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Women Trailblazers in the Law

ORAL HISTORY

of

SARA-ANN DETERMAN

Interviewer: Brooksley Born

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ORAL HISTORY OF SARA-ANN DETERMAN

THIRD INTERVIEW

December 12, 2005

This is the third interview of the oral history of Sara-Ann Determan which is being taken on behalf of Women Trailblazers in the Law, a project of the ABA Commission on Women in the Profession. It is being conducted by Brooksley Born on December 12, 2005 at the office of Arnold & Porter LLP, 555 Twelfth Street, NW, Washington, DC.

Ms. Born: Last time we talked about your getting married at an early age and very precipitously. Why in retrospect do you think you did that?

Ms. Determan: One, I was wild about Dean Determan. Two, I had spent the year at Conn College with so few dates. As I told you, it occurred to me at the old age of 18 that I might be heading toward never dating or getting married or otherwise being involved. Three, the whole business about being a virgin bride was important to me, and I was at a time in my life when I wanted to make love. I've thought about it a lot, and I honestly don't think there is anything more to it than that. I had the arrogance and the youthful silliness of thinking that I knew what I was doing and there was no reason not to. Maybe there was a little bit of fear that, if we waited, he'd stop being interested. I didn't think of myself as super attractive, and I thought of him as so special. We'll get into that in terms of the marriage over time because I just thought it was a miracle that someone like him was interested in me. It just seemed beyond my wildest

expectations that anyone so special should have fallen in love with me. I don't think it was more than that. I certainly wasn't trying to get away from home. I was already away from home, and except for summers at home, there was no expectation that my life was ever going to be controlled by my parents. I think he just seemed too good to pass up.

Ms. Born: Tell me why, what seemed so good about him to you?

Ms. Determan: All the wrong things, but also a lot of the right things. He wanted to be a lawyer. He understood my desire to be a lawyer. We had talked about the fact that he would support that. He didn't have an expectation that he would have a stay-at-home wife. He was interested in liberal politics and so was I by that time. He was very good looking, very tall. He had been a Princeton basketball player -- the whole works, and he was, still is, really kind and just a decent person. I knew he was a decent person, and I fell wildly in love. But underscoring was a sense that here I am, a little girl from Palmerton, Pennsylvania, and here this amazing man actually wants to be married to me. It just seemed like a dream.

Ms. Born: Do you think the sexual mores of the day played into the decision on both your parts?

Ms. Determan: I can't speak for him, and it would be interesting to have a conversation with him saying, "Why did you marry me when we were so young and knew each other for such a short period of time?" But certainly my insistence on being a virgin bride was relevant. We didn't even really discuss it because he understood at the time that with the good girls, that was part of the deal. I

think, looking back, he probably thought I was as magical as I thought he was, which seems very odd to me even now. (laughter). Isn't that wild?

Ms. Born: There must have also played into it a confidence in yourself of being able to still meet your dreams of getting an education, becoming a lawyer.

Ms. Determan: No, that was actually part of the dialogue. As I told you in our earlier talk, we never really discussed who would go to law school first, but it was part of the clear understanding, and he was a wonderful husband for me in that regard. I don't know whether I ever told you this story, but when I was asked to be the Editor-in-Chief of the Law Review at George Washington Law School, I told them that I couldn't, that I had a child at home and that just wasn't going to be possible. I came home that afternoon and told Dean, and he said, "You call him right now and say of course you can do it. I can be the maximum-time parent for you to do this. This is not something you should turn down." And obviously I did have confidence that I saw that kind of person in him even in such a short time. And he was very, very supportive of me. The other thing is, I didn't know anyone who was divorced except this one aunt who I thought was crazy, and so the idea that the marriage wouldn't work was not part of my experience either. Marriages were like my mom and dad's. They probably fought behind closed doors, but they liked each other, and they were happy, and they were married, and that's how I would be married. So much of it was very naïve, so you, of course, can see why my parents were very concerned about it. But it was good for a very long time, and then it stopped being good.

Ms. Born: The other question that I had from our last session is along the same lines, and that is your getting pregnant and having your first child at a time when you had not yet gone to law school and you were expecting to go to law school soon.

Ms. Determan: I thought I could have it all. And I did not think about having babies except for a pregnancy that was unwanted. We were always concerned about that, and we were concerned about birth control. This is pre-pill so there was all kinds of concerns. But at that time when I was 24 and Dean graduating from law school, I was looking at Ivory Soap ads because the babies were so cute. It was as if my entire being was saying, "Okay, now its time to have a baby." And we had talked about it, as I had told you. And the intention was that the baby would not interfere with my plans to go to law school, and again we were young and arrogant, I guess, but we just figured we would be able to do it. My father had made it clear that he would pay for as much education as I wanted. As it turned out, I got a full scholarship so he paid for the babysitter. But Dean was working for the government by that time, and if it hadn't worked that way, we would have still been able to pay for the babysitter. The longing for a baby was very strong. And needless to say, I have never been sorry. But it never crossed my mind that I wouldn't make it work.

Ms. Born: Do you think that was partly a cultural thing -- that in that era it was kind of a given that married couples would have children, and there wasn't the same deliberation about it then?

Ms. Determan: There was no deliberation about it. The only question was when. The idea that I wouldn't be able to be a mother medically never crossed my mind, and

the idea that I wouldn't want to be a mother never crossed my mind. I'm glad because I've now had a lot of friends, mostly women younger than me, but some not, who made a conscious decision not to have children in the same way you make all the conscious decisions -- you weigh the pros, you weigh the cons. You can figure out vicariously the cons in an instant, but there is no way on God's earth that anyone can figure out the pluses without having been there. I think that is one of the reasons that there is a biological urge to reproduce because we certainly haven't evolved so that we know without experiencing it how magical it is to be the mother of a child. It's almost as good as being a grandmother. (laughter).

Ms. Born: And did it feel magical to you when Dann was born?

Ms. Determan: Oh yes, oh yes, oh yes, although I was in the hands of an obstetrician who -- I only have to tell you one story about her. I told her I wanted to nurse him. She thought that was really stupid. In those days the better thing to do was deemed to be formula. But I really wanted to nurse him. I'm sure from pressure, pressure's not the right word, I'm sure from the advice from my mom and my respect for her. And this doctor who had delivered him -- and they gave me ether and it wasn't a nice delivery -- came in one night and said, "Do you hear that child crying, do you hear that child crying? That's your child. All the other children are doing fine because they have formula." You know how you are after you have had a baby, and you're lying in the hospital, and the doctor is screaming. You don't say, "Bring him here now and he'll stop crying." You say, "Ohhhhh." So that was the experience in terms of the relationship

with the doctor. It was the classic -- "Little girl, don't ask me any questions, I'll take care of you, and we'll do it my way." I've looked back. I've been in that situation in my lifetime more than I like to admit, and my responses have not been what I thought they would have been. I was 25 years old. I was not a skittish person, but I could no more say to her, "I want my baby now, and I want to feed him, and I'm not going to wait for four hours, and if he's crying it's because he's hungry and needs to be fed now" -- I couldn't say those words. I've had other experiences in which I look back and asked, "Why did you passively take that?"

Ms. Born: Did you start bottle feeding?

Ms. Determan: No, I wouldn't let them bottle feed. But the next day I woke up and knew, one, I wanted to get out from under this woman, and two, get my baby out of the hospital so I could see him whenever I wanted to. I knew it was just going to be the best possible day, and I was so excited. That was November 22, 1963. That was when Kennedy was assassinated, so I spent the first three days having my brand new baby at home watching television every waking hour.

Ms. Born: Was that when you were applying to law school for this next fall?

Ms. Determan: Yes, he was born in November, and the applications were in. I applied only at Georgetown and George Washington and ultimately accepted the GW admission because GW at that time was set up so people could work and go to law school during the day at the same time, and all the classes were finished by 1:00, which was perfect for the mother of a child -- and they didn't ask about my father's income in terms of trying to decide whether I was eligible for a

scholarship -- and I was offered a full tuition scholarship, and the combination of those things -- it was just obvious.

Ms. Born: Did they ask about your husband's income?

Ms. Determan: Yes, but his income was very small. At that time GW was considered on a par with Georgetown. I don't know that I'd make that choice today. Georgetown clearly has the stronger reputation now, but at that time they were more or less the same.

Ms. Born: What kind of child care choices did you then face and make in terms of starting law school?

Ms. Determan: I started law school orientation in August and we moved from that apartment in September. For the first two weeks, Dann was actually up at my mother's house. Dean was having his vacation, and we moved to a place in Arlington, Virginia, off Columbia Pike, called Arlington Village. Very soon after we moved there, I found a woman who had a child just Dann's age who lived nearby. She took care of Dann for the next three years, and it was really perfect. Dann went to a little Montesorri preschool, and so did her little daughter. I didn't have any problems, and she was right there, so even if she didn't feel very well, instead of calling me and saying I can't take him, she had a child she was taking care of anyway, so he would just go over there.

Ms. Born: Was he cared for in her home, or yours?

Ms. Determan: Their home. But she also had access to our house so if he wanted to play with his toys, or she needed to get a change of clothes or anything; she was literally ten houses away. It worked out really well. Barbara Baker was her name.

Ms. Born: You arranged your classes so you would have the afternoons off?

Ms. Determan: They didn't even have them in the afternoon. I think there were some seminars by second year when I was all tied up with the Law Review. Then her income went up, and she had some more hours.

Ms. Born: The first year, she was taking care of him in the mornings?

Ms. Determan: I'm sure I was home by 1:00 every day.

Ms. Born: Did you take the LSAT before you went to law school?

Ms. Determan: I took the LSAT's in August when I was pregnant with Dann who was delivered in November. So I was great with child and took the LSAT's then because I knew I was going to be heading to law school.

Ms. Born: Did you do well?

Ms. Determan: Yes, that's why I got the scholarship, I guess.

Ms. Born: Tell me about your impressions of law school and your first year.

Ms. Determan: For anyone who has spent one year cleaning up after a baby in an apartment in Anacostia and washing one's husband's socks by hand, law school is heavenly. I loved it from the first day. Our law school, unlike most, had a long history of encouraging women. So I was one of 40 women in a class of about 600, including the night school. Many of them were gone after first year, but I think 25 or 30 graduated. The first woman ever to be Editor-in-Chief of the Law Review was sometime in the 1940's, and GW was actively recruiting in the seven sisters schools at that time -- one of the very, very few schools. The first woman who ever graduated from a law school, as opposed to reading law, graduated from GW. I didn't know all that when I decided to go there, but I

was very glad, because I met several people, including one who is a friend to this day and who I see regularly.

Ms. Born: Who is that?

Ms. Determan: Her name is Ruth Kovnat. She's down in Santa Fe.

Ms. Born: She was in your class?

Ms. Determan: She was in my class. She left. Her husband was in the Air Force, and she graduated from SMU but we've stayed friends. There were several women in the class who I kept in touch with for many years after law school. We'd all get together. There was the ladies room -- it looked like a standard ladies room, six or eight stalls, but to get to the toilet area was a big room. It was a good size room that had couches and chairs and that's where most of the women met.

Ms. Born: Was it kind of a lounge?

Ms. Determan: Yes, a lounge. That's where most of us went between classes. You could study there. We were friends, and we helped each other. In law school you had all the standard stuff -- women who wouldn't be called upon except about the rape cases, and the looks on the guys when you'd raise your hand. But I couldn't have cared less. I just didn't care that the guys would sometimes treat us as if we didn't really belong there. I knew I belonged there. The main reason was I was already married. I wasn't interested in social life with those clowns. I had Mr. Perfect back home. And all of my friends were married. Well, that's not true. My closest friend, a woman I met in the registration line, had a wedding ring on, and I started talking to her and asked her what her

husband did, and she said that he husband had died the month before. She and I became really good friends, and I think she just loved being part of a family that included a child. I remember seeing her sitting with Dann on her lap and just crying. We were good for her, and she was good for us. Her name is Leslie Black.

Ms. Born: So you felt that at least some of the men in the class felt that women didn't belong?

Ms. Determan: I'm not sure why. I don't remember experiences in detail to know why I had that feeling, and I may have had that feeling because I just assumed that they were feeling that way. I couldn't tell you -- except for the calling on the women for the rape cases in criminal law -- any specific example that I would say justified that feeling. But I certainly had it. And so did the others. I mean we talked about it. But I don't remember. I can't tell you any interchange with anyone that would justify that feeling. So maybe we assumed it.

Ms. Born: Do you think that feeling made you behave differently in law school?

Ms. Determan: I doubt it, but if it did, it just made me feistier. I didn't mind raising my hand and having a fight with the teacher. I also didn't mind telling him that I didn't feel prepared to discuss something if I was called on. But in our class, the girls -- I have to be careful to say this the right way. I think the years that people like you and I went to law school, the women had to be substantially more motivated than the men. There were a lot of men in the class who were going to law school to avoid the draft or going to law school because they had been history majors and didn't know what else to do. The girls were just more

highly motivated, and maybe we were brighter, but we were just more willing to work harder and were a little more mature. Not all the women did well, but a disproportionate part of the women did well. When I went on the Law Review, I don't remember how many people went on, but it couldn't have been more than 20, and of that 20 probably 6 or 7 were women.

Ms. Born: A disproportionate number.

Ms. Determan: Yes, very disproportionate because as I told you we were 40 of 600 in the first year class. But, this whole trailblazer business -- if you're going to be a trailblazer, you can't let things like whether or not the boys resent you being there even really hit your consciousness very much. As I said, it would probably have been tougher if I'd been single.

Ms. Born: Was that an era where people were still flunked out of law school in substantial numbers?

Ms. Determan: Oh sure, oh yes. And some of the girls left, I'm sure, because they didn't like it, for the same reason the guys left. But there were some girls who were struggling. It wasn't really talked about. They just weren't there the next year. My close friends, about whom I would have known what was going on, all graduated.

Ms. Born: Were there particular classes in your first year that you liked? Or did you like them all?

Ms. Determan: I liked them all. Everyone likes constitutional law. One, you're dealing with things you've at least heard a little bit about, and two, you're dealing with things that feel very important. Also, as the daughter of a lawyer -- I

remember in contracts, when we first were introduced to the concept of consideration, I knew about that. My father had explained that to me once in some context or another. We had all the classic courses -- torts, contracts, con law, legal writing and property. Note the absence of ethics. (laughter).

Ms. Born: Tell me about the legal writing class. Did you enjoy that?

Ms. Determan: Yes. As I recall, the professor was very old and not particularly good, but we had some teaching assistants who tried to help us with our writing. We did one appellate brief in a *quasi*, not an interscholastic moot court, but in a *quasi* moot court and a couple of research papers. I've often thought that, if I were teaching legal writing or if I were teaching contracts and wanted them to write, I would give them notes on the back of an envelope and notes of conversations and exchanges of letters and say, "Write it up as a contract," or ask, "What have they have agreed to? Give me a memorandum as to who has agreed to what." Our assignments were not that creative. I always liked to write, and I found law school -- this sounds so arrogant -- I found law school so easy. I truly did not look at a book from the time I got home until the time Dann went to bed at 8 or 8:30, and then I read the cases and felt ready for the next day, and it just wasn't hard. It just wasn't hard. It all seemed so logical to me. Something I've loved about the law -- it lets you master some of the overarching principles. They really are largely logical. Certainly the first year, big common law principles are logical. There tends to be a certainty about it. And you have a sense of what the right answer just has to be because it's not logical if it's not that answer. Some of us could see that and some couldn't.

Then the writing -- I'd done a lot of writing as a history major in undergrad school, and I never had any trouble doing that, so it all seemed quite easy.

Ms. Born: Were there particular professors that you liked and that meant a lot to you?

Ms. Determan: Actually, its interesting because after first year, we had to take certain courses, but you would learn who were the good people teaching it and who were the bad people teaching it. What strikes me is I remember more the poor ones who were in the clear minority than I do the really good ones. But I, of course, loved it so that I probably wasn't being as particular as I might have been. But it was a strong faculty. The evidence teacher was awful; this legal writing teacher was pretty bad. I loved the torts professor. I loved the con law professor. He was a new guy who ended up being the Dean of the Law School for a very long time. I really liked him.

Ms. Born: Did you interact with the professors in first year?

Ms. Determan: No, the major interactions, besides the dialogues in class, were with the teaching assistant in the legal writing. They were big classes; we didn't have any small classes in those first year classes. You'd see professors in the halls, and they'd say hello, but we weren't writing papers in the first year except in legal writing, so it was all exam and in the classroom. By second and third year, you'd know the professors well, and particularly with the law review, there was a lot of interaction with the faculty.

Ms. Born: Tell me about going on to a law review.

Ms. Determan: Trying out for law review in those days was exclusively on grades. The first year that I was on the law review, we still had a law review faculty advisor.

Ms. Born: Was that during your second year of law school?

Ms. Determan: Yes, during my second year of law school, first year on the law review. The law school still had a lot of control of the law review through this advisor and otherwise. For those of us who were very high up in the class standings, the review would have had to have a very good reason not to accept us. I think maybe the top ten percent were eligible to try out, but those of us in the top 5% or top 2%, there wasn't much question that we were going to make it. That year was the year that we petitioned first the Dean of the Law School, who agreed, and then the University to let us have control of the budget for the law review and no faculty guidance except as we requested it, which we thought at the time was an enormous step forward. So by the next year when I was the editor-in-chief, we didn't have this formal relationship with a faculty advisor which in a way was fun because I could get what I wanted by asking any members of the faculty and we were pretty much feeling our oats from this wonderful independence.

Ms. Born: What was the motivation for becoming independent?

Ms. Determan: That was driven primarily by the third-year people in that year I was second year. I suppose it was because that's how it operated at other law schools. But, you know, people in their early 20's don't like folks saying yea or nay to things they think they're perfectly capable of deciding. I don't know if it was a particular incident -- if it was it's lost to history in my mind.

Ms. Born: How was the decision made that one actually was invited to join the law review?

Ms. Determan: It's a jumble in my mind between the year I was invited and the year I was in charge of inviting. So I can't tell you it was exactly this way both years, but this is the way I remember it. For the people in the top 10 percent of the class, there was an announcement. It was on the bulletin board: the following people are eligible to write for the law review. If you are interested, come to a meeting. And we were given an editing assignment and a research assignment to check footnotes and so forth and then asked to write a case note on a case we were told to go and look at. As I said, I think for those of us who were near the top of that 10 percent, I don't even know that anyone ever looked at our stuff; I think there was an assumption that we just were going to be on. But for the people who were writing to get on the law review, who weren't in this informal, automatic selection group, the editors of the law review, the third year students, reviewed their materials. Again, I don't know to what extent the faculty advisor had a role, but I think it was mostly the editorial board, the third-year students, who selected the second-year students. That certainly was how it was my third year when we didn't have a faculty advisor; we selected them on that same basis.

Ms. Born: What did you do your case note on?

Ms. Determan: Oh, my God (laughter). The big writing I did in the second year after I was on law review had to do with preemption, which was really interesting in that time. The whole concept of preemption wasn't quite as well thought out then as now, and the statutes weren't as clear on preemption on those days so it was a lot of common law. That funny little case note. As I recall, it was a tort case,

although our law review focused, not exclusively, but an enormous focus was on essentially federal law, statutory stuff. We always did things in the patent law area. You should have seen me as editor-in-chief trying to figure out (laughter) whether these patent law articles did or did not make sense. So that it is possible that even that little case note was not common law, but rather was a constitutional law case or a statutory case. I just don't remember that.

Ms. Born: How large a proportion of your time in your second year was devoted to the law review?

Ms. Determan: How large a proportion of my law school time?

Ms. Born: Yes.

Ms. Determan: Probably two-thirds. How large a proportion of my life? A lot less. I had a child.

Ms. Born: Did you have to have the babysitter later, longer?

Ms. Determan: Yes, Barbara stayed until three. Earlier, I picked him up at 1:30 when my classes were over at 1:00, but then we went an extra two hours. But she was always willing. It didn't make any difference to her. She was going to be home with her little girl anyway, and so if I was running late, I could just call her, and she would invariably say okay. Sometimes, she would say, "Well, I'm going to have to take Dann along to the grocery store."

Ms. Born: And it was all right with the law review that you were having to leave at a specified time in the afternoon?

Ms. Determan: I don't recall that there was any expectation that we had particular hours. It was like law firms; it was piece work. You had notes that you had to review,

you had cite checking to do, and no one much cared when you did it. But I very, very seldom went back down in the evenings. Whatever it was I had to do, I got done.

Ms. Born: So tell me about how you were chosen to be editor-in-chief.

Ms. Determan: The third-year people chose us. But I was first in my class at that time. Ironically someone not on the law review ended up graduating first in our class. He was someone who focused on patent law and intellectual property. I was selected by the editorial board, and I think essentially by the editor-in-chief.

Ms. Born: Meaning some people in the third-year class?

Ms. Determan: Oh yes, it may even have been just the editor-in-chief. When I selected my successor, it was me doing the selecting, but I did consult with the other members of the editorial board. But it was like Lincoln's Cabinet.

Ms. Born: And you have already told us the story of your being selected and saying no as an initial matter.

Ms. Determan: Yes. My initial reaction was that I couldn't. Dean sure stepped up to the plate.

Ms. Born: Were there any particular challenges in being law review editor-in-chief in your third year? I imagine just the transition to a totally independent law review was a challenge.

Ms. Determan: As I recall, that wasn't something I was concerned with, but that's because I wasn't an editor and dealing with an advisor. So I don't know what role the advisor had before. I was incredibly busy, and I had made it my goal to get the law review back on schedule. It was classic stuff, where you had to get out the

last issue of the previous year, and I had promised myself we would not do that to the next year's group. I had it pretty well planned in terms of what was going to be in it. Getting the articles from the outsiders on a timely basis was always a problem. Getting it from the students was not. I had a situation where we turned down a submission from one of the members of the faculty, who was really pissed. We got an article from the leading light then in the estate and gift tax area, whose name I can't remember (he was down at Duke), and he gave us an excellent article. I did the most minor of revisions to it, but he had done a case book with the Dean of the Law School, Dean Kramer, so I felt just out of niceness I should tell Kramer that we should have this article coming and that I sent him these slight revisions. I remember Kramer saying, "Oh, my God, you didn't! Oh, he's going to pull that article; he cannot abide people editing his work. I had all these fights with him in the midst of writing the case book." But I got back a letter saying that he thought that I had improved his piece. I had done very little, but I do remember worrying for a while that the Dean was right and I had insulted this leading light in the tax world. It was hard to disappoint some people who didn't make the law review and who had clearly worked hard. There were jealousies. I was in the final stages of getting out one of the issues, just doing the final editing over the Christmas vacation, and that was the year that I had the severe burn. So I was in the GW hospital, reading and editing articles, and people were coming to my bedside bringing things for the law review. That was wild. I felt very much like a *prima dona*. I really loved the attention.

Ms. Born: How did you get the burn?

Ms. Determan: It was a New Year's Eve party at our house, and we were having meat fondue. I was heating oil on a stove in the kitchen and went in, and it had flamed up and the curtains in the kitchen were burning. I don't know why I had curtains, but I did. I haven't had curtains since. The curtains had caught on fire, and Dean came in. We did everything wrong. We poured water on the oil fire, and of course, that just made it worse. Dean wrapped his hand in a tea towel that was there and grabbed the pot, and I opened the back door. The big door opened in but the screen door which I opened and held open, opened out. As Dean stepped over the threshold, the fire kind of went in his face, and he just threw the pot of oil outside, including on my legs. So I had third-degree burns. Third-degree burns don't hurt very much because they mess up the nerve endings. But first degree burns hurt. I had one on my face -- I never thought of myself as caring about things like scars on my face, but I remember -- and one on the top of my thighs, and they were both hurting like hell, and the really bad burns, as I said, weren't hurting. So they took me down to the hospital that night, and I could walk. Our place was on a courtyard at the far end, so it was almost a half a city block from our house to where we parked the car, and I had no trouble walking, getting out there to go to the hospital, but that was the last I walked for about three or four weeks. It was not that big a deal as it turned out. I had nasty scars, and the following summer when I went swimming, I could overhear people saying, "Oh my God, I wonder what happened to her?" But there is a funny story. The skin graft was from my

lower butt-upper thigh in a long rectangle, and after I came home and everything was largely over, Dann, who at this point was four, was saying to his friends, “Mommy will show you her scar; show them your scar, Mommy, show them your scar.” (Laughter). He expected me to hike up my shorts and show these little kids (laughter).

Ms. Born: And you didn’t have any difficulty though in carrying on as editor-in-chief and doing your law school work?

Ms. Determan: By that time, probably more than half of the courses I had were paper courses and not exam courses by third year. I think I took a couple of exams in the hospital. I really don’t remember. It was not a big deal.

Ms. Born: Tell me about your courses during second and third year and what you became most interested in and involved in substantively.

Ms. Determan: I loved tax. That’s how I started. Tax was required, which is interesting. I don’t think there’s another law school in the country that requires tax. Maybe a lot of them did at the time; I don’t think any of them do now. We did not have a particularly personally appealing, vital, brilliant wonderful professor, but he was very good and focused very much on the overarching themes of the tax law. More than any of the other courses, it all just seemed to fall into place. One of the reasons I always loved tax law is because every now and then you would just be finished. You have the answer and there was nothing more to analyze, nothing else you had to look up. There it was: if you did this, this would be the result. If you did this, it would be a different result. So I wanted to take estate and gift tax. I took partnership and corporate tax. I took

a lot of tax courses. I thought there was a very good chance I was heading to be a tax lawyer. The course I probably loved the most was called appellate practice. Monroe Freedman was a big ACLU-type around town, and he was the teacher, and we had an actual case. It was an appeal, *Hattie Mae Ricks*, and it was the case that established in the District of Columbia that there can be no such crime as loitering. If there is a loiterer, Hattie Mae was one. Hattie Mae's job was to get the drivers of cars to stop and pay her for sex. She was, as I would put it now, a sex worker but she was arrested, not for prostitution, but for loitering. This class with Monroe as the attorney on the case did the brief and the reply brief, and that was really thrilling because there were no other clinical opportunities. That was the only real-world kind of opportunity we had in law school at the time. The same guy who I loved so in con law and who became the Dean, Jerry Barron, taught civil procedure and he was wonderful. So I remember civil procedure, not because I think its inherently interesting, but because he was so very, very good at it. I'm sure there were others, but nothing pops into my mind now. Family law was interesting. I remember thinking at the time how stacked family law was against women. I remember consciously being aware -- "wow, the way this has developed, women really can get screwed." And in my second year, not the year I was editor-in-chief but the second year, the law review got the article by Katherine East and another woman that led to Title VII, called "Jane Crow and the Law." That was really a breakthrough article. After that, the law school played with the idea and ultimately did have a course on women and the law, but there was

nothing on gender discrimination law while I was in law school. But I remember being pretty excited about that article and the fact that we had published it.

Ms. Born: Do you remember anything about the women's movement when you were in law school?

Ms. Determan: I would say there was no women's movement when I was law school. We did publish that article, and things were clearly brewing, but it hadn't hit the newspapers, and it certainly hadn't hit GW Law School. But maybe we were just more oblivious than we should have been. Things were happening. I remember when I was well out of law school, when I was pregnant with Stevie, that we went to the Women's Legal Defense Fund organizational meeting which is where I met Marna Tucker; it's where I met lots of people who were my friends for years.

Ms. Born: Tell me in your third year how you handled parenting. Could you still get home by 3:00 in the afternoon?

Ms. Determan: No. And that's where the conversation with Dean came in. We paid Barbara more, and there was many a night -- maybe three or four nights a month -- that I would come home at 11:00 or 12:00. I remember working many times on weekends, particularly during the summer before law school started when I was trying to get out that last issue of the year before, and we were only a rump group of people at the law review. I think there were probably six weekends that summer that Dean took Dann to the beach where my parents had a house trailer and we had a house trailer in a campground near Rehoboth,

Delaware, and I just stayed home and worked at the law review. So Dean became the primary parent by far, and then Barbara worked more for additional money.

Ms. Born: Was Dean working full time?

Ms. Determan: Yes, Dean was working in the Civil Rights Commission during that whole period.

Ms. Born: Did you feel conflicted because of the parenting duties, family responsibilities?

Ms. Determan: I'm sure I didn't like missing all those weekends at the beach. The answer is I must have, but Dann was flourishing, and he really liked Barbara, and he really liked Barbara's little daughter, and he was going to the little Montessorri school. Both of them were going to the same little school. He was doing fine. There was one period right at the beginning where I remember I had said to Dean, "If this continues for six weeks, I'm going to have to drop out of law school." Every morning Dann would grab me around my knees and say, "Don't go, Mommy, don't go." But that didn't last very long. He was fine. He still is fine.

Ms. Born: When did you decide you wanted to be a tax lawyer?

Ms. Determan: I think after I took that first course in taxation. I also had a focus on estate and gift tax and did take the basic wills course, which was God-awful. One, I knew that was a practice area that I could control within the tax law, and secondly, I think we knew that was an area in which women may have had more opportunities at that time than general tax. The person living next to us on this courtyard was a lawyer at Hogan & Hartson, Jay Ricks, who became an

extremely competent communications lawyer. He had told me about Hogan & Hartson; that's how I had gotten interested in it. When I applied at Hogan & Hartson, I did so through him. I just sent my resume in through him. By this time, I was either clerking on the Circuit Court or maybe had the clerkship lined up on the Circuit Court with Judge Henry W. Edgerton. I learned later than he sent it forward at the firm, and when asked whether he was recommending me, he said that he wasn't recommending me, he was just forwarding my resume. Would he have recommended me if I had been a man and he just knew me on the basis of just being a neighbor? Maybe not. Maybe he was just being careful, but he had my resume in front of him. It wasn't as if he was being asked to do anything in terms of "recommending" other than saying I was a decent person, nice neighbor, and seemed fine, but he wouldn't even go that far.

Ms. Born: Were there women at Hogan & Hartson then?

Ms. Determan: Hogan & Hartson, according to history lost in the mists, had a woman during World War II when many of the men were gone, and according to what can't even be a capital G gossip, very small g gossip, she was involved with one of the partners, and she left. The year before I came, they hired a woman. Her name was Olivia Barklay out of Harvard. She was the first woman in the contemporary time period, and when I interviewed there, I actually interviewed with her. She had come at the standard time -- August or September of the year I was interviewing. She just barely had come when I interviewed, and she left in December of the year I came so she was here a total of 15 months. Let's

put it this way, Olivia probably didn't open doors for people. I remember the first week I was at the firm (laughter) Olivia coming by my office at around 2 in the afternoon and said, "Let's go get our nails done." (Laughter). What I learned later was that, even though Hogan & Hartson had a rotation program at the time for new associates that was the norm, not the exception, the tax department, including a very powerful partner who was the head of the tax department, just told the firm that they wanted me, and the understanding was that I would not rotate because the others were not sure they wanted me, they weren't sure they wanted a woman. And I told you about my interview here at Arnold & Porter.

Ms. Born: Tell me about that.

Ms. Determan: I was interviewing with Mrs. Fortas, who was then head of the tax department at Arnold & Porter, and Paul Berger, who was another tax partner, was very eager to have me come, and he and I had had a really nice interview. But then it was time to go see Mrs. Fortas, and I said to her what I was saying to everyone, that I was willing to work very hard, but I already had a child and wanted to have another and, excepting rare emergencies, I could not work at the office evenings and weekends. And she drew herself up to full 4' 9" or whatever she was, and said, "My dear, around here, we have rare emergencies at least three times a week," (laughter), and I said, "Well, you're not going to be very happy with me and I won't be very happy with you," and I left. Paul Berger said, "Don't pay any attention, we can work it out, we can work it out." But when I went to H&H and said essentially the same thing to Seymour

Mintz, the head of the tax department, he said, “None of us likes to work evenings and weekends except in emergencies.” The difference was so strong, and at Hogan & Hartson I had the feeling that no one would think they were making special rules for me. Those were in the good old days.

Ms. Born: Were you doing these interviews while you were still at law school?

Ms. Determan: No, this was during the clerkship. This was in the fall, in the normal interview period during the fall that I was a clerk.

Ms. Born: Let’s go back to law school. Did you work at outside employment while you were at law school at all?

Ms. Determan: No, not at all. I got a small stipend as editor-in-chief of the law school. I think I got a \$100 a month, all of which went to Barbara Baker for the extra babysitting.

Ms. Born: Did you have to work on the law review during the summer between your second and third years?

Ms. Determan: Yes. And the summer after I graduated, I didn’t work. I was heading for the clerkship that fall, and I just didn’t want to.

Ms. Born: Tell me what you were thinking about in terms of what job you wanted when you were still in law school and how you decided on a clerkship.

Ms. Determan: My assumption in law school was that at some point I would probably try to teach. I certainly had no intention of being a commercial lawyer for my whole career. I was encouraged by the faculty to seek a clerkship, and we were living in Washington so that the only clerkships, appellate clerkships, were the U.S. Court of Appeals and the Supreme Court, which wasn’t within shot. I think I

probably sent letters to Supreme Court justices, but I got the standard, no thanks.

Ms. Born: Had there been women law clerks on the Supreme Court?

Ms. Determan: To the best of my knowledge, there hadn't been any. The Supreme Court was just at the time where they were starting to focus on taking people who had already had clerkships at the federal circuit courts. But in any event, I did apply, but that was never in the cards. I wrote to circuit court judges -- Judge Bazelon and Judge Leventhal and then Judge Edgerton. Judge Edgerton was in senior status and had had a lot of female clerks. I got an interview with Judge Bazelon and an interview with Judge Edgerton. I did not get an interview with Judge Leventhal. I remember the interview with Judge Bazelon because I went in there, and it was as if, as he was getting ready to talk to me, he just focused on some elements of my resume, and he said, "You're a mother! (laughter). We can't have a mother here. I'm sorry. I'm wasting your time." And I said, "Thank you," and left. And when I told that story to my friend Lennie Schreiber, she said, "Judge Bazelon called you a mother?"

Ms. Born: Judge Bazelon was the chief judge at the time?

Ms. Determan: Yes, he was the chief judge of the D.C. Circuit, and it was a day and age when no one was surprised at that. They thought the story about Lennie Schreiber's reaction was funny, but people didn't say, "That is outrageous, that's not his decision to make." Even I thought, well, I am a mother, and if that's a disqualifier, it's hard to take it personally. We were in an interesting time -- in our own lives, we were treated in a way that we would now consider being

kicked around and being clear victims of gender discrimination, but it didn't feel like it at the time because we weren't sensitive to it.

Ms. Born: We were part of the society and the culture ourselves.

Ms. Determan: And part of the problem. I mean, I'd like to think that now anyone in my position would say, "Listen you asshole, Judge Bazelon, have you heard of Title VII? It's not up to you to decide whether I have time to meet my job requirements; if I don't, fire me, but don't not hire me." I could no more have said that; it wouldn't have hit my consciousness, and if it had hit my consciousness, I wouldn't have been able to make myself say it.

Ms. Born: It did not occur to you.

Ms. Determan: No. It didn't occur to me. But even worse, had it, I wouldn't have said it. Even if I had thought it, even if I had thought I was being treated unfairly, I wouldn't have had the gumption to say it. But now young women, they'd have the gumption.

Ms. Born: Tell me about your interview with Judge Edgerton.

Ms. Determan: He was such a gentle man and a gentleman. And he was very eager to make opportunities for women and had had women clerks for years. I was maybe the seventh or eighth. And we had only talked for a short time when he offered the job, and I took it on the spot. I was the last clerk when he was really active. He was getting, certainly not senile, but he was getting slow, in terms of physically slow. And at the end of my clerkship, he was really quite sick, and interestingly enough, I did a lot of work for Harold Leventhal, who hadn't even given me an interview, and for Judge Bazelon, who said I was

disqualified as a mother. But I just loved him and respected his work. He was, next to Bazelon, he was the giant on that court even then. And there were some pretty interesting judges. And as a little footnote, Warren Burger was on the court at the time before he went to the Supreme Court. He taught me a good lesson because I had contempt for him. He just wasn't a pleasant guy. He just seemed so dumb. The other clerks didn't like him, including his own clerks. He was just horrible. But after Judge Edgerton got sick, it was not the Bazelon's of this world who came to see him. Judge Burger went to see him, I think almost weekly, during the entire time he was sick, and it was a very good lesson for me because even then I appreciated that being decent to a colleague who is sick is more important than whether you are arrogant about your work or whether you are dumb. And so for all of what happened afterwards, for how horrible he was on the Supreme Court and how embarrassing he was on the Supreme Court with his fancy airs, I always remember what a basically decent guy he was to someone I loved. And Judge Bazelon, who learned a lot at the knees of Judge Edgerton and who was perfectly healthy at the time, never showed up. He was much too busy and much too important. So that the guy on the court that I disliked the most, and I think the judge I probably had most contempt for, was the one who was kindest to him. You knew that at the time, and it was really quite amazing.

Ms. Born: Let's go back and try and wrap up a couple of things about law school. Tell me about who your friends were in the last couple of years of law school? Were you mostly interacting with law review people?

Ms. Determan: Almost exclusively with law review people by the end, but my closest friend, the woman I met in the registration line, was also on law review, and she and I were very very close friends. Lennie Schrieber, the one who thought that “mother” was half a word, was on the law review, and she and I were good friends. As an aside, she ended up losing her job as a Jerry Brown-appointed Judge in California because she had an affair with a person who appeared before her. I have never figured out how she arranged that. But apparently there was a huge scandal. And then a third friend was a woman who also ended up on the bench and still is on the bench out in California and who was also on the law review. So the three of us, Leslie, the widow, and Lennie and Lucy McCabe were very good friends, and some of the men on the law review, who were always friendly and nice in the offices. But the fact is, except for Leslie who would come to my house from time to time, I was either at school or with Dean and Dann at home. I didn’t have any social life with people at the law school.

Ms. Born: No time?

Ms. Determan: Not really, except for Leslie. We would go out with her, and she had some boyfriends. Four of us would do things very occasionally. But the ladies lounge, the law review offices, that was pretty much it.

Ms. Born: Do you think your social philosophy or political views evolved during the time you were in law school?

Ms. Determan: Interesting, interesting. Let’s see, that was ages 26 to 29. Certainly the whole Vietnam thing was heating up very dramatically during that time, and I think

we all, even those of us who were kind of over the peak of the wildness of the sixties or were insulated from it, to some degree, were becoming more radicalized. Although I don't remember at the time consciously thinking that I am thinking about these things more, the entire society was thinking about these things more. Dean was in civil rights and the Vietnam war was really getting hotter and hotter. Dean lost his job when Nixon came in. Let's see, that would that have been 1969.

Ms. Born: So what did he do then?

Ms. Determan: He went to the U.S. Attorney's Office for a while. Then he went up on the Hill for a while. Then he ended up at the Better Business Bureau. I have to tell you one funny story, one of the Vietnam stories. The law clerks at the DC Circuit were madly trying to get assignments to avoid the draft and one of them called over to the Pentagon having heard of something called direct army commissions. He got a recruiting sergeant and said to him he was interested in the direct army commission program. The guy said, "Well, this is a program for people who have special skills that we need; what are your special skills?" And he told him that he was a lawyer, and then there was a long pause, and the guy said "Son, we are not suing the Viet Cong."

(Laughter) I certainly was not radicalized about the role of women. That happened later. I learned much later that there was resistance to me that I have always been arrogant enough to assume must have been because I was a woman within the firm. That whole business about only the tax department agreeing to take me. I didn't learn about that for years. I am not sure I would

have learned it even if I had been super sensitive, but it just didn't strike me that I was carrying any baggage. We were so dumb, so blissfully caught up in the same boxes that the whole society was in.

Ms. Born: Perhaps it was the blindness that let you succeed.

Ms. Determan: Certainly, I think that I have been served well in my life by my assumption that things will go well and my general crazy optimism. But we were all blind; it wasn't just me. It wasn't just me not seeing the discrimination that was there. We were caught up in the same social pattern. I told you the other day about how embarrassed I am looking back at the extent to which I took dives in high school. There was one girl who didn't, and she was ostracized. She had everything bad happen to her that I was trying to avoid having happen to me. But of all the people in my high school class, she is the one I respect the most. Because even at 15, 16, 17, 18, she did not take a dive. She was right, and if you didn't like her that was just tough as far as she was concerned. I would like to look back and say that I was that self-confident, that I was that insensitive or uncaring about the society as a whole. But I have always cared what other people would think.

Ms. Born: But not enough not to do well in college.

Ms. Determan: No, but by then I have this husband.

Ms. Born: He exempted you?

Ms. Determan: Yes, he exempted me. Because what did I care about the boys. I already had super husband.

Ms. Born: So how did you do academically in law school?

Ms. Determan: I was second in the class. The guy who none of us had ever heard of because he was in the night program actually graduated first. I remember when Monroe Freedman found out that I had missed being first in the class by a little bit, he said, "Sally, you should have told me. I didn't have to give you a 98; I could have given you a hundred." It didn't matter. I actually was second in my class at Delaware. I was first in my class after the first year at Conn College, but I didn't graduate there, and second in my class in law school. The perennial bridesmaid, that's me.

Ms. Born: Were there any particular role models or mentors you had during law school that we haven't talked about?

Ms. Determan: We didn't talk about Monroe as a mentor, but he certainly was. The fellow who had been the law review advisor during my second year -- a lovely lovely guy -- was really good to me. He was important to me. And Jerry Barron -- I really liked him -- was helpful to me.

Ms. Born: Do you remember the law review advisor's name?

Ms. Determan: No, I don't remember his name. Certainly there were no women on the faculty. I had my friends who were women, but I certainly didn't have any women that I was looking up to. I say that more categorically than perhaps is true. We had a large number of adjunct professors who taught in the night school, and there could very well have been some women teaching in the night school that I just would never have known or known of, so don't hold me to the fact that it was an all male faculty. But it certainly was an all male faculty in the day school.

Ms. Born: Let me just ask you one more question about your applications for clerkship to the D.C. Circuit. Had there been female law clerks hired by judges other than Judge Edgerton at the time you were applying?

Ms. Determan: At the time I was applying, I think the answer is no -- except for motions clerks; apparently there had been one or two women as motions clerks -- but the year I served, Sally Katzen was Skelly Wright's clerk. Marge Smith may have been a motions clerk; I don't remember. And she was in my class and hadn't applied out of law school. Sally was Skelly Wrights' first woman clerk, and there were the three of us.