <http://www.state.gov/j/tip/rls/tiprpt/2014/226649.htm> (last visited Apr. 9, 2014).
- 56 The reporting period is when the TIP committee evaluates each country's compliance with the TVPA Minimum Standards. See 2014 TIP REPORT, *supra* note 13; *supra* text accompanying note 50 (explaining factors in determining whether a country has met the Minimum Standards). The reporting period began April 1, 2013 and ended March 31, 2014. 2014 TIP REPORT, *supra* note 13, at 38.
 - 57 This practice is extremely similar to that employed by ISIS. See Annabel Grossman, *Single Islamic State militant 'has killed 150 women and girls' because they refused to marry members of the terrorist group*, DAILY MAIL (Dec. 18, 2014, 4:27 PM) <http://www.dailymail.co.uk/news/article-2878693/Single-Islamic-State-militant-killed-150-women-girls-refused-marry-members-terrorist-group.html>. The group typically forces captured women and girls into temporary marriages, which results in sex slavery; for women and girls who resist, their fate is grim. *Id.*
 - 58 2014 TIP REPORT, *supra* note 13, at 332-33.
 - 59 Eretz Zen, *Saudi ISIL Militants Filmed Laughing at How They Will Share Yazidi Female Slaves*, YOUTUBE (Nov. 1, 2014), <https://www.youtube.com/watch?v=wJGK1ivJyhw> (ISIS militants are shown offering more if the girl has blue eyes and, on the converse, their willingness to kill a girl if she is missing teeth).
 - 60 Reissa Su, *ISIS Militants Anticipating 'Slave Market Day' To Buy and Sell Yazidi Girl Slaves [VIDEO]*, INT'L BUS. (Nov. 4, 2014), <http://au.ibtimes.com/isis-militants-anticipating-slave-market-day-buy-sell-yazidi-girl-slaves-video-1385090>. Whether the Saudi men in this video are ISIS militants is unknown.
 - 61 Batha, *supra* note 9; 2014 TIP REPORT, *supra* note 13, at 32 (stating organ trafficking is a human trafficking violation when individuals are transported, harbored, or recruited to remove organs through coercive measures).
 - 62 *Supra* text accompanying note 14 (stating Saudi Arabia has failed to actively prosecute trafficking crimes and failed to adequately protect trafficking victims). In 2014, the Saudi king issued a "rare decree making it a criminal offense to join a foreign war," yet he has failed thus far to "rein in radical preachers" within his kingdom. Somini Sengupta, *Nations Trying to Stop Their Citizens From Going to Middle East to Fight for ISIS*, N.Y. TIMES (Sept. 12, 2014), available at http://www.nytimes.com/2014/09/13/world/middleeast/isis-recruits-prompt-laws-against-foreign-fighters.html?_r=0. This decree also criminalized those who "belong to or sympathize with radical religious and political movements," which targets unregulated extremists "with well-known leaders and followers." Madawi Al-Rasheed, *Saudi Arabia's anti-terror law not enough*, ALMONITOR (Feb. 4, 2014), <http://www.al-monitor.com/pulse/originals/2014/02/saudi-anti-terror-law.html#>. This raises serious concerns whether the King can even enforce anti-terrorism laws. See *Id.*
 - 63 *ISIS harvests organs to fund terror: Iraq ambassador*, FOX NEWS (Feb. 18, 2015), available at <http://nypost.com/2015/02/18/isis-accused-of-harvesting-organs-to-fund-terror/>.
 - 64 "Hidden populations" are groups of people for whom size and boundaries are unknown and no representative sample exists. Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking, Data and Research on Human Trafficking: A Global Survey*, 43 INT'L MIGRATION 17, 18 (2005), available at http://www.no-trafficking.org/content/web/05reading_rooms/data_and_research_on_human_trafficking_a_global_survey_iom.pdf#page=19.
 - 65 *Id.*
 - 66 Presidential Determination 2014, *supra* note 16. It is interesting to note that President Obama has exercised his executive power by presidential memoranda "more than any other president in history." Gregory Korte, *Obama issues 'executive orders by another name'*, USA TODAY (Dec. 17, 2014, 1:16 PM), <http://www.usatoday.com/story/news/politics/2014/12/16/obama-presidential-memoranda-executive-orders/20191805/>. According to the Federal Register, Obama has issued 195 executive orders and 198 presidential memoranda. *Id.* That means he has signed 33% more presidential memoranda in six years than President George H.W. Bush signed in his eight. *Id.*
 - 67 § 110(d)(4) states: "provision to the country of nonhumanitarian, nontrade-related foreign assistance, or the multilateral assistance described in (1)(B), or both, would promote the purpose of this division or is otherwise in the national interest of the United States." Victims of Trafficking and Violence Protection Act of 2000. Multilateral assistance described in (1)(B) including financial institutions, such as the International Monetary Fund and other World Bank institutions. *Id.* This broad language is common in presidential waiver provisions. Rachel Cohen, *President Obama Can Ease Sanctions on Iran by Himself—But That's Not the End of the Story*, WASH. MONTHLY (Oct. 21, 2013, 3:33 PM), http://www.washingtonmonthly.com/ten-miles-square/2013/10/president_obama_can_ease_sanct047474.php. Historically, Congress has included buzzwords such as "important," "necessary," "essential," and "vital." *Id.*
 - 68 Presidential Determination 2014, *supra* note 16.
 - 69 There are two different types of waivers: fact-based exemptions and discretionary waivers. Cohen, *supra* note 67. Fact-based waivers are typically exercised when a country shows proof it is taking steps to reduce or halt the actions for which it would have been sanctioned. *Id.* Discretionary waivers, on the other hand, give the president unilateral authority. *Id.* Legislation that grants the president power to make a discretionary waiver typically has broad-sweeping language, such as "for the interest of the United States." *Id.*
 - 70 See *id.*
 - 71 Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 Yale L. J. 2599, 2603 (1997), available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2897&context=fss_papers&sei-redir=1&referer=https%3A%2F%2Fscholar.google.com%2Fscholar%3Fhl%3Den%26q%3Dfear%2Bof%2Blegal%2Bsanctions%2Binternational%2Blaw%26btnG%3D%26as_sdt%3D1%252C26%26as_sdt%3D#search=%22fear%20legal%20sanctions%20international%20law%22 [hereinafter *Why Do Nations*] (quoting HANS J. MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 249-52 (2d ed. 1954).
 - 72 *Id.* at 2636 (citing ABRAM CHAYES & ANTONIA HANDLER

CHAYES, THE NEW SOVERIEGNTY COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS 3 (1995)).

- 73 Charles R. Little, *Sanction Fear and the Maintenance of Social Order*, 55 SOCIAL FORCES 579, 594-95 (1977), available at <http://sf.oxfordjournals.org.libproxy.wustl.edu/content/55/3/579.full.pdf>.
- 74 The United States and Saudi Arabia have a war-induced working relationship: the United States has a “strong military presence in the Gulf,” which guarantees Saudi Arabia’s security while Saudi Arabia has acted as local law enforcement in the Middle East. *Saudi Arabia and the United States: Awkward relations*, THE ECONOMIST (Mar. 29, 2014), <http://www.economist.com/news/middle-east-and-africa/21599767-american-president-and-saudi-king-will-have-unusually-edgy> [hereinafter *Awkward relations*]. Despite a “growing list of grievances on both sides, the two countries need each other.” *Id.* For this reason, the United States may feel uncomfortable sanctioning a “friend,” but this may only increase the sanction’s effectiveness. Hufbauer et al., *In Brief, infra* note 137 and accompanying text (stating sanctions against “friends” are more effective).
- 75 See Christopher M. Blanchard, *Saudi Arabia: Background and U.S. Relations*, RL33533 CONGRESSIONAL RESEARCH SERVICE (Jan. 23, 2015), <https://www.fas.org/sgp/crs/mideast/RL33533.pdf>.
- 76 *Id.* at 11. In late 2014, at the height of ISIS terrorist activities, the United States sold Saudi Arabia an Airborne Warning and Control System worth \$2 billion and a Patriot Air Defense System with Patriot Advanced Capability (PAC)-3 Missiles worth \$1.75 billion. *Id.*; *ISIS Fast Facts, supra* note 3; Press Release, Saudi Arabia – AWACS Modernization Program (Aug. 12, 2014), <http://www.dsca.mil/major-arms-sales/saudi-arabia-awacs-modernization-program>; Press Release, Kingdom of Saudi Arabia (KSA) – Patriot Air Defense System with PAC-3 Enhancement (Oct. 1, 2014), <http://www.dsca.mil/major-arms-sales/kingdom-saudi-arabia-ksa-patriot-air-defense-system-pac-3-enhancement>.
- 77 Blanchard, *supra* note 75, at 15. The Obama Administration “requests appropriations” for this “nominal amount” in its “annual budget resources, which permits Saudi Arabia to receive a discount on the millions of dollars worth of training it purchases through the Foreign Military Sales program. *Id.*
- 78 *Islamic State: Where does Jihadist group get its support?*, BBC (Sept 1, 2014, 5:45 PM), <http://www.bbc.co.uk/news/world-middle-east-29004253>.
- 79 Batha, *supra* note 9 (explaining that ISIS typically sells its sex slaves to neighboring Middle Eastern countries – including Saudi Arabia); Blake, *supra* note 37 (explaining Saudi Arabian citizens help smuggle and sell organs harvested by ISIS).
- 80 §2339A.
- 81 Charles Doyle, *Terrorist Material Support: An Overview of 18 U.S.C. 2339A and 2339B*, R41333 CONGRESSIONAL RESEARCH SERVICE (July 19, 2010) at 1, <https://www.fas.org/sgp/crs/natsec/R41333.pdf> [hereinafter *Terrorist Material Support*]; Violent Crime Control and Law Enforcement Act of 1994.
- 82 *Id.*; §2339B.
- 83 *Terrorist Financing, supra* note 1, at 8. The offenses listed in § 2339A are not explicitly terrorist offenses, but rather violent predicate offenses to the federal crime of terrorism. Charles Doyle, *Material Support of Terrorists and Foreign Terrorist Organizations: Expiring Amendments in Brief*, CONGRESSIONAL RESEARCH SERVICE (Sept. 15, 2015) at 4*, available at <http://fpc.state.gov/documents/organization/56101.pdf> [hereinafter *Material Support of Terrorists*]. Offenses include, but are not limited to, conspiracy to commit certain violent crimes overseas, hostage taking, torture, and financing of terrorism. *Id.* For an exhaustive list, see *id.* at 4-5*.
- 84 Material support is defined as “property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, *training*, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, *weapons*, lethal substances, explosives, personnel . . . and transportation.” § 2339A(b)(1) (emphasis added).
- 85 Norman Abrams, *The Material Support Terrorism Offenses: Perspective Derived from the (Early) Model Penal Code*, 1 J. NAT. SEC. L. & POL’Y 5, 6 (2005), available at http://jnslp.com/wp-content/uploads/2010/08/02_ABRAMS_MASTER.pdf; United and Strengthening America by Providing Appropriate Tools Requires to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272. An offense under §§ 2339A or 2339B is serious with a maximum penalty of 15 years confinement or life imprisonment if persons die as a result of the offense. § 2339A(a). The USA PATRIOT Act of 2001 amended these sections to increase the maximum imprisonment term from 10 to 15 years. Abrams, *supra*.
- 86 *Id.* at 30.
- 87 § 2339C.
- 88 § 2339A requires “knowledge or intent.” Abrams, *supra* note 85, at 11 n. 4. Sections 2239B and 2339C also contain the “or,” which permits knowledge alone to be sufficient. *Id.*; §§ 2339B, 2339C.
- 89 Abrams, *supra* note 85, at 11 n. 26.
- 90 See *Humanitarian Law Project*, 561 U.S. 1.
- 91 *Id.* at 21.
- 92 *Stewart*, 590 F.3d at 113 n. 18.
- 93 Justin A. Fraterman, *Criminalizing Humanitarian Relief: Are U.S. Material Support for Terrorism Laws Compatible with International Humanitarian Law?* 46 INT’L L. & POLITICS 399, 416 (2014).
- 94 *Humanitarian Law Project*, 561 U.S. at 29 (showing Congress made this decision regarding the 1994 version of the statute). The TVPA follows this congressional sentiment in that humanitarian aid is not a form of assistance that may be withheld for non-compliance with the Minimum Standards. See Victims of Trafficking and Violence Protection Act of 2000 § 110.
- 95 See Abrams, *supra* note 85, at 9 (showing those typically charged under §§ 2339A and 2339B are individuals acting in their private capacity).
- 96 *Boim v. Quranic Literacy Inst. and Holy Land Found. for Relief and Dev.* 291 F.3d 1000, 1016 (7th Cir. 2002) (stating Congress permits foreign states that are designated as sponsors of terrorism to be sued in the United States court for § 2339A violations). The court agrees with the district court that § 1605(a)(7) implies foreign states may be sued in the United States for acts giving rise to criminal

- liability under § 2339A. *Id.* In coming to this conclusion, the court emphasized a lack of civil liability under any other section lends further justification for the application of section 2339A to the situation at hand. *Id.* (explaining the situation at hand involved the prosecution of a foreign government under 2339A). The court ties section 2339B into the argument stating it provides, not the basis for civil liability, but rather a definition for what Congress intended terrorist activity to include. *Id.*
- 97 Vicki C. Jackson, *Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence*, 35 GEO. WASH. INT'L L. REV. 521, 523 (2003), available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1111&context=facpub>.
- 98 Under § 2339A, training is defined as the “instruction of teaching or designed to impart a specific skill.” *Harold*, 561 U.S. at 21.
- 99 *Supra* text accompanying note 76 (listing types of weaponry the United States sold to Saudi Arabia); Blanchard, *supra* note 75, at 15-18 (detailing high-value arms and security training deals the United States has made with Saudi Arabia from 2010 to 2015).
- 100 § 2339A.
- 101 Lynch, *supra* note 29 (explaining ISIS sex slave markets); Batha, *supra* note 9 (estimating the number of Iraqi women and children enslaved or murdered by ISIS); al-Hassoun, *supra* note 10 (estimating the total number of women and girls ISIS has trafficked); Blake, *supra* note 37 (highlighting ISIS organ trafficking involvement); Hathaway, *supra* note 42 (explaining how ISIS typically harvests organs).
- 102 Clemons, *supra* note 15 (naming foreign officials who believe Saudi Arabia directly supports ISIS); Butt, *supra* note 15 (detailing United States officials who believe Saudi Arabia has providing funding for ISIS).
- 103 *Erga omnes* means the obligations of a state are considered to be ones fulfilled for the community as a whole – including “basic human rights”. Chuang, *supra* note 47, at 460 n. 112.
- 104 *Id.* at 460.
- 105 *See id.*
- 106 Sarah H. Cleveland, *Norm Internationalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1, 73 (2001).
- 107 *Id.*
- 108 Harold Hongju Koh, *Jefferson Memorial Lecture Transnational Legal Process After September 11th*, 22 BERKELEY J. INT'L L. 337, 339 (2004).
- 109 Chuang, *supra* note 47 at 462 (citing Cleveland, *supra* note 106, at 6).
- 110 *Id.*
- 111 Victims of Trafficking and Violence Protection Act of 2000.
- 112 Marwan Muasher, *Reviving U.S. Influence in the Middle East*, N.Y. TIMES (Oct. 17, 2012), http://www.nytimes.com/2012/10/18/opinion/marwan-muasher-reviving-us-influence-in-the-middle-east.html?_r=0. The United States frequently deploys “sanctions to assert its leadership in world affairs” with its presidents often feeling “compelled to dramatize their opposition to foreign misdeeds.” GARY CLYDE HUFBAUER ET AL., ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY 11 (1990). These sanctions are often imposed even when the “likelihood of changing the target country’s behavior seems remote” because the “cost of inaction” (e.g. loss of United States confidence both at home and abroad and proving the United States has the ability to act) is often viewed as “greater than the cost of sanctions.” *Id.* With Saudi Arabia, the United States must weigh this “cost of inaction” with its long-standing working relationship. *See infra* text accompanying note 131 (showing the United States and Saudi Arabia rely on one another for security issues in the Middle East); MASON, *infra* note 120 and accompanying text (explaining the United States and Saudi Arabia have long-term business deals, which include both arms and petroleum). In doing so, it may find the cost of sanction greatly outweighs the “cost of inaction.”
- 113 *Id.* Arabs agree the United States hold “all the cards on the peace process,” yet our leaders appear unable, or unwilling, to “play them.” *Id.*
- 114 *Id.*
- 115 Our history with the Middle East has shown “there is a need for the ‘stick of American sanctions to complement the ‘carrot’ of European critical dialogue and trade.” Tanter & O’Sullivan, *supra* note 51.
- 116 Chuang, *supra* note 47, at 459.
- 117 Victims of Trafficking and Violence Protection Act of 2000 § 110(d) (4).
- 118 2014 TIP REPORT, *supra* note 13, at 333, available at <http://www.state.gov/documents/organization/226848.pdf>. The Government has been issuing these reports for the past fourteen years. *Id.* at 7, available at <http://www.state.gov/documents/organization/226844.pdf>.
- 119 If a country is not a “State Party” to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, then little motivation to comply with the Minimum Standards will likely exist. *See* 2014 TIP REPORT, *supra* note 13, at 10 (listing Japan, Nepal, Pakistan, and many others as countries that are not States Parties to the Protocol). However, Saudi Arabia is a “State Party” to the Protocol and a failure to make a concerted effort to become compliant with the Minimum Standards jeopardizes its ability to obtain “nonhumanitarian, nontrade-related foreign assistance” from the United States. *Id.* (showing Saudi Arabia is not on this list meaning it is a “State Party”); Victims of Trafficking and Violence Protection Act of 2000 § 110.
- 120 *See* Press Release, Presidential Determination 2009-29 With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons (Sept. 14, 2009), <http://www.state.gov/j/tip/rls/other/2009/129276.htm>; Press Release, Presidential Determination 2010-15 With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons (Sept. 13, 2010), available at <http://www.state.gov/j/tip/rls/other/2010/147148.htm>; Press Release, Presidential Determination 2011-18 With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons (Sept. 30, 2011), available at <http://www.state.gov/j/tip/rls/other/2011/175577.htm>; Press Release, Presidential Determination 2012-16 With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons (Sept. 14, 2012), <http://www.state.gov/j/tip/rls/other/2012/197803.htm> [hereinafter Presidential Determination 2012]; Press release,

Presidential Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons (Sept. 17, 2013), *available at* <http://www.state.gov/j/tip/rls/other/2013/217567.htm> [hereinafter Presidential Determination 2013]; Presidential Determination 2014, *supra* note 16. Archived Presidential Determinations with regards to human trafficking end in 2009.

- 121 The United States' relationship with Saudi Arabia dates back to the Second World War. *Awkward relations*, *supra* note 74. President Franklin Roosevelt met with Abdul Aziz, Saudi Arabia's founding king, and created a strong alliance. *Id.* The United States provided security, and, in return, Saudi Arabia provided us with oil. *Id.* These shared interest have since eroded. *Id.* The United States is "producing more of its own oil, natural gas, and liquefied natural gas than ever." Karim Rahemtulla, *World Manipulated Into Buying Saudi Oil*, WALL ST. DAILY (Nov. 7, 2014), <http://www.wallstreetdaily.com/2014/11/07/u-s-saudi-arabia-oil/>. Because of this, Saudi Arabia has lowered its prices for oil export making it cheaper for the United States to import foreign oil than it is to use its own. *Id.* Despite this, United State oil supplies are plentiful with domestic refineries "overwhelmed with supply." *Id.* While it has never been the goal to become energy dependent, the United States need not rely on Saudi Arabia for oil like it did in the '40s. *Id.* Becoming self-sufficient would cause significant consequences for the Saudi Arabian economy, which relies on the petroleum sector for roughly 80% of budget revenues and 90% of export earnings. ROBERT MASON, FOREIGN POLICY IN IRAN AND SAUDI ARABIA: ECONOMICS AND DIPLOMACY IN THE MIDDLE EAST 66 (2015). The US-Saudi relationship is further complicated by long-term arms deals, such as the one agreed upon in 2010 for \$60 billion, which maintains a "strong alliance against Iran" and secures up to 75,000 jobs." *Id.* at 69. These are important considerations that might justify waiving sanctions against Saudi Arabia for the foreseeable future.
- 122 See *supra* note 112 and accompanying text (stating the United States relies on sanctions to convey its ability to act within the global sphere).
- 123 Chuang, *supra* note 47, at 462 (stating sanctions must meet three conditions to "achieve consistency with international law principles").
- 124 In 2014, Algeria, Thailand, Central African Republic, Saudi Arabia, the Gambia, Kuwait, Uzbekistan, Papua New Guinea, Malaysia, Libya, Guinea-Bissau, Mauritania, and Yemen all received a full presidential waiver, while Venezuela, Syria, Russia, Zimbabwe, Cuba, Eritrea, Iran, and Equatorial Guinea did not. Presidential Determination 2014, *supra* note 16. The memorandum does not explain why these Tier 3 countries received such differing treatment from one another. The United States cannot selectively condemn nations "that engage in fundamental rights violations without severely weakening the credibility of its unilateral enforcement efforts." Cleveland, *supra* note 106, at 85.
- 125 Chuang, *supra* note 47, at 462. Another condition would require the United States to apply its "domestic sanctions laws" within the international law framework. *Id.* Implementing either condition may be problematic for the United States as sanctions have proven more a political game than a tool for activism. John Carberry, *EU, US sanctions on Russia: A bold move with a complex tool*, CORNELL UNIVERSITY (July 29, 2014), <http://mediarelations.cornell.edu/2014/07/29/eu-us-sanctions-on-russia-a-bold-move-with-a-complex-tool/>.
- 126 Adding to this discourse, international economics scholars claim there are other conditions to consider. Economic sanctions are widely considered ineffective, but many claim this is because these sanctions do not follow the "nine commandments." Gary Clyde Hufbauer et al., *In Brief: Economic Sanctions Reconsidered*, 3rd edition, PETERSON INSTITUTE (Nov. 2007) at 2, <http://www.iie.com/publications/briefs/sanctions4075.pdf> [hereinafter *In Brief*]. These commandments warn policymakers against biting off more than they can chew. *Id.* Sanctions can only accomplish so much and there is "a weak correlation between economic deprivation and political willingness." *Id.* They also instruct countries to "slam the hammer," but avoid turning the screw. *Id.* In effect, it is important to make the sanction, but its enforcement is unnecessary for it to be effective—especially if the sanctioning country wishes to avoid military escalations. *Id.* Interestingly enough, the commandments claim that economic sanctions are most effective when given to friends, rather than adversaries. *Id.* The reason being they have more to lose both diplomatically and economically. *Id.* This would be very true for Saudi Arabia since the United States consistently provides it both these types of support. See Blanchard, *supra* note 75. Another sound commandment reminds the actor to "choose the right tool for the job." Hufbauer et al., *In Brief*, *supra*, at 2. President George H.W. Bush has admitted sanctions have been a valid interim response until stronger military measures could be taken. *Id.* (citing GEORGE H. BUSH & BRENT SCOWCROFT, *A WORLD TRANSFORMED* (1999)).
- 127 *Id.* at 2; Tanter & O'Sullivan, *supra* note 51 (insisting engagement by way of sanction is only feasible if there are "partners in the target country" that are leaders able and willing to engage with the United States).
- 128 Syria, home to ISIS, has been a Tier 3 country from 2012-2014. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2012) at 332, *available at* <http://www.state.gov/documents/organization/192597.pdf> [hereinafter 2012 TIP REPORT]; U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2013) at 351, *available at* <http://www.state.gov/documents/organization/210741.pdf> [hereinafter 2013 TIP REPORT]; 2014 TIP REPORT, *supra* note 13, at 332. Even though Syria has a long history of human trafficking, it made its way onto the Tier 2 Watch List in 2010 and 2011. 2013 TIP REPORT, *supra*. Despite its fluctuations, Syria was quick to receive sanctions every year since it returned to its Tier 3 status. Presidential Determination 2012, *supra* note 120; Presidential Determination 2013, *supra* note 120; Presidential Determination 2014, *supra* note 16. The Presidential Determinations say little as to why one country on the Tier 3 list is sanctioned yet another is not. See *id.* These inconsistencies, both in rank and provision of waiver, has led Professor Chuang to question the United States' methodologies when it comes to policing human trafficking worldwide. See Chuang, *supra* note 47.
- 129 Beth Harrel, *Malaysia Drops to Tier 3 on the TIP Report, But No Ramifications Are Felt*, HUMAN TRAFFICKING CENTER, <http://humantraffickingcenter.org/posts-by-htc-associates/malaysia-drops-tier-3-tip-report-ramifications-felt/> (last visited Feb. 20, 2015) (stating Malaysia's drop to Tier 3 was regarded, by some, as the country's failure to make a stronger anti-trafficking commitment and, by others, as a failure of the TIP report methodology).
- 130 *Supra* text accompanying note 121 (explaining the United States entered into a \$60 billion arms deal with Saudi Arabia in 2010).
- 131 An estimated 14,500-17,500 people are trafficked in the United States every year. THE CNN FREEDOM PROJECT: ENDING MODERN-DAY SLAVERY, <http://thecnnfreedomproject.blogs.cnn.com/category/the-facts/the-number/> (last visited Feb. 23,

2015). Much of the detail surrounding domestic human trafficking remains unknown. See Steve E. Lize & M. Pippin Whitetaker, *Human Trafficking in the United States: Globalization's Impact on Dispossessed, Dominated, and Discarded Populations*, in URBAN ILLS: TWENTY-FIRST-CENTURY COMPLEXITIES OF URBAN LIVING IN GLOBAL CONTEXTS (Carol Camp Yeakey et al. eds.) (2014). Trafficking within the United States remains largely invisible while it “generates millions of dollars for criminals” and directly benefits legal enterprises. *Id.* at 379. United States trafficking vignettes typically portray victims as foreigners; however, statistics show United States citizens are the highest percentage of victims among both children and adults. *Id.* at 385-86. Despite rampant trafficking within our borders, the United States has remained a Tier 1 country since 2010. 2014 TIP REPORT, *supra* note 13, at 398, available at <http://www.state.gov/documents/organization/226849.pdf>. The United States' status as a first world country, and its continued lack of success in managing trafficking within its border when compared to third world countries, like Saudi Arabia, should make us question whether the TIP Report has objectively accurate measuring standards based upon each country's available resources to combat human trafficking. *Countries of the First World*, NATIONS ONLINE, http://www.nationsonline.org/oneworld/first_world.htm (last visited Feb. 26, 2015); *Countries of the Third World*, NATIONS ONLINE, http://www.nationsonline.org/oneworld/third_world.htm (last visited Feb. 26, 2015).

132 *Supra* text accompanying note 52 (explaining the TIP committee works closely with nations willing to make concerted efforts to reduce or eliminate trafficking within their borders).

133 *Supra* text accompanying note 128 (showing Syria has randomly fluctuated over the years between Tier 2 Watch List and Tier 3).

134 As President Obama has encouraged at the U.N. Security Council Summit on Foreign Terrorist Fighters, it is important that nations and international communities come together to “confront the real and growing threat of foreign terrorist fighters.” Press Release, Remarks by the President at U.N. Security Council Summit on Foreign Terrorist Fighters (Sep. 24, 2014, 3:11 PM), available at <http://www.whitehouse.gov/the-press-office/2014/09/24/remarks-president-un-security-council-summit-foreign-terrorist-fighters>. With terrorism and human trafficking so closely linked, a coming together of Saudi Arabia's neighboring countries that are making efforts to meet Minimum Standards, such as Iraq, Jordan, United Arab Emirates, and Oman (all Tier 2 countries), could fulfill President Obama's desire to confront and combat terrorist groups. 2014 TIP REPORT, *supra* note 13, at 62, available at <http://www.state.gov/documents/organization/226844.pdf>.

135 First and foremost, programs should focus on educating law enforcement about human trafficking issues. Heather J. Clawson et al., *Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned*, CALIBER (Dec. 2006) at 54, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf>. For example, the TIP Report committee could provide training or educational tools to Tier 3 or Tier 2 Watch List countries that seem willing to make efforts to become compliant, but have no idea where to start. If education efforts are rolled into law enforcement training in the offending country, the new policies could seamlessly mesh with that country's legal framework. This increased awareness has been shown to help law enforcement recognize areas that need improvement to better identify trafficking crimes and support victims. *Id.* In addition, new programs should also encourage collaboration at all levels of the offending country's government and law enforcement agencies.

Id. at 57. In many developing countries, where trafficking problems are more rampant, poor populations are at the mercy of their government; if their government does not provide a service or policy, there is nothing these individuals can do to implement them on their own. See *Making Globalization Work for the Poor*, THE WORLD BANK, <http://live.worldbank.org/making-globalization-work-poor> (discussion transcript). Therefore, encouraging the offending country's government to find protocols that are culturally appropriate will be vital to increasing the likelihood protocols are effective and readily adopted by law enforcement agencies throughout the country. Clawson et al., *supra* note 135.

136 In early 2015, the Saudi prince re-listed his 10,500 square foot apartment in Manhattan for sale at \$48.5 million. Katherine Clarke, *Saudi prince lists Mahattan apartment with bullet-proof panic rooms and aquarium for \$48.5M*, DAILY NEWS (Feb. 26, 2015, 1:00 PM), <http://www.nydailynews.com/life-style/real-estate/saudi-prince-lists-manhattan-apartment-48-5m-article-1.2130322>. The prince has an estimated net worth of \$22.9 billion. #34 Prince Alwaleed Bin Talal Al Saud, FORBES (last visited Apr. 11 2015), <http://www.forbes.com/profile/prince-alwaleed-bin-talal-alsaud/>.

137 A global proclamation would play into the “saving face” aspect that typically motivates countries to avoid public behavioral sanctions. See Koh, *Why Do Nations*, *supra* note 71.

138 Presidential Determination 2014, *supra* note 16.

139 *Supra* text accompanying note 50 (explaining factors considered when determining whether a country have complied with the Minimum Standards).

140 2014 TIP REPORT, *supra* note 13, at 333, available at <http://www.state.gov/documents/organization/226848.pdf>.

141 Blake, *infra* note 37 (explaining how ISIS relies on organ trafficking); Hathaway, *infra* note 42 (shedding light on ISIS organ trafficking methods); Lynch, *infra* note 29 (detailing ISIS sex trafficking crimes); *infra* text accompanying note 35 (showing prices at which women and children are typically sold by ISIS).

142 *Supra* text accompanying note 51 (explaining that taking action through sanctions is better than taking no action at all).

143 The war chest is an estimated \$2 billion in total assets, including an “ever-expanding weapons cache.” *How ISIS War Chest May Be \$2B and Growing*, NBC NEWS (June 16, 2014, 10:59 AM), <http://www.nbcnews.com/storyline/iraq-turmoil/how-isis-war-chest-may-be-2b-growing-n132246>.

144 §§ 2339A, 2399B; Blanchard, *supra* note 75, at 9 (stating the United States sells Saudi Arabia education and training programs at a significant discount of \$10,000); *supra* text accompanying note 79 (listing the pieces of weaponry the United States sold to Saudi Arabia); *supra* text accompanying note 121 (stating the United States entered into a \$60 billion arms deal with Saudi Arabia in 2010).

145 Muasher, *supra* note 112 and accompanying text (noting the United States typically uses sanctions to assert its power); *supra* text accompanying notes 135 (explaining what new anti-trafficking programs should include).



2016 Outstanding Law Students

Selected by law schools as their outstanding students, these talented and dedicated award winners are among the best and brightest. They are honored for academic achievements and for the impact they have made beyond their classrooms. The women listed below have worked to further the advancement of women in society and promoted the concerns of women in the legal profession with tenacity and enthusiasm that inspired their fellow law students and their professors.

NAWL salutes these individuals who have begun working early in their careers to promote justice for women. We encourage them to continue making a difference as their careers blossom.

Megan Admire
Rutgers School of Law

Allyson Clair Agee
Belmont University College of Law

Rachel Ainsworth
University of Louisville Brandeis School of Law

Amy M. Bailey
Loyola Law School, Los Angeles

Sara E. Block
University of Texas School of Law

Anna Cristina Boyle
University of Connecticut School of Law

Alexis R. Branham
Ohio Northern University Pettit College of Law

Vanessa J. Cavallaro
Touro Law Center

Emily R. Champlin
Golden Gate University School of Law

Claire A. Collins
University of Virginia School of Law

Tara Lynn Dickson
Thomas R. Kline School of Law, Drexel University

Cristine R. Dixon
Wake Forest University School of Law

Kathryn S. Dunnam
Mercer University -
Walter F. George School of Law

Alyssa R. Federoff
Duquesne University
School of Law

Meagan Elizabeth Gordon
Georgetown University
Law Center

Julie M. Hedberg
Arizona State University
College of Law

Danielle King
Seton Hall University Law School

Ellen Rachel Kirtner
Case Western Reserve
University School of Law

Elizabeth Littlejohn
Valparaiso University Law School

Amy Mathieu
University of Pittsburgh
School of Law

Kaela T. McCabe
Creighton University
School of Law

Molly Marie McDonnell
University of Iowa College of Law

Jean Cho Mosley
Pennsylvania State University,
Dickinson School of Law
(Carlisle Campus)

Nina Nolen
Willamette University
College of Law

Jane O'Reilly
University of Maine
School of Law

Alysha Preston
St. John's School of Law

Cydney L. Reynolds
Samford University Cumberland
School of Law

Hannah Ruth Roberts
Emory University School of Law

Samiyyah Ali
Vanderbilt Law School

Caroline Schurra
Quinnipiac University
School of Law

Penelope Scuder
Pennsylvania State University,
Dickinson School of Law
(University Park)

Markeithia H. Silver
Vermont Law School

Sarah Elizabeth Smith
University of Memphis Cecil
C. Humphreys School of Law

Allison M. Stevenson
Stetson University
College of Law

Leah M. Tabbert
University of Minnesota
Law School

Ashley Tanner
University of South Dakota

Jenny Thoma
West Virginia University
College of Law

Jamie Lynne Thomas
Campbell University Norman
Adrian Wiggins School of Law

Emily Elaine Tichenor
Washington and Lee University
School of Law

Melissa A. Valladares
Rutgers School of Law

Priya J. Walia
University of Cincinnati
College of Law

Katherine M. Watkins
George Washington
University Law School

L. Olivia Wiggins
William & Mary Law School

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Your 2016-2017 NAWL Board

*Incoming President Leslie Richards-Yellen
well-versed in diversity issues*

Marsha L. Anastasia's year as NAWL's President came to an end at NAWL's 2016 Annual Meeting and Awards Luncheon on July 14. Taking the helm is Leslie Richards-Yellen, director of Inclusion – Americas, Hogan Lovells. She is a public finance attorney with more than 30 years of experience as in-house counsel and in private practice. A member of NAWL since 2008, Richards-Yellen served as program committee co-chair from 2008 to 2013, and then as vice president from 2014 to 2015. Prior to Hogan Lovells, she practiced in public finance at Hinshaw & Culbertson LLP serving borrower's, underwriter's, issuer's and workout counsel. She also served as the firm's chief diversity and inclusion officer and as chair of its Diversity Committee and a co-chair of the Attorney Life

Committee. She was responsible for implementing firm-wide diversity initiatives developing best practices and supporting recruitment efforts for the firm. Passionate about increasing diversity in the workplace, she also is a member of the Board of Directors for the Chicago Committee on Minorities in Large Law Firms, and she serves on the Advisory Board for the Institute for Inclusion in the Legal Profession. In 2014, Richards-Yellen was appointed to a two-year term on the State of Illinois Supreme Court's Commission on Professionalism (ISCCP). She also serves as chair of the ISCCP's Diversity Committee.

Anastasia is Vice President, Deputy General Counsel – The Americas at Pitney Bowes Inc. She is



Photo: Marty Morris/MPM Photography LLC

responsible for legal affairs of business unit operations in the U.S., Canada, and Latin America. Prior to joining Pitney Bowes in 1997, she practiced at Day, Berry & Howard (now Day Pitney LLP) in Hartford and Stamford, Conn. Anastasia also is a member of the Pitney Bowes Women's Initiative Leadership Team. She serves on the advisory committee for Thomson

Reuters' Transforming Women's Leadership in the Law. She served as vice president of NAWL for 2013-2014, was NAWL's treasurer in 2012-2013, a recipient of NAWL's Virginia S. Mueller Outstanding Member Award in 2008 and served as chair of the 2008 NAWL General Counsel Institute. You can see Richards-Yellen's acceptance speech at <https://www.youtube.com/watch?v=z6G4UdRVmiY> ■



Above: NAWL's 2016-17 President, Leslie Richards-Yellen, left, and Immediate Past President, Marsha L. Anastasia. Opposite page, seated from far left: Assistant Secretary Sharon E. Jones, president and founder of Jones Diversity Inc.; Secretary Karen S. Morris, vice president, general counsel for USA's Property and Casualty Group; Immediate Past President Marsha L. Anastasia, vice president, deputy general counsel – The Americas at Pitney Bowes Inc.; President Leslie Richards-Yellen, director of inclusion – Americas, Hogan Lovells; President-Elect Angela Beranek Brandt, partner with Larson King, LLP; Treasurer Kristin D. Sostowski, director (partner) with Gibbons P.C.; DeAnna D. Allen, partner in Cooley LLP's Washington D.C. office. Standing from far left: Sheila M. Murphy, senior vice president and associate general counsel at MetLife; Lauri A. Damrell, partner in the employment group at Orrick, Herrington & Sutcliffe LLP; Carol Robles-Roman, president and CEO of Legal Momentum; Kristin L. Bauer, principal with Jackson Lewis PC and the executive editor of WLJ; Peggy Steif Abram, partner in the Minneapolis office of Faegre Baker Daniels LLP; Diane E. Ambler, partner in the Washington D.C. office of K&L Gates LLP; Sandra S. Yamate, chief executive officer of the Institute for Inclusion in the Legal Profession; Elizabeth A. Levy, counsel at the Massachusetts Institute of Technology; Jennifer A. Champlin, director of human resources for Wal-Mart Stores Inc. and Leslie D. Minier, partner and the chief diversity officer at Katten Muchin Rosenman LLP. Not pictured: Vice President Sarretta C. McDonough, of counsel in the Los Angeles office of Gibson, Dunn & Crutcher; Susan (Susie) L. Lees, executive vice president, general counsel and secretary of Allstate Insurance Company; Suzan (Sam) A. Miller, vice president, corporate secretary and deputy general counsel of Intel Corporation; Suzette Recinos, chief legal officer and corporate secretary for Daymon Worldwide.

Photo: Marty Morris/MPM Photography LLC

NAWL'S 2016 HONOREES WORK TIRELESSLY FOR DIVERSITY



From left: Immediate Past President Marsha L. Anastasia presents the award to Megan Alvarez, Heidi Swartz and Karen Berenthal of Facebook, Inc.

Photo: Marty Morris/MPM Photography LLC

The President's Award: Facebook, Inc. Legal Department

The National Association of Women Lawyers President's Award is presented each year to an organization that has championed programs to retain, promote and advance women lawyers.

By Marsha L. Anastasia, NAWL Immediate Past President

We're all aware of Facebook, Inc.'s COO Sheryl Sandberg and the movement she created with the publication of her book *Lean In* to encourage even deeper levels of engagement and leadership by women in the workplace. What many of us may not know is how the power of that message, and Facebook, Inc.'s culture of inclusion, is reflected in the roles of women in its legal department. With the presentation of the 2016

President's Award, NAWL recognized and honored that message and culture as a model for our profession.

Facebook, Inc. has an impressive number of women in leadership positions within their global legal department, which includes Facebook, Inc., WhatsApp and Oculus:

- 50 percent of associate general counsel are women
- 54 percent of directors are women

- 25 percent of deputy general counsel are women
- 50 percent of general counsel of subsidiaries are women

Facebook, Inc. is a sponsor, member and active participant in Corporate Counsel Women of Color and the California Minority Counsel Program.

Facebook, Inc. also has numerous engagements with female outside counsel. The legal group in general, and Heidi Swartz (who accepted the award) in particular, not only promote and mentor women and diverse lawyers at Facebook, Inc., but do so with the firms with which they work. Swartz's consistent efforts to translate Facebook, Inc.'s culture of transparency, and recognition of individuals for their work, beyond Facebook, Inc. is unique and deeply valued by those who have the good fortune to work with her.

Facebook, Inc. takes several steps internally to promote and increase diversity overall at Facebook, Inc., including:

- Doing salary reviews to ensure that salaries are fair when the data is cut by categories, like race and gender.
- Offering four months of parental leave for new moms and dads.
- And of course, welcoming employees to join Lean In Circles to share experiences about being a woman in the workplace.

Facebook, Inc. is also working to roll out their diversity programs globally, and the legal team at Facebook, Inc. is one of the most can-do and committed teams in this space. For example, when the management team extended the parental leave policy worldwide, Swartz and her team worked hard to make sure the program would work in over 30 jurisdictions around the world.

In support of this initiative, Facebook, Inc.'s CEO, Mark Zuckerberg, took paternity leave and publicly shared photos of himself with his wife and baby. He contributed to a very public dialog on paternity leave and balance, which assists in breaking down biases about having children and taking parental leave.

Clearly, Facebook, Inc., their management team and their Legal Department are doing amazing things to support working women and women lawyers, more specifically.

The President's Award was accepted by Heidi Swartz, director and associate general counsel, labor & employment, who leads the Employment Law Group in Facebook, Inc.'s legal department. ■



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Arabella Babb Mansfield Award: Vanita Gupta

The Arabella Babb Mansfield Award is the oldest award given by NAWL in recognition of professional achievement, positive influence and valuable contribution to women in the law and in society. The award is named after the first woman admitted to a state bar in the United States.

Vanita Gupta serves as Principal Deputy Assistant Attorney General and Head of Civil Rights at the U.S. Department of Justice (DOJ). Under Gupta's leadership, the Division works in a number of areas, including advancing constitutional policing and other criminal justice reforms, promoting disability rights, protecting the rights of LGBTQI individuals and combating discrimination in education, housing, lending and voting.

She is a longtime civil rights lawyer. Prior to joining DOJ, she was deputy legal director of the American Civil Liberties Union and director of its Center for Justice. While managing a robust litigation docket, Gupta also worked with law enforcement, departments of corrections and across the political spectrum to promote greater fairness and trust in our criminal justice system. From 2006-2010, she was a staff attorney with the American Civil Liberties Union's Racial Justice Program. She won a landmark settlement on behalf of immigrant children detained in a privately run prison in Texas that led to the end of "family detention" at the facility. Prior to that, she worked at the NAACP Legal Defense Fund where she successfully led the effort to overturn the wrongful drug convictions of 38 individuals in Tulia, Texas, who were ultimately pardoned by Governor Rick Perry. She then helped negotiate a \$6 million settlement on behalf of her clients. Gupta also served for several years as an adjunct clinical professor at NYU School of Law,



NAWL President Leslie Richards-Yellen, left, presents the Arabella Babb Mansfield Award to Vanita Gupta.

Photo: Marty Morris/MPM Photography LLC

where she taught and oversaw a civil rights litigation clinic.

In addition to NAWL's Arabella Babb Mansfield Award, she has won numerous awards for her advocacy and has been quoted extensively in national and international media on civil rights issues. Gupta is a magna cum laude graduate of Yale University and received her law degree from New York University School of Law. ■



Sheri Lynn Johnson, center, with her daughters Rafaela Henry, left, and Kalena Henry.

Photo: Marty Morris/MPM Photography LLC

M. Ashley Dickerson Award: Sheri Lynn Johnson

The M. Ashley Dickerson Diversity Award is named after trailblazer Mahala Ashley Dickerson, NAWL's first African-American President (1984-85), and is presented to a lawyer who has promoted and advanced diversity in the legal profession.

Sheri Lynn Johnson, Associate Dean for Public Engagement and the James and Mark Flanagan Professor of Law at Cornell Law School is the 2016 recipient of the M. Ashley Dickerson award.

An expert on the interface of race and issues in criminal procedure, Johnson is Assistant Director of the Cornell Death Penalty project, an initiative to foster empirical scholarship on the death penalty, offer students an opportunity to work with practitioners on death penalty cases and to provide information and assistance for death penalty lawyers.

After her graduation from Yale Law School in 1979, Professor Johnson worked for a year in the Criminal Appeals Bureau of the New York Legal Aid Society, and then joined the Cornell Law School faculty in 1981, where she became the first woman to receive tenure. Professor Johnson co-founded the Cornell Death Penalty Project in 1993.

She currently teaches constitutional and criminal law, and supervises the post-conviction litigation and capital trial clinics. You can see Johnson's acceptance speech at https://www.youtube.com/watch?v=7yJg6A297_M. ■

Lead By Example Award: Alan Bryan, Walmart

The Lead by Example Award is presented to a male lawyer who is a leader in his law firm, company, government-unit or public interest entity and supports the advancement of women. He works in a company, firm or government/public interest unit that demonstrably supports such advancement. In his department, measurable metrics support the award.

This year, NAWL salutes Alan Bryan, senior associate general counsel, Legal Operations & Outside Counsel Management, Wal-Mart Stores Inc., for his continuing work to promote women lawyers. A long-time member of NAWL, Bryan is a founder of the NAWL Challenge Club, which facilitates professional relationships between corporate counsel and women lawyers.

Of the NAWL Challenge Club, Bryan told *insidecounsel.com* in May 2015, “We want to build personal and professional relationships because relationships lead to trust; trust leads to that first work assignment; that first work assignment leads to a book of business; that leads to empowerment of a woman attorney in a law firm, and empowerment leads to partnership and leadership positions.”

At Walmart, Bryan heads the Office of Outside Counsel Management for Legal Operations. He oversees operations and processes and relationships with all company law firms nationwide. Through the lens of performance, cost-saving and diversity, his office reviews and improves legal department processes, policies, and costs and procures and evaluates law firms and legal department vendors.

He also has served as one of his company’s representatives in the Inclusion Initiative, a collaborative effort of companies committed to an immediate and measurable increase in the retention and use of minority- and women-owned law firms by America’s largest corporations.

In 2014, Bryan helped develop an International Integration program to incorporate best practices of Walmart’s U.S.-based legal department in its Latin American markets. He also worked



NAWL President-Elect Angela Beranek Brandt presents the Lead By Example Award to Alan Bryan of Walmart.

Photo: Marty Morris/MPM Photography LLC

with colleagues to create a diversity initiative aimed at changing the landscape of the legal profession in Latin America.

He serves as a liaison and frequent speaker for many legal department strategic partners, affinity groups and diverse bar organizations across the country.

The Federation of Defense and Corporate Counsel (FDCC), initiated Bryan into membership in 2013, where he serves on the Diversity Committee.

He is an active participant in the National Association of Minority and Women Owned Law Firms (NAMWOLF). He serves on the NAMWOLF In-House Advisory Board and as an inaugural mentor in its Emerging Leaders Program.

He has served as a committee member for the Defense Research Institute, has served on the ABA Commission on Diversity & Inclusion 360 since 2015, and participates in Walmart’s Medical-Legal Pro Bono Partnership with Arkansas Children’s Hospital.

He graduated cum laude from the University of Arkansas School of Law where he served as managing editor of the *Arkansas Law Review*. You can see Bryan’s acceptance speech at <https://youtu.be/jYYVIqp8L18>. ■

What is NAWL Challenge Club?

On March 15, 2016, the National Association of Women Lawyers® (NAWL) announced its One-Third by 2020 Challenge, calling for an increase in the representation of women across five different areas of the law. NAWL challenges the legal profession to meet the following goals by the year 2020:

- Fortune 1000 General Counsels are at least one-third women
- Each class of new law firm equity partners is at least one-third women
- Annual law firm lateral hires (both partners and associates) are at least one-third women
- Law school Deans are at least one-third women; and
- Diverse female attorneys (including women of color and LGBTQI attorneys) increase in every segment of the legal profession by at least one-third

According to the U.S. Bureau of Labor Statistics, as of 2015 the U.S. legal profession is 33% women, yet women are not represented at the top levels of practice in the same percentages.

- Women comprise only 18% of AmLaw 200 law firm equity partners. (NAWL's Ninth Annual Survey on Retention and Promotion of Women in Law Firms, October 2015)
- Women comprise 24% of Fortune 500 General Counsel and 21.5% of the Fortune 1000. (Minority Corporate Counsel Association's 16th Annual General Counsel Survey, December 2015)
- Women comprise 30% of deans of ABA accredited law schools. ("Female Deans Taking Charge," National Law Journal, June 22, 2015)

For the past 10 years, NAWL has tracked the professional progress of women in law firms and in this past year's survey found the numbers to be virtually the same as they were a decade ago.

This new challenge calls for dramatic change because if the pace is not quickened, women equity partners will not even reach the 2006 goal of 30% until the year 2181. (NAWL's Ninth Annual Survey on Retention and Promotion of Women in Law Firms, October 2015).

Criteria for Corporate Legal Department Membership:

- Dedicated participation in club activities by legal department decision-makers
- Commitment to increasing the number of women equity partners in law firms
- Agreement to allow a limited number of pitch sessions by law firm club participants
- Consideration of law firm club participants for new work
- Willingness to encourage succession planning that includes law firm club participants

Criteria for Law Firm Membership:

- NAWL Sustaining Sponsorship
- Commitment to increasing the firm's women leadership and equity partners
- Identification of top female talent to participate in club activities
- Investment in participants to allow travel to club events
- Agreement to provide transparency within law firm for equity partnership requirements

For information about joining NAWL Challenge Club, contact Caitlin Kepple at kepple@nawl.org or 312-988-5861.

Virginia S. Mueller Award: Beth K. Baier, LTC Mary E. Card-Mina, Lindsay G. Carlson

The Virginia S. Mueller Outstanding Member award is presented to NAWL members for exemplary contributions to NAWL.

Beth K. Baier is principal counsel, Media Distribution, The Walt Disney Company. A member of NAWL since 2009, she has been on the planning committee for NAWL's General Counsel Institute since 2009, serving as marketing co-chair, sponsorship chair, vice chair and, last year, as chair of GCI 11. She also served on the sponsorship subcommittee for the NAWL Mid-Year Meeting & Awards Luncheon in Los Angeles.

In addition to her position with Disney, she is an adjunct professor of law, supervising the corporate

counsel and the entertainment, sports and intellectual property internship programs at San Diego School of Law. A graduate of University of San Diego School of Law, she was lead articles editor of the San Diego Law Review.

Baier clerked for District Judge June L. Green in Washington, D.C. She spent several years as a litigation associate with O'Melveny & Myers in Los Angeles and then moved to Warner Brothers Entertainment, rising to senior vice president.

She received a Women of Distinction award from the Women Lawyers Association of Los Angeles, a Leading Women in Home Entertainment award from Home Media Magazine and a Lifetime Excellence award from her alma mater, University of Wisconsin – Eau Claire.

LTC Mary E. Card-Mina is staff judge advocate, U.S. Army, Communications-Electronics Command (CECOM), Aberdeen Proving Ground, Md. She has been a member of NAWL since 2009, serving as chair of the Book Club Planning Committee, founder of the NAWL Women in the Military Affinity Group and has served on the Annual Planning Committee for 2 years.

She is the highest-ranking attorney service member at Aberdeen Proving Ground. During her second year at The Catholic University of America, Columbus



From left: NAWL Treasurer Kristin Sostowski with LTC Mary E. Card-Mina and Lindsay G. Carlson.

Photo: Marty Morris/MPM Photography LLC

School of Law, she interned with the Army JAG, or Judge Advocate General's Corps, in Germany at the U.S. Army Claims Service. She worked in the tort law branch examining accident and death cases with the Army as her client.

She applied for active duty in her third year of law school and was accepted into the JAG Corps. After graduating and passing the bar exam, she attended legal training at the Judge Advocate General's Legal Center and School. Card-Mina deployed to Iraq in 2005 as Brigade Judge Advocate with the 2nd Brigade Combat Team, Fourth Infantry Division.

While in Iraq, she volunteered to work on a project to rebuild a girl's school.

Prior to becoming the staff judge advocate at CECOM, Card-Mina served as the deputy staff judge advocate at Fort Sill, Okla., for an office of more than 80 military and civilian personnel. She also served as the chief of recruiting for the Army JAG Corps.

Lindsay G. Carlson is a partner at Alston & Bird LLP. A member of NAWL since 2007, she has served as chair of P2P San Francisco; Program Subcommittee chair, Mid-Year San Francisco; and Sponsorship Subcommittee co-chair, P2P Chicago. She also serves on both the Mid-Year Meeting and Annual Meeting planning committees annually.

Her practice at Alston & Bird focuses on complex business disputes, including products liability matters and the defense of consumer class actions. Carlson has extensive experience defending against claims brought under California's Unfair Competition Law, Consumer Legal Remedies Act and False Advertising Law.

She has been named as a Rising Star by Southern California Super Lawyers every year since 2013. She earned her J.D. at UCLA in 2004 and her B.A. at Gustavus Adolphus College (Minnesota) in 2001, with majors in political science and French. Prior to joining Alston & Bird, she served as a law clerk to Justice Paul H. Anderson of the Supreme Court of Minnesota during the 2004-2005 term. ■



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BRIDGING THE GAP: HIGH-LIMIT DISABILITY INSURANCE

Disability income protection hasn't kept pace with salaries for high-income professionals

By Gary F. Terry

Highly compensated attorneys have a financial problem that becomes more serious each year: Should these individuals become disabled, there is a gaping hole in their disability protection.

Here is an example of the issue: A partner in a large law firm who earns \$1 million per year is diagnosed with multiple sclerosis and goes out on disability indefinitely. Her disability plan will pay 60 percent of earnings to a maximum benefit of \$25,000 per month for an annual benefit of \$300,000. This means her original predisability, after-tax, take-home pay of \$650,000 (\$1 million

minus 35 percent tax) is now \$300,000. Her disability income benefit is 54 percent less than what she took home after-tax before becoming disabled.

The disability insurance market for earners in this group has been frozen for more than a decade. While salaries, annual bonuses and long-term incentive payments have increased, the available amount of disability income protection hasn't kept pace.

The irony is that the more income these individuals earn, the less disability coverage they can obtain as a percentage of their total compensation. Thus, the gap

between disability coverage and the benefit domestic insurance companies are willing to provide continues to widen.

Today, the domestic disability income insurance market is concentrated in a handful of companies that write most of this business. Their actuaries develop the guidelines and set the rules on how much coverage they will write based on an individual's income. These are known as the "issue and participation limits," which is usually an amount based on replacing 60 percent of earnings with a maximum monthly benefit of \$15,000 to \$25,000. The only exceptions are the largest legal and accounting firms where they will write a combination of group and individual supplemental coverage up to \$40,000 or more per month. Unfortunately, the maximum benefit amounts available tend to be nearly identical from one insurance company to another. In addition, the individual supplemental coverage is expensive and cumbersome to administer.

Individual supplemental coverage oftentimes presents its own set of problems domestically, as well as internationally. Supplemental coverage definitions for total and partial disability sometimes differ from the base group contract. This can and does result in claims conflicts due to these inconsistencies frequently resulting in a claim being looked at as a total disability by the group contract and a partial disability by the supplemental contract. This is many times the case even when group coverage and supplemental coverage is provided by the same carrier. Worse yet, is that individual contracts may have different definitions of disability depending upon the state in which the insured resides. If the firm has international offices, coverage is often

not available for lawyers living outside the United States, which means lower benefit levels for international colleagues.

Over the last few years, there have been efforts at creating new products to help solve the widening gap problem. This was first initiated with Lloyd's of London for highly compensated professional athletes and entertainers. Then came a migration to a multi-life guaranteed insurance product for highly paid white-collar professionals. These products were first offered in 2007 and are now commonplace in the multinational law firm community. There are, however, many products offered that have the same problems as their traditional domestic counterparts. And benefit consultants and brokers are ill-prepared to understand the issues that arise during a claim since they do not specialize in this area and don't understand the complexities of this marketplace.

Using the example of the partner who is diagnosed with MS, we can see how the amount of disability income protection can be improved with a specialty product. The partner with MS earning \$1 million per year can be protected up to 60 percent of earnings $\$1 \text{ million} \times .60 = \$600,000 \div 12 \text{ months} = \$50,000$ per month (60 percent income replacement) versus the existing amount of $\$300,000 \div 12 \text{ months} = \$25,000$ per month (30 percent income replacement).

A substantial increase in the amount of disability coverage available for highly compensated lawyers has been long overdue. New products offer an exciting and refreshing solution to solving this old problem. As one might expect, the renewed energy driving these innovations will undoubtedly produce even more intriguing and beneficial solutions. ■

The irony is that the more income these individuals earn, the less disability coverage they can obtain as a percentage of their total compensation.



Gary F. Terry is executive vice president and managing director of The Westport Group in Braintree, Mass. He has more than 30 years of corporate planning expertise associated with executive benefits. Terry can be reached at gterry@westportgp.com.

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