

ABA Commission on Women in the Profession

Women Trailblazers in the Law

ORAL HISTORY

of

SARA-ANN DETERMAN

Interviewer: Brooksley Born

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ORAL HISTORY OF SARA-ANN DETERMAN

FIFTH INTERVIEW

May 1, 2006

This is the fifth 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 American Bar Association Commission on Women in the Profession. It is being conducted by Brooksley Born on May 1, 2006, at the offices of Arnold & Porter LLP, 555 12th Street, N.W., Washington, D.C.

Ms. Born Sally, the last time we were talking about your early years as an associate at Hogan & Hartson. I know that you began to do public interest work at some point during those years. Can you tell me about that?

Ms. Determan: It was very early in my career. I probably hadn't been at the firm for six months when Barrett Prettyman asked me whether I would help him prepare testimony on behalf of the ACLU that he was going to be giving to the City Council (so this would have been in 1969 at the latest -- maybe in late '68) on juvenile curfew legislation that was proposed. (When you live as long as we have, what comes around seems to keep coming around and coming around!) I essentially did a little research on what had happened in cases in other jurisdictions, prepared his testimony, and he gave it and we were all very happy with it. I don't remember what I did next but I kept doing little things. I organized a project among lawyers doing wills through Legal Counsel for the Elderly, and much later for the Whitman Walker Clinic for AIDS patients.

The only other case of any consequence that I remember is Jan McDavid and I did a case on behalf of a Nazi organization -- just dreadful, dreadful people -- that had been denied 501(c)(3) status as an educational organization, even though they were putting out materials that, if you didn't look at their content, were the same kind of "educational" material that anyone else was distributing. The IRS had denied exemption on the grounds that those were not really educational, and our position was the First Amendment doesn't let the government decide what is and is not educational. But even Ab Mikva couldn't buy that, and we lost in the Court of Appeals. "Big Mamma Rag" had opened the flood gates (that was a lesbian newspaper that the IRS had said wasn't educational), and they won. But we didn't win, in large part I think because one of the "educational" articles was on how to make a bomb! But those two projects brought me to the attention of Ralph Temple of the local ACLU, and I think frankly, they were looking for a woman to serve on one of their critical committees. They asked me if I would go on the ACLU screening committee, and that's how began my function with the local ACLU. Then I went on the Board which was an elected job -- it wasn't an appointed job -- and eventually chaired the Board. The classic tradition was that a former Board Chair who wanted to would then represent the affiliate on the national board, which I did. And then I agreed to run at large for the national board and won a term, again sometime in the '70's. I think that was before Stevie got sick.

Ms. Born: Well, I've got that it was '87.

Ms. Determan: Oh, so that was much later.

Ms. Born: Yes.

Ms. Determan: I just don't remember. But I'm sure that that is correct.

Ms. Born: So tell me about the local ACLU and your recollection of the years that you were on the Board and chair of the Board.

Ms. Determan: One of my absolute favorite pro bono activities that I've ever done was serving on the Screening Committee at the ACLU. The Screening Committee decides what cases the local ACLU will seek to place with volunteer lawyers or, in some cases, staff attorneys. The issues come to us prepared by the Legal Director, initially Ralph Temple, who is a very gifted guy, and then Art Spitzer and Leslie Harris, both of whom did a very nice job of presenting the cases, so that I ended up in discussions with other much more sophisticated constitutional lawyers than I, including people who were regularly arguing before the Supreme Court -- mostly litigators. I think I was the only tax attorney for a while. But they were people who really knew this case law and we were arguing about whether or not (1) the cases are likely to be successful, and (2) what harm they would do if they weren't successful, and all the other things that the ALCU needs to think about, including whether it was important enough. I learned so much from those conversations, and of course I had some strong views, especially that we should get more involved in gay rights and in women's rights. And we did. I don't suggest there was a lot of resistance to that -- I think there wasn't. But that was really, really fun. I felt like all of us made a contribution, and none of us disproportionately. I mean, I

was no more important than any other member of that committee. But we did a good job -- we were careful about what cases were taken, and we were very careful not to take cases the loss of which would set back civil liberties unless we thought there was a really good shot at winning. Being the Chair was less fun. It was more administrative. There was a vacancy in the executive director that year and so we had to get involved in all of that. Chairing the meetings is fun; I like to chair meetings, but you don't leave at the end of the evening thinking how much you've learned, how much fun it was.

Administrative issues around exempt organizations, I have never really been able to get terribly interested in. They're important and so I have always been willing to do them. I mean I've always understood that when you agree to be Chair or on a board, that's what you have to do, but it's not nearly as much fun as dealing with what cases to take and listening to people who know what they are talking about on the subject. I don't remember anything else particularly noteworthy other than internal things that came up during that year. It was during the period that we were developing -- in a series of cases that dealt with the National Park Service -- a lot of the rules that still exist today for petitioning the Congress, for the demonstrations and so forth in the District of Columbia, which have proven to be very important and amazingly resilient. The National Park Service, which one would not think of as being particularly sensitive to civil liberties, was sensitized by a series of cases that we brought during this time period. And anyone looking at the rules now would say, "My goodness, the Federal Government has such liberal rules for demonstrations in

the District of Columbia!" But that came out of a series of cases. I don't remember anything else big across the board that we were doing at that time. There's always discrimination on the basis of sex, discrimination on the basis of race, discrimination on the basis of sexual orientation which was outlawed in the District of Columbia very early. And then the First Amendment stuff -- it's amazing. You would think the governmental entities would learn, but we had case after case after case -- whistle blower cases and others. This is a very interesting town to be on the ACLU screening committee.

Ms. Born: Where do you think your interests in doing this kind of public service came from? Where did your commitment to the First Amendment, to civil rights, to civil liberties come from?

Ms. Determan: I remember as a little girl, on the civil liberties side, hearing my father on the subject of Joe McCarthy, and his talking to me about how evil that was and how important it is that we live in a country in which people can have their say. There was no sensitivity particularly in my growing up around race discrimination, and I don't remember, as I said before, about giving much thought to women's roles. I just swallowed hook, line and sinker what girls were supposed to do and just knew I was different because I wasn't going to do that. But it wasn't that I thought that the culture was wrong to make me feel like I was different; I just thought I was different. It wasn't until I was well into adulthood that I understood the extent to which the laws needed to change and the culture needed to change. I was in my late twenties by the time I saw that about women. Of course, once your eyes are open about Jim

Crow and the life of the people in the south where the law caused horrible pain and suffering, I just can't imagine anyone not being interested in that issue. But except for the Joe McCarthy conversations I had with my father, in terms of my formative years, I don't remember anything. In terms of gay rights, I remember always thinking, once my eyes were opened about women and race, that there's just no difference. I didn't understand about people who believe that there needed to be civil rights protection for Blacks, but who didn't also see it for gays. It certainly is exactly the same kind of analysis. I think in some ways it was dumb luck that the ACLU was the first organization that I got really involved in because that was my first pro bono activity and my name got before Ralph Temple, and as I said, I think part of it was that they were looking for women. They were a little embarrassed in having these all-male committees. And so I was benefited by my status as a women in that sense.

Ms. Born: Do you remember when your views of women and the appropriate role for them began to change? What led you by the time you were on the screening committee to be advocating taking cases that were women's rights cases?

Ms. Determan: I was on the law review at GW when the Jane Crow article was published. It was my second year. I wasn't the editor that year; it was the year before. But I worked on it. I was really, really amazed at some of the stuff that they said was going on, that I just hadn't given any thought to.

Ms. Born: Maybe you should describe the article.

Ms. Determan: It was by Catherine East; it was a co-authored piece in the GW law review, and I graduated in '67 so that was probably the '65-'66 law review. It was the first article on discrimination, lawful discrimination against women. It didn't go into the sociological thing; it wasn't a Betty Friedan kind of thing. It was how the law limits the potential of females, and I was stunned. I'd never given any thought to it, in part because I was not in the right paradigm in that if someone had said to me, "Did you know that there are places that women can't serve on juries?" I might have said "Yes." But they went through many issues so intensively and so successfully. Maybe a man could have read that article and come away thinking that nothing was wrong but I can't imagine very many women being able to read that article and not saying, "Oh, my God!" So that was the beginning. Then my own experience that I told you about in terms of interviewing for jobs -- and that was after the 1964 Civil Rights Act had outlawed discrimination against women in employment. It's fair to say that it wasn't direct experiences at Hogan & Hartson because it wasn't. As I told you before, any discrimination against me was done behind closed doors so I was unaware of it. But to start having your eyes opened -- was there a click moment for me? The only click moment I had was -- I couldn't even tell you exactly when it was --but I'd probably been at Hogan & Hartson two or three years. And I couldn't get to sleep. My husband Dean was asleep next to me, and I woke him and said, "Why didn't we even discuss who would go to law school first, why didn't we even discuss whether I would get to go before you would get to go?" We had always understood that we

would both go. It never crossed either of our consciousnesses that there was any question that he, as the male and the older guy too, would go first. I mean, it was as if the question was, "Will the sun come up tomorrow morning?" And that was a click moment. Whatever came into my head that made me wake him to ask him that question indicated that I was starting to think in a very different way because it never ever occurred to me before then. But what it was that brought me to that moment, I think it was the article. And then I was involved quite early in the Women's Legal Defense Fund. To some degree I felt, as you probably did, that part of being a women lawyer in Washington is you gotta get involved in this organization, this organization is going to do things for women and I have special responsibility to do that. I made some of the best friends I've ever had in my life through it. I went on the WLDF screening committee, and then you really hear about the discrimination against women.

Ms. Born: Tell us about WLDF.

Ms. Determan: The Women's Legal Defense Fund was started by a small group of about 15 women, not including me, who got together and decided, just like the ACLU model of protecting civil liberties was useful, that what we needed in the District of Columbia was an organization devoted to finding lawyers who could help women who are the victims of sex discrimination. And the organizational meeting I remember very well, because I was 8 months pregnant with Stevie, was in 1971. So I had been practicing not more than 3 years. And at that organizational meeting we were asked not only to sign up

for this new organization and agree to spend some very modest amount of dues -- I think it was \$10 or \$25 -- but also whether we were we interested in doing anything. And one of the things was the screening committee, and I knew what a screening committee did because I was serving on the ACLU screening committee, so I signed up for that screening committee and served. For all I know, every single person who signed up served. I don't know what choosing was going on at that time. I did the screening committee for several years with the Women's Legal Defense Fund. One of the things that we also did was help not only in cases but projects, and a group of women, primarily lesbian women but not exclusively lesbian women, wanted to create what I think was the first safe house for the victims of domestic violence in the District of Columbia, "My Sister's Place." And I remember the first meeting there. My Sisters Place was in a scary area of the city to me at that time, not because of race but just because of garbage and stuff all over the street and so forth, and we went to this place for one of our meetings, which was My Sister's House. And on the outside it was horrible, and on the inside the furniture was all grungy and everything, but it was so cheerful and there were children playing and women looking relaxed and happy. It just seemed like such a very special good thing we were doing. I believe that was the first of the area's safe houses. Obviously, that should be a governmental function, and it only lately came to be a governmental function, but My Sister's Place to this day still exists. I made just some wonderful friends, just some wonderful friends. Of course that experience really opens your eyes because that was not

only about legal discrimination like the article, or discrimination against women like me who had all kinds of advantages, but just some of the grossest kind of things in family law areas, particularly. We got a lot of those cases -- employment, housing. I remember we were involved in some litigation in the District of Columbia although it was a federal program. I think it was one of those state action kind of quasi state/federal things on the man in the house rules for the AFDC, Aid to Families with Dependent Children. Aid was being denied if the father, or any man for that matter, was living in the same household, and the middle of the night searches were held to see if a man was there. I mean it was just -- now, looking back 30 years later, it just seems that must have been a hundred years ago that attitudes were so different. Of course, the culture at that time did assume that there was a role for government in these kinds of discrimination. So you not only had litigation under the Constitution or the statutes, but you also had potential for legislative changes. One of the things the Women's Legal Defense Fund did was work with the City Council on some legislation to protect women, to add women to the human rights ordinance. And it was thrilling work; it was work that you could see was making a difference, even though your own particular individual role may not have been that critical. You were with a group that was mattering.

Ms. Born: Who were the people, Sally?

Ms. Determan: Who were the people in the group who were running it? The people I remember most of all are Gladys Kessler, who was very involved; Liz Dunst, who has since become my partner, was very involved; Hope Eastman, I

remember working with on a couple of things; Mary Helen Mautner (who died of breast cancer several years later) was very active. There was a woman who is teaching at Georgetown now who had done a lot of stuff in the domestic relations area who was very active and I can't remember her name. This was all before Judy Lichtman came, courtesy of you and your speech to the Junior League. Marna Tucker was active and you were active. I've never been good at names. I wouldn't have been able to tell you the names 20 years ago probably, but it was a pretty small handful of people, but I think of Gladys Kessler, who chaired the board for the first probably five or six years. She was the real mover and shaker. She was the chief; the rest of us were Indians. But it was heady times because we could see that we were making a difference. People were noticing and people were caring. It was quite wonderful.

Ms. Born: Do you think WLDF had a role not only in helping women in the community but also did it help you and the other women who were participating?

Ms. Determan: Oh, sure. In lots of different ways. You learn things that you otherwise wouldn't. If you're sitting in a large corporate law firm doing what virtually everyone else does, you don't learn a hell of a lot. You also start getting insight into how the society works, not just how the law works -- because as lawyers, you have a sense of how the law should work and what your role is on behalf of the client to push it to work in a certain direction or not, but when you get involved in a social/legal movement, then you see how the law plays roles in people's lives that you would never think about otherwise. And so I

found it very enlightening. And of course you make so many friends. I wouldn't have known you -- well, I would have known you but I wouldn't have really known you. I wouldn't have known Marna Tucker, I wouldn't have known Gladys Kessler, and later lots of others. I got into the ABA for women's rights, and you were on the Council for the Section of Individual Rights, and the person who had been chairing the Committee on Rights of Women was stepping down for some reason or other, and you asked me to chair it. And that's the first thing I did, I mean I was a member, but that's the first thing I did with the ABA of any consequence. And from that I went on the Council and then from the Council I started chairing the Individual Rights Section. But I remember going before a man who was then the chair and later a Ninth Circuit Judge and who was considered very liberal, to talk about doing something on the very very very few number of women federal judges. We wanted to get a little bit of money, I think a thousand dollars or something, to do a study of women in the judiciary. And Cecil Poole said -- I mean he was just insulting -- as if what a ridiculous thing: "Why would we be interested in anything like that?" Well, we did it anyway and it was a pretty shocking response, and the next thing we did was the number of women in the red book, the red book being the ABA's list of the real activists in the ABA. And even assuming that every single Lee and every single other ambiguous first name was female, it was still pretty outrageous. And just getting the data out in that day and age shook people up and created opportunities. It was thrilling; it was thrilling.

Ms. Born: This was the early '70's?

Ms. Determan: The early '70's, yes. And information then, and I don't mean to be cynical, but I do think more so in that era, information led to people being shocked and a little ashamed, and out of shock and shame, if not the goodness of their hearts, doors were opened and people got opportunities. I mean, am I telling you that because we demonstrated how few women there were on the judiciary, that therefore immediately they started naming tens and tens of women? No, but the ABA Judiciary Committee got sensitized and started to add sensitivity to gender issues to some of the things they asked people about and so did politicians. This was one tiny element, and it was exciting.

Ms. Born: What other things did the Rights of Women Committee do?

Ms. Determan: The Equal Rights Amendment was very hot during those years, and we put out -- I remember that's when I first met Ruth Ginsberg -- and we did this little Q&A thing that was supposed to come out with the ABA imprimatur that I had largely written which is questions and answers about what it would do. And Ruth was teaching at the time, very involved in the Equal Rights Amendment, and knew a hell of a lot more about it than I did -- the way that only Ruth can do. I was at a meeting with her and she said, "Who wrote this erroneous thing?!" And I thought her reference made it sound as if everything was totally screwed up. Well, there was one small thing that she thought probably had been overstated, or was understated, or it was a matter of emphasis. And that was essentially her only comment, but I was nearly wetting my pants, I was so embarrassed that Ruth Ginsberg, who was a

particular heroine of all of ours at the time, would be saying that I had done this terrible error in the Equal Rights Amendment pamphlet put out by the ABA!

Ms. Born: Do you think even in that early time she had enormous stature?

Ms. Determan: Oh, she did. That was the era that she was litigating the central critical cases on sex discrimination before the Supreme Court. I think she was one of all of our heroines. And she was a pretty impressive figure, even though she's very soft-spoken and had the social skills of a sponge. When she tells you that in the gender discrimination area you have made serious errors in the presence of people like Brooksley Born and others, you just want to crawl through the floor.

Ms. Born: Brooksley Born and others have had that very same experience with Ruth Bader Ginsberg!

Ms. Determan: Sure, but I didn't know it at the time. I thought, oh my God, she thinks I'm so dumb!

Ms. Born: Well, she had really orchestrated the cases.

Ms. Determan: And she did it brilliantly. Although isn't it interesting that that was the area in which the bright line between the compelling state interest -- if there was a compelling state interest, you couldn't do it -- got eroded, that in the gender area we got this "irrational nexus" test.

Ms. Born: Tell me how WLDF evolved and how your role evolved -- you were a member of the board.

Ms. Determan: I can't remember but I don't think I went on the board until after Judy Lichtman came on as a half time compensated person. And she was the first compensated staff person we had, and of course she was brilliant, just absolutely brilliant. But in the early days the function of the board was again largely administrative. The cases to take, the projects to go into either became staff functions or screening committee functions, and not really board functions. Ours was a fund-raising organizational role. And I was happy to do that but I've never found that as much fun as -- running an organization administratively isn't as much fun as the guts in the law of what the organization is trying to do. I had the same thing with the Lawyers' Committee for Civil Rights Under Law. I mean how can you say no to the Lawyers' Committee for Civil Rights? I continue, even as a woman, to believe that race is the central social, moral issue of our society, so when I was asked to go on the board of the Lawyers' Committee for Civil Rights, both the national and the local, I just didn't feel I could say no. I mean it's just too important. And I loved the people I met doing that kind of work, and of course, that work was central also for all the same reasons we've just talked about. And the society was open to what lawyers could do. That wasn't fun -- not the fund-raising and changing the by-laws. That's the kind of thing I ended up doing, and I've never particularly enjoyed that. But the ABA stuff for years was really fun. The Section of Individual Rights at that time was essentially the only place in the ABA that was pushing some of these social issues. And we were so successful in those early years that the entire ABA

changed and now the Section of Individual Rights is one of many many voices for progressive legislation, progressive internal operations. But at the time it was nowhere but in the IRR Section, and so that was just enormous fun.

Ms. Born: How long were you the head of the Rights of Women Committee?

Ms. Determan: I don't remember those dates. I think I probably chaired the committee for not more than 2 years before I was asked to go on the council. And then I went on the council and served for six years. And I served as Chair.

Ms. Born: You were Chair in '86 to '87.

Ms. Determan: And I was in the House of Delegates after that.

Ms. Born: Right.

Ms. Determan: And it was during that time when we were doing all of the abortion work, and that was really fun.

Ms. Born: Why don't you tell me about that?

Ms. Determan: I don't have to tell you but I can tell whoever else may someday look at all of this. No one would be surprised to learn that abortion was highly controversial within the ABA as well as everywhere else and continues to be. But we were very eager to have the ABA take a pro-choice position, not a pro-abortion position, but essentially a position that the law should just stay out of it in terms of criminalizing conduct. And as I recall, we brought a pro-choice motion twice and it was tabled twice, once on a technicality.

Ms. Born: This was before the House of Delegates?

Ms. Determan: Before the House of Delegates of the American Bar Association. The Individual Rights Section brought it all on its own. I don't think we had any

co-sponsors the first time. And it was tabled as being not germane. It was not germane -- imagine that! That a resolution in favor of de-criminalizing abortion, essentially a pro-*Roe v. Wade* position, was deemed not germane to the nation's lawyers.

Ms. Born: Particularly when there had been a Supreme Court case saying it was a constitutional right.

Ms. Determan: Yes, a Supreme Court case! And cases all over trying to figure out its extent, well, that still exists. So it wasn't germane to the nation's lawyers -- that was the technicality. And then the second time it came up, it was tabled for further discussions, further investigation, whatever. But the third time it came up, we won. And we won quite overwhelmingly. Once it went to a vote, we had the votes.

Ms. Born: Do you remember what year that was?

Ms. Determan: I don't remember. I can find out. At about the same time we were doing a gay rights resolution because I was also in charge of that one because I was the IRR delegate to the House of Delegates. And that one was really fun because there was some really nutsy opposition to that. But no one was suggesting that it wasn't germane, at least, and it didn't have the outside interest that the abortion one had. For the choice one, we had all kinds of external organizations coming in. I remember James Bopp, who is still very active in the so-called right-to-life groups, joined the ABA for the purpose of being able to get floor privileges to come in and argue against it. And we actually had people with signs outside the meeting, and all kinds of internal politics in the

ABA around using the General Assembly to override what the House of Delegates had done, and all kinds of archania. It was really fun.

Ms. Born: Who were your allies in this effort?

Ms. Determan: Well, we had a lot of allies -- the women across the board -- well, not across the board, but the vast majority of the activists, and by this time there was a handful, but nonetheless, a pretty powerful handful of activist women. You were certainly very active at the time. Esther Lardent was active at the time. Martha Barnett, who ultimately became president of the ABA, was a little careful about getting her skirts potentially tarnished in this activity, but nonetheless, was behind us. Estelle Rogers and I did most of it. I did most of the speaking, I wrote most of the speeches, I wrote most of the materials, but she was right in there getting votes and talking to people. I know there were others, I just don't remember them all. But those were the critical people. The Washington women were pushing it. And we had help from men. John Pickering, a senior partner at Wilmer Cutler, was wonderful and so was the fellow from New York, Alex Forger, wonderful Alex. At this point we were not alone by any means, but it was the women who were running things and the final vote obviously was not just the women voting for us. But on the gay rights one, we had the kind of opposition -- it's just stunning the kind of things that were said on the floor of the House about why a nondiscrimination provision for gays was contrary to the Bible. A lot of Bible talk, a lot of talk about conduct that people choose and they could stop it anytime they want to and therefore it's not like race or gender. It was interesting they were talking

about gender as if -- now, there's something we can really understand. Not this homosexuality. But we won that one too.

Ms. Born: So both of these happened while you were the delegate to the House of Delegates from IR&R.

Ms. Determan: I was then elected at large as an assembly delegate to the House for several more years but I didn't have a portfolio in the way you have when you're the delegate from the Section. So from time to time, I would be asked to speak on something, to write in favor of something, but it was those couple of years that I was the delegate from IR&R that were the fun years.

Ms. Born: Tell me what happened before you were the Delegate, when you were the chair of IR&R. Do you remember any highlights of the year that you were chair?

Ms. Determan: All these issues were percolating. Gay rights, abortion, civil rights issues, voting rights issues. All of those issues were ours, and at probably every meeting for six years, there would be two or three resolutions from the Section of Individual Rights, either cosponsored or alone before the House of Delegates. But I don't remember a specific one that got our attention during that period. It's possible that it was while I was still chair that the first tabled pro choice thing happened. And in those days, and probably today, in that organization and probably in every other organization, someone who is willing to spend the time and do the work has other opportunities, and I was appointed to several standing committees most of which, not all of which, but most of which I ended up being chair of for at least a term. And the timing of all of

this is really very fuzzy in my mind. The SCLPSR Committee, the Special Committee on Lawyers Public Service Responsibility which became the Pro Bono Committee, I know was early, because I'm pretty sure that I had to drop out of that one when Stevie got sick. And Stevie got sick in 1980.

Ms. Born: So that was the late 70's.

Ms. Determan: And I think that was the first standing or special committee that I was appointed to.

Ms. Born: So you served on that committee as a member and then became chair?

Ms. Determan: And then had to resign. I resigned as chair.

Ms. Born: What did that committee do?

Ms. Determan: Our main function was to support pro bono activities within the ABA and to encourage local bars to get involved in pro bono activities and pro bono best practices. We were very involved with government lawyers and whether or not government lawyers could lawfully do pro bono work using even secretarial assistance and telephone assistance much less hours that they were being compensated for. But the big issues were around structuring pro bono within law firms and how one goes about with the ethics rules and otherwise in encouraging pro bono activities -- not significantly different from what's being done today but what was best practices then was just the very beginning of essentially Esther Lardent's work on pro bono lawyering. And there's a person whose had such an incredible impact on the development of pro bono lawyering.

Ms. Born: How has she done that?

Ms. Determan: Esther was doing a lot of consulting work for the legal services organizations founded by the Legal Services corporation. The federal government had for years, and probably still does, I don't know, a requirement that a certain percentage of their overall budget, I think it was 15%, had to be devoted to using, developing, training and otherwise exploiting -- and I use that not in a pejorative way -- the private bar -- the Congress (or maybe it was by regulation, I think it was by statute) having decided that the private bar really should be helping out here, but recognizing that there needs to be a structure within which that could be done. Esther became very early on very interested in how the Corporation can most effectively use pro bono lawyers. From that she came to head the Post-Conviction Death Penalty Project that I had set up through the ABA. That was the other thing I did in my year as Chair of the IRR Section. I was very interested in the death penalty, and we got some money with the Litigation Section and created the Post-Conviction Death Penalty Representation Project.

Ms. Born: And that happened when you were Chair?

Ms. Determan: Yes. And Esther came up here to run that program.

Ms. Born: Tell me about that program.

Ms. Determan: That program was an attempt to get the ABA to encourage the private bar to handle post-conviction cases -- habeas or statutory equivalents -- in death belt states because there were literally hundreds of people on death row who were not represented and were not pursuing post-conviction relief to which they were clearly entitled. The Litigation Section was very involved in that and we

actually found lawyers. I mean, it wasn't just showing bars how to do it. Esther's program, funded in part with ABA funds and in part with outside funds, actually set up mechanisms for identifying and supporting pro bono work with fine materials -- this was pre-computer materials. The program has to date placed more than a hundred cases and I think even in the very early years it placed 20 or 30, including one that I took, the firm, Hogan & Hartson, took in 1986, and it's still going on.

Ms. Born: That was the year that you set up the project. So you were the first chair of that project?

Ms. Determan: I was the first chair of that project. Ab Mikva was very involved in it. I can't remember who the fellow from the Litigation Section. It was that wonderful, wonderful man from San Francisco -- Bob Raven. And Esther, who is just one of those really, really unusually talented organizational persons, and Esther set it up just brilliantly. She made us all look really good. But we inevitably got involved in legislative activities around habeas corpus because at the same time as we were running around the country for these guys -- and I say guys advisedly, as far as I know there were no women for whom we got lawyers then on death row. It was at a period when, and I don't think it's a cause and effect, the Congress got very interested in speeding up these things -- these guys lounging on death row and getting out on all these technicalities -- and so we also on a parallel track with the legislative staff in the Washington office of the ABA got very involved in the legislation. I wish I could say we'd been successful. It could have been worse without us but it was pretty bad.

Ms. Born: Did you testify?

Ms. Determan: I did testify on behalf of the Post-Conviction Program. So did others. But the critical work was done behind closed doors as you well know, and the Washington office was really good on that topic. That young man who since has retired was really, really good. He was doing criminal justice stuff and the Criminal Justice Section was good on it. Lawyers are good on habeas. What the Congress did on habeas was an outrage to even very conservative lawyers. So that there was no resistance within the ABA to using whatever power that the ABA had, but it was a Republican majority at that time with a real sense that the system was broken down. The system was in fact broken down but not the way that their fix presupposed it was broken down.

Ms. Born: Let me go back and ask one question that I probably should have asked when we were talking about the pro choice resolution.

Ms. Determan: It was very political in the House of Delegates.

Ms. Born: Did you have a lot of feedback afterwards about the impact that that position had on the Association and did people quit the Association?

Ms. Determan: I got some personal stuff. I mean there were people in the firm who said what an awful thing I had done, and I was told that some eighty people or so had resigned from the ABA. There were threats that the resignation rates would be huge and that the ABA would lose all its membership money. 80 people of course is nothing. But those were 80 people who said they were resigning because of the resolution and others could have resigned without stating it, but there was also a substantial influx of new women members. And more so than

the 80 who had identified themselves as leaving because of abortion. But we had been putting a lot of effort into getting women members apart from offsetting any losses in the abortion thing. So again cause and effect are not absolutely clear, but I have always thought that overall it was helpful to the ABA and not hurtful to the ABA, but I also thought just like I do about the history of the ACLU and the march where they lost all these members -- Skokie, Illinois, where they backed the Nazis' rights to assemble. There's some things you do whether you're going to lose members or not, and I remember saying to myself and others that I was not going to feel responsible if there was a loss because if you lose because you are on the right side of what I saw as a moral issue, well so be it. But we did work hard to offset those losses. And the ABA's position became significant in several settings -- in some of the litigation it was significant and I think it was significant in Congress and in some of the state legislatures. I don't remember to what extent the ABA was involved in issues of parental notification or waiting periods or all of those kinds of extraneous stuff that was attached to legislation. But I think we were always on the right side of most of those issues and our original resolution talked about unfettered access and I think we used that to come out against a lot of these later things. So it was very much worthwhile. It was also very fun.

Ms. Born: The Post-Conviction Death Penalty Representation Project was part of broader works you did in the ABA on pro bono representation.

Ms. Determan; The other standing committee that I was appointed to was the Delivery of Legal Services. That committee had as its focus legal services for essentially the working poor. We used to see ourselves as the dealing with income quadrants, we were really representing 20% to 60% percent quadrants, the people who could truly not afford lawyers in the same way that most people who use lawyers can. And that involved studying and encouraging legal clinics, commercial legal clinics, not legal clinics for pro bono. It involved looking at ways to make it unnecessary to use lawyers -- either *pro se* support through bar associations and otherwise legislative changes to make it easier for people to proceed *pro se*, legislative changes to make it unnecessary to use lawyers for the kinds of things that this population typically use lawyers for. That had some success but the economics were such that legal clinics never really made it -- not for absence of trying, not even for absence of financial support. H&R Block was trying to get legal clinics off the ground. But what people were willing to pay didn't cover what lawyers felt they needed for their overhead. And then the computers came, and Nolo Press came and we were encouraging Nolo. The bar wouldn't have liked that but we were. Nolo Press focuses principally on how to do things without lawyers. And the computer, with its capacity to produce standardized instruments that people could use, took care of what we were trying to do, which is wonderful. There's a lot of people who proceed *pro se* in divorce areas for example or in probate areas, which is perfectly safe and reasonable. But we had a lot of resistance from bars -- not only the pocketbook resistance that one would expect if you are

trying to encourage people to bypass lawyers, but I think really understandable, philosophical concerns about people losing rights that they didn't know about and didn't get proper guidance on. But that's the way lawyers think. Lawyers think in terms of a particular client who might not be aware of her rights, as opposed to a macro look that says, "This many people are never going to have access to anything if we don't do something about it." Will there be some people who are hurt by it? Sure, but won't a hell of a lot more people be benefited by it? So it was interesting to try to do these kinds of things within the bar with the mindset of the bar in terms of individual's access to justice and the great pride lots of lawyers take in producing that for their clients. I was never thrilled with our results. I realized that it was a bigger problem than one committee of even the bar association could do. And I still think that an attempt should be made to get funding to get a model state to take a good hard look at its statutes and regulations and court rules in family law, probate, residential real estate transactions -- maybe landlord-tenant but that may be impossible. These are the areas in which the working poor and the middle class intersect with the law. Because if you start from the premise that we will disregard what was done in the 16th century on the probate side or you start from the premise that maybe someone will be hurt but let's benefit a hell of a lot more people on the family law side, you really could get some significant streamlining, some significant capacity of people to do it themselves, and then you add computers and the court spending a little bit of money on kiosk kind of access to both materials and rules, someone taking

some real time to put things into language that folks can understand, you can make a real difference. I've talked about this for years. I must say, however, I've done nothing to get it funded other than to ask Esther Lardent to talk to her friends at the Ford Foundation who are interested. But that's a really good project and someone should do it and the logical state to do it in is Maryland because its close to Washington where you can get a lot of volunteers. Michael Melman is very interested in doing it, and it's got a progressive leadership -- not in the state house these days, but in the legislature. But it's expensive. This is not an easy project. That would be a major undertaking. But if there is to be effective relief for the people who now can't get lawyers, in some areas, not all areas, it's going to have to come from a capacity for them essentially to do it themselves or a very expanded use of stand-alone paralegals, and for a while, the unauthorized practice of law was a problem. But I don't think there's a bar in the country left that has the nerve to bring unauthorized practice of the law charges against anyone. But there is not a big stand-alone paralegal "I'll help you fill out your divorce paper" industry out there either, probably for the same reason it didn't work with legal clinics. There are really not even small amounts of money available to spend on these things.

Ms. Born: Some unions do it.

Ms. Determan: Yes, and there are prepaid legal plans that they tried to get off the ground, but I don't think they went anywhere. It's not for lack of thinking about it. I mean, people know there's a market there. People know that there are people

with some money, not much, but some, but the fact is, they don't want to spend any. For the people who really fall between the cracks we never could figure out anything except some kind of no-fault personal injury insurance that people didn't want to pay for either. The person falls down and breaks an arm, loses two weeks of work, and has total out-of-pocket of \$10,000 is not going to get a lawyer. And in our system, the landlord who had the defective stairs is not going to pay unless the fellow makes him. So you have lots of people whose clear entitlement to some kind of compensation is just defeated by the economics of the situation and even the contingent fees that do make it accessible for some people are available only if your damages are very substantial. And that's a huge number. So the net result of the work of that committee was only marginally helpful, I fear, to anyone. We tried. We tried. But the profession is up against some economic realities and maybe it's not all that different from anything else. If you can't afford to call a plumber, you try to do it yourself as best as you can even though it's not as good as it should be and you go to the do it yourself books but somehow or other when it involves basic legal rights like custody of children, it's very, very sad that people who work really hard for a living just can't afford the help they need -- but we could never figure out a way to provide it for them. Let's face it, we don't provide it for the lowest 20% except sporadically through the Legal Services Corporation and those are people who sometime lose their homes for the absence of legal representation. So that was satisfying in the way that having friends and talking about interesting subjects is satisfying, but it wasn't

satisfying in the way that usually made a difference. So I didn't enjoy that one as much as the others. And then the other thing I was assigned to in the bar was the Commission on Legal Problems of the Elderly. And that commission was very effective. It was very effective. It was very effective in large part because the staff was very strong and the staff director was particularly strong at getting financial support from exterior sources.

Ms. Born: Who was that?

Ms. Determan: That was Nancy Coleman. And she had a very strong paid staff that did a lot of very good legal work, including working on statutory changes and all kinds of acts, Medicare, Social Security, others. They were listened to by the Congress and had a high impact. But in addition to that, she got a lot of support within the ABA -- because one, she was good at getting it, two, we're all getting older, and three, some very, very well respected, powerful men chaired for years and years and years, former presidents of the ABA, former state delegates, John Pickering and Alex Forger and several others. And that was fun to work on -- not because I felt like I made much of a contribution because it was really staff-run unlike some of the other stuff that I did in the Bar. Nancy would tell you what they were doing and you would say, "Have you thought of this and have you thought of that?" So that it was fun because it was obviously productive. The project was productive but you didn't feel like your own activities were making much of a difference. But that was okay. That's a good thing. That was not a bad thing. I enjoyed that. The other pro

bono things that I did through those years, I mentioned before -- the project for wills for the gays and then it was all men through the Whitman-Walker Clinic.

Ms. Born: This was for AIDS patients.

Ms. Determan: AIDS patients. HIV. And I did a lot of trainings for other pro bono lawyers on how to do powers of attorney and wills and other kinds of things that were of particular interest to this population. And that felt good. The training felt good because this was after Stevie had died and I felt like I was effectively communicating not only some of the legal things but also how you deal with people who are dying. The other things I have done in the pro bono area besides direct representation, the death penalty, the wills, and so forth. I wouldn't have been interested in being president of the District of Columbia Bar but for the fact that I thought the Bar's pro bono program was really, really tired and shabby and not doing a good job at all. I wanted to run with the idea that I would just revamp it, which is what I did with a hell of a lot of help from other people, I might add. I appointed a committee to take a good hard look, and the staff that had gotten tired and was not being effective ended up being uncomfortable and moving on, and we got some really good people, including Maureen Syracuse, the person who is running it now, and changed the entire emphasis of that program.

Ms. Born: So you were president of the Bar from 1990 to 1991.

Ms Determan: Yeah.

Ms. Born: I know that years before you had been treasurer.

Ms. Determan: Well, actually, I ran for treasurer but I wasn't elected. That's what you're remembering. No, I had nothing at the top levels of the Bar until I was president-elect. But as I said, it's not the kind of thing I would have been interested in doing although, like you, I'd been approached to run before -- in part again, they wanted women and in part because I had a reputation of being an activist generally. But the pro bono thing just wasn't going well. Not because it hadn't at some point done well but you know how programs are like everything else. They get tired if you don't do new and different things, it becomes a job and not a calling.

Ms. Born: So how did you reinvigorate it?

Ms. Determan: I created a committee to take a look at it, chaired by Steve Pollack who is wonderful and they really did a lot of work. They had hearings, they talked to all the voluntary bars, they talked to all of the pro bono providers, the organizations in town who relied on volunteer lawyers for at least some if not all of their representation. And they talked to other bars. Again Esther Lardent was enormously helpful. She must have given us \$50,000 worth of free consulting in connection with this project. But at the end of the day we had a whole new structure for the Public Services Activities Corporation, PSAC it was then; it's now the Pro Bono Corporation. We had the opportunity to get this fine legal director who is still there.

Ms. Born: Maureen Syracuse.

Ms. Determan: Yes, Syracuse. I couldn't remember her married name. Her maiden name was Thorton. Maureen Thorton. And she was very very good, and we've

developed a legal clinic to do a lot of what we do and there is some interest in working around the edges of law reform although the Bar, being a unified bar with limitations on how much you can do legislatively, works primarily through its sections on those kinds of things. But I'm very proud of what was achieved. Steve Pollack is the person who should be really proud and Esther and Maureen, but nonetheless, it was my kicking the program in the butt that got it going and that feels really good.

Ms. Born: Sally, you've contributed so much through the years to public interest and bar activities, pro bono activities, at a time when you were practicing law, trying to be a mother and spouse. How did you have time to do it, number one? And secondly, what was the firm's reaction?

Ms. Determan: Well, let me answer the number one first. When I started at Hogan and Hartson, the average number of billable hours per associate was 1450. Could I do it, starting now? No. Now the average is 1900 or 2000, and that 550 hours is a lot of mothering and a lot of bar activities. The other thing is that I have never ever fallen into the terrible trap of thinking that how much you earn is the report card on life. I didn't care that others were earning more than I was. It seemed perfectly reasonable that they were. They were collecting more. They were billing more. I wanted to do things other than the professional practice of law, and Hogan and Hartson has always been very pro bono oriented. And again, perhaps behind closed doors, like perhaps behind closed doors, there was sex discrimination, they may have been saying, "Damn, why can't we get some of that energy for our clients." No one ever said anything to

me. And Dean Determan understood that it was important to me, and he liked being with the kids, and we had good household help, and in those days the kids were flourishing, and when they stopped flourishing, when Stevie got sick and everything fell apart, I stopped doing it. Not forever, a good long time. Could I have had more partnership shares over those years had I done all of this in the tax section or the probate section? Probably. Did I want to write things about the generation-skipping tax regulations as opposed to abortion? You've got to kidding. I was doing this for me, and I didn't get any resistance but it was a different era. I feel very sorry for the women who are working with the expectation that they will spend the kinds of hours that many, not all, associates spend in large corporate law firms. But I also earned \$12,500 the first year, not \$175,000 or whatever they do offer clerks these days. I remember when we were clerks, we earned \$8100. And obviously \$8100 bought a lot more than \$8100 does now. But it wasn't what \$175,000 was to \$8100 in terms of what houses cost or what cars cost or even what gasoline costs. So that I think the critical thing, and I'm sure you had it too, I just never fell into that trap of thinking I had to be one of the high muckity mucks at Hogan and Hartson. I was always sufficiently arrogant to think if that's what I had wanted I probably could have, but I never wanted it.

Ms. Born: And did you find your time in the public interest gratifying and important in your life?

Ms. Determan: Oh yes. Oh yes. I mean that's where I had, except for my relationship with my husband, and a handful of neighbor friends, that's where all of my friends

were. Even within the firm, the friends I had tended to be people who were on the left-wing side politically and very interested in pro bono work and the rights of discriminated-against groups of all kinds. And fortunately, there was a critical mass of them at Hogan and Hartson, and, for many years, it was a prevailing attitude at Hogan and Hartson so I felt supported in the work. I think there were people who were actually proud that I had high visibility, and certainly I was supported in running for the Bar president. It was a nice launching pad and I loved the practice. Would I have loved the practice if my professional non-billable stuff was in the same area? Oh (laughter). I probably would have committed hari-kari. Maybe I just lack depth. Maybe I like a life. My favorite courses were survey courses. And if I go back to school, which I intend to, I would take things like comparative religion or introduction to philosophy. Maybe I'm just superficial. But I would like a life that has a wide variety of interest. I like to be reading Connolly, *The Closers*, right after I've read Erickson's *The Young Martin Luther*. That's the kind of life I want to lead and always have. And so doing all these bar things, many of which were not intensive or in depth, at the same time I was practicing law -- it seemed to me like a very good way to manage life.

Ms. Born: Would you have been bored?

Ms. Determan: I would have been so bored. And you know a lot of women in my area, and my area classically been heavily represented by women, are women who have made fabulous reputations for themselves doing in depth, wonderful writing on these obscure little things -- some of my friends, and they've been chair of

the probate section or the tax section. Oh, it would never occur to me to be active in those sections. I never thought of the Bar as a way to develop business. I never thought of the Bar as a way to develop in terms of my selling expertise. I always thought of the Bar as a way to give and to make friends and to have fun and to learn new things.

Ms. Born: Maybe that's a good point to end this session.