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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

### SEVENTH INTERVIEW

November 15, 2006

This is the seventh interview of Sara-Ann Determan for the Women Trailblazers Project of the American Bar Association Commission on Women in the Profession. It is being held on November 15, 2006, at the offices of Arnold & Porter LLP, 555 12th Street, N.W., Washington, D.C. 20004.

Ms. Born: Sally, we left off the last time in 1984 with Stevie's death. Tell me about what you did at that point and how you handled the period of grieving.

Ms. Determan: 1984 was largely a lost year in terms of any career things. I went to the office. I did what I could. The firm continued to be very generous, knowing that I was very vulnerable. The mourning was in many ways as important a part of the growing I did with the death of Stevie and his illness as his death because I learned so much. I learned so much about resiliency. In the very early days, I'd wake up in the morning and then the reality would hit me. It's like being in a black hole. But it was so intense that I knew it couldn't last. I knew I would either get better or spin out, that it was not endurable at that level. And I assumed I'd get better. After maybe five or six weeks in which the loss was the central reality -- the other kids were still in my life and friends and families were still in my life but that loss was with me almost constantly -- I started to just feel better when I woke up in the morning, and it didn't hit me in the face. I was able to smile some and enjoy discussions of things other than the loss.

But in a way for me, that was even worse - and I've since talked to other people and this is not at all unusual - because that didn't have the sense that it would truly end. I think of that, looking back at the time as kind of a gray period -- a sense that this could be what the rest of my life was going to be. That it wasn't unendurable, and it wasn't totally without pleasure and joy, but it certainly wasn't the components of pleasure and joy that I'd associated with most of my life. But little by little it got better. I had a hysterectomy at the end of the year -- yet another nonevent that took me out of the firm for a while. But by the end of the year and the beginning of the next year, I was feeling like I could be me again. And that I had learned so much, and the memories of Stevie started to be the funny stories, and eventually, you come to a sense of how lucky you were to have had him for twelve and a half years. And your other children have their own needs, including David who was still in bad shape - death of a brother and an absent mother and a father who had left. And I was dragged into reality. The firm obviously, I felt and I'm sure accurately, was still patient with whatever my needs were. But I was very eager to get back to work. And so by '85 I was back largely doing what I did. And, as I think I've said before, at any given time in my career, with the exception of maybe a two-year period, there has always been one big matter that seems to monopolize my time. Never exclusively - I've never been so unlucky as to have only one thing going at a time. I really don't remember what it was during that period. Typically, they were very large estate tax controversies with the Revenue Service. Actually, I do remember, because I was working --

I think it's a matter of public record -- with the owner of Jockey Corporation.  
Have I told you about her?

Ms. Born: No.

Ms. Determan: Although many of my clients were local, virtually all of my really big clients, the hundreds and hundreds of millions or in one case, billions, were from out of town. One of the sources for these big clients was an organization that essentially sold life insurance, but they did it in an extraordinarily clever way with closely held businesses all over the country. He had recommended me to the Jockey company, to its owner, because he thought she wanted a woman. It's the only circumstance that I know of in which a very, very major client came my way because I was female. And Donna Steigerwaldt was a fabulous woman, just a fabulous woman. Her father had founded the Jockey company, and, as it was true in those days, when he died, he left it all to the only son and none of it to the two daughters. The only son couldn't manage his way out of a paper bag, and it was clear that the family business was going down the tubes. And what Donna had been before that was chair of every organization she'd ever been in, because she had these incredible leadership qualities, but she had never worked in the company. The senior management came to her and said, "This thing's going down the tubes if you don't do something." I guess, you know, she must have had an equity interest. I guess the two sisters probably had nonvoting preferred shares or something. So, she went into court, and after a very nasty, hideous, horrible experience, which she handled beautifully,

she essentially bought her brother out and took control of a company that had this fabulous brand and not much else. She was just a wonderful client.

Ms. Born: This is the Jockey underwear company?

Ms. Determan: Jockey underwear, yes. And she had a daughter whom she was grooming to succeed her. She actually has two daughters. One of them she was grooming to succeed her. It was a really exciting representation. And the reason I remember that was going on at that time is that I got a call from her during the afternoon that Stevie died, and she knew that Stevie was very sick, knew that Stevie was at the end of his life, but she felt so bad that she had called me that day. She must have mentioned it ten times. You know how many male clients would have mentioned it ten times over the years? No, no, but she did. So I was doing a lot of work on her planning and Jockey corporate stuff. It was really fun. The other big case that we took on that I was very involved in and I think we started in 1985, was a pro bono case, a death penalty case for John Ferguson. I was chairing the Death Penalty Representation Project of the ABA at that time, and I got a call asking whether we would be willing to handle this case that was likely to involve the issue of how crazy do you have to be not to be subject to the penalty. We were told there was nothing that was going to save him otherwise, that this was going to be an important case, because he was so very, very ill. And would we take it, even though the case was a mess, etc. John Ferguson had been found guilty of murdering six people in 1975, in two separate cases. John Ferguson is still alive. Hogan & Hartson has represented John Ferguson in post-conviction processes from 1985, and it's

now 2006. John Ferguson is almost 60, still as crazy as a bed bug. And it was both one of the most fascinating legal things I've ever done and also the most disgusting as you learn more and more about how the death penalty is applied in this country. The jurisprudence is every bit as complicated as the Internal Revenue Code. I can't tell you how I admire the lawyers who have truly mastered procedural default. And at the same time as we were representing him, the Congress was messing around with habeas corpus and the Supreme Court was bringing down cases that could hardly be justified within the framework of normal case analysis. But my job on that case was primarily the factual developments although obviously I had to know the others. There was a team, a whole team of litigators -- and I'm not a litigator -- and young associates working on the case. But what one learns from actually working on a case -- which I might add is why it's so important that lots of lawyers take these cases, not only because people on death row need representation, but the group or community that understands what a mess it is needs to continually be expanded because otherwise we won't get any change. It was pretty depressing to see how it all works. Not as depressing as going to death row in Florida and meeting with the client, but very depressing. The case is now set for another District Court hearing. But I think its going to be on a fast track and my guess is that within two or three years we will indeed be dealing with whether he is too sick to be executed. But that took enormous amounts of my time.

Ms. Born: What was depressing and disgusting about it?

Ms. Determan: Well, what happens is you get into the community of death penalty post-conviction lawyers, which I had to some degree through the ABA before I had a case. But once you have a case you're in it up to your eyeballs. And you start understanding the level of incompetence of the lawyers who represent these people at trial. And the number of rich people on death row is pretty limited. So these are all either incredibly overworked public defenders or, in the main death belt states, these are court appointed attorneys, oftentimes the available ones. And they're available because they don't have a practice and they don't have a practice because they're drunks or they don't know how to do anything. And they hang around the court house waiting to be appointed to something or another. And they end up doing virtually no preparation. Catastrophic arguments to the jury. No development of facts to either ameliorate the sentence or to find out guilt or innocence. Someone did a ratio or some kind of mathematical analysis of the lawyers who represented death row inmates in the deep south, the bible belt, against the lawyers who were disbarred. And its amazing how many lawyers who were later disbarred represented death penalty eligible people. And as habeas got tighter and tighter, what happened at trial became more and more important. And then the Supremes started to narrow what was incompetent, sufficiently incompetent, counsel that in and of itself was enough to merit a new trial. And there are cases in which they found that the person had had competent counsel when the lawyer was drunk during the trial. There were cases in which appellate courts, including the Supreme Court, found that it was a tactical decision and therefore

not incompetent not to put on evidence of horrible backgrounds and terrible things that happened in their childhood. I always was kind of anti-death penalty on the moral merits, but I can understand people that aren't. And I really can understand the concept of retribution, and some people believe that it even serves as a deterrent. But no one who knows the system can come to the conclusion that it is a fair system and that only the very guiltiest are subjected to the death penalty. And so I became absolutely committed to the idea that this country some day has to do away with the death penalty. And the interesting thing is, for all of the political support for the death penalty, particularly in the states that are most aggressive about giving death sentences, the number of people actually executed has gone, way, way down -- in part, because of relief from appellate courts, in part, because public defenders are doing a better job, in part, because prosecutors seem to me to be a little more careful when they ask for the death penalty. And that latter fact, I think, grows to some degree out of the civil rights movement, because, for years, the main color of folks on death row was black and that's not true anymore. That's not true anymore, in part, I think, because prosecutors who have to be elected have to respond to African-American voters which in some ways is an exciting democratic response to all of this. But I digress.

Ms. Born: Do you think that the development of DNA testing has had an impact?

Ms. Determan: I think that the development of DNA testing has been enormously important because I do think that the vast, vast majority of people supporting the death penalty assumed that it was one, fairly imposed and two, never imposed on

someone who is innocent. So when the DNA became available to establish innocence, it was important. But for all the work lawyers did on habeas and all the work pro bono lawyers have done representing these guys, the biggest impact was by journalists and student journalists in the University of Chicago -- it may have been Northwestern -- in which a journalism teacher, for some reason that I'm not sure I've ever known, gave his class an assignment involving a couple or three people on the Illinois death row that he apparently had some reasons to believe may be innocent. And even without DNA, these kids essentially, in the newspapers if not in the court, established innocence, and then the Republican governor put a hold on all of the executions in Illinois. Interestingly enough, the governor apparently was taking bribes -- in so many ways a very bad public servant. But he did respond in this area. And I've always respected him because you don't get any political points for being soft on the death penalty. I've read a really interesting thing that explained to me why, legislatively, we're probably not going to get rid of it, even though it's stupid, expensive, and can't be done fairly unless you allocate many more resources to it. Some of the murders are so God awful. People really do terrible things that get communities all riled up and we have elected prosecutors. But there is a discussion of why they were able to do away with it in England, which had the same low public support for doing that as exists in the United States, and why we can't. And the explanation that I felt was most sound was that here members of Congress and, to a smaller extent, the Senate need to be concerned about primary opposition. So the parties don't have the

kind of discipline that they do in England. The way England did it was that the leadership of the Labor Party and the leadership of the Conservative Party both decided that there will be no more death penalty. And it was a safe vote. In our system there aren't safe votes around this issue.

Ms. Born: Because incumbents would then be challenged on the issue?

Ms. Determan: Yes, incumbents would be challenged in the primaries by people who bring up the facts. And these facts are often just horrible. And you can see that it would take one hell of an educated electorate to not respond to those facts by saying, "Well the son of a bitch really deserved it." But the courts, in their own way, even the conservative courts, are picking away at it. And as I said, I think the prosecutors at the ground level are starting not to be quite so anxious to seek the death penalty, and the numbers are going way down. I am hopeful that, at some point, the Supreme Court will say, "No more." But its going to be the courts; it's not going to be Congress. It's not going to be state legislatures in the death belt. Some day it will be the Supreme Court.

Ms. Born: Are you still playing a role in the Ferguson representation?

Ms. Determan: My role in the Ferguson representation is virtually over, as is my role in most representation in the firm. I really don't have very many clients. I think I mentioned to you one of the realities of being a tax lawyer is you really can't hold yourself out as an expert unless you are willing to do the homework -- know what Congress is doing, read the advance sheets, read the commentators about what Congress is likely to do. And very frankly, at this time in my life, I realize I can't have my cake and eat it too. I can't any longer hold myself out

as a cutting edge expert unless I'm willing to do what I'm not willing to do, which is read all those cases. So that except for some very old clients where it's just a matter of them wanting to change things or my giving general advice that is then carried through by lawyers who are more up-to-date and who will tell me, "Sally, that's not going to work because of this in the new tax law," I'm really not doing very much anymore at all.

Ms. Born: What led you to decide to semi-retire?

Ms. Determan: Well, I have these wonderful grandchildren. We wanted to build another house down in St. John. I had made an extraordinarily fortunate investment through a friend who was handling my account and who bought me 100,000 shares of Qualcomm when it was \$2.00 a share. And so I had the resources to retire. And very frankly, it wasn't as much fun anymore. It just seemed to me there was a big world out there that I wanted to investigate. And that I wanted to spend more time with these grandchildren. Cole, the little boy who lives right down the street, was born the January that I quit being a full-timer. You know, I was 65, or 66. I mean it wasn't like this was early retirement. Interestingly enough, at the time I had the notion that I probably wouldn't want to even continue being a lawyer as a volunteer. I really didn't. It wasn't that I hated the law -- I loved it. And I loved my career, and I loved the firm, which sounds crazy, but I did. But I didn't want to be a lawyer. I'd see these opportunities: the Lawyers Committee, and some of the immigration issues out in Virginia, and I would think, oh wow, I could really be useful to them. And then I realized that I didn't want to. What I've done, besides some work on the book I'm writing

about Stevie, which I can tell you about, is that I've done a lot of work with the Unitarian Universalist Church, which I have loved. This is a bunch of crazy old lefties. I mean it's really fun. And I will chair its Board of Trustees next year, and that feels to me like something important. When we are down in St. John, I will volunteer in the little elementary school, and I will do some reading with the kids who barely have books, and that's fun. I'm much more interested in one-on-one kind of work, rather than serving on boards of lawyers. And it's fun, it's fun, my life is good. I'm really very happy with it. But there was no big reason. It just seemed like time for the next part of my life.

Ms. Born: Looking back on the period when you were actively practicing, from 1985 to the present, are there cases that pop up in your mind as really important to you?

Ms. Determan: Well, for someone in the tax department with estate planning and exempt organizations, cases is not the way that you would describe it.

Ms. Born: Matters.

Ms. Determan: Matters. But I did have what probably has the potential for being the only really long-range important thing I've ever done. My client, and again it's a matter of public record, so I can tell you about it, was Jay Van Andel who was one of the co-founders of the Amway Corporation, now called the Alticor Corporation. He was my only billionaire client, who is mentioned in Forbes as a billionaire. Again, I'm not talking out of turn. And his estate planning, needless to say, was very complicated. I had recommended to him, as early as the late '70s that he consider creating a medical research organization, in part because under the Internal Revenue Code, medical research organizations

could be controlled by the philanthropist, but also could hold closely held business interests, unlike private foundations. He had always been interested in medicine. He began his career peddling Neutrilite vitamins. And as his son has told me, they never had real peanut butter or white bread in their home. He really was very health conscious, so that he always indicated an interest in doing something about it at some point. But that was not done. In 1986, there was a change in management at Alticor, and Jay, my client, had to choose between two of his sons to take his role as co-CEO of the company. For reasons that I'm not sure I understand, but even if I did I wouldn't go into, he chose his oldest child and older son. He had two sons and two daughters. And he devastated his younger son, who was clearly the son in whom Jay had more day-to-day confidence. I suggested to Jay, when I talked to him, that now would be a good time to do the medical research organization and let his younger son David take it over. I think, not for tax reasons, not for reasons of getting money to medical research sooner rather than later, but for reasons of loving his son and feeling like he knew he had disappointed him, he said, "Go for it." And we set up a structure for the Van Andel Research Institute that was unique in the tax law. And it worked beautifully. They now have I don't know how many labs going. But they are doing some spectacular work. I don't think all of that would have happened if I hadn't been pushing him and if I hadn't myself thought of the right structure that worked given all the facts and circumstances of their situation and the tax law. This is going to live; this is going to be extremely well endowed. They are getting lots of NIH grants.

This is going to be up there with the leading medical research organizations in the country, and they will do some very, very good work. And that's thrilling.

Ms. Born: When was it set up?

Ms. Determan: 1986 was when we did the trust documents that created it. They hired George Vande Woude as medical director. George had been very high up in the NIH and the National Cancer Institute, and George was the medical founder. He was the investigator who had identified oncogenes, which are the precursors to cancer, and was extremely well respected. The Board of Scientific Advisors, a five-person board, were five Nobel Laureates. And that was because of George and also because of the thrill of starting something from scratch. But it's just been fabulous. Hogan & Hartson still represents the Van Andel Institute, and I am now handling Jay's estate. I will probably cease billing any time when the audit of that estate is over. But I can't hang it up entirely and leave that to others, because I just know so much more about it than anyone else, and I feel like I owe it to the family to hang in there.

Ms. Born: Can you tell us about your representation of Jack Kent Cooke?

Ms. Determan: Oh, that was really fun. John Cooke-- I didn't represent Jack Kent Cook, the father. I represented John Cooke.

Ms. Born: His son?

Ms. Determan: Yes, the son. John Cooke came to Hogan & Hartson through a lawyer who had done some relatively modest stuff for the Redskins.

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Ms. Determan: He had some years earlier introduced me to John, and I had done a standard kind of wills - trusts kind of estate plan for him, nothing very elaborate. But when his father died, John came to me with a whole host of questions.

Ms. Born: His father was the owner of the Washington Redskins?

Ms. Determan: His father was the owner of the Redskins, Jack Kent Cooke. John had a 10% interest in the team, but his father had a 90% interest. John called me up after his father died, and he had a whole host of questions about the estate, and he said to me, "I don't want you to represent the estate; I want you to represent me." And I, of course, said, "I'll represent whichever you want." He said, "I want you to represent me. I want to have a lawyer not for my role as executor, but for my role as beneficiary." And from that he asked, "Will you now represent me and try to secure the Redskins," because the disinterested personal representatives in the estate had decided that they would not sell the Redskins to John. Even though I thought I had come up with a very clever way that they could, they didn't want to. And so began Sally in the land of the NFL, which was absolutely bizarre.

Ms. Born: When did this start?

Ms. Determan: Well, you know I'm so bad on dates, but it must be ten years ago by now. And John immediately took over the Redskins. He was the President of the Redskins, and even though he only owned 10%, he was also his father's son and was one of the first among seven equals in the fiduciary roles. So John was running the Redskins, trying to make them as profitable as he could and at the same time trying to put together some investments and some techniques

whereby he could secure them. I, instead of dealing with all of the intricacies of the Internal Revenue Code, started dealing with the intricacies with the NFL ownership rules, which are not as hard as the Internal Revenue Code, but have, not only the core rules, but by then a whole series of when exceptions have been granted and under what circumstances exceptions can be granted. So, here's Sally talking with the NFL lawyers. The whole thing was just so bizarre. And dealing with these large lenders for sports franchises from various investment banks that wanted to do deals with us. And dealing with potential co-owners, and trying to figure out how to beat back other claimants. And eventually as the world knows, John didn't get the team because he didn't have enough money. The rules are such that the main equity owner has to have at least a 30% personal interest. And the price got so high that there was no way that John could meet that requirement. But to his eternal credit, as a footnote, he's the kind of guy -- there's much about John that one can fairly criticize, but his core being is, "Well, if I can't have that, I'll do something else." And he's now deep into developing a winery out in the Middleburg, Virginia area and is enjoying being a rich man from the sale of his 10% interest in the Redskins. Although I must admit, he and I both talk from time-to-time about how glad we are that they have such lousy seasons.

Ms. Born: (Laughter.) Do you still represent him?

Ms. Determan: No. The fellow who handled the estate, a fabulous guy out of Richmond, is doing that. When I retired, I said to John, "You know this doesn't make any sense. You need someone who is available to you right away." And so Dennis

is now representing him, and I'm sure doing a great job. But that was really fun. I have to tell you one story. John had invited us to come and sit in the owner's box. He actually did that two or three times. And I said to Gary, "Do you think it would be okay if I took a book?"

Ms. Born: Gary is your second husband?

Ms. Determan: Gary is my husband, right. He said, "No, it would not be okay if you took a book. You have to act like you care what is happening on the field." But what happened was the first time I went, there was this very, very elderly woman sitting next to me. And she seemed nice, spoke with a big accent, and I started talking to her. She was Mrs. Hirshhorn of the Hirshhorn family that gave the nation that wonderful, wonderful gallery, the museum. And she was fascinating -- talking about the acquisition of art and how that came all about. So I had a wonderful time in the owner's box merely glancing from time to time at what was going on in the field, but talking to Mrs. Hirshhorn.

Ms. Born: Can you think of other highlights in terms of clients?

Ms. Determan: Well, during this period, we had quite a few clients who had made tons of money on the big bubble in the Internet, including many who had cashed out. So they didn't lose everything by any means. And many of them had very interesting observations to make about the charitable use of their funds. And what was really interesting during that period was the number of clients who weren't interested in setting up foundations just to make grants to other people. They wanted to do something active. And their biggest interest, their biggest concern, was about managing the money. None of them had any confidence in

banks or investment managers or the classic people who manage large sums of money. And some of that thinking and analysis and drafting we did around how to make sure that the money was being managed properly was fun. There were lots of people. I ultimately became an expert because the first couple I had to do so much work thinking of every alternative I could possibly think of, and then they would tell their friends. And I had already developed some techniques. Except for the Van Andel estate and the ongoing work with this billionaire client and some ongoing work with Jockey, most of my clients during that period didn't have a lot of ongoing work. The work involved very intense work planning things for them and it would be done. But we had a lot of interesting work. I had a lot interesting work, and the firm still does, around some of the tax and other exempt organization issues that arose in the management of the Van Andel Institute. We did a bond offering to build the building. I needless to say, wasn't in charge of it for Hogan & Hartson. Hogan & Hartson wasn't in charge of it, but Hogan & Hartson was doing a lot involving the tax aspects of the tax-exempt bonds. And also employment agreements and licensing of the things that they discover out there. That was a pretty major thing. The other very, very big case that I got during this period was again from the same person who had sent me Jockey. I got a call from him saying would I come out to St. Louis because he'd like me to meet a couple of men who were the trustees of the Marvin Schwan Foundation. Marvin Schwan had had an amazing idea many years ago. He took, in rural America, in little trucks, frozen food that he sold. He started with ice cream

and then went to pizza and to this day all over America there are these little Schwan trucks that deliver food stuffs. Every now and then you'll see them, particularly if you travel in rural America. Frozen food stuffs to people at home. They also have a huge institutional business. Many hospitals, many schools, many prisons get virtually all of their frozen food from Schwan. And then they sell their ice cream through some of the big retailers. It had gone from a Mom and Pop dairy that he was helping his parents with into a very, very huge and valuable organization. Under Marvin Schwan's estate plan, which I had nothing to do with -- I never met the man; he was dead by the time I got involved -- these two men were virtually in charge of everything. They were co-trustees of the foundation, they were co-trustees of each of the children's trusts, they were co-trustees of each of the grandchildren's trusts, and they also voted the shares. They had been told by Boston counsel, the same guy who had done the estate plan, that they were in a conflict of interest position because they were wearing so many hats. And I thought that was crazy. If I have money and I want Brooksley or whoever to handle every aspect, I have the right to do that and essentially it's a waiver of any conflict. So I thought that analysis was a little strange. And I went out there and they said, "What do you think of this conflict of interest theory?" And I remembered the right words. Every now and then in life the right words come into your mouth. And I said, "It's not a conflict of interest; it's just a whole series of responsibilities, but none of them are mutually exclusive. It's just that you can't exercise one without thinking of your other responsibilities." Well,

that's what they wanted to hear, and they said, "Well, wouldn't it be useful if we had a separate lawyer for the foundation?" The foundation had the bulk of the assets. And they said, "We could let the estate lawyer handle the estate matters and handle the trusts". I said, "Whatever you want." It turned out that the lawyer who had done the estate plan had made a very serious error -- potentially \$400 million dollar estate tax error. And when I dug in, I saw it. The company was represented by a very good lawyer out of Minneapolis. I had been told to be in touch with him on company issues, because there were buy-backs and all kinds of things that the company had to be involved in. I said to him, "Did you see that problem?" And he said, "No, I'll get back to you." He called back in a couple of hours and said, "My God." And that began it. We were in a huge battle, and our poor clients were in the middle because the lawyer up in Boston who was handling the estate was insisting that that problem didn't exist. He was insisting that the problem didn't exist and that the estate tax auditor who was already working on it hadn't raised anything. I looked at the letters, and while it wasn't crystal clear, it sure seemed to me he was raising this issue. So to make a long story short, they dumped the Boston firm and asked us to handle this issue in the audit. I worked a lot with a litigator because we ultimately were in the Tax Court, and it was the biggest Tax Court estate tax case in the history of the United States. We ultimately settled it for, I think, \$40 million dollars which was a good settlement. The Revenue Service had a strong case. Out of that grew the representation, on an ongoing basis, of the foundation. Actually, just last week, someone else who is

doing other work, real estate work for the foundation, said to me that it would be a good idea for me and my successor to go out to St. Louis and sit down with the clients, that he has a feeling the clients are worried about what happens when Sally is totally retired. Fortunately we have a wonderful person who can step in. But that client has been fascinating. They made huge offshore investments, so I was involved in partnership agreements for this big deal down in Costa Rico, with a Costa Rican company and a German company and some folks in Minneapolis. I mean it was thrilling, it was really fun. That was the other really big one. And that's still going on.

Ms. Born: Who have you worked with over these years in the firm in terms of junior people?

Ms. Determan: From the time I was a partner for two or three years, there's always been at least one person who is essentially assigned to me. There has been a series of such people. But the way the tax department and the firm is set up, if it's my client, I have dibs on any of the tax department associates, and if it's litigation, then I have dibs on the litigation associates. Obviously, if it's in litigation, the partner in charge of the litigation is not me. I'm just a consultant, but I do get involved in how to staff it. So, over the years, I have worked with not nearly as many associates as many other people have because I've always had more of them assigned exclusively to me. During some of the big cases, there would be eight or ten associates working either directly for me or indirectly. Believe me, I was not drafting a partnership agreement for offshore real estate investments without help. I worked a lot with women although the associates who stayed

with the firm and became partners in the estate planning subpractice of the tax department were men. Ted Desmairis is a partner now doing estate planning. Tim Lloyd was a partner doing a lot of estate planning, but through estate planning activities he started to do a lot of partnership work. So his practice, while it still includes estate planning, also includes a lot of commercial partnership stuff that has nothing to do with the estate planning. The women who worked with me over the years have left when they had children. It was the classic case. Both of them had husbands whom they'd met in law school who were doing very, very well, so that they could maintain a reasonable lifestyle without the woman's income. Although I think they chose the practice in part for the same reasons I did, because you don't have a lot of all-nighters and crazy artificial deadlines, they found that the level of commitment that was expected by the Hogan & Hartson structure was just not totally consistent with being a mom. In one case, she tried part time for a couple of years, but her husband had made partner, and she decided that this is crazy. I think she's happy with that decision. Now all her children are in college, and she's teaching tax law, and I think she's happy with her decision.

Ms. Born: So it was only the men who stayed?

Ms. Determan: My successor as head of the estate planning area is someone who came in as a very senior associate and is very, very good. Her name is Molly James, and she works a part-time schedule in that she leaves every day at 4:30 PM.

Ms. Born: Does she have children?

Ms. Determan: She has two children, both of them had been born since she came to Hogan & Hartson. But her husband teaches. He teaches at the War College. So he does not have a job that requires him to physically be elsewhere than at home during all his working hours. He does a lot of work at home. And the kids are now old enough to be in day care. So that's working out. There's no way that she could do it if he were also working 2,500, 3,000 hours in a law firm. Since most of these young women do marry lawyers because they meet them in law school, it's something I have grave concern about, across the profession, not just at Hogan & Hartson. We have lots of part-time women lawyers. Very few part-time men lawyers. And a lot of the part-timers, even the ones who are most career focused, get to the point that they like the part-time status. They get to the point that they have developed a lifestyle that makes sense for them, which doesn't surprise me, since when I came to Hogan & Hartson and had my babies, the average number of billable hours that the budget anticipated was 1,450. But 1,450 is a low part-time schedule now. Of course I also had a beginning salary of \$12,000. But it is a real difficulty for the young women, even in a practice that I think has historically been a female practice, because it is one that is more compatible than most with a balanced life. I feel like I came up at exactly the right time, that I had opportunities as a woman because all at once everybody was looking -- we've got to have a woman on our board, we got to have a woman doing this, we got to have a woman doing that. You were up against the ceiling going into law school and some of the clerkships, but in that late '60s period, the ACLU wanted a woman, the Lawyers' Committee

wanted a woman, and we had opportunities that came to us because of our gender. And so we were able not only to do a lot of professional activities, the bar and otherwise, but we did them at a level that wasn't an entry level. They weren't looking for worker bees. They were looking for board members or committee chairs, which was thrilling and wonderful, but it was possible because we were working in a culture in which fifteen, sixteen, seventeen hundred billable hours would not have put us at the top of the scale, but we were players. By the time it got really as demanding as it is now, we were well established, and so you take fewer shares if you don't work that hard. You had a client base, and the firm depended on you, and maybe behind closed doors, they were saying, "Why doesn't Sally give up some of these professional activities and bill some more time?" or "Why doesn't she become chair of the Tax Section, instead of the Section of Individual Rights?" but it never made its way to me. And I was always very happy with the way the compensation worked out, because I didn't want to be in a position where I felt I was being compensated at the same level as people who were willing to work a lot harder on billable matters than I was. All that would have done was put pressure on me. That's why I never thought those lock-step partnership compensation arrangements made any sense for women, because you would feel like you weren't doing your fair share, really, really being ripped apart. The Hogan & Hartson compensation system that begins, I think for fourth year associates in which the compensation gives some flexibility in terms of your life choices, always operated well for me.

Ms. Born: Do you think that participation of women is a problem that the profession is facing and needs to address?

Ms. Determan: Absolutely. I think the profession, the really far-sighted people of profession, and I must say I don't see many of them, will see that the time is coming where they cannot meet the client demands without women. There are too many women in law schools. Even if they tried, notwithstanding Title VII, to only hire men, they couldn't hire enough. So that some accommodation to the reality of women's lives, women's lawyer's lives, must be made. They get out of law school at twenty-five; they wouldn't even be considered for partner until thirty-two or thirty-three. Prime child-bearing age is during that period or during the first three years after it. These are not women for the most part who want to be childless. There are some, and maybe the law firms will try like hell to figure out a way to find out lawfully whether someone is in that small category or not. Raising a child and billing the number of hours we're talking about is almost impossible, unless you have a special situation with your husband like I was talking about Molly -- husband who is a teacher and can work at home or independently wealthy, whatever. But the other reality, as I've said before, is that these young women lawyers are often marrying other law school classmates. And since they have done well enough in law school that they are being considered by the Arnold & Porter's and Hogan & Hartson's, typically, not always, their husbands are also considered by the leading firms which are making the same kind of demands on men, but are also compensating them sufficiently highly that the young women can say, "I can't

do this anymore. I can't be a full-time lawyer at Hogan & Hartson and a mother to these children in the way I want to be." So they go on part-time. We are kidding ourselves if we think all but the true superstars, the kind of once every five years of lawyers, can be part-timers all the way into partnership. It just doesn't work the way it's done now because originations are too much of a consideration.

Ms. Born: Originations of business?

Ms. Determan: Yes. Originations of business. And how much money you have collected on your time. And as the super gifted husbands then go up in their firms, it doesn't seem so important that the women's income, which is part-time income, goes into the family coffers. They can maintain their standard of living on just his. And so we are going to lose these women unless the firms adapt to nature's reality. And we're probably going to have to pay the men more because they will be so in demand as women drop out of their law firms. It seems to me, and if I were in law firm management I would see that there are needs to really think hard how can you most effectively use your part-time lawyers. God knows, I don't think anyone is paying much attention to doing that. The other thing I think we have to think about is the thing I was talking to you about before, what the large investment companies, which are even harder on their people than lawyers, are doing. And that is having a formal re-entry program for the women who have dropped out for four or five years while their children were really young and a real mechanism for keeping them up-to-date while they are at home -- for keeping them in the networking and aware of

developments so that when they do come back, they are much more up-to-speed than they would have been without these programs. The programs indicate the interest in getting them back. I don't know of a law firm that's doing that. The law firm who does it is going to be a hell of a lot better off over the long haul, no matter how expensive it is.

Ms. Born: Isn't that really the issue, firms are not willing to make the economic investment or to lower the overall profitability?

Ms. Determan: Except that if I'm right and the women are bowing out because the pressures are ridiculous, that's going to go to a lower bottom line than those firms making accommodations.

Ms. Born: It is a tremendous waste, because it's just when those women are the most profitable and useful for the firm that they leave.

Ms. Determan: They are not going to be able to get the work done without women. And so, is that an accommodation that costs the bottom line? Not if you compare it with the bottom line that's likely to happen if they don't make the accommodation. Because there is not, in my judgment, an industry, a thinking industry, a white collar thinking industry that now can write off 50 plus percent of the brain power. And we are 60% of the undergraduates in colleges. How can they possibly run a high brain-power industry without accommodating to the reality of women's biological lives?

Ms. Born: Well, I thought that thirty years ago, Sally. And it hasn't happened yet.

Ms. Determan: Actually, one of the things that I have often contemplated with you and with others and just by myself is whether it would be worse, in terms of the drive for

billable hours and the desire to maximize the bottom line, had women not come into the profession when we did. Have we ameliorated that at all?

Ms. Born: It's not clear.

Ms. Determan: It's not clear. I mean I'm not sure how much worse it could get. People do have to sleep and eat. But, it's the kind of thing you'll never know because we did come into the profession, and we obviously had some impact on it. But I wish we had more. We helped the young women coming behind us. We mentored, we introduced, we used them in our staffing, and we talked to them about client development and about motherhood and practice, all at the same time. And I'm sure we helped. We have the day care arrangements, and we have other accommodations -- the part-time. You were the only part-time partner in your firm. Very few part-time partners in ours. Now there are, but not over the years. And we did the things that weren't easy when we did them, but looking back they were the easy things. What we are talking about now are structural changes that are not easy.

Ms. Born: Tell me about what kinds of things you did in the firm, other than individual one-to-one mentoring of younger women, to try to make it a more family-friendly place.

Ms. Determan: I wish I could tell you that I had been on the cutting edge of all of this. None of the things we did for family-friendly were done other than with me participating. But there was a critical mass of senior women who worked together on the day care when we moved here.

Ms. Born: When you moved to the new building?

Ms. Determan: Right. To the new building. I'm pointing to it because we're so close. The pressure for part-time arrangements -- there was an informal committee of senior women who worked on that. I was always part of that, but so was Jan McDavid, so was Deborah Ashford. I just don't remember who had what ideas. But we worked hard on some of the structural things. Deborah actually came up with one that has turned out to be very useful to the women in the firm. And that is having the Hogan & Hartson food service serve dinners. Deborah Ashford regularly takes meals home to her daughters. And I think some of the other women do that, too. I didn't have young children when we started having dinners. But those dinners didn't come for the women. The dinners came to encourage people to work late and not go out to long dinners outside of the firm. And of course the maternity leave policies and all those things, I was very much involved in. I wish I could think of more things to do.

Ms. Born: Among other things, you've got women in the firm together.

Ms. Determan: Oh yes. In the early years, we would have regular lunches and regular dinners, and the dinners were always at my house, and I always organized those things. Eventually, two things happened. One, the group got very large. And secondly, our EEO folks started to get worried that we were somehow discriminating against the men, and particularly when the summer clerks came, we were discouraged from having any all female get togethers. I always thought that that was stupid, but by that time, we had such a large critical mass that getting together as a group wasn't as important as it had been earlier on. It's pretty thrilling what has happened statistically, but it's very discouraging

what is happening to the lives of these young women lawyers. And I thought often whether, if I had a daughter, I would encourage her to go into law. The answer is always yes. The law is wonderful. The law you can do so much with. But a large corporate law firm? Maybe until you get your debt paid, and you get some experience. Large corporate law firm for a career? I'm not sure in good faith I could recommend that to a woman these days. I hope that ten years from now, when the accommodations that I think are going to be have to be made are in the process of being made, I would feel differently. But I wouldn't want my daughter to have a job in which she is expected to bill two thousand hours and keep up and develop a professional reputation and somehow or another still lead a balanced life.

Ms. Born: Do enormous business development?

Ms. Determan: That's right. I think it's tough on the young men. I'm not sure I'd recommend it to a son. But I think we still have a culture, part of it is cultural, a little bit I think is biological, in which the sons don't worry about how the kid is doing at day care when they are working on a case, and the moms do. So the psychological burden on a woman who is feeling torn between her career and her children, I think, is much greater than a man's.

Ms. Born: And in practice almost always the greater actual burden.

Ms. Determan: Yes. And in practice although some of these people, because of the compensation levels in two law firms, are able to get full-time nannies and full-time "thises" and full-time "thats" and their husbands will take care of the kids on Saturday mornings and stuff like that, I think we just worry more about our

kids. Did the housekeeper remember to give him his medicine when he came back from day care? I mean, I bet you, the number of women who worry about things like that is ten times the number of men who worry about things like that. And just thinking about it when you're trying to focus on a brief or a client conference, whatever, it's hard. It's hard.

Ms. Born: Absolutely.

Ms. Determan: And I don't know ways around it that keep the bottom line where it is when you are expecting 2000/2200 billable hours. There's no magic way to put more than twenty-four hours into a day.

Ms. Born: Do you think the system has to change?

Ms. Determan: It has to change. And I remember once many years ago when I was a brand-new lawyer talking to a fellow who was a Marxist. He was an academic economist and he was a Marxist. He said women are going to do fine in the law because it's going to make financial sense. You can't rule out 50% of your brain power. "You women will do fine." And using a Marxist analysis, that is what is ultimately the best for the long-term bottom line, which also, I guess, is a capitalist analysis. Some of these accommodations are going to become vital because the bottom line is going to start sinking. But we're not there now.

Ms. Born: One of my concerns which I'd like your reaction to it is that I think with this emphasis on profitability and the bottom line, it's possible that a kind of sexism has actually had a resurgence among the younger partners and senior associates -- male -- who are determined to have as profitable an organization as they possibly can and many of whom came into the profession because they

saw it as a money-making lifestyle, when obviously, when we went to law school, it wasn't seen that way.

Ms. Determan: I don't know whether sexism results from that attitude, in that I think they're perfectly happy if the women bill that many hours. But their attitudes about the bottom line, I think, are permeating the firm, possibly more than it did when we were coming up. It's just the bottom line now. It's kind of at the edges of what human beings can do, unless you increase your billing rates, and then you have a competitive disadvantage because of what we were just talking about. There are just so many hours in a day. But I'm not sure that gets played out in sexist ways because of the other factors we were talking about. But I'm sure that the most hard-driving, bottom-line oriented partners would be perfectly happy if it's a woman who's bringing in \$3 million worth of originations and billing twenty-two hundred hours a year. Are they, with their focus on profitability, more likely to complain about the adaptations they have to make in their own practice to deal with part-timers? Probably. But as you and I talked about earlier, you get that from some senior women, too. I think the firm is actually substantially less sexist in its core attitudes. There is no one that I know of in our law firm, and I bet in your's, who thinks that women shouldn't be lawyers. I mean, no one's that old anymore.

Ms. Born: And they're certainly were when we started.

Ms. Determan: Oh my God yes. So that the blatant "over my dead body will I work with a woman lawyer" kind of sexism is gone in large corporate firms, at least in the "blue" states. But the practices in the firms designed to maximize the bottom

line have a disproportionate negative effect, for all the reasons we've talked about, on women. And we old girls don't have any answers. I don't have any answers.

Ms. Born: Well, the institution of the large law firms has shown itself pretty resistant to whatever efforts we've been able to make to ameliorate that.

Ms. Determan: There is progress around the edges, the lactation rooms, the day care arrangements, even on paper having generous part-time arrangements, the pregnancy leaves. The easy ones have been adopted by a lot of firms. Your firm was in the forefront of some of that. I wish I could see something that would maintain the bottom line and still reflect the reality there are only twenty-four hours in a day. But I don't see it right now. I think we'll see it because, as I said, I think there are going to be consequences to not doing it that will turn up in the bottom line so that doing it increases the bottom line. That's the only way it's going to happen, I fear. And you know me. I'm a hopeless optimist.

Ms. Born: Well maybe we should end there.