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CBA

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Special YLS Theme Issue

PROTECTING OUR CHILDREN



CBA RECORD

- 6 Editor's Briefcase**
Lawyer Lincoln: A Lesson in Character
- 8 President's Page**
Someday
- 10 CBA News**
- 20 Chicago Bar Foundation Report**
- 22 Murphy's Law**
- 50 Legal Ethics**
Attorney Advertising and Solicitation
By John Levin
- 51 Ethics Extra**
Sealing an Entire Court File is Never Appropriate
By Kimberly Gleeson
- 52 LPMT Bits & Bytes**
Sore Thumbs in the Paperless Office
By Catherine Sanders Reach
- 54 Nota Bene**
Lessons from Creative Nonfiction
By Amy Cook
- 56 Summary Judgments**
Jasmine V. Hernandez reviews the 2016 Bar Show "This Case is a Shamilton"

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CONTENTS

February/March 2017 • Volume 31, Number 2

SPECIAL YLS ISSUE: PROTECTING OUR CHILDREN

- 30 Combatting Trafficking for Sexual Exploitation—
Lawyers are Key**
By Jody Raphael
- 34 Efforts to Combat Child Trafficking in the US—Victims and
Victim-Witnesses**
By Katherine Kaufka-Walts
- 38 If You See Something, Say Something—1-888-373-7888**
By Oliver Khan
- 40 1910 Law Still Used as a Prosecution Tool—
The "Mann Act" Lives**
By Adam J. Sheppard
- 44 The Work of CASA with Children in Foster Care—Chicago
Volunteers Create a Better Future**
By Jason Marcus Waak
- 46 Mercy Home for Boys and Girls—Helping Youth in Crisis
Since 1887**
By Katy Sikich and Tricia A. Rooney



On the Cover

This issue of the **CBA Record** features an untitled painting from a resident of Anne's House, a facility that helps victims of sexual exploitation and human trafficking.

By Adam J. Sheppard

1910 Law Still Used as a Prosecution Tool

The “Mann Act” Lives



The federal government still uses the “Mann Act,” enacted in 1910, as a major tool to combat human trafficking. The Act’s official name is the “White Slave Traffic Act;” however, it is more commonly referred to as the “Mann

Act,” named after its author, Illinois Congressman James R. Mann (he had also practiced as a lawyer in Chicago). The law initially prohibited, *inter alia*, the interstate transportation of women for purposes of prostitution, “debauchery,” or “any other

immoral purpose.” *See* White–Slave Traffic (Mann) Act, ch. 395, 36 stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424). The broad language of the initial version of the Act allowed the government to prosecute individuals for a wide

array of activity that it deemed “immoral.”

Perhaps the most controversial Mann Act prosecution was that of Jack Johnson, the first African-American heavyweight-boxing champion. The case occurred in Chicago in 1913. Johnson was convicted by an all white jury of transporting a white woman from Pittsburgh to Chicago for the “immoral purpose” of having sexual intercourse with her. He had sent her \$75 in travel expenses to make the trip. She was an adult. She admitted that her travels were wholly consensual. She was also a “spurned lover” of Johnson’s and testified against him. See Kevin R. Johnson, *The Legacy of Jim Crow: The Enduring Taboo of Black-White Romance Dear Senator: A Memoir by the Daughter of Strom Thurmond*, by Essie Mae Washington-Williams & William Stadiem. New York: Regan Books, 2005. Pp. 223., 84 Tex. L. Rev. 739, 752 (2006); See also *Johnson v. United States*, 215 F. 679 (7th Cir. 1914). Many commentators viewed the prosecution as a pretext for targeting interracial relationships.

Historians have also viewed other celebrity Mann Act prosecutions as politically motivated. In 1944, Charlie Chaplin was charged with a Mann Act violation stemming from a paternity suit. Chaplin was later acquitted. “Some believe the case was motivated by Chaplin’s left-of-center political views.” Eric Weiner, *The Long, Colorful History of the Mann Act*, <http://n.pr/1zoDfHV> (last visited 2/6/17). J. Edgar Hoover, who instigated the prosecution, had called Chaplin one of Hollywood’s “parlor Bolsheviki.” *The Mann Act*, <http://to.pbs.org/2kkG5uJ> (last visited 2/7/17).

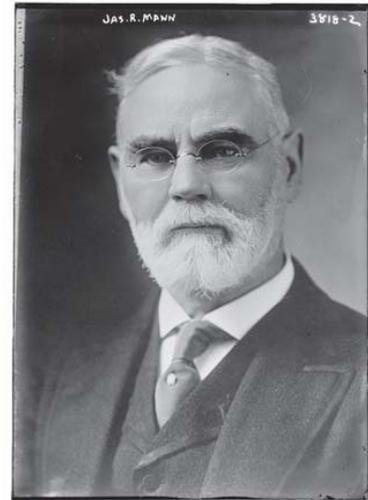
In 1961, Chuck Berry was twice convicted of a Mann Act violation. (His first conviction was overturned on appeal and he was reconvicted at his second trial). Berry was convicted of transporting an underage Apache girl across state lines for an “immoral purpose.” Berry had apparently taken the girl on tour with him. According to Berry, the woman had claimed to be 21 years old. 1961: *Chuck*

Berry goes on trial for the second time, <http://bit.ly/2k12Tyv> (last visited 2/7/17). She only complained to authorities after she had a falling out with him. Berry served about 20 months in prison. Among the songs that he wrote from prison were “No Particular Place to Go” and “You Never Can Tell.” *Id.*

In 1986, Congress made the statute gender neutral (it applies regardless of whether men or women are transported), added further protections for minors, and deleted any reference to the ambiguous terms “debauchery” or “immoral purposes.” As currently constituted, the Act criminalizes knowingly transporting “any individual” with the intent that the individual engage in prostitution or “any sexual activity for which any person can be charged with a criminal offense.” 18 U.S.C. §§ 2421–2424. The law also criminalizes knowingly persuading, inducing, enticing, or coercing any individual to travel in interstate or foreign commerce for the aforementioned purposes. *Id.* at § 2422. It also provides for enhanced penalties—specifically a mandatory minimum of 10 years’ imprisonment—when minors are transported. *Id.* at §§ 2242, 2243.

Even under its current, narrower, version, the Mann Act remains a prevalent prosecution tool. In 2008, prosecutors who investigated former Governor Elliot Spitzer used the Mann Act to prosecute individuals associated with the Emperor’s Club, the prostitution service that Mr. Spitzer allegedly frequented. (Mr. Spitzer was not formally charged but others were). See Danny Hakim et al., *Spitzer Is Linked to Prostitution Ring*, <http://nyti.ms/2liLlFO> (last visited 2/6/17). In 2015, this author represented an individual in a Mann Act prosecution involving a conspiracy to transport women to the Mission District of San Francisco to work in brothels. In *United States v. Holland*, 381 F.3d 80, 82 (2d Cir. 2004), prosecutors used the Mann Act to charge a Vermont–New York prostitution ring.

Many modern Mann Act prosecutions



Illinois Congressman James R. Mann

stem from online activity, such as chat rooms or postings on Craigslist or backpage.com. See e.g. *United States v. Key*, No. 13 CR 726, 2016 WL 6599933, at *1 (N.D. Ill. Nov. 8, 2016) (“[The defendant] found girls for his prostitution ring through backpage.com.”). Internet-related Mann Act prosecutions often involve an adult attempting to locate a minor for purposes of engaging in sexual activity. See e.g. *United States v. Joseph*, 542 F.3d 13 (2d Cir. 2008). Many times, a law enforcement officer is posing as a minor on the Internet. See also *United States v. Spencer*, No. 2:13-MJ-129, 2013 WL 2417976, at *3 (S.D. Ohio June 3, 2013).

Consent of the individual who travels to engage in the prohibited act is not a defense. *United States Key*, 13 CR 726, 2016 WL 6135666, * 5 (N.D. Ill. 2016). The best defense is typically a mental state defense—i.e., the defendant did not act “with intent that the individual [who was transported] engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense.” §§ 2421–2423.

In cases involving on-line activity, some defendants have argued that they were merely “role-playing;” they never actually would have gone through with the prohibited act in real life. Expert testimony

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on the issue of role-playing in the context of sexually explicit conversations on the Internet may be admissible. See *United States v. Joseph*, 542 F.3d 13, 21 (2d Cir. 2008)(recognized as abrogated on other grounds).

Sentencing hearings in Mann Act cases also present special challenges. Most notably, whether an enhancement for a “vulnerable victim” applies (U.S.S.G. § 3A1.1(b)) or whether a district court may depart upward from the advisory sentencing guideline range if the conduct was unusually “degrading” to the victim. See U.S.S.G. § 5K2.8; see also e.g. *United States v. Long*, 185 F.3d 30, 51 (D.D.C. 2001).

In summary, the Mann Act, a law born out of progressive-era attempts at legislating sexual morality, remains a prevalent prosecution tool today. On the one hand, it helps combat forced prostitution and human sex trafficking. On the other hand, commentators have argued that using a federal criminal law to prosecute consensual acts of prostitution between adults may be overreaching. See e.g. *Michael Conant, Federalism, the Mann Act, and the Imperative to Decriminalize Prostitution*, CNLJLPP5 Cornell J.L. & Pub. Pol’y 99 (1996). For the immediate future, however, Mann Act prosecutions remain relevant and practitioners must remain up-to-speed on strategies for defending against them. ■

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