

Oral History Interview with Martina Vandenberg

Conducted by Sarah Rutherford
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transcribed by Alexandra Kurland

This oral history was conducted with Martina Vandenberg by Sarah Rutherford in Washington, DC. Martina Vandenberg began working to fight human trafficking while living in the Russian Federation in the 1990s. After starting a rape crisis center in Russia, Martina documented human trafficking cases in Israel, culminating in a report that she authored and which was eventually reported on by the *New York Times*. After Israel, Martina became the Women's Rights Division researcher for Europe and Central America at Human Rights Watch, during which time she authored a report on the trafficking of women and girls in Bosnia. Martina worked with members of Congress to create extraterritorial jurisdiction for U.S. government personnel who engage in human trafficking while posted abroad. Later, Martina conducted pro bono work prosecuting human trafficking cases in the United States, first at a large law firm and later at an organization that she established. Martina discusses the achievements of her organization and the issues that arise in human trafficking prosecution, including the challenges of prosecuting cases involving diplomats posted in the United States and the stories that give her the strength to continue her work.

Topics: human trafficking, women, feminism, crime, prosecution, diplomacy, human rights, Human Rights Watch, war crimes, peacekeeping, law, sex trafficking, forced labor, policy

Countries/regions: Russian Federation, Russia, Beijing, Netherlands, Amsterdam, Western Europe, Israel, Central Asia, Bosnia, Balkans, Herzegovina, United Arab Emirates, Australia, United States, Florida, Washington, DC, Maryland, Virginia, Tanzania, Mexico, Kosovo, Serbia

Sarah: Alright. So, to get it started, how did you first become aware of human trafficking?

Martina: So, it's interesting. I was living in the Russian Federation, and I had moved there to start a rape crisis center for women. So I was working with the feminist movement in Russia. In the 1990s, we were trying to start a rape crisis center, and it became apparent pretty quickly that we weren't just dealing with rape; we were dealing with a much bigger issue: that there was also human trafficking. And it was just after the Wall had fallen and just after the former Soviet Union had sort of opened, and so we learned through the hard way, anecdotally, that women were being trafficked abroad for forced prostitution. But it really hit home when I led a group of Russian women to the Beijing Women's Conference, and while we were there, we met this group of women all wearing karate jackets emblazoned on the back with E.U.P.M.M. So it was the European Police Women's Union, and they really wanted to contact Russian feminists and Russian women's organizations because they -- the police women, particularly in the Netherlands -- were finding trafficked women in Amsterdam. And so the Beijing Women's Conference was this incredible moment where European police met Russian activists, and they were able to communicate about human trafficking that was happening in Western Europe.

Sarah: And while you were in Russia, did you do anything to help aid the formation of this work?

Martina: So, I mean, we started the rape crisis center. That opened in 1994. It's called Sestry-- Sisters -- and it's still open. They still run today. And the hotline at the rape crisis center handles both human trafficking and also rape cases. So, it's run by this amazing group of Russian activists who've been at it now for more than twenty years; they're pretty remarkable. But I then [2:01] left Russia and moved to Israel and did work in Israel documenting human trafficking of women from the former Soviet Union into Israel. So, essentially, what I did was use my Russian language skills to find trafficking victims in Israel and interview them and then write a report about it.

Sarah: And what was the result of that report?

Martina: So, it hit the front page of the *New York Times*. It was in the *New York Times* in January of 1998, and it caused a huge firestorm. I was told by the State Department at the time that when the report appeared in the *New York Times*, Madeline Albright was on a flight flying to Israel to meet Netanyahu, and apparently she called back from the plane back to the State Department and said, "I need a briefing on this because I want to raise it with Netanyahu," right? So, the newspaper article -- the *New York Times* article, particularly -- had a huge impact with essentially the U.S. government raising this with a head of state. I don't think that had ever happened before.

Sarah: That's great. So what happened after Israel for you?

Martina: So, after Israel, I started working for Human Rights Watch, and I was the Women's Rights Division researcher for Europe and Central Asia, which meant, of course, it was right after the war in Bosnia, and so I spent a lot of time in the Balkans doing work on war crimes.

Sarah: And what were some of your findings in the Balkans?

Martina: Well, we tried to focus in the post-conflict period on trafficking of women to Bosnia and Herzegovina for forced prostitution, and so we were looking for the links between peacekeeping and human trafficking, and it wasn't hard to find them. We did find them. What we discovered through interviews, and through very careful analysis of documents leaked to us by the U.N. and others, was that individuals who were based with the peacekeeping forces [4:01] in Bosnia and Herzegovina -- mostly contractor, not necessarily military personnel -- were going to brothels in Bosnia and Herzegovina and literally purchasing women as chattel along with their passports. In one case that we found, U.S. government contractors who were there with S4, with the NATO forces -- U.S. government contractors had gone to a brothel. They had purchased a woman, her passport, and an Uzi. And they were punished, ultimately, for buying an Uzi, right? The fact that they had purchased a woman as chattel somehow didn't actually hit the radar screen, and so after doing that reporting and writing that report -- the report is called "Hopes Betrayed: Trafficking of Women and Girls to Bosnia for Forced Prostitution in the Post-Conflict Period." So, we're looking at the period after the war. I spent the next literally ten years [Martina laughs] of my life trying to work with members of Congress and other advocates to amend U.S. law to create extraterritorial jurisdiction so that U.S. contractors, and peacekeeping personnel, and really all U.S. government personnel who engage in human trafficking while posted abroad can be then prosecuted in the United States.

Sarah: And were you able to get that?

Martina: It took ten years, yes, but now, happily, there's extraterritorial jurisdiction not just for government contractors, not just for government personnel; we have created U.S. extraterritorial jurisdiction over trafficking crimes for any U.S. citizen, any green card holder, or any person who comes to the United States for any purpose, and so that has really opened the doors of the courthouse quite significantly to people who would otherwise be by and large immune from prosecution.

Sarah: [06:01] And are you seeing people being prosecuted?

Martina: So that's the frustrating part, right? So the U.S. government has only used extraterritorial jurisdiction three times. It passed in 2008, so they've had nine years. It's been used three times. One time, it was used in a sex trafficking case where a trafficker operating out of the United States trafficked women to U.A.E. and also to Australia, and Department of Justice prosecutors, to their credit, argued that in that case, *U.S. v. Baston*, all of the money earned by a victim in forced prostitution who was held in Australia -- all of the money earned in Australia -- had to be returned to her as criminal restitution, as compensation, because compensation to victims is required under federal law; it's also required under international law. So, that trial court in Florida said, "no, there's no extraterritorial jurisdiction," and to its credit, the Department of Justice then appealed that to the Eleventh Circuit Court of Appeals and won, and so \$400,000 earned in Australia by a woman held in forced prostitution by someone operating out of the United States, \$400,000 was then included in the restitution order.

Sarah: So you said you've seen three of these cases. Out of how many?

Martina: Well, you know, that's a really interesting question, because I think people believe that the federal government is prosecuting trafficking cases, you know, right, left, and center. The reality is that in fiscal year 2015, which is the last year for which we have full data, the U.S. government brought 257 trafficking cases at the federal level. That's the entire country right? But the United States is actually not an outlier. If we look at the global data, the prosecution of trafficking is abysmally low, so across the entire world, according [08:01] to the data released by the Department of State, it has a global assessment of prosecution across the world. In the same period, in the entire world, the number of trafficking prosecutions was 10,051, right? That doesn't sound bad, necessarily, until you compare that to the number that the International Labor Organization released, which is that there are 20.9 million people held in all forms of servitude -- both forced prostitution and other forms of forced labor around the globe. So 20.9 million people, 10,051 prosecutions.

Sarah: So as we think about what needs to be done to correct for this, maybe we can circle back to your work that you did pro bono, initially at Jenner & Block, and then [at] the organization that you created.

Martina: So I serendipitously landed at a law firm in 2003. 2003 was the same year that Congress passed a law allowing trafficking victims to bring lawsuits against their traffickers in federal court. So I ended up at a law firm, Jenner & Block, that had an immense, immense commitment to pro bono, and the law suddenly had opened courthouse doors so that trafficking victims could bring their own cases. So I started taking referrals, some of them even from my old peers at Human Rights Watch. So cases started slowly trickling into the firm, and we started working with these trafficking survivors. Many of them were victims of forced labor in Washington, DC,

Maryland, and Virginia. So we started working with them, and we tried so hard to get the federal prosecutors to prosecute their cases, but many of our clients had been trafficked by diplomats, and it was very difficult -- not impossible, but very difficult -- for prosecutors to bring those cases, and frankly, I got tired [10:01] of saying to clients in my office that we had tried to get a prosecution, and we couldn't get a prosecution, and there was nothing we could do. And so instead of saying, "there's nothing we can do," what I started saying was, "the government's not going to bring this case, but you can bring your own case in federal court so you can have your day in court, and you can be in charge of that process, and we, your lawyers, will represent you pro bono in that case." And with that came a sort of bubbling up of these cases where trafficking victims trafficked here to the United States would bring cases in federal court alleging human trafficking and demanding damages, and they were, by and large, extremely successful. And so in one case, for example, that we did against a Tanzanian diplomat where the case hadn't been prosecuted, the verdict was close to \$1.1 million in damages. Similarly, when we did another case in Virginia, a woman who had been held for four months in forced labor -- but also, the entire time she was held in that home, she was subjected to severe sexual violence, including rape and other forms of sexual abuse -- the verdict in that case was \$3.3 million dollars. So even in cases where there was no prosecution and the perpetrator would never go to prison, what we were able to do, slowly but surely, was bring some bit of accountability, to bring some deterrence, to bring some small chink into impunity, so that trafficking survivors could feel like they had achieved justice. So we fought and fought, and what you realize with these cases is that winning in court is only about one-tenth the battle, because then you have to enforce the judgment and actually get the money. It's a Pyrrhic victory for a trafficking victim to win a million dollars and then never see a penny, [12:01] right? So the lawyers have to be completely dedicated not just to winning the case, but actually seeing it through all the way to collection.

Sarah: So, this seems like the perfect fit for you. What led you to leave that and start your own organization?

Martina: So at a law firm, even as wonderful a law firm as mine, you can't do all pro bono all the time, and I wanted to do all pro bono all the time, and in fact, when I was there, I started bringing trafficking cases in, and we started getting more and more trafficking cases, so [that] by the time I left the firm, there were 40 lawyers who had done trafficking cases at the firm, all of them working pro bono, which was remarkable, but I looked around the firm, and I looked around these brilliant lawyers and thought, you know, every law firm should have lawyers doing this work. I mean my partners at the firm joked that I was the head of the human trafficking practice group, which existed only in my mind, but I wanted every law firm in the United States to have a human trafficking practice group, and so the only way to do that was to leave.

And so I left the firm so I could do all pro bono all the time, and you know, at first I looked around for an organization where I could just land, right? Where I could leave my partnership with the firm and just, you know, parachute into another organization. And I looked everywhere and I couldn't find anything, and so I realized that I was gonna have to create it. And so we, you know, went back to the drawing board and created it from scratch. But now, what we've done is we've trained 3,000 lawyers, and we've trained the non-governmental organizations, because many of the case managers and social workers providing services to trafficking survivors had no idea that trafficking victims could actually access the justice system, right? Everyone was sort of waiting for the prosecutors, but in some of my cases, that's like waiting for Godot. And so we [14:01] realized that if we trained the case managers, the case managers could identify survivors who needed lawyers, which from my perspective is almost all of them [Martina laughs], and so once you identify someone who wants a lawyer, there needed to be a bridge between service providers doing social services or, frankly, even social services providers providing immigration legal services, right? To bridge to this whole other area of law dealing with accountability and remedy.

Sarah: And do you have any metrics in terms of how well you've been able to be that bridge?

Martina: Mm hmm. So we are a very data-driven organization, so we have a database of every civil case ever filed. And when I started there were about 80. At this point, there are more than 230. So we can't take credit for all of those, but I do feel like I'm a little bit like a popularizer, right? I mean, part of my job is to run around the country and say, like Sarah Palin says, "drill, baby, drill," so I run around the country and I say, "sue, baby, sue." My goal is to educate lawyers, but also educate trafficking survivors that they have these rights, and then, if they want to pursue them, terrific. So the number of cases has nearly tripled. So that's one metric that we look at.

The second is we ourselves do referrals. So when the non-governmental organizations across the United States come to us and say, "we have a case; we think that it needs legal services; the client has requested a pro bono lawyer," then we get to work trying to find a pro bono lawyer, trying to sort of serve as a matching organization. So in all, we've matched more than 220 survivors with lawyers, so we've... some of the survivors have more than one legal case, [Martina laughs] so some of the survivors got [16:01] more than one lawyer for multiple legal issues. What you find is that trafficking victims often have a buffet of legal needs; it's not necessarily just one thing. So that's the other metric that we use, is how many cases we've placed.

And then the other piece that we watch is what happens in these cases. So we do a significant amount of technical assistance in the cases. So we give lawyers access to our database of every

case ever brought, right? 'Cause when I was in private practice, what I wanted was a database of every case ever brought, 'cause it would have made my life so much easier. I would have had, you know, examples of things that I could copy, or at least use to sort of inform my own pleadings. So we created the database, we give access to the database to all the pro bono attorneys. But then we very carefully in our database track exactly what happens in all those cases. So where there's a public settlement on the books, we track that, and where there's a judgment on the books, we track that. And we also keep track of the cases where we've had some involvement, either by referring the case or by providing technical assistance during the case, and looking at the end game with all the cases that we've been involved in with varying levels of engagement, the total amount of money at the end of the cases is \$40 million, right? Now, I mean I have to be perfectly frank, because not all of that \$40 million has been collected, right? That's where the sort of really hard work of enforcement occurs. But \$40 million in judgments, in settlements, sends a pretty strong message that survivors have rights and won't tolerate impunity and are willing to fight.

Sarah: I want to jump back to a specific question, which is, you've mentioned that a lot of these cases are linked in some way to diplomats. [18:01] Why is that?

Martina: So in the United States, diplomats are permitted -- and also international organization employees are permitted -- to bring domestic workers to the United States. And they bring those domestic workers on special visas. Those special visas are called A-3 visas and G-5 visas. Those visas say directly on the visa that you work for X, Mr. X, a diplomat. If you leave that diplomat's home for whatever reason, you're out of status. It creates an incredible tie, almost a chain, that keeps domestic workers trapped with employers, even when those employers are abusers, even when those employers are holding people in forced labor, even when those employers are committing acts of sexual violence or physical violence. And so that system of domestic workers for diplomats and international organization employees creates an incredibly vulnerable category of mostly women who come to the United States, and the irony is most people think of human trafficking and think trafficking victims are all smuggled in illegally across the border through Mexico. In all my years of representing trafficking survivors, I've never had a single client who didn't arrive in the United States with a legal visa, and a contract, and a dream, and a sense that she had done everything right and that she was gonna earn money and be able to send it home to her children, right?

So these visas allow the diplomats pretty significant leeway to be horrendous employers. And certainly there's a continuum. Some of the employers just engage [20:01] in plain old vanilla wage theft, but some of them are on the other end of the spectrum, and it really is human trafficking, forced labor, and sometimes even forced sexual servitude. And so what we've tried to do over the years is, number one, sort of penetrate diplomatic immunity, eviscerate diplomatic

immunity. And it took ten years, but eventually we figured out that diplomatic immunity is not a bulletproof vest, right? Diplomatic immunity, where you have full immunity 24 hours a day, seven days a week from both criminal and civil cases, ends when you leave. And so, when a diplomat leaves the United States, if the domestic worker has managed to run away, and the domestic worker has managed to find help, the diplomat no longer enjoys the defense of diplomatic immunity. As soon as they are out of U.S. airspace, we can sue them for damages. And then they have only the same defenses that you or I would have. They only have the same defenses that a mere mortal would have. And they can no longer claim diplomatic immunity as a way to prevent any kind of accountability.

By the same token, the international organization employees don't have full diplomatic immunity. They only have immunity [from] nine to five, Monday through Friday, for their official acts. And every court that has looked at trafficking of domestic workers by diplomats has said that trafficking your domestic worker, raping your nanny, these are not things that are part of your official duties representing your state. And so the courts have said that you don't have immunity for those crimes if you're just a regular international organization employee [22:01] or once you leave the United States. So it's tricky; it's hard; it's complicated. That's why we have big pro bono law firms, big behemoth law firms doing these cases pro bono, because you have to serve the defendant in their country of origin, right? When they go back to their home country, you have to serve them there, and then the case proceeds in the United States.

Sarah: Wow. So, as you've mentioned, you've been working on these issues for years and years--

Martina: Twenty.

Sarah: You've been involved with hundreds of cases. Are there any cases that still stand out in your mind?

Martina: So, I think I probably can't answer that question--

Sarah: Mm hmm.

Martina: Because... [Martina laughs]

Sarah: Fair enough.

Martina: [pause] Let me try... [pause] So the cases that stand out in my mind are the cases where we have actually held someone accountable. And a good example of this is, you know, when a

diplomat leaves after there's a judgment, it can be incredibly difficult to enforce that judgment. The diplomat generally is not planning to come back, right? Because there's a judgement against them. It could be a \$1 million judgment. They're not coming back to the United States. They're not leaving money in the United States; most of them are very careful to gather up their assets and leave. And so the cases that really stand out for me are the cases where we have fought tooth and nail and then finally forced the government of that diplomat to pay, right? So the really kind of cutting-edge work in this area is if the diplomat won't pay, then you force the government to make what's called an ex gratia payment. And an ex gratia payment is a payment directly [24:01] from the state that that diplomat comes from in order to cover the damage that the diplomat committed while posted in the United States. So if you can do that, that's remarkable. And that's what we try and do in most cases now.

Okay, so two final questions for me. One is, again, working on these issues for twenty years -- very heavy issues, emotionally draining, I'm sure. What keeps you going?

Martina: So what keeps me going are the amazing and remarkable women that I get to work with. So I'll give you two examples. So one is, you know, when I was doing the rape as a war crime reporting in Kosovo as a Human Rights Watch researcher, I was traveling all around Kosovo and literally trying to find women who had been raped by Serbian paramilitaries. And I found one woman, and she's in the report that we wrote about this on ethnic cleansing and rape as a tool of ethnic cleansing in Kosovo. This woman had been gang raped by Serbian paramilitaries when she was pregnant. And she managed to get away, and by the time that I interviewed her, she had had her baby, and we were both sitting on a concrete floor in an apartment building that had been stripped, and I interviewed her for hours, and she held the baby that had been born after this brutal, brutal series of rapes. She held the baby during the entire interview. Years later, I found out indirectly that she and other women that we had interviewed when we were at Human Rights Watch had gone to the Hague and had testified against Milosevic, which is pretty amazing. That's just remarkable. I mean, the resilience of these survivors to go to another country and testify in an unfamiliar court against [26:01] the head of state of the country that's responsible for the abuses. Now, you know, Milosevic had the audacity to die before he could be convicted of anything, but from my perspective, even the success of having his indictment amended to include rape as a war crime and rape as a crime against humanity, again, command responsibility for those things, was a huge testament to the power of these women's decision to tell the truth, right? These women's decision to actually speak about what had happened to them.

So similarly, now, when I'm in the United States working with trafficking survivors, and one of them goes on the stand and testifies, it's so moving. I mean, some of them come off the stand and it's like they're two feet taller, because they've told someone in authority. They've told the

judge. The judge has listened. And someone in authority has actually acknowledged what has happened to them. One of the most moving experiences I've ever had in court here in the United States was at the end of a case in Virginia, where the judge, having heard testimony from the victim who had been raped for four months in a household, held in forced labor, the judge turned to the survivor and her husband and the end, and he didn't quite apologize, right? That wouldn't have been appropriate. What he said was, "What has happened to you is something that should never happen to any person." Right? That is so healing. That is such an amazing moment. And so I think the reason that I can go on is because of the resilience of these women -- and sometimes men -- but the resilience of these individuals who have the courage to fight back and to demand accountability.

Sarah: And [28:01] so my last question to you is: for someone who's watching this and thinks, "what can I do to help prevent human trafficking?" What would you say?

Martina: Well, I think there are a lot of things people can do. I mean one is, if you want to work on human trafficking, you can volunteer for an organization that's doing human trafficking work. If you're a lawyer, you can do pro bono work representation of trafficking survivors. If you are someone who's really committed to doing human rights work more broadly, you can go abroad and actually sort of learn this work in the trenches. I'm convinced that the only way to do serious human rights policy work is to spend years, literally, in the trenches documenting abuses, fighting abuses, observing abuses. There's no way to do this without actually seeing it up close. And what I've learned is that a lot of the great ideas people have here in Washington, the great remedies that people think of in Washington, when you actually go back to ground, when you actually go back to the grassroots, when you actually go back to the trenches, where the abuses are occurring, those brilliant policy proclamations in Washington, DC don't work. So I think my advice would be, if you're gonna do it, be hard-core. Do it seriously. Really dive in to the deep end. There's no way to kind of do this in a superficial way. You have to be sort of swimming in the ocean, frankly.

Sarah: That's great advice. So that wraps up my questions; is there anything you'd like to add?

Martina: No, not that I can think of.

Sarah: Okay. Emma, any-- no?

Martina: No.

Sarah: Well thank you so much.

Martina: No problem.

END [29:59]