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Judith Lichtman

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ABA Senior Lawyers Division

Women Trailblazers in the Law

ORAL HISTORY

of

JUDITH LICHTMAN

Interviewer: Jana Singer

Dates of Interviews:

April 10, 2006
April 17, 2006
May 5, 2006
March 18, 2010

Judith Lichtman Transcript

Jana: Please start by giving your full name, and where and when you were born.

Judith: Judith Lichtman. I was born in New York City, in Brooklyn, New York, on July 23, 1940.

Jana: Tell me a little about your family growing up and what you remember. What sticks out?

Judith: The most important aspect of my growing-up years was the fact that I grew up safe and secure in a very large extended family. Although I was born in Brooklyn, we moved when I was very young to the southern tip of Queens, about a block from the Atlantic Ocean, to a very small town in New York City called Far Rockaway. My family had very clear, sophisticated political, economic and social-justice views. I believe that people find mentoring experiences in lots of different ways and from lots of different people. For me, it was engaged parenting along with the imparting of values from this extended family that helped mold and steer both my sister and myself in ways that are just incalculable.

Jana: Were your parents politically active? Did they talk about events over dinner? How did they impart those values?

Judith: My parents were working-class people who had not graduated from high school. They got their GED diplomas when I was in law school and my sister was in college. So they were not formally educated people, but they were quite sophisticated and active politically. The social-justice philosophy of communism appealed to them in the 1930s, but once the Hitler-Stalin nonaggression pact was signed, they quickly lost interest because they were very clear about their Jewish values. Although they did not live as observant Jews, they were very proud of being Jewish, so the Hitler-Stalin nonaggression pact was too much for them. My father's two sisters were labor organizers for a very progressive union that no longer exists called District 65.

Some of my earliest memories are marching in May Day parades and taking ballet lessons at the union hall. We listened to the songs of the CIO, music sung by Paul Robeson and Leadbelly, music of social and economic justice. I was nurtured on these messages. In fact, I still have these albums. My aunts were very much labor socialists and Jewish labor socialists. That was also true of my grandparents and my dad's extended family—less so for the members of my mother's extended family who had greater

financial resources and identified more those interests. Although in retrospect, they were not very wealthy people, they just had more money than we did.

Jana: You mentioned your extended family. Did they all live in the same neighborhood?

Judith: They did, by and large. My maternal grandmother lived with us; or rather we lived with her. When I was born, my maternal grandfather lived with us as well, but he died when I was about 3 years old. Also, my paternal grandmother and, for most of my very early years, my unmarried aunts lived a few blocks away. My mother's older sister, who is still alive today at 93 and not in bad health, also lived a few blocks away. Other aunts and uncles lived nearby, too, both in Brooklyn and when we moved to Queens. My mother is 92 and in quite good health. She has nieces and nephews who today are in their 80s—just four or five years younger than she is—and they are some of her closest friends. They have been her close friends for all these years, never living very far from one another.

There is a tabletop book with lots of wonderful photographs called *When Brooklyn was the Center of the World*, and the last photograph in the book is a picture from the 1950s of what we called the Belt Parkway, which was our main highway, with cars leaving Brooklyn, and all you see are the backs of the cars heading east outside of Brooklyn. This is indeed the story of the Jewish exodus. They left Brooklyn for Long Island; they left for Queens; they left a crowded, urban world for a more suburban one—and that's certainly true of my family.

Jana: How old were you when your family moved from Brooklyn to Queens?

Judith: I was very young. I started fourth grade in Far Rockaway, so I was 9 years old.

Jana: Can you remember the move?

Judith: Oh yes, I remember the move. I even have some earlier memories than that. My earliest memories are of living in East Flatbush, on the ground floor of a two-family house. At the end of the war there was a real housing shortage, and the one way you could get an apartment back then was to say that you needed it for a returning veteran. Our landlord had a son in the army, so we were "dispossessed." I was only about 5 years old and I remember that. We moved in briefly with my paternal grandmother and aunts, and then into an apartment, best described as a tenement, owned by a maternal aunt in Brownsville, Brooklyn, which was a dangerous neighborhood then and only got worse.

We then moved to Far Rockaway. I have very, very clear recollections of living in each of these places.

Jana: Do you have any other recollections about the war? You were very young.

Judith: I remember a fair amount about the war and that's because my father had two brothers who served in World War II—younger brothers—and he had two very close cousins who served in the war—one returned and one was killed. All four of these men were real presences in my life. My two uncles were forever maimed by their war experience. We were very close and they were never psychologically whole after that. One became an alcoholic and the other was just a really messed-up person. I adored them both. These were not people who we shunned; they were people I saw all the time, and I was very attached to them.

I remember I had these two blouses made from parachute nylon, a gift given to my mother and grandmother from the one cousin who did not return from the war; he was a fighter pilot. Textiles were very hard to get during the war, and nylon was a brand new synthetic. I can still picture them. They each had two little puffy sleeves and little round collars. I have some other memories, too. I remember food shortages and that my mother traded coupons with people because I liked pineapple, which I now hate with an absolute passion. I don't know why I liked it, I just remember my mother trading coupons for pineapple. Certain things just stick in my mind. I remember the star in the window. If you had a solider serving in the war, you would put a star in the window, and I remember that.

I also remember that my mother had a cousin by marriage who people thought was killed. Nobody had television—there was no such thing as a television—so you received news from the radio, newspapers and from newsreels in movie theaters. My mom's cousin went to the movies and saw her husband in a POW camp in a newsreel. So a) she knew he was alive; and B) how awful. And then we all went to see him. I was a little kid and I remember going to the movies to see him. He was also a presence in my life and I knew who he was. I knew Harvey and there he was in this POW camp, and he came back alive. Then I remember the end of the war. I remember people dancing, screaming and crying. I don't remember Hiroshima and Nagasaki, but I remember knowing about it later—in the 50s—and knowing that bombing Hiroshima and Nagasaki were bad things but necessary. I don't have contemporaneous memories. You would think I would.

Jana: Not without television.

Judith: That's right. But my parents must have talked about it without us being around.

Jana: You have one sister?

Judith: I have one sister. I'm the big sister. She's three-and-a-half years younger than I am. We live about six blocks apart. She has one wonderful, extraordinary daughter, Rachel, who's about to turn 21. My sister never married. Rachel is adopted.

Jana: What do you remember about your sister growing up?

Judith: My sister and I are at the same time very different yet very much the same. We are very close friends; she is indeed my closest friend and I hers. We share political views and social values, and our approaches to things are exactly the same. My sister is a gifted writer and I struggle—I'm not very good. She is a social scientist, with a Ph.D. in social psychology. She's had many important leadership roles in the social-science academic world and is currently the executive director of an organization called American Education Research Association, which is an association of education research academics. She's very athletic, and I am totally not athletic. She played handball and tennis, and soccer and field hockey, where I did none of those things. I was the bookish person and she was the athlete—not that she wasn't an academic achiever because she was— but those were sort of the family stereotypes.

Jana: What do you remember about growing up with her? Do you remember doing things together or was there a friendly rivalry?

Judith: We were always very, very close. I'm sure we had our moments, I have no doubt about that, and it certainly could be that I sugarcoat them in my memory, but aside from some occasional big blow-ups between us, we got along very well. We shared a bedroom, and for much of my growing-up years, we shared a very large bedroom with my grandmother. There was a single bed and a double bed, and we would take turns sleeping with my grandmother because that was the best spot to be—sharing a bed with our grandmother. My sister and I shared a closet and we shared clothes. We didn't actually have clothes that were our own. But we did not view ourselves as either poor or deprived. We thought that we were very privileged little kids.

Jana: How about your mother and your father? Was your mother at home? Was she working for pay?

Judith: In the very early years, and until I was in high school, my mother was at home and my dad worked as a traveling salesman selling ladies lingerie. He would take business trips occasionally and be gone for a couple of nights, but for the most part, his

territory was New York City, Long Island and Westchester, so he would sleep at home most of the time. He represented one or two companies, and he had a car, which he needed to earn his livelihood and made him appear more affluent than certainly his brothers and sisters. During those years, my mother was a stay-at-home homemaker whose life was spent taking care of her children and our four-room apartment in Far Rockaway. Her volunteer work at our public school and synagogue absorbed her.

Almost every single night after dinner, my parents would visit my dad's mother and sisters, or my mom's sister, who all lived in the same little apartment building. They were all very close friends and that was their social life. That was my mother's life until my maternal grandmother died, when I was 14. Then she got a job working part-time as a dental assistant, and then my dad's economic fortune and career changed dramatically for the better. His nephew, my cousin, bought a nursing home on Long Island—it was a burgeoning business—and although my father knew nothing about the nursing-home business, he trained, took courses and became the nursing-home administrator. This was his career until he died at age 84. My mother became an assistant administrator in the nursing home, and they worked together for decades, eventually owning parts of several proprietary nursing homes and always working in one of them. This really changed the economic fortune of my family. By then I was probably in college. I don't remember exactly when that all happened, but certainly around the time I finished high school, or started college.

Jana: So you mentioned that of you and your sister, you were the bookish one. What do you remember about school—elementary, middle school?

Judith: I was the bookish one, yet not a very accomplished student in terms of academic grades, which is interesting. I wasn't very disciplined in my approach to studies, nor were my parents very disciplined. One thing that came to mind when I was telling you about my mom's life a second ago, is how after dinner we would go with them to visit their relatives, and if there was homework, they couldn't have cared less. Not that they didn't care about education. They did, but they had ambivalence. They had extraordinary belief in their daughters' intelligence and not a very high regard for what they viewed as the busy work of homework. What is it when you live with cognitive dissonance? It makes no real sense. Their views can't be resolved.

I never got very good grades and did perfectly fine without studying a lot, and so I was never in jeopardy. Plus, they didn't think for a second that we had to be A students. I think they were very proud of us and they thought we were going to be accomplished people. They believed in our accomplishments. However, if it meant the difference

between having our company, which they thought was fabulous, or studying, they would not have ever thought to leave us home to study.

As for books, I read everything—nothing was off limits. My parents prided themselves on how well read I was, and that was much more important to them than whether or not I got an A or a B.

Jana: Did they suggest books?

Judith: Sometimes they suggested books. But lots of the books I read in those earlier years were the ones that all the kids of the 40s and 50s were reading, like the Nancy Drew books. So maybe my friends suggested them—I don't remember exactly. There were also the Sue Barton, student nurse, books and the Cherry Ames series. I devoured every single one of them, and if you go back and look at them now, they're interestingly sexist and racist, which my parents weren't. My parents must not have ever had a clue about some of these books or they would have been just totally appalled. I don't even know how much of those messages I got. I must have just skipped over them. Because it's only in retrospect that one can say those books are really terrible. But they were also about women who were accomplishing things, not leading traditional lives by staying at home. Then there were, of course, the more classic *Little Women* and *Rebecca of Sunny Brook Farm.* And I just couldn't read them fast enough.

Jana: Do you remember if you thought about doing things or being like those characters?

Judith: I don't have a memory of the books per se influencing me, although I suppose on some subliminal level they probably did. But I think more importantly, it was the fact that my parents always thought we would be economically independent people that had a much greater influence. They reared us to go to college and have careers. They thought that we would become public school teachers or social workers. But they always thought we would work.

Jana: Was that unusual among your friends?

Judith: It was unusual in my parents' generation, in their friendship circle, and for their relatives. It was unusual, yet they just took it as a given. I think what was even more unusual was sending your daughters away to college. Going to Queens College and living at home, going to Brooklyn College and living at home, that was very acceptable in their friendship circle. Sending your kids away to some place where they were sleeping away at college was very, very unusual. And they really wanted us to go away to college.

Jana: Did they ever explain why?

Judith: They wanted us to have a different experience. They were very clear about that, but I didn't want to go away at age 18. I spent the first two-and-a-half years at Hofstra College living at home, attending college, as a commuter. I was a big baby and leaving this very comfortable cocoon was way more than I was up for. And I only left home the second semester of my junior year because during the summer between my sophomore and junior years, I went to the University of Wisconsin for summer school, took a couple of history courses and loved Madison, Wisconsin. But by the time summer school was over, it was too late to get into a dorm for first-semester junior year. So I went back to Hofstra for a semester, finagled my way into a dorm room and then left home in January 1961. I stayed at the University of Wisconsin for law school.

Jana: What made you decide to go to the University of Wisconsin for the summer?

Judith: Wisconsin was a very popular summer school. It's beautiful and on a lake. I had a very good friend who was interested in going and so we went together. Also, my professor and advisor in the history department at Hofstra had just received his Ph.D. in American history from the University of Wisconsin, and thought very highly of its history department. He thought that I was a serious-enough students to transfer—and he was right.

Jana: Did you think maybe you would teach history?

Judith: When I got to Wisconsin majoring in American history, I also minored in American political theory. I intended to get a Ph.D. in American political theory and thought I would become an academic, which was a pretty scary prospect at the time, especially for my parents. They thought getting a Ph.D. and teaching at the college level was a pretty big deal. Women just did not do that. Who was ever going to marry me?

Graduate school seemed like a very long road. My parents thought that I could start teaching elementary or junior high school, or be a social worker tomorrow or the next day. So although they were generally very supportive, they worried about me and they worried about the expense, even though I was at a state university and worked part-time. Admittedly, I was earning little money, so school would continue to be a financial burden.

My decision to go to law school was purely a decision driven by having a superb mentor. I am the perfect example of a beneficiary of a wonderful mentor. Shirley Abrahamson—

who is, and has been for quite some time, the Chief Judge of the Wisconsin Supreme Court—was getting her Ph.D. in law. She wanted to be a law academic. While she was working on her doctorate, she taught an undergraduate Con Law course in the political science department, using a law school textbook. I took her course.

Wisconsin had many very strange rules. One such rule that existed in 1961 allowed that if you took the year-long Con Law course and got two A's, you did not have to take Constitutional Law in law school, which is perfectly ridiculous. So, I've often accused Shirley of giving me those two A's not because I deserved them, but because she wanted to prove to me that I could do well in law school—and she did! Basically, she advocated that a graduate degree just wasn't "activist" enough, and given who I was, I really needed the law degree as a license for activism.

Another one of Wisconsin's crazy rules at that time—don't forget this is the fall of 1961, spring of 1962—was you didn't have to take the LSAT if you had a B average, which is not a very high average, from the Madison campus of the Wisconsin system. So if you went to school in Sheboygan, that wouldn't get you in, but if you attended the Madison campus, you would automatically get admitted without an LSAT score. LSATs were not relied upon in the 60s the way they are today. To need a magic number or set of numbers just wasn't the case. Now I did take the LSAT because I wasn't sure if I wanted to stay in Wisconsin, and indeed to hearken back to my family, I did get into NYU, which then was not nearly the prestigious law school it became in the 90s and into the 21st century. But I would have had to live at home and commute because my parents didn't have enough money to pay the NYU Law School tuition and have me live on campus, and by then my parents had moved to a different part of Queens. So Shirley Abrahamson sat me down, walking and talking me through that application, and God only knows what else she did. There were only two women in our class out of 150.

Jana: You said that she thought an activist needed a law degree. So what made you an activist early on? Were you an activist in college, even in high school? What issues were you active around?

Judith: I actually don't remember high school activism. There may have been some, but I don't remember it particularly. I think much of my high school years were centered around friends and social life, more social life and more friends. Some are still my friends today, so I clearly invested a lot of personal resources into peer relationships. But I don't remember too much activism. I remember a lot of eating pizza and going to football games.

But I certainly remember activism in college. I started Hofstra in the fall of 1958, and sit-ins at Woolworth lunch counters in the South began, I think just a year or so later. I was very active in organizing sit-ins at the Woolworths in Hempstead, Long Island, because students were holding sympathetic demonstrations in other places. So what animated me, what interested me, were race relations and race discrimination. And it was the dawning of the civil rights movement that truly captured me and my intentions and my energy. When I got to Wisconsin, I continued my civil rights involvement and was much more interested in that than the anti-war activities going on in the early 60s. When I got to Wisconsin in January of 1961, people were beginning to oppose the Vietnam War. It wasn't that I was not supportive. It just wasn't where I put an enormous amount of my own personal energy. By the late 50s, early 60s, there were SNCC [Student Nonviolent Coordinating Committee] chapters and CORE (Congress of Racial Equality) chapters on college campuses led by students.

Jana: Did you participate in any of that?

Judith: I did participate and I provided leadership, and by the time Mississippi Summer came along, I was in law school. I was too afraid to go myself. I wanted to go, but I just did not have the nerve. I organized other students to go, and so I was part of a group of students who would send people on freedom rides. One of the interesting things about moving to D.C. was that I met Marion Barry, whose job it was to actually put people on buses in D.C.

From New York to Washington, D.C., buses were integrated, but once you left the Greyhound Station or the Trailways Station, you had to change seats because D.C. was south of the Mason Dixon line. We were one of many stationlike feeders in the early 60s, and we would send students to Marion Barry from all over the country—Ohio, Wisconsin, Michigan—he and his colleagues would place people on buses to go south and challenge segregated seating on interstate buses.

Jana: What did it feel like being involved in that?

Judith: You thought you were truly in the middle of social change. We knew that this was very big, and we also knew that it was very dangerous. Buses were being burned; kids were getting their heads knocked in for just sitting next to a black person. Sitting next to a black person on a bus could get you killed. We had no illusion about it and that's why I was afraid to go. So I remember some ambivalence as well; I was such a big shot that I would send other people but not go myself.

Jana: What about your parents?

Judith: I think my parents were very supportive as long as I wasn't talking about going South, and I think they were pretty secure that I was a big scaredy cat, so I don't think they were worried at all during that time. They worried later when I married Elliott and moved to Mississippi. They were worried! They didn't tell me not to do it, but they were worried, but that was later in the late 60s. Even five or six years later, it was very different.

Jana: At Wisconsin, what else do you remember first as an undergraduate and what was the thing that you focused on during your last two years of college? Did you find classmates and friends who shared your passions?

Judith: That's a good question. The short answer is yes, absolutely. There was a level of integration on the campus. The first obvious thing is that there were not that many Blacks, and there certainly were no Hispanics, and there were virtually no American Indians although Wisconsin has a very large tribal presence. I know there were probably more Native Americans in the state prisons than there were in the state universities. But to the extent that Blacks were present, there was quite an easy social life between Whites who were liberal social activists and Blacks. Then there were 12,000 kids on campus—and now there are much more. My campus life was a very integrated life.

I am very much a product of growing up safe and secure in the 1940s and 50s. I think one of the best memoirs of that time is Doris Kerns Goodwin's *Wait Till Next Year*, which chronicles her life growing up Irish Catholic during this same time period, just about 10 miles up the road from where I grew up. It is the story of my life: neighbors and family all around, rooting for the Brooklyn Dodgers, knowing that you were on the side of civil rights, hating the Yankees and Giants because they did not let Blacks play.

Ira Glasser, the head of the ACLU for many, many years, wrote a wonderful op-ed about how everything he learned about civil rights and civil liberties he learned from being a Brooklyn Dodgers fan. Even baseball was a part of that social consciousness. I remember Jackie Robinson coming to play for the Dodgers as if it were yesterday. I was about 10 years old, yet following how fans treated him was a big topic in our lives.

But I was also a product of the Cold War and the McCarthy era. I remember my fourth-grade teacher, Mrs. Stillwater, telling us that there were submarines lurking in the Atlantic, and because I lived near the ocean at that time, my world view of the Atlantic was the body of water just a block from my house. I remember having nightmares and not being able to sleep because I believed there was a submarine on the beach a block away. My parents went to the school to complain, along with the parents of my very best

friend, Judy Stone (formerly Judy Cohen) and her twin brother, Richard, who is now a columnist for *The Washington Post*. They complained about this idiot teacher, Mrs. Stillwater, scaring their children into believing that the Korean War was coming right to their little snippet of the Atlantic Ocean. I remember being very frightened by those "take cover" drills and dog tags. So although we were secure with family and friends, we were affected by those external forces.

Because my parents, and especially my dad's family, were leftist in their politics, they felt some significant unease during the McCarthy era. I remember somebody coming to pick up our garbage and going through it, and I remember my parents taking copies of the *Daily Worker*, along with other magazines and newspapers, to a dump to get rid of them. And I remember my parents also getting rid of record albums. I remember my aunt, also with leftist politics and a member of a trade union, being threatened with deportation. I could not understand how she could be deported if she was born in the United States.

When I was much older, I learned that my dad's family had lied about her being younger than my father because she was unmarried. The younger son could not get married until his older sister was married, so they made her younger. Turns out she was not born in the United States; she was born in Russia. She was born before coming to this country. Everyone knew about the lie, except for us little kids. She knew what the investigators were trying to get her to talk about—union activity. She was told that if she didn't talk, she would be deported. Fortunately, it all turned out fine. She didn't talk and they didn't deport her. She knew they did virtually nothing, but that didn't mean that other lives weren't destroyed. I knew about the blacklist in Hollywood. My parents talked about it and would mention the writers and actors who were blacklisted or had changed their names to get jobs. That was very much a part of my life in the 50s, and it didn't come from reading a book.

Jana: How do you think that affected your views, your social activism?

Judith: It all had a profound impact on my believing that a government could become authoritarian too easily and realizing just how fragile democracy is. I think my parents believed that in a very personal way, and I think I did/do, too—that you have to work very hard to keep democracy in place. My parents were not pessimistic. They did, however, believe it was hard work and you couldn't take it for granted. The political swirl of the 1950s profoundly affected my growing-up years in Far Rockaway.

Back then there was no street crime; no one got mugged, even though it was clearly a working-class neighborhood. This was not a high-rent district, but it was very safe, and we were in and out of each other's homes all the time. We played in the street after dark,

we played constantly, and we walked everywhere. We spent endless hours hanging out at the "candy store," which was actually a neighborhood luncheonette, and would drink Cokes for 5 cents. So in that way, it was safe and secure, despite the fact that I believed submarines were watching me from the Atlantic, or that McCarthy was hounding people. I remember going to the auditorium in elementary school to hear two things on the big radio: The first was General MacArthur's speech about leaving the Army, and the second was the Army-McCarthy hearings. I heard Welch say, "Have you no shame?" So the world was swirling around us while we lived in our cocoon, just 45 minutes from Manhattan.

My parents loved to eat and they were adventurous; they ate very well all their lives. We would drive 45 minutes to go to dinner in Little Italy and Chinatown. My father loved to drive, and he thought nothing of it, especially if the drive was food related. One of my favorite anecdotes—and I found out fairly recently that I wasn't alone with this—is that my father would read the obits of Mafia guys who were killed, often in restaurants. He would say, "They know how to eat!" And then that is where we would go for dinner. We would go to all these restaurants and weird places in Brooklyn, and we all thought that was great fun.

Jana: Did your family travel in the summer? What did you do?

Judith: We didn't travel because we lived at the beach. Who needed to travel? We belonged to a "beach club" that had lockers, a communal shower and a wonderful restaurant owned by a Greek family who were all our friends. This restaurant had the best Manhattan clam chowder I've ever tasted. The restaurant doesn't exist anymore … but to this day I measure all other chowders against it. The club had a carousel, and the Rockaway Play Land was up at about Beach 100th Street. Living at Beach 17th Street, we could take the bus when we were older. I never went on those rides, which was another difference between me and my sister. She loved them all.

We didn't take vacations. We lived in a vacation spot and indeed our extended family came to visit us, and to see my mother and my grandmother. We were laughing about all this with my mother just recently, although she says we were exaggerating, but we aren't. She used to make us get up early to leave the house and go to the beach so that when these relatives would "drop by", nobody would be home—and then they would have to go to the beach to see us. Otherwise, she and my grandmother were stuck cooking and cleaning all day. I don't think we were exaggerating because both my sister and I remember getting up long before we ever wanted to.

We also didn't get birthday presents, but I don't think it occurred to us that we were missing anything. What you got on your birthday was your favorite meal and your favorite dessert, and this was a really big deal. It was a huge celebration, but there was no exchanging of gifts.

Jana: And holidays?

Judith: We had huge meals, but again no exchanging of presents. Everybody would be together for Passover, but there would be no Haggadah reading. We did not live very observant Jewish lives, although we belonged to a modern orthodox synagogue.

Jana: Modern orthodox? Was it separated by gender?

Judith: Yes, it was separated by a very low bench that was no higher than my desk, and you could see and be seen—that's what made it modern. There was an ultra-Orthodox synagogue, not Hasidic, nearby that we didn't go to. There wasn't a Reform synagogue until you crossed over into Nassau County, Long Island, but that was a very famous, fancy one—way too upper class for any of us. I grew up belonging to a youth group called Young Judea. It was culturally important—it was living a Jewish life without the rituals. I went to High Holiday services, but my parents would rarely go. My sister would go too because that was part of our social life with our friends. Mostly, I would go to synagogue and stand outside. I rarely went in. I was certainly more interested in the social life than the religious ritual aspects of the Jewish holidays.

Jana: How about Israel? Wasn't that the time when Israel was establishing itself and Young Judea was focused on Israel?

Judith: I remember buying trees for Israel. I remember the Jewish National Fund box in our house. You would put money in the JNF box and save it for something special; ours was for Israel. My parents weren't activist Zionists, but they were proud of Israel. I remember celebrating the creation of the state of Israel in 1948. I can remember it being a very big deal in our house and in my community. I remember the UN resolution and the important role that President Truman played. I have a clear recollection of all of that, but my Zionism, which I now hold as an important part of life, really came much later after I met Elliott. My Zionism now includes a strong belief that Israel should embrace democratic values and a two-state solution. The first time I ever went to Israel was in 1972 with Elliott and our baby daughter, Sarah.

Jana: You were talking about Wisconsin and the campus life and the political activism. How did that work? Were you focused on that in your classes? Was that a part of everything?

Judith: I do think political activism was a part of everything I did. I think one of my real interests, both in American political theory and in American history, was grounded in that social activism. I was much less interested in Plato and Socrates than I was in modern American political theory and my American history interest was definitely focused in the 20th century.

Jana: So Shirley Abrahamson was right?

Judith: She was right. She knew me as this SNCC person and understood my civil rights interests. Also a very important part of the American history curriculum was social and economic history of the 20th century. There was a very, very important scholar of the Holocaust, a man named George Mosey, who in later years actually taught here at the Smithsonian and the Holocaust Museum. So taking courses with George Mosey at the University of Wisconsin, and taking courses in intellectual and social history of the 20th century, fit quite nicely with my interests in civil rights and the labor movement. They all became pieces of the whole.

Jana: What about an interest in gender and women? Was that at all a part of college?

Judith: No, not at all—and it was not a part of law school. It did not occur to me at the time that there was something wrong with the fact that there were 150 men and only two women in my class. As I indicated earlier, all you had to have was a B average at the University of Wisconsin Madison Campus, to not have to take the LSATs to get into the Wisconsin Law School. I knew sexism existed. I knew at the time were wrong, but I had no particular interest in fighting, in fighting the wrongs.

The fact that there were two women in my class, however, quickly went from the sublime to the ridiculous. One of the first things I noticed was that there wasn't a women's lounge. There were places where the guys could hang out and have their study groups, but we weren't allowed in most of those places. There was a ladies' bathroom, but there was no communal place that made it easy for women to gather. There were places that men and women could hang out together, but not one exclusively for women. So that was sort of ridiculous. I've been back and now there is no men's lounge, let alone men's and a women's lounge.

There was something else that was ridiculous—and I did know this was very wrong. There were two sections of about 75 students each, and I was in one section and, because we were separated alphabetically, Clarice Feldman (formerly Clarice Wagman) was in the other. The criminal law professor, Ed Kimball, was a Mormon who went on to become one of the founders of Brigham Young Law School in the 1970s. He only called on the woman (there was only one of us in the class) once a semester. It wasn't anywhere near *The Paper Chase*, but the class was it was still taught using the Socratic Method. Being called on only once was supposedly a benefit because you didn't have to worry about being called on again. However, part of this tradition was that the one time the woman student was called upon was to discuss "the rape case." So in front of all 75 guys, I had to respond to the question: What constitutes rape? I had to say, "Penetration, no matter how deep." And if I could manage to say that "simple sentence" I could rest assured, I would never have to speak again the entire semester.

I remember the humiliation of it all. I remember knowing it was wrong, but it never occurred to me that there was something I could do about it. It did not occur to me to go to the Dean. We had big mouths. We were tough. We were right in there with the guys. But we never thought that there was something we could do about this. It wasn't that we thought we shouldn't. We knew it was wrong and certainly knew the feeling of humiliation, and we didn't like it. But that was part of what we signed up for in this system, so we took it.

Jana: Were there any women instructors?

Judith: There were only two. One was the librarian, and the other was the family law professor who was also the Legal Aid Clinic Director. She's recently retired and still a friend of mine; she's quite a wonderful woman. She was terrific then and she's terrific now. As I suggested, we all knew there was something wrong with the way women were treated, but we didn't think we could do anything about it.

I recently went back to Wisconsin for my 40th law school reunion, but I couldn't get Clarice to come back with me. She remembers her law school years as being much less hospitable than I do with my rose-colored glasses, and so she had no interest in going back. There were a bunch of bald, old, 65-year-old men and me! Many of them were retired, and many of them were actually quite wonderful. There were guys who had made it big and were the presidents of the bar. I mean, who goes back to a reunion but the people who are the most comfortable with their lives? I had a wonderful time, but I didn't stay very long. It was very interesting and quite satisfying to be there briefly.

Jana: Did you continue your civil rights activism in law school?

Judith: I did and probably even more so. I graduated from law school in 1965. The time between the fall of 1962 and 1965 was a hotbed of civil rights activism. So I continued my work with Mississippi Summer 1963, 1964, of facilitating the sending of fellow students to attend freedom schools and registering people to vote. I spent a fair amount of time also addressing with civil rights issues in Madison. By then I was much more aware of the fact that the city was very segregated, but for the most part I just focused on the South and the passage of the 1964 Civil Rights Act.

Jana: What do you remember about the debate?

Judith: I remember Adam Clayton Powell attempting to put Title VI onto every piece of legislation that could pass so that he would eventually get the entire Civil Rights Act enacted, including Title VI. I remember Congressman Emanuel Celler, the leadership of Congressmen Celler and Peter Rodino, and Adam Clayton Powell working on the 1964 Civil Rights Act.

I should say that I was in law school when John Kennedy was assassinated so that had a huge impact on me and my entire generation of young people. We could tell you exactly where we were when we heard the horrible news. We viewed President Kennedy with some significant ambivalence. On the one hand we were big Kennedy-philes, and on the other we were very critical because we thought he wasn't moving fast enough on civil rights initiatives, and so we were very critical. He had said in his presidential campaign that, with a stroke of a pen, he would require fair housing, but his pen never struck. So we were very disappointed with his lack of commitment and leadership.

Jana: What was your reaction when he was killed?

Judith: We were beside ourselves with grief. I sort of joke (and it's only a little bit funny) that for most people of my generation, Kennedy's assassination was a turning point. If this horrible thing could happen, then anything bad could happen. It was so unthinkable. For me, this turning point happened several years earlier when the Dodgers left Brooklyn. That was a horrible thing in my life. Now, how could you equate the Dodgers leaving Brooklyn to the President of the United States being assassinated? Of course you couldn't, but it wasn't cynicism. I think that for me and for many of my friends and family, the Dodgers leaving Brooklyn was just the worst thing that could happen, and I was deeply distressed with this terrible injustice.

We were all very frightened by Kennedy's assassination, worried about what would happen to our democracy and to our nation. And we didn't love Lyndon Johnson. We

didn't know yet what was going to happen in Vietnam. We knew enough, we were politically active enough, to know President Johnson was putting more and more "technical assistance" into Vietnam. Johnson was a good ol' boy from Texas, and we weren't at all sure this guy was to our liking. And the notion that the President of the United States could be killed was just very frightening to us.
Of course, nobody had cell phones back then. I remember the lines for the public telephones in the student union, which is where I was when I heard the President had been shot. I remember people calling their parents and just crying. Everybody was crying until they got their turn at the phone, and then they would call their parents who were also crying. I went upstairs in the student union and was glued to the television. It was about 12:15 – 12:30 mid-west time. I don't know what time it was in Texas, but I remember that there were lots of people in the student union, which is one of the places where I hung out, and where we watched Walter Cronkite cry. I remember those visuals as if it were yesterday.

When our children were young, we took them to the Broadcast Museum to see Howdy Doody and Mr. My Imagination, the programs of my early TV-watching years, which they thought were ridiculous. But we also wanted to see that tape of Walter Cronkite announcing Kennedy's death again.

Jana: Did you ever think of doing something traditional with your law degree?

Judith: I went to law school largely because Chief Justice Shirley Abrahamson believed in me. I thought that the 1964 Civil Rights Act was important and thought that if passed it would allow me to find exactly the right kind of job where I could get paid to work on issues I cared about deeply. So, I was both unambivalent in law school and very clear about job opportunities I would seek.

Another one of Wisconsin's ridiculous rules was that you could get admitted to the Wisconsin Bar without taking the bar exam, if you took this trial-practice summer course. The Dean would attest to your high moral character, you would raise your right hand and you got admitted. There was only one little problem: No other state recognized your bar admission. If you were going to stay and live your life, your legal and professional life, in Wisconsin, this was great. But for me it wasn't, so I went home to New York and took the New York Bar.

Jana: Why New York as opposed to say Washington, D.C.?

Judith: Well, New York was home and it was where my parents were, and I had no idea exactly where I was going to live. I came to D.C. in March of 1966 (exactly 40 years ago)

because I went home at the end of the summer, after getting admitted to the Wisconsin Bar. I took the New York Bar in the fall and failed it. I didn't even know what I didn't know. I thought I had passed—I had no idea. I spent the entire bar review course doing the *New York Times* crossword puzzles. I thought this course was the most boring thing. So I took it again in February of 1966 and then moved here in March, not yet knowing if I had passed. But I did figure out that you needed to listen to the instructor and study — and I did pass the exam.

After taking the New York Bar exam, I immediately came to D.C. because of the passage of the 1964 Civil Rights Act. My job searches were here, but I did not actually move here until I had a job. Clarice, my law school roommate and her husband, who she met in law school and who was also a good friend, came here right after law school. He was with the Justice Department and she was with the National Labor Relations Board (NLRB). I came here several times, stayed with them and looked for a job enforcing civil rights laws. Through various connections—including somebody my father knew, a grown-up child of somebody who lived in one of my parents' nursing homes—I had lots of civil rights interviews at various agencies.

My first job was working with the then Department of Health, Education and Welfare: first, for an entity called the Equal Educational Opportunity Program, (now the Office of Civil Rights, OCR) and then for the General Counsel's Office of HEW doing the exact same work, enforcing Title VI of the new Civil Rights Act of 1964. My job was to travel around the South and tell southern school superintendents what they had to do to comply with Title VI, which requires that recipients of federal financial assistance not discriminate on the basis of race, color or national origin. School superintendents wanted to be in a position to obtain the newly enacted law's provided federal funds for public schools.

Jana: That's a wonderful, comforting story for our students. Were the school superintendents of the South receptive to a young Jewish woman from New York?

Judith: With an N.Y. accent 10 times worse than it is now? And I haven't lost my New York accent—nobody has ever asked me where I'm from except people from New York City. The superintendents were very unreceptive, and it was a dangerous and hostile thing to do. I would spend my days going around visiting with school officials—mostly white, some black, mostly men. The Blacks were not at all friendly either because their entire economic livelihood, as well as the entire economic base of the black community was at stake, which I didn't appreciate at the time. And the black principal of the elementary school and the black high school didn't think for a second that they were going to end up okay as a result of school desegregation, and they were of course correct.

At night we would go into the homes of the activists and the black church leaders, and the NAACP and local Conference of Racial Equality (CORE) chapter leaders, and try to convince people to put their children in schools, to integrate them, which was an extraordinary experience that will be with me for my entire life. What they were doing was courageous beyond what we could have ever anticipated. In the summer of 1966, the federal government asserted that school desegregation would be achieved with just one black child per grade. The school district could keep its federal funding with only one black child per grade—not even one per classroom. The bar was so low! Can you just imagine how vulnerable these K-12 students were?

Jana: Do you remember any families or children in particular?

Judith: I remember many extraordinary grown-ups—black ministers in little places in Mississippi, Alabama and Georgia who were so courageous. Many of the leaders were also engaged in voter registration during the same time as they were leading efforts for school desegregation. The leadership came largely from the funeral-parlor owners and the black churches because they were the people most immune from white economic pressures. The Blacks would continue to use the black funeral parlors and would continue to go to black churches. They didn't live rich lives, but they were upper working class and not as vulnerable as the teachers and the principals who had an awful lot at stake. Blacks in the school system were beholden to the white power structure that cared nothing at all about black education. And sadly, very sadly there were a lot of black almost illiterate teachers who knew they couldn't make it in an integrated school system. They, too, were victims of the racially segregated education system.

There was an enormous amount at stake in the black communities, both in large cities, and in small and rural communities. I think I was pretty oblivious at the time to the larger contextual issues at stake, and the social and economic challenges for Blacks. I was so convinced that Brown vs. Board of Education had been rightly decided, and that I was doing God's work in implementing that Supreme Court decision, as well as all the other judicial decisions, and the 1964 Civil Rights Act, itself.

Jana: Tell me the story about how you met your husband, Elliott.

Judith: Two different people introduced us in 1966, neither of whom knew each other. The first was my law school roommate and the only other woman in my class, Clarice Feldman, who worked with Elliott at the NLRB in the Appellate Section. The second was a colleague of mine at the Office of the Department of Health, Education and Welfare (HEW), then Linda Finkelstein, now Linda Ferren.

Jana: Head of this project!

Judith: Head of this project—that's right—and a very important person in my life to be sure. Linda and her then husband, Moe Finkelstein, and I worked together at HEW on school desegregation. Moe, Linda and Elliott were close friends. Moe and Elliott were counselors together at a tennis camp and then also went to Harvard Law School together. So when a distinct pair of people who did not know each other suggested that we meet, it was too much for Elliott to ignore.

Clarice, Linda and Moe all argued that two people who cared so passionately about addressing race discrimination in this country simply had to meet. In the spring of 1966, Elliott had taken leave from the NLRB and had gone to Mississippi as a volunteer lawyer with the Lawyers' Committee for Civil Rights, which operated a program that rotated lawyers once a month. My friends were convinced this was a match made in heaven—and they were right.

Jana: Love at first sight?

Judith: Love at first sight for me. Elliott is much slower than I am at making big and small decisions, so it took me a while to even tell him that it was love at first sight.

Jana: So how long after you met did you marry?

Judith: Well, this is a story that I love to tell. We met sometime, I think, in very late July or early August, and soon after, my sister and I were taking a family vacation with my parents on Cape Cod. I didn't then—and I still don't—like to drive on highways, so my sister flew into D.C. from Chicago so that the two of us could drive together, planning that she would do most of the driving. She was tired from her early morning flight, so she told me to drive first so she could take a little nap, and then she would take over. Hours later she woke up and I had a smile on my face. She said, "I can't believe you don't want me to drive. You drove this far and let me sleep this long, and what are you smiling at?" I said, "I am planning my wedding." [Laughter.] She said, "Are you mad? Who are you marrying? What are you talking about?" The rest is history!

When we met in the summer of '66, Elliott was pretty sure he wanted to leave the NRLB to work full time for the Lawyers' Committee in Jackson, Mississippi. By February 1967, he was in Mississippi on a permanent basis. Interestingly, I was working for the HEW's Employment Education Opportunity Program, which was created to enforce Title VI of the 1964 Civil Rights Act, and then later and as said I worked for the General Counsel's

office working on the same issues. I would volunteer to go to Mississippi on "compliance trips." I would get two weekends as part of the trip, so I would go the weekend before I had to work, work all week and then stay the following weekend. People were not volunteering to go to Mississippi to deal with school desegregation. I was quite an oddity, yet much appreciated at the same time. We continued to travel back and forth. Elliott would come up to D.C. once a month and I would do at least two weekends a month for several months.

These were also the years of the anti-Vietnam war demonstrations, so Elliott would come up to D.C. from Jackson, for these marches, and we would both serve as legal observers. In October of 1967, there was a big march on the Pentagon, and thousands upon thousands of people were arrested. We spent the entire weekend getting people out of jail. It was a miracle that we weren't put in jail ourselves, because we now know that legal observers were targeted. Back then, we figured that we had inoculated ourselves against any police brutality with the good legal services we were providing, but as it turned out, we hadn't—we were just lucky.

It was during this particular October 1967 weekend in D.C., however, just eight months into our long-distance relationship that I said I could not do this for another minute. The traveling back and forth was just awful. But we had always assumed that in order for me to move to Jackson, Mississippi, we would get married first. So Elliott said, "Okay, fine. Let's get married."

Jana: Just like that?

Judith: Just like that.

Jana: And you knew each other a few months?

Judith: No, it was a year and several months. We met in the summer of 1966, and this was October of 1967. We were married in December of 1967 and bought a house in a brand-new black neighborhood in Jackson buying a cute little ranch house. Because the city was entirely segregated, this was a black neighborhood with the first new decent houses for Blacks in a nice subdivision. We paid $13,000 for this first home [laughter], with a down payment of about $1,000. Our mortgage and insurance were roughly $100 a month, which included a little extra insurance for Elliott's wonderful cello.

Jana: Did you go down there knowing that there would be a job for you?

Judith: Yes. That is actually a very good question. I looked for a job with some of the other civil rights organizations, such as the NAACP Legal Defense Fund office, and the Lawyers Constitution Defense Committee (LCDC), which was the ACLU office in Jackson. These two groups along with The Lawyers' Committee for Civil Rights were the three mainstays of civil rights offices.

Jana: And they were all in Jackson?

Judith: Not only were they all in Jackson, but they were all within a block and a half of one another. However, there were no job openings.

Jana: And so many of them were the civil rights leaders of the time, right?

Judith: Absolutely. Al Bronstein was then the head of the LCDC, and later became the head of the National Prison Project. We actually just went to the 40th reunion of the opening of the Jackson office of the Lawyers' Committee, which was quite emotional and quite extraordinary.

So there were not a lot of job opportunities back in the winter of 1967. Elliott and I quickly agreed that given our personalities, working together in the same office was not a very good idea, and besides, the Lawyers' Committee wasn't hiring. I wound up securing a job at Jackson State College, teaching political science, American political theory and American history. So that was my full-time employment. I was the first white faculty member hired by the college's new president, John A. Peoples. He was so nervous about hiring me that he wrote me the offer letter on a piece of paper that didn't have letterhead on it. I still have it. And he signed it John A. Peoples, president.

Jana: Was he worried about the students' reaction?

Judith: Oh no, no, no. He was worried about the state's reaction to his hiring a white faculty member. Jackson State had a cooperative agreement with a college in the New York state system called Harper College, which would send white faculty members to rotate in and out by the year or by the semester, and Jackson State would send students to Harper. Harper never sent students to study at Jackson State. So it was one-way integration. There were some white faculty members on campus—maybe three or four, or five maximum—but the state was okay with this because it opposed full integration and these faculty members were not permanent, always temporary.

Jana: But the state might well have objected to you?

Judith: It was a gutsy thing for him to do because there was no integration at the higher education level to speak of, and certainly Mississippi fought school desegregation at the elementary and secondary levels.

Jana: So what was that experience like?

Judith: It was a wonderful, wonderful experience. The only sadness and regret that I have is that I didn't stay longer. We left a year after I got the job, so I taught a full year but not a full academic year. I began in January 1968 and left after the fall semester of that year – December 1968. So I taught two semesters, but not in the way that the academic calendar runs. They were wonderful, wonderful students, and I learned probably more than I taught.

One of the saddest things about my experience was that my best students were products of Catholic schools. Now in and of itself, that's not so sad. What was sad was that if you left your kids in the public education system in Mississippi, chances were they wouldn't get a very good education. So parents with any ambition for their children and a strong belief in education wanted their kids in private schools. However, the only private schools available to Blacks were religious schools, and the only religious schools were Catholic schools. But not one of these kids was Catholic; they were all Southern Baptists, or rather Black Southern Baptists. In the late '60s, white Christian academies were beginning to burgeon as a way to educate white students while avoiding federally required school desegregation. But these black kids had none of these opportunities.

Jana: Were Catholic schools integrated?

Judith: No, not by and large. By the early '70s, some Catholic elementary and secondary schools were integrated, but not when I was teaching in 1968. Those kids had all come through segregated private schools.

Jana: What were the students like? Were they politically active?

Judith: They actually were not very politically active. There was a private black college in Jackson called Tougaloo. And Tougaloo was a hotbed of political activism. It was integrated so it had some white students—certainly no white students from Mississippi, but some out-of-state students who were making a political statement. Tougaloo was where they could take bigger chances because the school was not funded by the state. Those students were the leaders, and today when I see grown-up Mississippi civil rights leaders who in their 50s and 60s, who were activists, they came out of Tougaloo, not Jackson State.

In April of 1968, Martin Luther King was killed, and there were riots throughout the country. In Jackson, there were "mini" riots, especially around the junior high and high schools. I was on campus late in the afternoon when we heard about the assassination. My students came over to me and said that they thought I should leave, that this was not a good place for me, so they walked me to my car and I left. However, I decided to go back the next day because I didn't want to abandon my students, and I certainly was not afraid of them. Elliott drove me, and as we rode past the junior high and high schools—remember we lived in a black neighborhood—you could just tell that these kids were really angry. By the time we got to campus, students had taken corrugated boxes and were burning them on Lynch Street, the road that bifurcated the main campus. This was the extent of their protest, probably as benign as you could get. There were no real riots.

The mayor of Jackson at the time was a man with the last name of Thompson. This was the very end of the Johnson administration, and there was some law enforcement money called LEAA—the Law Enforcement Assistance Act. With his funds, Mayor Thompson bought a tank, appropriately named the Thompson Tank, in the event there was an uprising. He actually brought out this Thompson Tank in response to these kids burning corrugated boxes. So Elliott came and got me and, again, I left campus, but not because I felt at all personally threatened.

It was a wonderful place, and kids received a fairly good education.

During the summer of 1968, I taught in a summer school program aimed at helping elementary and secondary public school teachers get college degrees, which was now a statewide requirement. They had teaching certificates but not college degrees, and I don't even know if any of them were white. I had a few teachers in my program who were illiterate, and they were teaching elementary and secondary school students. What to do with these people? If you failed them, they could no longer teach, and they would be out of jobs. If you passed them, they would continue to teach despite the fact that they could not read or write. It was a very painful decision. I can remember this one woman's face as if it were yesterday. She couldn't read, and she was teaching third grade—and she was going to fail my entry-level American history course. She offered me a bribe of a bushel of okra. I hate okra, so it wasn't even a good bribe. She was elderly—looked 80 but was probably 60. I didn't pass her, and I didn't take her okra.

Another moral dilemma I faced was what to do with students who had school deferments that kept them out of the Vietnam War but who were in danger of failing courses. If you failed these students, you were running the risk that they would be drafted. I admit that I gave more than one D to young men who probably deserved to fail.

Jana: Did you think about staying in academics?

Judith: I went to law school to be an activist. Although I did have a wonderful, wonderful year, my own academic credentials had not prepared me to teach law school. And I wasn't interested in staying in undergraduate education because for the most part, I was teaching American political theory and American history—all of which interested me but not enough. I wasn't doing what I had gone to law school to do.

Jana: What then brought you and Elliott back to D.C.?

Judith: That is interesting, but first, I should back up and give you some context. At the time, there were three, maybe four, black lawyers in all of Mississippi practicing law. There were civil rights lawyers doing civil rights work, but they weren't doing landlord tenant, wills or family law. There were very few legal services in this state. Dean Morris, a very modern dean for his time, developed a program at Ole Miss, and brought in a few people, including Michael Trister and Walter Dellinger. I don't know if Dean Morris had gone to Yale or if he had an association with Yale, but he took these brand-new baby lawyers right out of Yale and started this legal-service program along with a clinic at the law school up in Oxford.

Jana: How far is Oxford from Jackson?

Judith: Oh, it's far—at least two hours. The law school at Ole Miss had recently graduated its first black student, Reuben Anderson, during the summer of '68. The three local black lawyers were inundated with work. One of them wouldn't have anything to do with the civil rights lawyers or anything to do with civil rights, and the other two were wonderful friends and colleagues that believed in the work of the civil rights lawyers. All three were lawyers who had "read for the law" because they couldn't go to law school in Mississippi. They could take the Mississippi Bar, but the only other people who would have taken the Mississippi Bar were out-of-state lawyers.

Marion Wright, a civil rights attorney who was the head of the NAACP Legal Defense and Education fund office in Mississippi, had taken the Mississippi Bar the year before, and had taken copious notes to prepare for the exam, and passed. Elliott and Michael Trister, who were up at the Ole Miss Law School, studied together for the Mississippi Bar using Marion's notes. On the first day of the Mississippi Bar exam, I received a call from George Kaufman. He was a great friend of ours in D.C. who was a labor lawyer and knew of Elliott's appellate labor law litigation experiences and his civil rights practice. He never approved of Elliott being in Mississippi and called to say that there was a

wonderful civil rights labor firm, run by an extraordinary human being named Joe Rauh, and they were looking for a lawyer. So George didn't think that Elliott needed to take this bar exam, or that he needed to stay in Mississippi anymore, because George had found him the perfect job.

That night I told Elliott about the phone call and he was intrigued. He continued with the exam but applied for the job in D.C. with Joe Rauh. We always thought we'd stay in Jackson for at least another year, but this job was made in heaven for Elliott so we had to give it serious consideration. The practice was focused on both civil rights and labor law, and Elliott would be a great asset to Joe with his appellate experience—having argued in every single court of appeals during his three or four years at the NLRB—in addition to all of his civil rights experience.

It was just too good of an opportunity to pass up, especially since we never intended on staying in Jackson forever. As it turned out, Elliott did pass the Mississippi Bar exam and was admitted to practice there, but not until after we returned to live in D.C. We left Jackson at the end of 1968, with Elliott having been there for just shy of two years and me there for only one year.

Jana: So you always thought that you would eventually come back to D.C.?

Judith: We did. We had a vast friendship circle that we had created during the few years we had lived here. Plus it was a lot closer to home for both of us since Elliott was from Pennsylvania and I'm from New York. We both always liked D.C. and knew it was going to be home.

Jana: So you came back and Elliott took the labor civil rights job, and you did a few other things right before or as the Women Legal Defense Fund was getting started.

Judith: I did. Working to eliminate race discrimination has been a consistent priority for me ever since my teenage years, or maybe even earlier. Upon returning to D.C., my first job was to work on the need for northern school desegregation for the Urban Coalition. We also began an inquiry into inequities caused by the school finance formula and how urban school districts were disadvantaged by state aid formulas.

I worked on both issues until a job became available at the U.S. Commission on Civil Rights, a place where I tried to get a job immediately after law school but ended up at HEW. The Commission had—and still has—subpoena power, albeit no enforcement powers, but it was a pretty powerful independent government agency then chaired by an

extraordinary Jesuit priest, president of Notre Dame and a powerful force in civil rights, Father Theodore Hesburgh.

By the end of 1969, I was holding hearings both in the South and in the North on school desegregation, about what was happening to black students and to faculty once integration began. These were very sad tales because the black faculty and black administration were losing both economic and professional opportunities in ways that were discriminatory. Black students were also being given a very difficult time.

Integration was working in some places and not working in many others, and of course school districts suffered terrible white flight. White flight, started right here in D.C., and spread certainly, into Christian academies to avoid school integration, across the South. These were the years of court decisions requiring meaningful steps that school districts needed to take in order to ameliorate the effects of white flight so that it wouldn't undo school desegregation. And by the end of 1973, there was somewhat surprisingly more school desegregation in the South than in the North. Activist leaders like Martin Luther King were shifting their emphasis to states such as Illinois, to address what was happening in the northern cities regarding race discrimination.

Jana: With the benefit of hindsight, could things have been done differently? We are obviously still living with the aftermath, but was there any other way?

Judith: There were certainly things that could have been done to protect the black faculty and students. Would the results have been perfect? Probably not, because the white school boards and white senior management of school districts would have probably always seen to it that Whites got the better jobs. But it could have been better than it was. You could have offered more protection by requiring greater numbers of black students and faculty, and by giving more federal money that could have been better directed toward increased integrated relations and human-rights courses for Whites. Things could have been better just by having a greater understanding of the needs of black students. When you require one black student per grade, or one per school, or one per class, these kids would just be overwhelmed. You needed safety in numbers.

Jana: From an academic legal perspective, there is a lot of focus on the white flight issue in Milliken vs. Bradley—the Supreme Court case that didn't allow for inter-jurisdictional remedies, but that may be an overly legalistic perspective.

Judith: Well, I don't think the Supreme Court decision happened in a vacuum. There were huge white power-elite pressures that mitigated against the Supreme Court giving the kind of expansive remedies that you would have needed, and it also sadly reflects

where the white elected power structures were. Whites controlled cities and Whites controlled states. There were few, if any, Black mayors. They didn't exist in 1960's and '70's. The White elected political dynamic created a real pressure on the federal courts. There were extraordinary towering, heroic, courageous legal giants like Judges Frank Johnson, J. Skelley Wright and John Minor Wisdom—people who would just impress you as personally courageous. They used the law and the Constitution to protect individual rights.

Jana: Was it an optimistic time?

Judith: It was a very optimistic time. You thought you could accomplish a great deal—and indeed a great deal was accomplished. They were very heady times. And you felt the power, certainly through '68, of the federal government more or less being on your side.

I have a funny story of not having the power of the federal government on my side. I was feeling optimistic, I was so heady, in overstepping my bounds, and ruing the day. The summer of '67, I believe, saw huge demonstrations in St. Louis because, rather than desegregate the schools in St. Louis, the white education power structure decided to put mobile units on the school yards of the overcrowded black schools, rather than ameliorate the overcrowding by sending some of those black kids to white schools. It was a very, very hot summer, and there were constant demonstrations. One of the things the civil rights leaders wanted was an investigation by HEW into the placement of these trailers to avoid school integration. The leadership of the civil rights movement in St. Louis asserted that Title VI was being violated. Somehow or other they got to me.

I can't remember how that happened, but I suggested that they send immediate telegrams to the President of the United States, and the Secretary of Health, Education and Welfare, John Gardner, who we knew to be sympathetic. In fact, internally, I didn't have the power to move the bureaucracy though I had tried to investigate what I thought was a terrible injustice. Eventually all of these telegrams came back to me to respond, and I truly received my just desserts. I had accomplished nothing except busy work for myself, letting these people down, to boot. And whatever were the politics of Missouri, we were not going into Missouri to desegregate their schools. It was not part of Lyndon Johnson's plan to tell white Democrats whose party votes he desperately needed. So there were limitations, but it was that heady powerfulness that allowed me to believe that I could get this to happen—thinking that I could accomplish this as a lowly staff lawyer who hadn't even been there for two years.

Jana: But this trickled down because there I was in high school, half a generation later, and chose law because it looked like I could change the world.

Judith: It did. And indeed there were a great many changes. During this same time, around 1971, my friends were forming what was then called the Women's Legal Defense Fund.

Jana: Were you starting to see connections between race and gender?

Judith: That didn't happen until later. It was well into 1973 before I began to see those connections. I had a baby in January of 1972—Sarah, who is now 34 years old—and I took a very long maternity leave. And then I did something absolutely outrageous. At the end of this seven-month maternity leave, I told the Civil Rights Commission that I would not be coming back. Now if someone did that today, I would be the first one to jump all over that person. Even then I knew it wasn't right.

Jana: They expected that you would be back?

Judith: Yes, of course. Let me back up a little bit. It was around the time that Nixon was elected. The Civil Rights Commission was a different place, with a General Counsel who was a Republican African-American—and quite conservative—and who also happened to not be very bright. I was due for a major promotion before I gave birth to Sarah. So I tried to hide the fact that I was pregnant for a very long time because I was very worried that if he knew that I was pregnant, I wouldn't get the job, which I believe was a promotion from a GS-13 to a GS-14. And indeed that is what happened. He said that he couldn't hold the slot open for a pregnant woman, and I never got that promotion.

This is when my consciousness about gender discrimination began to take shape. I loved what I did, but there were a lot of challenges. So when it came time to go back to work, I just could not go back there. That's when I decided to become involved with the McGovern campaign.

Jana: So this was the fall?

Judith: It was August when I started working in the McGovern campaign, and I worked in the "Jewish room," the campaign operation to woo Jewish voters. People tell tales about me bringing Sarah to work, which I did because I was nursing. I would keep her in the bottom drawer of a file cabinet. I worked through the election and then looked for another job.

Several of us refugees from the McGovern campaign went to work for the Commonwealth of Puerto Rico. It was the only big Democratic show in town because

Rafael Hernández Colón, a Democrat, had gotten elected governor of Puerto Rico. A wonderful guy named Gabriel Guerra-Mondragon began working for Hernández Colón's office here in D.C. José Cabranes, who is now a sitting judge on the Second Circuit became the head of the office. The two of them hired my long-time friend Sarah Erman, an extraordinary woman who was the issue director of the campaign; Marian Nease, who had been its treasurer; and myself. So I became a legal advisor for the Commonwealth of Puerto Rico.

Jana: Doing what sorts of things?

Judith: I mostly worked on obtaining federal grants in the areas of law and law enforcement, as well as federal enforcement of FCC for the Commonwealth.

Jana: You must have been doing lots of work on Capitol Hill and networking?

Judith: Yes, and I had done legislative advocacy with the Civil Rights Commission, too. And because of Elliott's jobs, I had lots of experience and close friendships in the labor law field as well. In the spring of 1974, I decided to take the summer off and then look for a job in the fall. Sarah was just a little more than 2 years old. She had been diagnosed with epilepsy, and there were a fair number of medical visits. She was actually in quite good health, but there were all kinds of decisions that needed to be made. The job required many trips to Puerto Rico, which would have been an incredible perk for someone who didn't have a new child, or didn't have a toddler with medical issues, or a husband. So traveling was nice, but after a while it got old.

Jana: So you decided to take the summer off.

Judith: I decided to take the summer off, and at some point I left the Commonwealth of Puerto Rico and started to do some consulting. A very important turning point for me occurred when I was working with the U.S. Commission on Civil Rights. As the consultant responsible for hearings regarding women on welfare and women in poverty, I began to make the connection between race and gender.

Three years earlier, dear friends like Gladys Kessler had formed the Women's Legal Defense Fund. I paid my dues to this new organization, but I had no particular interest in being very active, that is until I learned more about the connection between race and gender and poverty. That is what sparked my interest. As I said earlier, I was planning to take the summer off and look for a job in the fall.

But somewhere back in the winter of late 1973 or early 1974, Brooksley Born gave this dynamite speech to the Junior League of Washington, D.C., called "De Jure Sex Discrimination." It was a talk about all the ways that the law required sex discrimination. Brooksley got these Junior League ladies all fired up, and they asked, "What can we do, we the Junior League?" She said you could give money to the Women's Legal Defense Fund—and they did. They gave us $30,000 seed money, a one-time-only grant. So the feminist Women's Legal Defense Fund's first grant was from the Junior League of Washington, D.C., and the Women's Legal Defense Fund was searching for an executive director.

Jana: So they started in 1971?

Judith: They started in 1971 as a volunteer organization, with Brooksley, Gladys, Susan Ross, Katherine Mazzaferri, Sally Determan, Marna Tucker, Liz Dunst and several other visionaries. People always assume that I founded the Women's Legal Defense Fund. I did not found the organization. A group of about a dozen people came together in Susan Ross's living room. There is that wonderful expression about how when something is a success, there are many mothers of that success. Well there were all kinds of people who said that they were present in Susan Ross's living room. I was not there, and I have no idea who was or who wasn't. But many more people have said that they were there, than could have fit. She lived in an apartment building on R and Connecticut, and it did not have a palatial living room or kitchen.

Jana: But you knew these women?

Judith: I knew these women very well. They were my friends, and I paid my $10 dues to the organization. I was supportive enough of their efforts by being an early member, but I was not an early activist. So from 1971 to 1974, they organized themselves around specific topics and then provided pro bono legal services within those priorities: they had a steering committee that decided what cases they would take. They would actually litigate, and they would find volunteer lawyers in the private bar to do that. They had an employment discrimination committee. They had a name-change committee that would help people change their names, or go back to their birth-given names—a big issue in the early 1970s for a burgeoning feminist. There was also a credit discrimination counseling committee and something called the pro se divorce and family law committee.

Jana: That was way ahead of their time.

Judith: I often tell people when I talk about the early history of the Women's Legal Defense Fund that I would venture to guess that if we had been born someplace other

than the nation's capital, we would have stayed a local direct service organization. The women who founded this organization were quite sophisticated in the civil rights legal world. They knew the ACLU—Gladys had been a volunteer in Louisiana with LCDC in its Louisiana office. They knew the NAACP Legal Defense Fund; they knew the Lawyers' Committee for Civil Rights Under Law. And what I like to think is that they took the best of these models in actually forming the Women's Legal Defense Fund.

Jana: Initially it seems like it was a post office box.

Judith: The pro bono lawyers operated out of the trunks of their cars. The attorneys would bring their files to committee meetings and recruiting volunteer lawyers to handle cases. Jane Harmon was one of the first volunteers who brought an early case in Virginia on behalf of WLDF. She was in private practice and was a volunteer lawyer with the Women's Legal Defense Fund. She may have been our first pro bono litigator.

Jana: I have some early minutes that list some of the cases including something at George Mason representing a newspaper that wanted to publish either an article or an advertisement on abortion.

Judith: That was the case. That was definitely Jane's case.

Jana: It looks like the Women's Legal Defense Fund also conducted education seminars.

Judith: Public education. We provided education programs with volunteers. I remember that the Board met every month. It was a real working Board. The Board did the program work on as well as the oversight and financial aspects for the organization with a tiny budget ($10 dues), until the huge influx of $30,000 from the Junior League.

Jana: Did they know that they wanted to hire an executive director?

Judith: Yes. And part of the grant proposal that generated the $30,000 contained the commitment that we would teach two "Women and the Law" courses—one during the day for the Junior League volunteers who were stay-at-home moms, and one in the evening for Junior League volunteers who worked inside their homes. They were parallel courses, exactly the same. I can't remember if they were 12- or 15-week courses, but they were full-semester courses that met once a week.

Jana: And each member of the Women's Legal Defense Fund taught a week or two?

Judith: When they hired me as executive director, part of my job was to orchestrate these two courses and to get volunteers to teach them. "Women and the Law" courses were brand new. No case books. I used Ruth Ginsburg, Susan Ross and Wendy Williams's casebook in galley proofs the next year when I was teaching at Antioch Law School. Herman Hill Kay's book came out just about the same time. It was spring of 1975 when I taught that course. But this was a full year before that. And if you remember, Roe had been decided in January 1973. Ruth Ginsburg argued the Frontiero and Reed cases in 1971 or 1972. There wasn't much case law so there wasn't much to learn. When I was hired, Liz Dunst gave me a very thin paperback, which I still have, *A Century of Struggle,* by Eleanor Flexner and it was basically all you needed to know about women's constitutional and legal rights.

As I said, I was going to take the summer off, but had developed this brand-new interest in women's rights. Elliott and Gladys were on the screening committee for the ACLU and met once a month to decide, along with their colleagues, what cases the ACLU was going to take. And at one of these meetings, Gladys complained to Elliott that I wouldn't even entertain the idea of applying for this job, and she thought that was terrible, and that I should at least talk to them. I didn't speak with them initially because the job really didn't involve race discrimination, and I wanted to take the summer off. I had no particular interest in running an organization.

Elliott came home and told me I was being rude, and that it wasn't nice for me to ignore them. He said I should at least go and listen to these people, and he thought it was very interesting work and worth me pursuing. He thought that I might like it. So because I didn't want to be rude to my dear friend Gladys, I met with them—and the rest is history. There was a little issue with money because with the $30,000 grant came a full-time salary of $15,000—which was a huge pay cut for me. So we compromised: I accepted the $15,000 salary, but agreed to work only three days a week.

There was some uneasiness about the fact that I wouldn't work full-time. Here was this brand-new organization with grant commitments and two course offerings—and a syllabus that had yet to be developed. They also wanted a program of direct legal services, which I would have to coordinate. So they were rightfully nervous about this agreement, but it was the only way they were going to get me for that amount of money.

Jana: They never would have gotten anybody as good as you.

Judith: I don't know if they thought that. People have told me who my competition was but I can't remember any names. But to this day, Liz Dunst tells stories about whom they didn't pick.

Jana: So was the idea that this job was for one year but could be extended if they raised more money?

Judith: The idea was that it was a permanent position, and one of my responsibilities was to raise the money. It just wasn't going to be available from the Junior League.

Jana: Did you work with the Junior League? Were they involved on an ongoing basis?

Judith: Yes, they were very involved. They were quite interested in the grant because part of it was a way to train these young women to be leaders in their communities, so I had a committee that I interacted with, all the time. There were some wonderful women—some pains in the neck as well—but generally some really wonderful people. It was an all-consuming, hectic time.

Unfortunately, because of my lack of fundraising skills, I ran out of money by the end of the year. So I went on unemployment compensation and continued to work, while learning how to fundraise. And I began to learn the subject matter by teaching the course to the women in the Junior League. That was the summer of 1974, and in the spring of 1975, Katherine Mazzaferri and I taught a "Women and the Law" course at Antioch Law School under Jean and Edward Cahn.

Jana: It must have been one of the first "Women and the Law" courses in a law school.

Judith: I believe the first course was taught at G.W. by Susan Ross and Gladys. And then Marna and Brooksley taught one at Catholic. I can't remember who taught it first at Georgetown. I came after the G.W. course by about a year or two. That's when I was using the galleys of the Williams, Ross, Ginsburg book. It was hot off the presses, not even bound yet.

Jana: And the law students were eager?

Judith: They were wonderfully engaged—both men and women. By then I was pregnant with Julia, my second daughter, and never taught again. I just did it that one semester, but I loved it. I think Katherine and I did a really good job, and we had a lot of

fun doing it. The students learned a lot, but I was managing one child with another one on the way, and this new job—and I was fundraising. I was simply too over extended to continue teaching responsibilities.

Jana: I don't know how you did it.

Judith: I don't know how I did it either. I think I slept less. I said before that had we been in any other city, we would have stayed a local direct service organization. Importantly, I think most nonprofits are made in the image of the people who lead them. So I wasn't the litigator. I understood lobbying; I understood administrative advocacy; I understood how administrative agencies worked. I knew a little bit about Congress; I knew a little bit about putting together coalitions from my days with the Urban Coalition, Civil Rights Commission and even the Commonwealth of Puerto Rico, so I played to that strength.

When I began working in the summer of 1974, I increased the number of paid lawyers working on women's legal rights in D.C. by one-third. Marcia Greenberger and Lois Shiffer worked at the Center for Law and Social Policy, working at what was then called the Women's Rights Project (later to become the National Women's Law Center). Marcia was actually on maternity leave, so I didn't get to meet her for a little while. Elliott knew her because she was bringing the WEAL case and Elliott had the Adams case, each involving the federal government's failure to enforce Title VI and Title IX, respectively. Joe Onek, who was then head of the Center for Law and Social Policy, brought Marcia and me together for lunch at the Taj Mahal and said that we should merge our two organizations.

Jana: By then had she started the National Women's Law Center?

Judith: She had come to the Center in 1972, or '73, as the director of the Women's Rights Project.

Jana: And what was your reaction and Marcia's reaction?

Judith: We both understood that it was all in fun. We became the closest of friends and remain so to this day.

Jana: And the organizations thrive side by side.

Judith: Both thrive, and the organizations have two voices, with great syncopation.

Jana: So it sounds like this coalition building and working with other organizations has always been one of your strengths.

Judith: It was a strength I brought to the table. It would have been more of an anomaly had I turned the organization into a major litigation force. Now in those years, Ruth Ginsburg was litigating from the Women's Rights Project of the ACLU base, bringing major important lawsuits. Labor unions were litigating. Ruth Wyant was at the International Union of Electrical Workers (IUE) litigating important cases like Gilbert vs. G.E. (the pregnancy discrimination case under Title VII).

Jana: Was the organization still taking cases and assigning them out to volunteer lawyers?

Judith: Yes, we did that well into the 1980s, maybe into the early 1990s. But we weren't litigating with staff lawyers. The Women's Rights Project, now the National Women's Law Center, was growing and hiring women lawyers who were litigating.

When I came to the Women's Legal Defense Fund in the summer of 1974, we were in the midst of very heady policy times; Title IX passed in 1972, but we didn't have regulations until well into '75-'76. Working to pressure HEW to promulgate regs was very important because there was no Title IX enforcement without regulations. The law was nothing more than a piece of paper you could use to plaster a wall, but it was not doing anyone a bit of good. Ruth was litigating these cases, challenging gender bias in employment, federal benefits, etc. Therefore, the judicial branch generated major pressure on the administration to promulgate new rules and guidelines that required the nondiscriminatory enforcement of laws about everything from Social Security to the military and pensions.

It was a very heady time. The interaction between legislation, passing and real judicial activity, created a constitutional and legal revolution for women's rights. The modern day woman's constitutional and legal rights have been created between 1971 and the present. And the changes brought by these two branches created additional pressures on the administrative agencies. As we went into the Carter administration in 1976, there was a hotbed of great activity.

Jana: And was the administration, at least once Carter was elected, fairly responsive?

Judith: Yes, except with respect to reproductive rights. While many people in the administration were solidly pro-choice, Jimmy Carter wasn't. I always like to remind

people that Bill Clinton was our first pro-choice President. Jimmy Carter was vehemently anti-choice from a religious perspective. Pro-choice friends in the administration tried to make us feel better by telling us that Rosalyn Carter was pro-choice, but it did us no good; nor did Donna Shalala who was a dear friend, or Pat Harris who became Secretary of HEW at some point later in the Carter years—none of those people did any good, ultimately. Not because they didn't try, but rather because they couldn't be successful. There were many women political appointees who were strongly pro-choice but Jimmy Carter wasn't, end of discussion. There were many fights between 1976 and 1980 around the enforcement of the Equal Pay Act. Carter fired Bella Abzug, who was chair of the Federal Commission on Status on Women, for having the temerity to want to look at the entire federal budget's impact on women. She wanted to do an impact study on the effect of the federal budget on women and got fired for her perseverance. He wasn't an immediate champion, and there were some real pulls and tugs, as you can see.

I will say in retrospect that even before Carter, the Gerald Ford administration was a pretty moderate administration. The Title IX regulations were promulgated under Caspar Weinberger, when, at one point, he was secretary of HEW. For instance, the federal rules required that health services on college campuses provide contraception and abortion services. The regulation relied on the Roe vs. Wade decision. We lost that coverage in a subsequent 1980s fight over the Civil Rights Restoration Act overturning the Grove City College Supreme Court decision. Giving up on the reproductive health coverage under Title IX was the ultimate political price for overturning this pernicious Supreme Court decision in Grove City College vs. Bell.

We eventually had to give in as a result of pressure from other coalition partners. We had held up moving legislation for 4 years, and couldn't hold it up anymore. Back in the early 70's Secretary of HEW, Caspar Weinberger, thought he had no choice, because of Roe and promulgated regulations for Title IV requiring abortion coverage. This broad reproductive health coverage happened under President Gerald Ford. But the Carter administration was an administration that fought in the Supreme Court to defend the Hyde Amendment. So there were some real losses despite the fact that you had this four-year Democratic administration.

Jana: That's a lesson.

Judith: It wasn't unabashed glee.

Jana: During this time was it just you and an assistant running the Women's Legal Defense Fund?

Judith: I eventually learned how to fundraise, and I learned how to fundraise as a result of being mentored by some wonderful people, most especially by an important leader at the League of Women Voters, who had just raised some money for litigation for that organization. Her name is Dot Ridings. She sat me down and told me that fundraising was a lot like lobbying. She said that if you can lobby you can raise money. That was my "a-ha" moment. I thought, I am a good lobbyist. So this was just asking people to give money to support what you believe in.

Our first big grant, beside the Junior League grant, came in 1976. The fundraising decision was made by a combination of the Ford Foundation and the Robert Sterling Clark Foundation. Susan Berresford, who is now the president of the Ford Foundation, was then our grant officer, convinced Peggy Ayers, who was—and still is—at Robert Sterling Clark, and they combined to give us $25,000, plus a concomitant grant to Women Employed in Chicago for the same amount. To this day, we are close colleagues. This grant allowed me to hire Donna Lenhoff, in about 1976 or 1977. And for a while, it was just Donna, my assistant, and me. But we eventually grew, mostly as a result of securing an additional foundation grant.

There was also something else going on at the time that I think is important. Not only do I believe nonprofits get molded in the vision and the capabilities of their leaders, but they are certainly affected by external circumstances. Foundations, including Ford, became much less enamored with funding public interest law and legal services. The boards of these foundations were very corporate, and they were worried about being sued because of gender discrimination, or race discrimination or national-origin discrimination. I don't know if I am making it more cause-and-effect than I can prove, but the pressures on the foundations made the opportunity for funding public interest legislation a rather narrow span of less than a decade for whatever reason.

In the meantime, in the meantime as we entered the 1980s and we began to see a growing conservative judiciary develop as a result of judicial appointments under President Ronald Reagan. Civil rights groups were losing cases—a great plethora of affirmative action cases—and spending all of our time in Congress overturning them (Grove City College decision that I just talked about for example). While I am a true believer in using litigation as a strategy for social change, it is not my personal or professional strength. But litigation became an even less-hospitable strategy for securing social change, and civil rights lawyers began looking for ways to keep cases out of the courts or to settle cases. It was no longer the era of the NAACP Legal Defense Fund and the Lawyers' Committee bringing cases to actually change the face of education, of paper, of aluminum, of steel. Sadly these mega-important class action suits challenging race

discrimination or national origin—that was before the 1980s.

Jana: So in all areas of public interest law, the focus was shifting away from the courts to Congress and administrative agencies? Not yet to the state level?

Judith: Not yet. Not to the extent it is today.

Jana: So we are talking about the late 1970s and early 1980s.

Judith: I think the Pregnancy Discrimination Act is a good vehicle. When I speak to audiences, I often talk about the inextricable link between legislation, litigation, law enforcement and public education. When you look at the passage of Title VII of the 1964 Civil Rights Act, which included adding those three important letters—the prohibition against discrimination based on s-e-x—a revolution was started to protect a woman's right to work, free of gender bias.

Jana: A conservative tactic that backfired?

Judith: Absolutely. That's part of the folklore. I believe it to be true. Martha Griffith, a wonderful congresswoman from Michigan, seized an opportunity and made an unholy alliance with some very conservative members of Congress who wanted to stop the passage of the 1964 Civil Rights Act. The conservatives wanted to show Congress how ludicrous the bill really was, by adding those three little letters prohibiting sex discrimination in employment, and she succeeded in getting it in.

So when the EEOC (Equal Employment Opportunity Commission) wrote the guidelines and regs under Title VII, they assumed that pregnancy discrimination was sex discrimination. The guidelines and regs were quite strong. We won this principle in every District Court and every Court of Appeals all over the country until Gilbert vs. G.E.

GE's health plan covered everything, and when I say everything, I mean everything. It covered circumcisions and vasectomies. It even covered injuries resulting from felonies you committed. The one thing it didn't cover were any of the health-related costs attendant to pregnancy or prenatal care. We won the principle that pregnancy discrimination was sex discrimination and, therefore, a violation of federal law under Title VII of the Civil Rights Act of 1964 in the lawsuit against GE, all the way to the Supreme Court.

Now in an opinion that I view to be particularly "Rehnquistian," then Justice Rehnquist—he wasn't yet Chief Justice—held and wrote for the majority that it wasn't sex

discrimination to deny pregnancy health coverage because you were comparing pregnant and nonpregnant people, not men and women. I love to talk about it. That happened on a true day of infamy. You may remember that President Bush, the father, didn't remember when Pearl Harbor Day, but I always knew when Pearl Harbor Day was. It was a true day of infamy, and the Court came down with their ludicrous decision on December 7, 1976.

The Supreme Court had already decided that there was no constitutional protection against pregnancy discrimination. But people thought that there was a statutory protection and that the EEOC regulation was so tight in its interpretation of the legislative history that we were not at risk (we hadn't been at risk in any Court of Appeals and many had decided it.) There was no split in the Circuits. With the leadership of Sue Ross, who had by then left the EEOC but had been very involved in the writing of those EEOC guidelines; Ruth Ginsburg; and the labor unions (namely Winn Newman and Ruth Wyant), we immediately formed a very broad coalition of civil rights groups and labor organizations. I think if my memory serves me right, Judge Marsha Berzon, (currently on the 9th Circuit) who had been a Justice Brennan clerk, was then at the AFL-CIO. She really helped us a great deal, both with the Pregnancy Discrimination Act (PDA) and later with the Family and Medical Leave Act.

Jana: Was the administration supportive?

Judith: Yes, they were supportive. We had a lot of bipartisan support, and basically what Congress said was: "We meant what we said and we said what we meant." We thought that pregnancy discrimination was sex discrimination and that, if you don't agree, then we'll just say it again. It's really a very simple statue; it says you have to treat men and women the same based on their ability or inability to do a job and not on their childbearing capacity. It says it all in Title VII. But it took two years, this little, simple amendment, which passed in the middle of the night, truly in the middle of the night, during the last night of the Congressional session in 1978.

Jana: Was that because of opposition from the business community? Because of the abortion issue, or both?

Judith: Both. But for the most part it was corporate opposition. They thought women were going to make unsubstantiated claims for time off. It was sort of bizarre. And they said it was going to be very costly. It was going to raise their health insurance costs. Then in a very benevolent way it was going to discourage them from hiring women, so we assured them that discrimination was already a violation of Title VII.

Jana: Why in the middle of the night?

Judith: Because it was one of those things that ultimately we had the votes, and so they just did it with a voice vote, but it took that long. I don't see that happening anymore. That very broad and very important coalition stuck together and worked, dividing ourselves up into a legislative task force, a public affairs task force and a technical writing task force—and we were successful.

Jana: And who was in the coalition?

Judith: All the women's groups, labor organizations, civil rights groups, some health-related groups, the American College of OB-GYNs, religious groups.

Jana: I know that one of the things you are known for is leading coalitions. Did you do that in this case?

Judith: I suppose so. I was one of the leaders in the Title IX coalition, forming with the Women's Rights Project (now the National Women's Law Center). We founded the National Coalition for Women and Girls in Education, which we put together and then co-led to get strong Title IX regs. We began our coalition efforts to overturn the Gilbert decision with my assuming a leadership position. Ruth Ginsburg didn't have any legislative experience and Ruth Wyant was litigating cases—that's what she did for a living. Along with Marcia Greenberger later became the National Women's Law Center, we assumed leadership roles. Marsha Berzon was at the AFL-CIO's General Counsel Office working with Larry Gold, who was and is a towering giant in employment rights litigation as well as a master of the legislative process. We also had legislative people in all the trade unions who were very experienced, including Jane O'Grady at the AFL-CIO. I believe I chaired or co-chaired a legislative task force, which was our major activity.

Jana: So that's an example of working in the courts until it doesn't work there, and then the legislature. Were there new regulations to implement?

Judith: After the passage of the 1978 PDA, new regulations were required. So the seamless web went on and indeed the later story of realizing that all the good we had done with the PDA and the strong regs didn't give anything to people who had no benefits. All the PDA said was that if an employer provided any benefits, he/she had to provide them without regard to the employee's childbearing and child-rearing capacity.

As a result of litigation, which Susan Ross describes as "upside-down" litigation, in a case called Cal Fed, we were back in the Federal courts defending the principles of a gender discrimination-free work force. If any of us in our broad communities, including

the labor unions, had brought the Cal Fed case, we would have argued a "topping up" theory gleaned from Equal Pay Act litigation, where if men didn't get the disability for pregnancy leave coverage that women received, then they needed to have concomitant parental leave.

But what the bank Cal Fed wanted to do was give nothing to nobody. So that's what Susan Ross means when she calls Cal Fed an "upside-down" case. Once the Supreme Court decided Cal Fed against us, we were back in the courts litigating. This time the case was brought not by friends but by employers intending to destroy the enforcement of anti-pregnancy discrimination legislation and regulations.

It is interesting to me how that debate around special treatment versus equal treatment continues throughout the decades, especially during the debates often referred to as the "mommy wars" between moms who work outside of the home and stay-at-home moms. The staying power of that debate, I think, may be a metaphor for what has not yet happened, that there really has not been a revolution within families around caregiving. I think that until that revolution takes place and the men in our lives have as much caregiving responsibilities within families as women do, this debate will continue to rage in a legal or constitutional construct as well.

Let me go back to the Cal Fed case and again quote Susan Ross, who called it an "upside-down" case of an employer who wanted to give nothing to nobody. When we lost that case in the Supreme Court, it became immediately apparent that the deficiencies in the Pregnancy Discrimination Act (PDA) had to be addressed. The PDA contemplated that employers would be providing benefits—namely, health benefits. But if indeed you provided nothing, then the Act was not violated because it didn't actually require anything. The PDA required that employers treat men and women employees the same based on their ability or inability to do the job, and not a women's childbearing capacity.

So the conversation immediately shifted to what the law "should" require. This debate sparked the special treatment versus equal treatment debate, again. Interestingly, Congressman Howard Berman, a major proponent of disability coverage for maternity leave, had just been elected to Congress from the California legislature. When he arrived in Washington, almost coincidently in time with Cal Fed's decision, he thought he had the perfect answer: We should just enact the California statute nationwide and say that's what we all meant by discrimination based on pregnancy, and we would all be fine.

But many of us thought differently. Wendy Williams, who had argued Geduldig and lost the constitutional principle of pregnancy discrimination being sex discrimination and therefore a violation of the Constitution, was teaching at Georgetown Law School. And

there was a group of us very interested in a statute that crossed that divide and addressed family health emergencies. In addition to myself, it included Marsha Berzon, who had been working as a lawyer for the AFL-CIO and was quite involved in helping us with the PDA from that perch; people from the National Women's Law Center, especially Marcia Greenberger; and with us (the Women's Legal Defense Fund), Donna Lenhoff, who played a leadership role.

Now in the nine years of lobbying for FMLA (Family & Medical Leave Act), we could say with a straight face that we weren't going to enact a statue that made women of childbearing age more expensive to hire. That was how we dealt with the special treatment versus equal treatment debate—and that was the theory of our lobbying efforts. But just as important to us, and something we never said out loud, in all those nine years, was that we would be damned if we were going to enact a statute enshrining a public policy that said from now to eternity, women will have two major jobs—one outside the home as an economic provider to the family, and two, as a major caregiver to the family—letting men off the hook. We just were not going to do it. I never said it, I never lobbied using that rationale, I never said it to one friendly or less-friendly member of Congress, but it was always in the forefront of our minds. We weren't going to put a public policy in place that said men had no caregiving responsibilities for their families. We just weren't going to do it.

There were times in those nine years when it wasn't so clear to us that we would ever get family coverage, and we were importuned more than once in those nine years by our friends, by our inner circle of Congressional leaders. They said that social change is incremental—legislation is incremental. They said to focus on maternity leave first, and then come back and broaden it to include sick kids, sick spouses and sick parents, and your own serious health conditions. And each time that happened, it was very hard to resist. But several things kept us honest. One was the strength and the breadth of the coalition. We couldn't walk away from the trade unions, the disability groups and the representative older American groups. We just couldn't. At that point, to focus only on "mommies" would have meant jettisoning our important coalition partners that had joined forces with us—not only because they had every interest in the broader concept, but also because we needed the strength of the aging community, the disability community and the trade unions. We weren't strong enough on our own. Indeed, there were people in those early years who thought that the trade unions had gotten family leave, which presented another kind of annoyance.

Jana: Through collective bargaining?

Judith: No, through this legislative process we were engaged in. Many thought that the entire strength of the coalition—was the leadership of the trade unions. People diminished the role of women's groups. I think that over time, people have been disabused of that incorrect notion. Not that they weren't strong players, they were—but we were the central leaders. So not only could we not jettison our partners, but there was also a philosophical and theoretical discipline that prohibited us from moving to "mommies only." We were very clear that we weren't ever going to do another special treatment bill. I will go back and explain this in a second because I think it is both important and interesting.

But first, I want to mention an important footnote to this "mommies only" maternity leave discussion. In the beginning we never thought that men would use the family leave in great numbers. We assumed that we were safeguarding and protecting male-worker rights for sometime in the future—our children's mates, our grandchildren's mates, our sons. It didn't occur to us that it was going to be something that a great number of men would avail themselves of. And, happily, our assumptions turned out to be entirely incorrect. Here we are in 2006, and we estimate that more than 50 million workers have used family leave. That is quite an extraordinary number. Of those 50 million workers, about 47 percent are men, and although a great number are not using family leave for the care of newborns, they are using it for their own serious health conditions because many of them work in places where they don't have paid sick leave—and certainly no paid disability leave. (Only five states in the country offer long-term disability.) In addition, they are using it for the care of their parents and their spouses. We didn't calculate how valuable this benefit would be to male workers; we just didn't understand it. We understood it in the care of newborns or the newly adopted, but we didn't understand it in the broader context. So the real revolution is that men *are* using it, and they are using it in very significant numbers for a plethora of needs that we safeguarded by not solely focusing on "mommies only."

Jana: Do you think that will eventually carry over into men using it for their children?

Judith: I do, but with an enormous capital B. But, as long as the leave is unpaid and one income has to be sacrificed—and a woman's wage is worth less to the family unit than the income that a man brings in—it is more likely, in the short run, that the woman's wage will be the expendable one. That's part of why we are major advocates and leaders in trying to get paid leave. Not only so that men can take leave to care for newborns and the newly adopted, but also so that low-income people can use it in significant numbers. In many instances today, both men and women are using their family leave when there is a health emergency so over the top that they have no choice but to take the time off. Or

they have family that can support them while they are not working, or frankly, the emergency is so great that they have to go on public assistance. The economic support has to come from somewhere, so this is one of the reasons we are advocating for a minimum number of mandated paid sick days and paid family leave.

Jana: Which most European countries have?

Judith: That's right. I thought this was worth mentioning because at the time we were frying other fish. We didn't think we were providing a benefit to men in the short run, and it turned out that we were, which is quite an extraordinary thing to say.

Jana: One of the things I remember about that debate was how it split the feminist and women's rights community. Was that a painful or difficult thing, or was that more of an academic thing and it wasn't as prominent on the ground?

Judith: That's a very good question. Overall, I don't think it was as prominent on the ground. However, there was one aspect of the split within the women's community that resonated, and that was the fact that it was unpaid leave. In the end, NOW (National Organization for Women) opposed the bill because it wasn't paid leave. That was painful because we wanted paid leave. It was embarrassing that by almost the end of the 20th century, we were not advocating for paid leave, and because we were taking the very principled position in the context of maternity leave only—of not going incremental—we were arguing the converse in the context of paid leave. There was a fair amount of cognitive dissonance amongst us. We were embarrassed by it, and I said it all the time.

I would speak to audiences with the representative of Chamber of Commerce, who would often say in these forums: "Oh, it's just the camel's nose under the tent—what they are really after is paid leave." And I would say: "Right that is absolutely what I'm after." Our elected supporters would never say that. But I said it, and our side said it, too, because to say otherwise was not true. So that was the real-life debate. There wasn't much of a debate that hit the lobbying effort around maternity leave only, because our left flank, if I can put it that way, was after paid leave. It wasn't trying to narrow the coverage.

Jana: What happened with Howard Berman? Were you able to educate him?

Judith: He was educated, albeit a little bit reluctantly, but he and I enjoy a very cordial relationship till this day. What happened at that time was just by happenstance; he was not on the right committee and Pat Schroeder was. So she became our chief sponsor, and he went along—to get along, he went along. I will say that there were times during those

nine years, when it wasn't at all clear that we were going to get it, that he got a little bit antsy, but he never stopped supporting us.

Jana: Nine years. What's the story? I know part of the story at the end was Bush's veto.

Judith: Well, he vetoed it twice: once on the eve of the 1992 election, and once the year before, in the fall of 1991. We started out the way you often do with pieces of legislation with coverage of employers. I think we started out covering employers with three employees, and then we went to 15, and then we went to 25, and ended up at 50. We covered 26 weeks in the first iteration of the bill, and then it ended up, after several iterations, at coverage for 12 weeks. I think we thought that from the very beginning we would write the broadest possible coverage because it was the workers at those small businesses that had the most dislocation from family health emergencies—their own and their family members. Big businesses covered these emergencies, and they had much better benefits. The Fortune 1,000, not just the Fortune 500, all had paid leave. So it was the huge number of workers in very small businesses who really needed this protection.

We started out with a very low threshold for coverage, but that was not to be. And so much of the nine years were taken up in compromising. When this was first introduced in 1984, both Democrats and Republicans thought that this policy was truly communist notion. It was socialist, and I had people call me a communist. It was the most bizarre thing. We could not get Walter Mondale to talk about it in 1984. We couldn't get Michael Dukakis to talk about it in 1988, and Bill Clinton was the first candidate—candidate for president—who was willing to say that family leave was a good thing and he was for it. Not coincidently, his wonderful wife, Hillary Clinton, the then-First Lady of Arkansas, shared that conviction. So he was well schooled and well educated. We started out with very little Republican support, and there's nothing you can pass with just one party. And, as I'm suggesting to you, it was tepid support from the one party we had, and so we had to go out and broaden that coalition, not only our coalition, but the coalition of members who would be supporters. And that took a long time. It should not have taken nine years; there is no defense for the nine years.

Jana: How did you do that? How did you broaden the coalition to include more Republicans and to persuade reluctant Democrats?

Judith: Well, there were a number of moderate Republicans who were willing to talk to us: Marge Roukema from New Jersey, who is no longer in Congress; Nancy Johnson from Connecticut; Curt Weldon from Pennsylvania. Then a wonderful thing happened somewhere pretty late in the game: We successfully engaged the Catholic Bishops. They

supported FMLA, arguing that family leave was a very good thing for families and that women were less likely to have abortions if they had jobs to come back to. They energetically lobbied anti-choice members of Congress like Henry Hyde, who would never let me in the room. They were very successful in bringing on very significant numbers of anti-choice Republicans, social conservatives—actually, they were social liberals except about choice. They brought on religious, social justice folks.

What we ended up with, over the many compromises, were people who no longer saw this as bringing down the free enterprise system as you know it, which is truly the way the debate started—this was Norway and Sweden and Denmark, and maybe even the Soviet Union before the walls came down. We had very significant numbers of Congressional supporters, but we were not veto proof. It wasn't just a slim majority, it was a healthy majority, but it wasn't two-thirds. A super majority is hard to get. When George Bush, the dad, vetoed the bill in 1991, we attempted to override the veto and failed. Bill Clinton used the issue quite successfully in his 1992 campaign.

Here is a very strange, but wonderful, footnote to history. In 1996, in the campaign against President Clinton, Bob Dole said more than once that he thought FMLA should be repealed. Ann Lewis, a political operative for the Clinton 1996 re-elect, would often say, "A day without family leave is a day without sunshine." She said that because every time Bob Dole said family leave should be repealed, the numbers would just shoot up for Bill Clinton. From 1993, when Clinton signed it into law (which was the first law that he signed), to 1996, the law had become apple pie and motherhood. So many people had used it in just those three years. It is truly an amazing story.

Because we had such solid majorities in both Houses and because Bill Clinton loved the policy, and because the first word of the first bill was "family" and he loved that, he signed it in the Rose Garden as his first bill. I was there and I even have a picture of myself there. It was a beautiful day in February—I think it was February 4, 1993. You can see I am wearing a red silk suit and no winter coat. He signed it at that desk right there and he wrote "W" for William, and it was the first time he had done it, and he just leaned over and handed me the pen. So framed up here on the wall, right outside the office, is the first pen of the first bill that Bill Clinton signed into law, and it was the Family and Medical Leave Act. It was two weeks after his inauguration.

Jana: Also known as the Judy Lichtman bill?

Judith: I don't know how many people call it that. But the other wonderful sort of subtext of this, which I love, is you as may remember when the current President Bush first came into the White House, there was a lot of talk about vandalism and missing keys

from computers (the "W" key), and the presidential pens were gone. Well, childish vandalism clearly wasn't invented by the outgoing Clinton administration because as you see on the wall, that pen does not have the presidential seal on it. When President Bush, the father's, administration left, they left with all the pens. I have the Parker pen and he did use it for the "W" for the first signing, but there is no presidential seal on it. So, sadly, vandalism was clearly invented a year or two before 2001.

It was very easy once Bill Clinton won the election in 1992 to know that we were going to go back to Congress very early in January. We had enormous support from the Clinton transition team to pass FMLA very quickly. Newly named Secretary of Labor Bob Reich was a major proponent of the bill, and during the first week after the inauguration, we had testimony in both Houses with strong support of this administration, and then it quickly passed in both Houses.

Jana: Was it the same bill?

Judith: It was the same bill that Bush had vetoed in 1991 and then again on the eve of the election. The other interesting little side tale about this is that Al Gore's son had been very badly injured in the parking lot of Memorial Stadium at an Orioles game by a truck that backed into him. He was very badly hurt and was in intensive care for a while. Every day President Bush, the father, called to find out how he was. And before Bush vetoed the bill the second time, Al Gore went to the Senate floor and said, "Mr. President, don't veto this bill. You shouldn't have to be Al Gore's son to have your parents in the hospital with you when you are dreadfully ill, and you know how important it is because you called me every single day, and I know how important it is because I saw children at the hospital without their parents because they had to go to work, and they had to work because they couldn't lose jobs and their health insurance."

Jana: So did you think perhaps the second time around Bush would sign the bill?

Judith: We thought there was a very good chance, but there were several things at work that I think are probably worth telling. One is that this bill, like nothing I had ever seen before, got members not unlike Al Gore, to go to the well of both Houses and talk about their personal experiences of sick children, children with cancer, children who were disabled and sick relatives, sick spouses and sick parents. I had never seen that human side of members of Congress willing to be so public about family members. That was an extraordinary thing that happened. The other important thing to note about Bush's veto in 1991 and 1992 is that it was no longer about this bill. What had happened in the 1991 Senate election in Pennsylvania—where Harris Wofford used universal health insurance

care coverage as a very strong election issue in which to beat the opposition—was that the debate was all about health care and health insurance and federal mandates.

Our bill in essence was a victim of that debate because there was no way that business could accept a mandate—which Family and Medical Leave is/was—in the context of their fear that it was a stalking horse for universal health-care insurance. We had nowhere to go. We couldn't go up anymore in numbers of employees covered. We couldn't go down anymore in number of weeks, or even tighten the definition of the serious health condition, because that was not what the debate was about anymore. It was about the mandate. So the opposition at that point was not only the National Association of Manufacturers and the National Federation of Independent Businesses, which is the trade association of small businesses; it was the Chamber of Commerce and it was the Business Roundtable. It was the big corporate chieftains who were not going to be affected at all by our bill, because they were already providing much better coverage. But they could not abide "the mandate" and that's why we couldn't get George Bush's support. The business community came down with a large and very heavy foot. Bill Clinton was willing to take it on. He was willing to do it and he did it. So that's part of the reason why it took so long. It is because it became the surrogate for the debate around the health-care mandate.

Jana: Would you say that there are any particular political lessons that you learned through that long experience that you then were able to take and use the next time around?

Judith: It's hard to talk about what the lessons were because we lost both Houses in 1994 to a very conservative majority of Republicans, who were not interested in expanding the social-justice or economic-justice safety net. Most of our lessons have been in staving off really horrible encroachments to things, including family leave. They are couched often in defensive battles where we have been more or less successful. I also think that the extraordinary changes in technology, plus organizing grassroots in these 13 years, have caused a revolution in the way we do business.

Jana: How so?

Judith: In those years, we didn't use email. We didn't even know what that was. The not-for-profit community today is much more sophisticated about its communications strategy. We didn't have a director of communications until 1993. We would sometimes borrow and beg for money, and hire a small PR firm to act as consultants. Or we would rely on the communications capability of our allies. We conducted business in a very different way. This is a decade or more before 'Move On.' It's a decade before people

raised money on the internet. Today, for instance, if there is a Supreme Court nomination battle, we are in constant touch with thousands and thousands of members asking them to not only make phone calls, but also to email, and to send emails to their friends. This is very different than the constituent organizing in the 70s, 80s and 90s. Not only have we seen exponential growth in reaching grass roots, but we are also much more sophisticated about grass tops. For example, people who themselves are political donors and have access to members in both parties are approached in ways that we would have never imagined in the 80s.

Jana: There were other things going on during the 80s, including the Bork nomination, right? That was a successful campaign.

Judith: That is a good example of what it was like both before and after computers and the internet. Those grassroots battles were with staff on the ground, in very traditional coalitions that mirrored the national coalition's organizational structure. Superimposed upon that was the much more traditional field operation of hiring grassroots staff members in several states.

The Bork—and even the Clarence Thomas—nomination is a very good example of women's groups having a very central role. Indeed, the then Women's Legal Defense Fund (we didn't change our name until 1998) had a very central role in mapping the strategy and then providing the leadership to implement that strategy, which included a very sophisticated communications and public-affairs strategy, a legislative and lobbying strategy, and a grass-roots and grass-tops organizing effort.

Jana: The Bork nomination really seemed to have marked a turning point in the involvement of grass-roots advocacy groups in the nomination process. What was it that galvanized you and other leaders to make defeating the nomination of Robert Bork a priority?

Judith: Robert Bork was outspoken in his belief that many, if not all, of the constitutional and legal protections for women that were so hard fought and recently won should be overturned. These protections were hardly cemented in our consciousness as a nation, as being embedded in the fabric of our laws. I'm hard pressed, as I sit here today, to think about the exception to his rule. I just can't think of one. He opposed Griswold, thought Roe had been wrongly decided, and on and on and on. It didn't take much for us to both internalize what was at stake and explain it to people in very graphic terms. While the American people understood what was at stake during the Bork nomination, they have had trouble continuing to understand it because our opposition learned from their Bork experience. Never again have they had a candidate so explicit about his or her beliefs

regarding Constitutional protections for women's rights, civil rights, disability rights, the rights of the aging, minority rights and the rights, writ large, of many of the civil rights protected classes, including protections for people against discrimination based on sexual preference, and civil liberties.

People say Bork defeated himself because he was so surly, needed a cigarette break and was arrogant to the Senators. All of the Senators are arrogant, but some did not intend to have this guy be more arrogant to them than they were. All true. But he defeated himself because he said what he thought, and what he thought was so far outside of the mainstream of what the American people believed. People didn't want to go back and re-fight whether or not Brown vs. Board of Education was wrongly decided, or whether we could have real estate restrictive covenants based on race. He thought all of those cases were wrongly decided, not just the decisions providing for modern-day protections for women. And so what our very conservative opponents learned from Bork was that you can't be candid about what you think, and ever since, they've been entirely successful at obscuring people's records. Therefore, it's now very difficult to describe to people what's at stake in the midst of one of these fights. There will never be another Robert Bork. Our conservative opponents will not allow it. That's one of the reasons why today the National Partnership and many of our allies in the progressive legal community are intent on a very sophisticated public affairs campaign around every Supreme Court case. So that before we have a nomination we can say to people: "This is why this matters, this is how it hurts you, this is what's at stake for your life, this is what this decision just did to your rights and this is what we're going to do in the context of women's rights."

The other lesson that conservatives learned from their defeat remains painful for us, and that is we weren't supposed to win. They were supposed to win, and they believe that whole-heartedly. To them it's unfair that we won, so they have scapegoated the groups, along with ours, for having "politicized" the process and winning. This is ludicrous because the process is completely political. It always has been. There are these wonderful historical treatises that I love about how George Washington's nominees were politicized. Yet they have been entirely successful at demonizing us in the process, so much so that our best friends on the Judiciary Committee say, "I don't meet with the groups." That's a pretty painful spot to be in.

Jana: Now another nomination, from the next decade, that you played a very active role in was the nomination of Clarence Thomas. In one of the tributes to you (I think it was Marcia's), she talked about you marching over to Senator Mitchell's office to talk to him after he wasn't going to go out of his way to see you. That was a very different set of issues.

Judith: The confirmation of Clarence goes down as one of our truly worst defeats. I'm trying to remember the exact numbers. I think we lost by five or six votes, so you would have only had to turn three or four. There were many leading Democrats—some of whom chaired committees—who, "if" importuned by then majority leader George Mitchell to follow the party discipline, would have voted for us. Later, some of those people were primaried like Alan Dixon in Illinois who lost to Carol Mosley Braun. Wyche Fowler in Georgia lost to Max Cleland because, basically, women voters would not vote for him. There were one or two others whose Clarence Thomas votes cost them their election in 1992.

And 1992 was the year of the woman with historic women getting elected to federal office. That visual, of those nine white guys not being able to safeguard women's rights, and safeguard and protect Anita Hill testifying about her horrific treatment, I think was not lost on the women electorate. Never again would there be a Judiciary Committee without a woman. At some points we've had two and now we have one, but an important one—Diane Feinstein. It was a silver lining. It caused a cataclysmic change in women voters in the 1992 election—women voters were voting for their interests.

The seating of Clarence Thomas is particularly painful because we at the then Women's Legal Defense Fund, along with many other leading women's groups, most especially the legal groups, opposed his nomination based on his record. People who said we didn't know Clarence Thomas were wrong; we knew him very well. He had been a leading civil rights bureaucrat at the Department of Education and he was Chair of the EEOC. We had worked with him very closely, and we knew him when he was on the Court of Appeals. On the merits, on the substance, we did not believe he would vote for upholding the constitutional and legal protections for women. We had his record to prove that. It wasn't just intuition or what we thought. It was his public record: the speeches, the opinions he issued, things that he'd said and done, regulations he refused to implement, laws he sought to weaken. And we built that record and issued a report, stating our opposition based on his substantive record. When we did that, we had not yet heard of Anita Hill. Indeed, we opposed him long before we had ever heard of Anita Hill, and issued our report before we had ever heard of Anita Hill. I testified in opposition the day before I heard Anita Hill's name. We did know Clarence Thomas, and we opposed him on the merits.

I will admit to you that our opposition on the merits was going nowhere. We were not heading in the direction of successfully defeating him. We were not turning enough votes in opposition on the merits. The only thing that actually made it a contest was Anita Hill, who finally came out very reluctantly (and for all the right reasons as history shows, she was absolutely right to be reluctant). It was her personal testimony about his personal and

professional misconduct that turned this debate into one that was possibly winnable, and in-and-of-itself, that's pretty terrible. You ought to be able to beat a nomination like Robert Bork and I would say Clarence Thomas. Clarence Thomas is no more liberal and no more a believer in those constitutional and legal safeguards that we hold dear, than Robert Bork. He just wasn't going to talk about it. But the lessons that the opposition learned in defending Robert Bork made it difficult to impossible to defeat Clarence Thomas.

It is deeply troubling that some have asserted we went to Anita Hill because we had no choice and because we were already losing. That's just not true. We, at the then-Women's Legal Defense Fund, were very reluctant to talk about Anita Hill and her allegations. Indeed I didn't meet her or even talk to her until after he was confirmed. We were very worried both for her sake and for ours. We didn't want to compromise her testimony. We didn't want it to ever appear that we ginned it up, and were thus very worried about her testifying. No one knew better than we did about what it's like to be a victim of sexual harassment and speak out. So we were not major proponents of her doing it. We were not the people who outed her, as it were, because there were many intricacies that surrounded her testimony, and she was very reluctant to come forward. She wanted her allegations to be considered in executive session and we strongly supported that strategy. She didn't want to open herself up to publicity and we agreed. We had every reason to try to protect her interests, even though we understood that if they were protected, her testimony probably would have no value. We understood that; we got that. There was nothing naïve about our approach, but there were other forces that felt strongly that she had to come out publicly.

When her story did become public, the conversation about sexual harassment touched a chord with millions and millions of women, and it began a public conversation that we could not have ever anticipated. In the electoral context, it led directly to the year of the woman in 1992, with the election of significant numbers of women, and burgeoning support for EMILY's List, women candidates and the Civil Rights Act of 1991. Senator Bob Dole, the then majority leader, saw this huge outpouring of women power in 1991, immediately after Clarence Thomas was confirmed and long before we even got to the 1992 election. He sat down for very serious negotiations—not 24 hours after Clarence Thomas was confirmed—with Ted Kennedy to reach a compromise on the 1991 Civil Rights Act, which was a very important piece of civil rights legislation. The '91 Act would overturn many really restrictive Supreme Court decisions that severely limited the ability of civil rights plaintiffs, including women's rights plaintiffs; to sue employers for employment discrimination, significantly undermined the ability to bring class action suits, to get damages and affirmative action relief. What the '91 Act accomplished, just days after the Clarence Thomas confirmation, was it overturned those really bad Supreme

Court decisions. In addition, and importantly, for the first time for women's rights plaintiffs, it provided damages if you were successful in a suit against employers for sex discrimination. This (damages) is what the race-discrimination and the national-origin discrimination plaintiffs had as a result of the §1983 Civil War era protections—but something that gender-bias claims could never obtain under §1983.

Marcia Greenberger gets complete and total credit for the inclusion of the damages provisions because after our Civil Rights Restoration fights of '84 to '88, when we were trying to overturn Grove City College and go back to the status quo—that's all we were trying to do; not a thing more—Marcia said out loud and to every coalition partner and to every elected member who would listen to her that we were never again going to go back to where we were before. We were always going to try to push the envelope to expand rights. We came upon the inclusion of money damages for sex discrimination in employment, and although there is a cap on the damages for successful suits based on gender bias, there aren't race and national origin cases under §1983. The 1991 statute does have a cap, but it does allow substantial damages. Marcia really does get the credit because she wouldn't give up on it, and she was right.

Jana: To the extent that the seating of Clarence Thomas led to that statute, was it worth it?

Judith: No, it wasn't worth it, but it ameliorates the awfulness. During those days I was truly in the depths of despair because I thought that the system had failed us, which was your George Mitchell question. I couldn't imagine if Lyndon Johnson was the Majority Leader of the Senate, events turning out the same way. During a private session, George Mitchell (a perfectly lovely man) said, "I am not the Majority Leader. Some people think I'm the Majority Leader. I'm the Majority Persuader."

Well, Lyndon Johnson did not think his job was the Majority Persuader. So I thought the system had failed us. I thought it was unforgivable that people like Republican Arlen Specter voted for Clarence Thomas—allowing this man, who was unqualified in any number of ways, to ascend to the highest court of this land. I just couldn't figure out how you make lemonade out of those lemons. I just couldn't see it. I'm a Civics 101 little "d" democrat. I believe in our system. I believe in it to my core, and it didn't work. I just was beside myself. Was that despair ameliorated by the passage of a very good statute like the 1991 Civil Rights Act and the year of the woman? Sure, it made that bitter pill a little easier to swallow. But every time I see Clarence Thomas in what has been a set of five-four decisions, exactly where I knew he would be—which is in opposition to every broad enforcement of civil rights protections for all of our protective classes—it makes me angry.

I live with some fear that with the ascendancy of Justices Roberts and Alito, those slim five-to-four majorities will be lost. Now that Justice Sandra Day O'Connor, the moderate "right" person, is no longer there, and the moderate "righter" person of Justice Kennedy is now the swing vote, we will lose many of the protections that we now have every right to rely on and even take for granted. I think it's worrisome, and that goes for everything from whether or not Roe vs. Wade will remain in place to some of the basic protections of the civil rights laws of the 1960s.

Jana: When I teach Constitutional Law, Thomas is often in dissent—at the moment by himself. He has said he wants to basically repeal the New Deal. He would like to go back to pre-1937.

Judith: I think that's certainly true with the Lochner decision, and all the eminent domain cases and the takings cases. It's very serious—and the basic civil liberties stuff around the enemy combatants and Hamdi and those cases. There is a very serious assault on basic liberty. It's important to make sure that people know the real world effects of the decisions in those cases. Making the decisions real to people, as you go along, is our only hope at this moment because I don't think in the context of a high-powered political debate around a particular nomination, it is possible to have a meaningful conversation with the American people. As I stated earlier, given the Robert Bork experience, nominees are not allowed to fully express their views.

Jana: That actually raises the broader issue of how the Women's Legal Defense Fund strategy has changed, starting in the 1990s, first from direct advocacy to national issues, and then from more of litigation to a public education focus. Has that been an ongoing, long-term process?

Judith: Yes it has. Starting in the very late 1980s and going on until today, we do much more legislative lobbying and advocacy before administrative agencies than we do litigation. We litigate virtually not at all, except for one major exception: We took a Family and Medical Leave Act case to the Supreme Court with Nina Pillard arguing for us. It was obviously a case that we had an enormous investment in seeing that it was done correctly. It was a case on behalf of a male employee of the state of Nevada. The question at hand was whether or not state employees were covered by the Family and Medical Leave Act for their caregiving needs. All the popular wisdom was that this was a case we could not win. We couldn't win five-four, let alone six-three, which we did.

Everybody thought that our only hope of eking out a five-four win rested with Sandra Day O'Connor; however, Chief Justice Rehnquist—the same man who authored the

Gilbert decision—wrote virtually a feminist screed on the stereotyping of women and male employees in state government, and why our statute was indeed a civil rights statute that trumped the state constitutional sovereign immunity, and why, therefore, the Family and Medical Leave Act could cover state employees. It was a shocking decision on our behalf, a shockingly written decision. Who knows why; there have been all kinds of conjecture. Nobody knows and he has now passed away.

Linda Greenhouse has conjectured about how Chief Justice Rehnquist observed his daughter struggle as a parent and a working professional, and with few supports. Further, how she was unfairly treated as a federal government employee. Finally, how he was very attached to his clerks and saw the family/work struggles of his female clerks. The truth is we don't know. He passed away, so nobody had the opportunity to ever ask him.

When you have a case accepted by the Supreme Court for a hearing, you suddenly get importuned from all your friends who want to argue a case before the Supreme Court. Some of them were in private practice offering to do the case pro bono, but all of them said we didn't have a chance—maybe, maybe, maybe we could get a five-four victory, but they doubted it. We approached Nina Pillard, a very, very experienced oralist and Supreme Court advocate who had been in the Solicitor General's Office in the Clinton administration. She was back at Georgetown Law School. In addition, we received wonderful support from Jonathan Frankel and his team at WilmerHale (then Wilmer, Cutler & Pickering).

Jon Frankel and several colleagues had done a great deal of pro bono work for us in the past on many of these issues. But I think Jon would be the first to admit that although he put the entire firm's heart and soul into working on this case, they were very pessimistic. To go full circle, I'd like to point out an important Ninth Circuit concurring opinion written by none other than Judge Marsha Berzon. It sets out the sex discrimination aspects of the statute and what the statute was intending to address. It is wonderful when you have judges on the bench who know and understand employment discrimination, civil rights and civil liberties, and the need for protections. That is why we have always paid so much attention to judicial nominations. It matters who's on the bench.

Jana: And you don't just pay attention to federal judicial nominations. You've long been active in the District of Columbia.

Judith: I have been very active. I've been on and chaired our D.C. Judicial Nominating Commission. For all of the Clinton years, Eleanor Norton appointed me to the federal Judicial Nominating Commission, which also nominates people for the Federal bench and

the Marshall Service in D.C. I've been involved with and am proud of our D.C. Superior Court and D.C. Court of Appeals bench. It's a wonderful bench.

Jana: I think it makes a huge difference.

Judith: I do, too. The D.C. judicial selection process ensures a quality independent local judiciary with judges possessing a high degree of integrity. I see my friends and colleagues who operate in systems where judges are elected, and I think something bad happens in that process. To have an independent judiciary, I think you need to have a commission that's removed from the political process.

Indeed, I think it is a controversial issue around home rule because while the Commission itself is dominated by local appointees from the bar, the City Council and the Mayor, it does have on it an appointee from the federal courts, and it has a person appointed by the White House. They are in the minority. But it is not a Commission peopled by the political power exclusively in the city. Ultimately, the president picks the candidate who is confirmed by the Senate. It's not the Mayor who appoints. The president must pick from the list of three that is presented to him. If he doesn't choose a nominee within 30 days, then the Commission chooses. Therefore, there are some interesting political challenges around who gets on that list. The president is presented with a list of strong people. The president has never "not picked," so it has never happened that the choice has devolved to the Commission.

Jana: What would you say is your greatest achievement? And what are your plans for the future?

Judith: When I look back on my career with the Women's Legal Defense Fund, now the National Partnership for Women & Families, I can't help but think what a monumental blessing it has been to be able to make such a significant difference in so many lives. I cannot overstate the gift that I've been given. To have worked on policy that now requires people to be judged by their abilities rather than their gender or the color of their skin—what more can you ask for? The world is a better place because of our work, and I am blessed to have played a role in all the key civil rights issues that have made a difference to so many women over the past 40-plus years.

In terms of one specific crowning achievement, it would have to be a combination of the Pregnancy Discrimination Act and the Family and Medical Leave Act. These were certainly crowning achievements for the Partnership, and I was able to provide both personal and professional leadership. I can't go anywhere in this country and mention that I worked on the Pregnancy Discrimination Act and the Family and Medical Leave Act,

and not have someone come up and thank me. It doesn't get any better than that. Our conservative estimate is that since the Family and Medical Leave Act passed some 18 years ago, it has been used more than 100,000,000 times. That's pretty extraordinary.

I am still working full time for the National Partnership, on core issues for women including reproductive health. I am loving every minute of it and plan to continue to do so. I also plan to spend lots of glorious time with my three beautiful grandchildren, my friends and my family, and with my very healthy 97-year-old mother. I really am a pretty lucky lady.