

ABA Commission on Women in the Profession

Women Trailblazers in the Law

**ORAL HISTORY**

of

**FERN M. SMITH**

Interviewer: Sarah Flanagan

Dates of Interviews:

December 26, 2007

January 7, 2008

January 28, 2008

ORAL HISTORY OF THE HONORABLE FERN M. SMITH (RET.)

FIRST INTERVIEW

December 26, 2007

This is the first interview of the oral history of the Honorable Fern M. Smith (Ret.), which is being taken on behalf of Women Trailblazers in the Law, a Project of the American Bar Association Commission on Women in the Profession. It is being conducted by Sarah Flanagan on December 26, 2007.

Ms. Flanagan: Judge Smith, could you say your full name, including your middle name?

Judge Smith: Yes, my name is Fern Meyerson Smith.

Ms. Flanagan: And the date and place of your birth?

Judge Smith: November 7, 1933. San Francisco, California.

Ms. Flanagan: Could you just describe a little bit of your family's background? What generation came to the United States?

Judge Smith: Sure. My grandparents all came to the United States somewhere, I don't have the exact dates, but as best I can tell, somewhere between about 1895 and 1905. Three of my grandparents were from Russia originally and the fourth was from some place in the Austrian – at that time I guess was part of Austria. My father's parents settled in New York originally, which is where he was born, but they came to San Francisco when he was five, and my mother's family, parents, came right to San Francisco, where she was born,

although her father, my grandfather, died just a few years after, when my mother was about four years old.

Ms. Flanagan: What are your parents' names?

Judge Smith: My parents' names are, my mother's name was Sophie Blank, and my father's name was Sam Meyerson.

Ms. Flanagan: So one was born in New York and the other in San Francisco?

Judge Smith: Right.

Ms. Flanagan: What educational level did they get to?

Judge Smith: Well not terribly high. My father, who was very good looking and very charming, was kind of a "Peck's bad boy," and so he was invited to leave Polytechnic High School in the, I believe, in the 10th grade because apparently he was spending more time at the pool hall than he was spending in the classroom. However, he did, when he was 65 years old, go back to San Jose State and get a GED, which I was very proud of him for. And my mother went to a school called Commerce High, which was a public high school here in San Francisco down in the Civic Center, and was a high school graduate.

Ms. Flanagan: What was your father's occupation?

Judge Smith: Well, he was basically a salesman, I think is the best way to put it. In many different places and for many different products, but that was his primary occupation.

Ms. Flanagan: Did your mother have an occupation outside the home?

Judge Smith: No, she did not.

Ms. Flanagan: What do you recall of your father's and your mother's politics and interests when you were growing up?

Judge Smith: My parents were not terribly – I don't recall them being politically involved to be perfectly honest. So I can't tell you. If I had to look back, I would guess that they were Democrats at heart, but that is just a guess. They were not people who talked a lot as I recall about current events or – they really weren't involved in them at all.

Ms. Flanagan: Did they read to you when you were a child?

Judge Smith: They did not.

Ms. Flanagan: Do you recall there being – given where your grandparents came from and the time period – do you recall there being any kind of impact on your family, as you perceived it, of World War I?

Judge Smith: I don't know about World War I because I was born during the Depression, and I think that was – there were a couple of things. Number one, my grandparents, like a lot of immigrants from that era, were, basically were

driven out of their homes by anti-Semitism and left to escape that and pogroms, officially or unofficially. And so they wanted no part of remembering or passing on what they had lived through and were very anxious in their children being as Americanized as possible. So, the heritage was not something that was passed on. So that was part of it. They were all very Orthodox Jews. My parents I think were affected primarily by the Depression and the strains that brought. I was an only child and most of my cousins were either only children or there might have been two children in the family, but we were small families. I think that was a big impact that was left both by what had brought them to the United States and then, again, trying to earn a living. My grandparents were all minimally educated and so my parents came from really very, very modest means. I am not going to say they were poor because there was a roof over their heads and there was food on the table, but there wasn't a lot other than that.

Ms. Flanagan: You were born in San Francisco?

Judge Smith: I was. I was born at Mount Zion Hospital in San Francisco.

Ms. Flanagan: When did you move out of San Francisco?

Judge Smith: I moved out of San Francisco when I was in the 9th grade. At that time I was, it was, what we call grammar school, junior high school and high school. I was a 9th grader at Presidio Junior High School here in San Francisco. My parents moved to San Jose because my father had a job down there, and so I finished my high school in San Jose.

Ms. Flanagan: Before you moved, looking at the grammar school years – where did you go to grammar school?

Judge Smith: Argonne Grammar School, which was in the Richmond District, and I think no longer exists, at least in the same form. It closed I know many years ago because it was found not to be earthquake-proof, and I am not quite sure if it ever re-opened or not. It was on the square block or almost a square block between 17th and 18th Avenues on one side and Balboa and Cabrillo Streets on the other.

Ms. Flanagan: Did you remember those as happy years as a student?

Judge Smith: I did.

Ms. Flanagan: You enjoyed being a student?

Judge Smith: Well I loved being – I enjoyed being a kid. Yes, I enjoyed being a student. I always got good grades. The teachers always liked me. Yes. I was a happy child, and I had lots of friends. And I remember growing up, that part of growing up, as being a happy time in my life.

Ms. Flanagan: Did it come easily to you in school or did you have to work hard?

Judge Smith: No, I didn't. Probably that was part of my early undoing was the fact that I really didn't have to work very hard and I didn't work very hard. I think – That was – The parents in those days were not what are referred to now as helicopter parents. They did not hover. I mean my parents were always

proud of the fact that I was a good student, but you know, they didn't – I think because of their backgrounds and things, they didn't put a lot of demands on me, and school was always easy for me.

Ms. Flanagan: Were you a reader?

Judge Smith: I was. I loved reading. And again, I think in part because I was an only child and there wasn't any television at that time. My parents had a reasonably active social life. I mean, they had lots of friends having grown up in San Francisco and so they spent a lot of time – adult time – going to friends' homes or playing cards or things of that sort. So I had a lot of time by myself and so I read a lot.

Ms. Flanagan: What kind of books did you like to read?

Judge Smith: Oh, almost anything. I can remember reading when I was young all the Nancy Drew books and I can remember reading Heidi and the Little Princess and The Secret Garden and the Lassie series. There was a Public Library around 9th and Clement, I think it may still be there, so I would go over there a lot and bring home books. So I loved horse stories and dog stories and mysteries and things about young people. Almost anything I could get my hands on.

Ms. Flanagan: So up until the 9th grade did you live in the same neighborhood?

Judge Smith: I did. I always – I lived in several different houses. We never owned a home. We were always renters. But I always lived in the Richmond

District, somewhere between 17th Avenue and 21st and somewhere between Geary Boulevard and Balboa. That was the world as I knew it at that time.

Ms. Flanagan: And it was a welcoming neighborhood for you?

Judge Smith: It was. It was a very welcoming neighborhood. There were – Geary Street and Clement Street were very different, but there were lots of small shops, grocery stores, and there was the Alexandria movie theatre and the Coliseum. I spent a lot of time at the movies. I loved the movies. So yes, it was a safe and friendly place.

Ms. Flanagan: Did you ever encounter – You mentioned your grandparents coming from anti-Semitic experiences, did you ever experience anything like that in your childhood?

Judge Smith: Not my childhood. Growing up in the Richmond in San Francisco there was a big Jewish population, and so I – there were always a lot of Jewish children in my classes, both at Argonne and at Presidio, and so no, I was – I don't think anti-Semitism was a concept that I was even aware of until later in life.

Ms. Flanagan: Did you experience any challenges as a student? You know, grammar school age student, it sounds like you made friends easily, studies came easily to you. Were there any challenges you had to deal with?

Judge Smith: Well, there were but that's part of what I don't want to talk about so – They had to do with my parents and there were a lot of issues there. But as far as



my own world of my friends and school and things, no. I would say I was blessed from the standpoint that life was pretty easy for me.

Ms. Flanagan: And then in 9th grade your family moved?

Judge Smith: They did. And much to my dismay – You know, the 9th grade, I was sure my life was coming to an end immediately and abruptly and very unhappily, and of course within a month I could barely remember that I had ever lived in San Francisco.

Ms. Flanagan: What school did you go to in San Jose?

Judge Smith: I went to Herbert Hoover Junior High School, which was in the Rose Garden section of San Jose, and it was fairly far from where I lived. I lived in the Willow Glen section and so we took a school bus, which was a whole new thing for me because in San Francisco, although Presidio was a fair distance from where I lived, I just hopped on the streetcar and got myself back and forth. But in San Jose that was not the way it was done.

Ms. Flanagan: Was it still the closest school to you or was it the school district?

Judge Smith: It was the school district, yes. That was it. And so, everybody from Willow Glen who went to public school, and that was just about everybody my age, went to Hoover and then on to Lincoln, which was a couple of blocks from Hoover.

Ms. Flanagan: Is that where you went for high school?

Judge Smith: I went there for two years and then the start of my senior year Willow Glen High School opened up in Willow Glen and so those of us who were in Willow Glen were transferred to Willow Glen for our senior year. We were the first graduating class. And of course that was a big transition because it meant basically a lot of my friends, my close friends, were still at Lincoln, and so that was sort of, you know, a big deal to us, to all of us who had friends from both sides, not that it was a tragedy or anything. It was just another adjustment, but it was fun being the first class at Willow Glen.

Ms. Flanagan: So, were there any other – There were seniors and there were freshmen – Did they populate all the classes?

Judge Smith: There was a junior high school which also opened up, I think it was called Markham Junior High, on the same campus. And so, yes, there was a 10th, 11th and 12th who populated the school. It was a very small, relative – Lincoln wasn't terribly big, but I think my graduating class was 175, something like that. It was populated primarily by kids who would come from Lincoln, but there were only two high schools in San Jose prior to Willow Glen opening. There was Lincoln and there was San Jose, which was in the Eastern part of San Jose. And so when Willow Glen opened there were the Willow Glen kids who came but there were also a number of kids who had gone to San Jose High who were, lived kind of in between Willow Glen and wherever San Jose High was, so they also were at Willow Glen. And that was interesting because the population at Lincoln was a very, very white middle-class population. It was basically kids from the

Rose Garden district, which is relatively affluent, and kids from Willow Glen. Affluent, not meaning Pacific Heights, but middle-class. Very white. And then when the San Jose High kids, that group came over to Willow Glen, there were a number of kids of Mexican descent. So that was an interesting experience because I think, you know, we just weren't used to that. We had kids for whom English was a second language, for example.

Ms. Flanagan: Was there tension between the groups?

Judge Smith: No. No.

Ms. Flanagan: The kids got along?

Judge Smith: Well yes, there wasn't – I don't know that there was a lot of mixing socially and they tended to have their own friendships and groups, but I don't remember any hostility. It was a very different world. It was a pretty easy time when I look back on it now. It was before the Vietnam War and after World War II, and life was pretty good.

Ms. Flanagan: For you personally, did you continue to be a good student, grades came easily to you and friendships?

Judge Smith: I was, yeah, all of those things and friendships, and I was very active. I mean, I got elected to things, and I was in groups, the Honor Society and the Student Body, and I was a pom-pom – all those, you know...

Ms. Flanagan: You were a pom-pom girl?

Judge Smith: I was a pom-pom girl. It was very unofficial you know, but yeah. I was just really lucky. I look back and I think about my teenage years and they were fun. They were fun.

Ms. Flanagan: As you were moving through high school, did you give any thought to what you were going to do next or what your dreams were for the future?

Judge Smith: I assumed that life would go on being, in that way, as easy as it had always been. I assumed I would go to either Cal or San Jose State, but there were, again, family problems that occurred that meant I didn't go to college at all, which wasn't part of my plan.

Ms. Flanagan: Yes. Did you continue to be a good reader through high school?

Judge Smith: I did, although I would have to say that partying took up more of my time than reading. I had a very busy social life. Yeah, I probably – I mean I was a good reader, but I didn't have the hours that I spent alone because I had friends. And in those days kids drove very early because there wasn't really much public transportation and you could get – If you had to drive to school you could get a driver's license at fourteen. And of course everybody could get one at sixteen, and there weren't these rules about if you were sixteen you couldn't drive with other kids, and so, you know, on the day you were sixteen everybody trotted down to the DMV and got a driver's license. So everybody drove. So once you were in high school there was just, you know, as I say it, I make it sound like *American Graffiti*, and in a way it was. It was just a very happy time.

Ms. Flanagan: Did the outside world intrude at all, were you conscious of any national events or anything like that that had an impact?

Judge Smith: No. I think we were incredibly oblivious to almost everything other than ourselves. Maybe some people weren't, but again, my parents were not what I would call inquisitive about the outside world. They were smart, not well educated, but smart, but incredibly, I think, narrow and self-absorbed about what their interests were, so we were not a family that spent, you know, we weren't like the Kennedys. We didn't have a dinner table conversation where I was asked probing questions about anything other than who was I going out with and why was I going out with that person and those kinds of things.

Ms. Flanagan: Did you travel at all in your grammar school or high school years?

Judge Smith: Very little. We took a couple of automobile trips, but, again, we didn't have a lot of money. We owned our first house in San Jose. We took – I remember one year we went to Bryce National Park and Zion National Park, and all I can remember is that it was really, really hot. We didn't do anything exotic really.

Ms. Flanagan: Did you have any pets when you were a child?

Judge Smith: Very few. There were a couple of times that we had dogs, and they just seemed to encounter sad demises of various things, and so, no, animals were not a big part of our family life.

Ms. Flanagan: Were you engaged at all in athletic activities?

Judge Smith: Not much. No.

Ms. Flanagan: You were a pom-pom girl, you cheered on the troops?

Judge Smith: I was a great supporter. I'm a great spectator at sports, and so I got a vicarious thrill, primarily from dating the team quarterback.

Ms. Flanagan: So I think you've answered the next question I was going to ask, which is, I'm sure even in those innocent times, there were cliques in the schools?

Judge Smith: There were cliques.

Ms. Flanagan: And it sounds like you would have been in the "in crowd." Is that fair?

Judge Smith: That is a fair statement. Yes.

Ms. Flanagan: And then you have already mentioned that when the end of the high school years came, your plans to go to college abruptly changed due to family circumstances. What did you do instead?

Judge Smith: My mother and I moved back to San Francisco, and I went – I got a job in an office, and for the next several years I basically was an office clerk, either in an accounting department, primarily in accounting departments. I wasn't an accountant of any sort, but I was very good with numbers and things like that.

Telephone interruption

Ms. Flanagan: When we took that break, Fern, you were telling us about the job positions that you took after high school.

Judge Smith: Right. They were not – They were just office jobs. As I say, they tended, I guess, all to be in accounting departments or accounting related, an accounting clerk generally. I always had an easy time with math, and I was a quick study, and so I could learn quickly, but I didn't have any training to do anything of any very high professional level. And, so the years between I would say graduating high school, I was seventeen when I graduated, and until I got married, at twenty-one, were a series of jobs like that. They were respectable and interesting to some degree.

Ms. Flanagan: But it was all on-the-job training?

Judge Smith: It was all on-the-job training, yes. And then when I was twenty-one, I got married and continued to do the last job that I had really until my first daughter was born, and that was a couple of years later and then I stopped working at that point.

Ms. Flanagan: Just to put some years on this, what year did you get married?

Judge Smith: 1955.

Ms. Flanagan: What was your husband's occupation?

Judge Smith: He was a security analyst at the time. He had a graduate degree from, he had an MBA from Stanford. And we got married shortly after he finished

his MBA, and he had a job with Trans America as a security analyst in the Financial District. So we lived just a few blocks – I mean we came back – We were still living in the same neighborhood that I, in a way, had grown up in. In fact, when Susan was born we lived about a block and a half from where I live now. When she was two – no, she was about a year and a half I guess – he got a job with a small electronics firm in Silicon Valley, which was just starting its kind of boom, and we moved down to the Palo Alto, Los Altos area at that time, and that is where I lived really until after I finished law school and until after my daughters were out of the house.

Ms. Flanagan: And so what year did you stop working outside the home?

Judge Smith: 1957.

Ms. Flanagan: And so from 1957 – And when did you go back to school?

Judge Smith: I started Foothill in 1968.

Ms. Flanagan: So from 1957 to 1968 you were a stay-at-home, taking care of your two daughters?

Judge Smith: I was a stay-at-home, right.

Ms. Flanagan: How did you spend your time then? Did you have interests outside the home or activities you were involved in?

Judge Smith: Well, I did, but you know they tended to be sort of – They tended to be what middle-class stay-at-home women did at the time. A lot was involved. I



was room mother and baking cupcakes and driving the girls places and going to the park with friends who had children of similar ages, and I played bridge, and I played a little bit of tennis. What else did we do? My husband and I had a nice circle of friends, and so it was that kind of thing. There wasn't a particular independent type of activity that I was in. Most of it was family-related or related to our general social life.

Ms. Flanagan: When you had sort of changed your plans coming out of high school, or had them changed for you really, were you thinking as you were working, as you were starting your family, that you were going to go back to school, or was that kind of off the radar screen?

Judge Smith: It wasn't really off the radar screen. I was always very conscious of the fact that I hadn't done this. And when my husband and I got married and he -- As I say, he had an MBA, not only had an MBA but from a very prestigious school. And most of the friends that we made were friends that I met through him and his contacts, and so we had a group of friends in which the husbands all were college educated and many had graduate degrees. The wives tended to either have graduated college or have gone, started college, met their future husbands, dropped out before graduating. But everybody pretty -- I think everybody except for me had a college background. And I was always very conscious of the fact that I didn't. So yes, it was never off the radar screen, but it never, I never really sat down and said, thought about what I could do to change it or if I should change it.

Ms. Flanagan: During those years while you were raising your family, did you get involved in any kind of legal causes or community causes?

Judge Smith: No. The only thing I did, I remember taking the girls and going with a friend of mine and her children and we came up here and we marched in a Vietnam protest when the girls were – I may have already been at Foothill by then, or even at Stanford, I may well have been, it was either right before I started or during that time – but that's the only thing I can remember that left any mark on me.

Ms. Flanagan: And the – When you – What prompted you, then, to go to Foothill? Where were you at in your life where all of a sudden you decided to act on it?

Judge Smith: Well, I think part of it was, as I say, I had always had this complex or little kernel of regret. I wouldn't call it a complex, but a kernel of regret. I had met my husband through another couple. She and I had gone to high school together and had remained good friends, and she had married very young without any college and had married a close friend of my husband, a close high school friend, and we had stayed friendly as couples and had gone on vacations together. A couple of years we went down to a little place in, just over the border in Mexico, called Rosarita Beach in Mexico. And Carol and Al had four children, four young children. And Al was not as far along in business as my husband was. He hadn't done as well. He didn't have a graduate degree. And their, well none of us were rich. Their means were more limited than our means. And we were on the beach one day, and Carol

was telling me that she had started going to Fullerton Junior College in Southern California, and that she was going to become a dental technician. And we talked about why. And we had similar problems in our families – We both had come from troubled families, I’ll put it that way. The problems weren’t exactly the same, but both of us had come from what I think can best be described as extremely dysfunctional families. And both of us had, I think, done very well in high school, had felt thwarted by not going forward, and so we started talking about this. And I just decided that it was time for me to either stop moping about the fact that I didn’t have a college education or do something about it. And that if Carol with four young children, very close in ages together, and less money than I had could do it, that I could do it. And if I didn’t, then it was just because I was too lazy or too unmotivated, and I had to stop feeling sorry for myself. So I came back – We were living in Los Altos. Where were we living? We were living in Los Altos Hills at the time, and I, we came back, and it was the end of August. And Foothill College was literally down the road from where we lived. And so I hiked myself over to Foothill College and announced that I was there to register for the fall semester.

Ms. Flanagan: And this was 1968?

Judge Smith: This was in 1968, and they said “Well, what would you like to take?” And I said, “Well, how about this?” “Well, no; you don’t – You have to have some prerequisites from high school” or “Do you have your transcript?” Of course, I didn’t have a transcript and I didn’t have prerequisites and this was

filled or that was. Well, anyway, I finally said “Okay, what do you have that you’ll let me into?” And they said, “Well,” or the woman, whoever I was talking to said, “Well, we have a course called Marriage and Family Life, and it’s a three-hour class one night a week, and you don’t need any prerequisites, and you can then send for your transcript, etc.” And I signed up for it. And that was kind of the start. I just loved it. And I got my transcript, and the next semester I started going full-time and didn’t quite know how to stop after that.

Ms. Flanagan: You know, when you were feeling the urge to go, did you have in mind that you needed an education to do something else?

Judge Smith: No.

Ms. Flanagan: Did you have in mind that you just wanted to learn or you felt there was sort of a gap in your life that hadn’t...

Judge Smith: I just felt there was sort of a gap in my life, really.

Ms. Flanagan: So you didn’t have kind of a plan as to where this was all going to take you?

Judge Smith: I had no plan, no. Even when I started, I had no plan, and part of it was that I had this gap, but part of it was that the girls were six and ten by then, so they were starting to be gone more hours in the day. And I was becoming bored, frankly, with the life that I had. There was something missing, and I didn’t really want to fill it up – I mean, I enjoyed the social part of my life, and I enjoyed my friends, but it simply seemed to me that filling my whole

life playing bridge and tennis and baking cupcakes and selling raffle tickets for school events was not something that I could or wanted to do for the rest of my life.

Ms. Flanagan: And was your husband supportive of your going back to school?

Judge Smith: He was incredibly supportive. And although we did divorce later, I have always been incredibly grateful to him for encouraging me to do this and for supporting me financially during all of these years. And for, you know, I think putting up with a family life that changed and from my, with my changing from a full-time stay-at-home wife and mother to someone trying to squeeze a whole lot of things into the same number of hours.

Ms. Flanagan: How did your daughters react to the change?

Judge Smith: Well, they were mixed at the time. I think their – When I look back, they were kids themselves, and so I think in part they were a little resentful. I remember the younger one being quite annoyed, not annoyed, but I think feeling a little jealous because at one point, I remember, she wanted me to be the room mother for a particular grade and I just couldn't. And well, you know, "You did it for Susan and ..." and so I wasn't always, I wasn't there as much. I tried to always be there when they came home from school, and we always had dinner together. And I tried never to start my homework then until they were in bed or whatever, but clearly it made a difference. And so, I think, plus the fact that I was the only mother doing these weird things, you know. Because by then my husband was doing quite well. I

mean, again, not Bill Gates well, but he was making a good living. And our friends were, tended to come from similar backgrounds, and so none of the wives worked. It just wasn't the way things were done then. And they were, you know, stay-at-home mothers, and so I was a little weird.

Ms. Flanagan: Were the other mothers supportive of what you were doing and helpful to you, or think that you were embarking on some, you know, odd frolic?

Judge Smith: I think they were mixed, yeah. I don't know that I would call them supportive. I think some of them were a little jealous, and I think some of them were critical, and I think some of them just puzzled about why I was doing this. I would occasionally get questions about how did I deal with the guilt, that kind of thing. So, yeah, it was, it was a mixed bag.

Ms. Flanagan: And what was your focus at Foothill? So you were at Foothill for two years?

Judge Smith: Yes.

Ms. Flanagan: And what was your academic focus?

Judge Smith: There really was – I mean it was really just a liberal undergraduate, you know. I got an AA, but it was a broad spectrum. I took some science classes. I didn't take any math classes, but I took science classes and I took history and English.

Ms. Flanagan: And you did quite well at Foothill?

Judge Smith: Actually, I did very well at Foothill. I graduated first in my class with a 4.0.

Ms. Flanagan: And from there you went to Stanford?

Judge Smith: And from there I went to Stanford.

Ms. Flanagan: And what was your focus at Stanford?

Judge Smith: I majored in sociology, not because I really want – I wanted to major in psychology, but I had been told by some unknown source whom I can't even remember and who clearly didn't know what he or she was talking about, that if I wanted to get into Stanford, I shouldn't apply to the Psychology Department because psychology was one of their most popular majors. And so I should pick something else and then, you know, take psychology courses. So I looked through the books, and sociology had the fewest required courses of any major that was at all related or that I thought I could have any hope of coping with. And so I thought, well, that would be good because that left lots of electives for me to take. So that's what I did. I majored in sociology. Took a lot of psychology electives but, you know, took a statistics course, took a lot of... again, a lot of English and English-related courses and some history courses.

Ms. Flanagan: Given everything that was on your plate at the time, were you able to take advantage of extracurricular activities at Stanford?

Judge Smith: No. It wasn't so much that I wasn't able to, I just didn't. It wasn't my world anymore. At the time you had to go to Stanford full-time, so there were not people like me. Again, I was an odd bird at Stanford.

Ms. Flanagan: And how old were you when you were starting at Stanford?

Judge Smith: Let's see... It was in 1970, so I was 37, 36 or 37. But, yeah, I mean I certainly wasn't going to go to frat parties or keg parties, and I didn't have the time even if I had wanted to. So the only thing I did is, somewhere in there were Stanford's glory days. Jim Plunkett was the quarterback and Randy Vataha, and they went to the Rose Bowl a couple of years while I was there. And I've always been a big football fan. I guess it came from dating the quarterback in high school, but I sort of was emotionally stunted about football at that time. I've always loved football, so that was fun. And I would go to the football games and occasionally I could talk either my husband or one of my kids into going with me, but that was really all I did.

Ms. Flanagan: And did you make friends at Stanford?

Judge Smith: I did. And, yeah, I made one friend in particular who was actually the person – Without having had him as a friend, I would never have gone to law school. But he was young, very young; he was 20, 21. But I did make some friends. Most of them I didn't see outside of class because I was a middle-aged housewife as far as they were concerned, and they didn't really fit into my life, but they were friends that I could sit down – and this is still at the undergraduate level that we're talking about – and at least have lunch



with or get into a discussion with. And, of course, that was still, the Vietnam war was going on, and there were a couple of classes where people would come in and take over the class and, you know, certainly given Stanford it was hardly a revolution, but at least there was some protest going on. And so discussions would come up about that, and that was fascinating for me because these young people were so interesting and interested and so different than my friends that it was really quite exciting. I think I learned as much if not more from them than I did from the professors, to be quite honest.

Ms. Flanagan: How did the professors react to your being in the class?

Judge Smith: I think most of them were indifferent, and I would have to say that, with few exceptions, that was probably the least rewarding part of my education at Stanford. The instructors at Foothill had been incredibly supportive of me, several of them, and had been really motivating factors in my going forward. When I got to Stanford, I expected the professors to be on an even higher plane. And what I found, to be quite honest, was that they had little interest that I could see in the students themselves. TA's occasionally, you know, were the ones that you had contact with if you had contact with anybody. And so...

Ms. Flanagan: Was there someone designated as your counselor?

Judge Smith: I don't remember that happening at all. I don't remember being counseled at Stanford or being advised or being supported.

Ms. Flanagan: Was there any support network at all for older returning students?

Judge Smith: No, I think there were probably three of us. No, there weren't any, and that was part of the problem, I think, is that I was, in a sense, a little too early. And so there were really no efforts made for people like me.

Ms. Flanagan: Now amongst the students, I mean, I would think with the Vietnam War, also feminism, these movements were all on the campuses. Did the women students embrace you as, you know, a woman coming back to school, doing an independent thing later in life? Anything like that?

Judge Smith: No. I think again I was a little too early for that and so, no. I had this one friend, as I said, this young man, and he and I...

Ms. Flanagan: And is this Steve Stublarec?

Judge Smith: It is!

Ms. Flanagan: Steve was a partner of mine.

Judge Smith: Yes, of course. And, you know, Steve was as opposite from me as you could imagine. He had, you know, just gone straight through school, and so he was probably 20 at the time and I was 37, but we did, we were both in the Sociology Department, which was a small department, and we did a research project together on mixed marriages as I recall. And that's how we got to be friends.

---

Ms. Flanagan: And so, did you eventually move into the Psychology Department?

Judge Smith: No.

Ms. Flanagan: So actually your major was sociology?

Judge Smith: It was.

Ms. Flanagan: Okay. Your interest was psychology but your major was sociology.

Judge Smith: Right. And I did find – I mean there were some things about sociology that I actually did enjoy. I remember there was a class on the sociology of organizations, which I found fascinating, and I still, I mean, that's something that stayed with me, and I think it's something that's made me more adept at taking managerial roles and, when I was at the Federal Judicial Center, for example. I mean, I think that I came out of that – I think the professor's last name was Scott and I do remember him. I thought he was really pretty special. And I think that my awareness of organizations and my, I still think of them as organic, and I think it does play a role in how I've always approached my professions and the people I work with.

Ms. Flanagan: And you did very well at Stanford, as well?

Judge Smith: I did.

Ms. Flanagan: And you were Phi Beta Kappa?

Judge Smith: I was.

---

Ms. Flanagan: And at what point did you start thinking about, "Well, what do I do next? Do I go back home? Or do I continue on this path?"

Judge Smith: Yes. Well, it was probably my senior year at Stanford. I mean, that was the only year I, I only had two years as an undergraduate, and it was in my senior year. And it was because Steve and I would sit around trying to figure out, both of us, what we were going to do when we grew up. And the Sociology Department at Stanford was not well regarded, either within Stanford or nationally. And so, we both decided that, although we liked the field, staying on in that department was not, at Stanford, was not really something that made a lot of sense. Because of my familial situation, I had fairly limited options. There's only so far I could go, geographically speaking. And I did know, what I knew in my mind and in my heart was that the thought of going back and being a stay-at-home wife and mother was not something that I felt I could do comfortably. So I knew I needed to do something. My husband was very, very supportive about my doing something if I wanted to. But the question was what and where and I thought about trying to get into the Psych – That was when I thought about trying to get into the Psychology Department at Stanford because I had done well academically, and I thought, well, I could apply for graduate school in psychology and probably have a pretty good chance of making it. But you know, this was 1972 and this was right in the height of the Gestalt feel-good-about-yourself era, and the Peninsula was up to its proverbial armpits in psychologists, and I thought, "Oh, is this what Palo Alto really needs is one more middle-aged woman coming in to cure the ills of the world?" It

seemed somewhat silly. And so Steve came in one day – Have you heard this story before? You probably have.

Ms. Flanagan: No, I've just heard the conclusion, but not the story.

Judge Smith: Oh, okay. So Steve came in one day at Stanford, I was sitting in one of the little offices or something in the Sociology Department, and he said, "Okay, I know what we're going to do." "Okay, Steve, what is it?" "Well, we're going to go take the LSAT test in October." Was it October? No, that wouldn't have been right – was it? Maybe it was; maybe this was still in '74; no, I mean in '71. So in fall of '71 is probably when it was. And I said, "What is the LSAT?" And he said, "Well, it's what you take to get into law school." "Law school? Why on earth would I want to get into law school?" "Oh, this, that, the other thing." So I informed him that I had no interest in becoming a lawyer, that sounded like the dumbest thing I had ever heard in my life for me. And then he said, "Well, come take the LSAT." And he said, "I don't want to go take it alone. Come take it with me, it's only \$100 to apply." I went home that night and I said to my husband, "Steve wants me to go take the LSAT for law school." And he said, which was the first, I guess, non-supportive statement he had ever made, he said, "That's ridiculous. You'd make a terrible lawyer." Well, that's all I had to hear. I mean, if there was anything in the world he shouldn't have said if he didn't want me to do this was that I would make a terrible lawyer. So I called my friend Carol, who was the one who inspired me to go to Foothill to begin with, the one who started out to be a dental technician and by then she had

given that up and was going for a B.A. in psychology. And I called her up, and I said, "Tell me what you think of this." And I told her about the law school thing and she said, "That's so weird. I was sitting down the other day making a list of what professions that I thought you would be good at, and lawyer was at the top of the list, and here are the reasons why." So the next day I went in, and I told Steve I'd take the LSAT.

Ms. Flanagan: And what had Carol seen in you that she thought would make a good lawyer?

Judge Smith: She thought the logic with which I think and the way I approach problem solving and my ability to see both sides of things.

Ms. Flanagan: Did you agree with her when she kind of went through it with you?

Judge Smith: I did. I did.

Ms. Flanagan: Did it sort of open a window for you?

Judge Smith: But the idea of being a lawyer, still, I wasn't sure that that's, that those two were compatible, that those traits and being a lawyer still connected for me, but I was willing to. I didn't have anything better to do, and I figured, for \$100, why not?

Ms. Flanagan: So I take it you did well on the LSAT?

Judge Smith: I did. I did very well, and in fact one of the things that just floored me was I got a letter from Harvard – Because you could check a box that said "can we

send your scores on?" And I thought, sure, why not, I don't care, never thinking that anybody would care about what score, other than me, would care about what scores I got. So I checked the box, and suddenly this letter came from Harvard and it said, "Dear Mrs. Smith, we're trying to get more qualified women at Harvard, and we've seen your scores, and we think you would fit into Harvard Law School very well, and we'd like you to apply, and we'll waive the application costs." And that probably was the first time that it dawned on me that maybe I could do okay at this level. And it was a transforming communication for me, I think.

Ms. Flanagan: That, if Harvard thought you had what it took, then obviously you do?

Judge Smith: Exactly, that there was something, that I had done okay.

Ms. Flanagan: So did you apply to Harvard?

Judge Smith: I didn't. I didn't. Because it didn't make any sense because, obviously, there's no way I was going to pick up and move to Massachusetts, and just the fact that they sent the letter was enough, that was enough reinforcement for me.

Ms. Flanagan: Did you apply to any law school other than Stanford?

Judge Smith: Trying to remember if I did or didn't. The only possibilities – I sat down and thought about it, and the only possibilities were Stanford, Santa Clara and Boalt. And the thought of – I really was tempted to apply to Boalt because it had a good reputation. It was so much cheaper, and I was

beginning to feel, even though we could do it, I was beginning to feel guilty about using as much of the family resources as I was using on this sort of educational trip I was engaged in without really having any belief in the fact that I'd ever use it or it would ever pay off or whatever. But the thought of trying to commute, and the girls were still home....

Ms. Flanagan: So your girls now were ages like 10 and 14, as you were going into law school?

Judge Smith: Let's see. As I was going in, yes. I graduated from law school, Susan graduated from high school and Julie graduated from junior high school the same week.

Ms. Flanagan: Oh my!

Judge Smith: Yeah, so this was three years earlier, so yeah, Julie was like in the sixth grade or something and Susan was in the ninth grade, something like that.

Ms. Flanagan: And did your husband come around to the idea of your being a lawyer?

Judge Smith: I don't think so. I think he always questioned, well I shouldn't say always - I don't know that he came around to it then, but he decided that if that's what I wanted to do, that he was perfectly happy to support it, and that I should go to the best law school there was, and that was Stanford. And so I went to Stanford and talked to a man named Bill Keogh, who was the Dean of Admissions at the time. And Bill was a tough Irishman who'd come out of Hell's Kitchen in New York and was the first person, I think, at Stanford



who ever looked me in the eye and said, “This is something you ought to do, and I think you’d be great.” And so, I don’t think I ever applied any place else. I know I didn’t apply to Berkeley, to Boalt, because I just decided it was, I just couldn’t do it. And that if I was meant to do this, I’d get into Stanford, and, if I didn’t get into Stanford, I just wasn’t meant to do it, and I’d find something else to do.

Ms. Flanagan: And did you – So you got into Stanford?

Judge Smith: I did get in at Stanford.

Ms. Flanagan: And how did you balance the increased academic hours necessary for law school and the family?

Judge Smith: Well, it was pretty much the same way. You know, I tried to pick classes in the schedule that would get me home again by the time the girls were home, and I just studied a little later at night. And it wasn’t that much different.

Ms. Flanagan: Were you able to participate in any of the extracurricular activities in the law school?

Judge Smith: Well, there really aren’t many activities extracurricular; there weren’t then. I mean, law school was so threatening and competitive and everybody there was so anally compulsive. I was in a study group with some other people from my small section, and we would meet and study and things, but that was pretty much it.

Ms. Flanagan: Did you have any colleagues at the law school who were kind of similarly situated to you, coming back after an absence from school?

Judge Smith: There were a few. There were two or three other men, two or three men in my class, but none of them were in my small group. And none of them, I didn't really become close. Again, Stanford's a very small law school. I think 165 of us started out, and about 155 graduated, so it was small, but I didn't become close. One was a man from L.A., nice guy who had done very well in business and was doing this. And another was a teacher. Teaching was having a tough time at the moment. He had a Ph.D., I think, in sociology, so he was looking for something different. And I think we were the only three in the class.

Ms. Flanagan: Were the Stanford Law faculty supportive of you? Did they take notice of your situation?

Judge Smith: Well, I think they did notice my situation because again it was a small school and so, yeah, some of them, I would say, were. I don't know that anybody was non-supportive. There weren't any women when I first started. Barbara Babcock wasn't there yet, and so the only woman that was sort of remotely connected was Rose Bird, who was like a TA kind of for Tony Amsterdam, and she did a clinical program in criminal law that I wasn't terribly interested in, I didn't take, that wasn't a field that I thought I had any calling for. So, yeah, I think the professors took notice of me, and I thought some were quizzical and some were supportive. Bob Rabin, who

was my torts professor, gave me an offer to be his research assistant the summer after my first year, I guess. Bill Baxter was very nice to me. Mike Wald was, I think, more bemused by me than anything else.

Ms. Flanagan: Were there any faculty members in your law school years that were influential in launching you or helping to direct you into a career?

Judge Smith: No, I don't think so. I mean, again, it's -- The faculty was not what I would, well, that's not true. There was one, and interestingly, he was a visitor. His name was Phil Schuckman, and he was my civil procedure professor the first year. And, he was from University of Connecticut Law School? And Phil was amazingly bemused by Stanford. I mean, the thought that people came to class barefoot and that the students didn't expect to be called on just struck him as very bizarre. But I think it kind of tickled him, and he and I actually got to be friends and he -- I hated law school the first year. I just hated it, and at the end of the first year decided that I wasn't going back.

Ms. Flanagan: What was it about it that you didn't like?

Judge Smith: I didn't like the fact that everybody was so paranoid. I didn't like just nothing but this case study method. I didn't like the fact that your entire grade was geared to an exam at the very end and if you had a cold that day or whatever. It just was not fun. I was working too hard. I was feeling stressed. Everybody I knew was stressed. Nobody seemed to be having a good time. And I had no idea if I ever wanted to be a lawyer anyway. So, I was going to quit, and Phil Schuckman and Bill Keogh found out about it

somehow. I don't know why, apparently another student or somebody mentioned it to them. And Phil called me from Connecticut and Bill called me from some place else, and both of them gave me this pep talk on why I had to stay and etc., etc. And I remember Bill Keogh said, Phil Schuckman said I had to stay because there were barely any people there that had any soul and if I left – and this was blowing smoke, I'm sure – but if I left it would cut the number or the percentage down significantly. And Bill Keogh said, "You have to make me a promise. You have to promise me that you'll come back for one more semester and if, at the end of that semester, you still hate it and you want to leave, I'll never, I won't put any pressure on you." And I said, "Oh, God, Bill, in another six months I'll be halfway through." And he said, "I know, Fern." So, anyway, I went back, but I never loved law school.

Ms. Flanagan: So you didn't enjoy the method of study or the content of the studies?

Judge Smith: I didn't enjoy the method of study. I didn't enjoy the process.

Ms. Flanagan: Did you enjoy the content, I mean reading the cases and discussing them in class?

Judge Smith: Not especially. I didn't really learn to love the law until after I was out.

Ms. Flanagan: Were there any highlights for you in law school?

Judge Smith: In law school? Not really, no.

Ms. Flanagan: Did you work during any of your law school summers?

Judge Smith: I did. I did. I worked the summer between, I guess it was the summer between my second and third year, I worked at a firm called Chickering & Gregory here in San Francisco, which is no longer in existence. And then, I'm trying to remember if my second year or my third year, during the semester I worked at a small Palo Alto firm here, there in town. And I enjoyed that. I can't remember the name, but it was just three people, and it was fun. And that was probably the first time. And I enjoyed the summer at Chickering & Gregory. If they had offered me a job, I would have taken it, but they had three, two or three, three, I guess, summer clerks, and they had one job to offer, and they didn't offer it to me. And, in retrospect, I was always very grateful for that because I think it wasn't the place that I should have been or the work that I should have been doing.

Ms. Flanagan: Now, in the, so when you were a law student, were you thinking about a law firm practice, to the extent that you were identifying an area of the law that would be the best fit for you?

Judge Smith: I was. But I really, my first choice was to work for a law firm in the Palo Alto area so I didn't have to commute, but nobody in the Palo Alto – They never even responded. Nobody in the, except the firm, that small firm, they very much wanted me to come to work for them. But none of the few bigger firms there showed any interest in me at all.

Ms. Flanagan: And why didn't you go to the small firm?

Judge Smith: I think I felt like I wanted something a little more sophisticated and a little more opportunity than that.

Ms. Flanagan: Had you worked law review when you were at Stanford?

Judge Smith: No.

Ms. Flanagan: Did you work on any sort of those, they're not really extracurricular, the optional, extra moot courts, or things like that?

Judge Smith: No. I did freshman, first-year moot court, which was mandatory, but I was, my plate was as full as I felt I could keep it.

Ms. Flanagan: What year did you graduate from Stanford?

Judge Smith: 1975.

Ms. Flanagan: 1975. Did you give any thought to clerking for a judge?

Judge Smith: No.

Ms. Flanagan: At this point in time, did you have any sort of aspirations of being anything other than an attorney in the court system?

Judge Smith: No. And I really didn't have any. One of the reasons that I didn't give any thought to clerking was that by then I had gone to school full-time for seven years, and I just, to me, clerking – I didn't really know what clerking was, and it seemed to me like one more year of school. And I thought, "Enough already." I was going to be 41 when I graduated, and I thought I'd either get

out there and start being a lawyer or give up the whole idea. "I don't have any more time to fiddle around with all this stuff."

Ms. Flanagan: Have you thought about the "what ifs?" What if you had gone to college straight out of high school, and kind of comparing the path you took with the path you thought you were going to take?

Judge Smith: Right.

Ms. Flanagan: And whether, in fact, you got more out of college and more out of law school than you might have going straight out of high school. I mean, have you looked at that, the pros and the cons of the two paths?

Judge Smith: Oh yes, sure. I've spent a lot of time thinking about that, and I think there are both. I think the cons of the way I did it is that I, to me, college and law school had virtually no social experience to them. And because of things that had gone on in my family, I'm sorry that I didn't have that opportunity, not just because of it, but I mean, I think that the growing up part of going to college is very important. And I never had that, living as a young, single person away from my parents and learning how to be an independent, starting to learn how to be an adult. You know, I went from living with my mother to living with my husband, and so I'm sorry that I didn't have that social experience and growth. But on the other hand, I think because of the times, it's very likely that what would have happened is that I would have gone to college, I simply would have married somebody at college, and that probably would have been the end of any education on my part. Whereas

doing what I did, I did it for the learning and for that part of it, and so I think I got much more out of the educational part than I ever would have had I done it earlier. But it's hard to know.

Ms. Flanagan: Do you have a recollection of preparing for and taking the bar exam? Is that a memory that's still with you?

Judge Smith: Oh yes. Oh yes.

Ms. Flanagan: How did you do that with a family?

Judge Smith: Well, I took a bar course. Did I take a bar course? I don't, I did take a bar course, and also I bought these books and I would take tests at home and that. Yeah, so I did all of that, and it went pretty much the same way I did everything else. You know, you just kind of squeezed it in. The course itself, as I recall, I think was just in the mornings. The course is kind of a blur, but I must have done it because I remember that Stanford, we got out later than everybody else did, and by the time we started taking the bar course, everybody else had been taking it for about a week or something. And so I remember thinking we were behind and worrying about that a little. And then, when I took the bar exam, we took it at Hastings. I remember that, and we stayed at that little motel that's been a dozen things. It's right behind the Federal Building now. The Phoenix Motel – It may have had a different name then, but it's right in the Tenderloin. Because I just didn't think I could cope with being with the family or having any distractions, so I came up here and stayed for the three days.



Ms. Flanagan: Did you already have a job lined up before the bar exam or did you do your job search after the bar exam?

Judge Smith: No, I had a job. I had a job with Bronson that I had accepted in the fall before I graduated, the fall of my third year.

Ms. Flanagan: So was this part of on-campus interviewing?

Judge Smith: It was.

Ms. Flanagan: The firms came to the law school?

Judge Smith: Yes.

Ms. Flanagan: And did you find, did you have any problems in the interview process with either the fact that you were a woman or the fact that you were now in your late thirties?

Judge Smith: I had lots of problems because of my age. I think the fact that I was a woman helped because the firms were finally beginning to realize that this was a problem for them. So that helped, I think, to some degree. But my age just, I think, freaked people out. I think they just were not, didn't understand how I could possibly fit in.

Ms. Flanagan: Did they give voice to their concerns?

Judge Smith: One did, and I will remember him always. And I'll remember the firm always. I never say who it is when I tell this story, but he was probably 35 – you know, a young partner. And they invited me to the firm, and when I

interviewed with him, he said, "Well, now, you know, Mrs. Smith, you're going to be over 40 when you graduate." I informed him that, "Yes, I was well aware of that." So he said, "Well, you know, you'll be close to 50 when you become eligible to be a partner here." "Yes, I guess I will." And he looked at me, and he said, "Well, don't you think you'll be over the hill by then?" And I always hoped that once I got on the Bench that some day my courtroom door was going to open and that little twerp was going to walk in and I was going to say, "I remember you. I don't know if you remember me, but I remember you." But he never did, so, too bad.

Ms. Flanagan: Too bad. What did you do to try and overcome their concerns with respect to your age?

Judge Smith: Well, I would talk about it. And I would explain to them that, you know, I understood that I was older but that my record, I thought, spoke for itself as far as the fact that I've not entered into senility yet; and that I did not believe that my age gave me any special powers; that I realized as far as the law was concerned I was going to be a neophyte and I wasn't going to know any more than any other first-year associate; that I wasn't going to assume that my age gave me any priorities; that I was not going to resent taking direction from someone younger than I because I would measure our roles in terms of how experienced we were in the law and what we knew; and that I thought I understood myself well enough to know that that would not be a problem for me.

Ms. Flanagan: And when you were looking at large firms – You said earlier you were looking for the larger firms because you wanted a more sophisticated type practice. Did you have any idea which practice area in the firm you wished to be in? Did you want to be a litigator or a business lawyer?

Judge Smith: No, I wanted to be a business lawyer, but it was a bad time for business lawyers. We were just coming out of a recession, and so firms were not looking to hire business lawyers. They were looking to hire litigators primarily. And because I was a woman and because I was older, I figured I didn't need to put up any more roadblocks. So I just figured I'd tell them I wanted to be a litigator and then when they hired me, once they figured out how fabulous I was, a year later I could say, well, you know, I've been thinking about this and actually I'd really like to be a corporate lawyer, and that would all work out. And it didn't.

Ms. Flanagan: What made you think that you preferred to be a business lawyer over a litigator? What were ...

Judge Smith: Well, I liked the analysis part. It's what I had done at Chickering & Gregory, and I had enjoyed the analysis of the business problems and the issues and the law. And I couldn't imagine myself standing up in a courtroom. Number one, I've never been – well, I probably am now – but at that time I did not think of myself as a person who enjoyed controversy or arguing with people. I really was more of a persuasive kind of person and felt that my talents were more in the reading, that my talents were more in

reading about issues and being able to analyze them and logically plot them out, etc. So that was where I saw myself.

Ms. Flanagan: And so once you got into Bronson, did you discover that you liked litigation or was business not an option?

Judge Smith: It wasn't so much that it wasn't an option. It was that I got swept up by and assigned to a very flamboyant trial lawyer – and I use the word trial lawyer intentionally because the trial lawyers at Bronson considered “litigator” a demeaning term and did not consider themselves to be trial lawyers, I mean litigators. And I was assigned, at his request, to one of the more flamboyant trial lawyers in the aviation department. And I think he had me assigned to him as a joke, more or less. I think the thought, number one, that there were going to be women trial lawyers was almost more than he could cope with, and the fact that one of them was this 41-year-old housewife from Los Altos was just something that he was going to have great chuckles with at the bar, not meaning the law bar. But, for whatever the reason, we hit it off, and he promptly decided that I was not only going to stay at Bronson but that I was going to be the first woman partner at Bronson, and he was going to make it happen. And so while the rest of my classmates were in the library still drafting interrogatories, he was sending me off to take depositions in airplane crashes and doing all these absurd things for which I had absolutely no experience, and most of the time had no idea what I was doing. But there I was, and I was so busy and so caught up in all of this that it was probably

three years later before I could even catch my breath. And by then, I wasn't about to start over.

Ms. Flanagan: And did you enjoy it?

Judge Smith: It depended on the day of the week. I enjoyed the excitement, and it was a, it was so different than anything I had ever done in life. The people were different; the behavior modes were different; the tasks were different. And so I did get caught up in it. And my husband and I separated after I had been practicing for a year. Also a part was that I think it kept, it was something that...

Ms. Flanagan: Kept you busy?

Judge Smith: Keep me busy and so yes, it was...

Ms. Flanagan: How did you handle child care and balancing things when you were having to travel and all of that?

Judge Smith: It was hard. Susan was in college by then, so – But Julie was just starting in high school and, you know, having the kinds of issues that young girls have at that age. And so, that was a struggle. Her father and I – He lived very close, and he was in a position by then where he was pretty flexible. So that helped because she could stay with him.

Ms. Flanagan: You were both living in San Francisco?

Judge Smith: No, we were both still living in Los Altos.

Ms. Flanagan: So you were commuting?

Judge Smith: I was commuting – just to add to the whole mix of things. But it all worked out.

Ms. Flanagan: Were there any women role models for you at Bronson?

Judge Smith: No, I was the – There had been one woman for a short time; she'd left before I came. Then there was another woman who was there, but she was very different and in a completely different field. And then the day I started, a young woman started, and I use the word "young" intentionally, who was 23 and had graduated from UCLA, and I was 41, and she and I are still very good friends. But it's sort of like Steve in a way. We had very little in common, but we were very fond of each other and, as I say, she's still a good friend. But there were certainly no role models, and there were really no role models in the profession. When I left the practice of law, I had never once appeared before a woman judge. Never.

Ms. Flanagan: Had you ever had experience with women peers in litigation from other firms?

Judge Smith: No. There were none in the aviation business and that's what I did about the first four years – or at least none I ran into. And then when I started doing the Dalkon Shield work, there were a couple who were younger than I from the plaintiffs' side and a couple of other Robbins' lawyers from different parts of the country. But we were never really together enough to be peers.

And everybody else who came after me at Bronson was so much younger that I was the role model, God help them.

Ms. Flanagan: And in trying to establish as a trial lawyer or a litigator, whichever, your own style and how to handle situations...

Judge Smith: Yes, it was hard.

Ms. Flanagan: How did you arrive at your style; I mean, how did you develop it?

Judge Smith: I think I really owe it all to this first mentor of mine. His name is Ed Green. He just retired from the law. And he was watching me take a deposition very early in the game, and when it was over he said to me, "Fern, stop trying to be what I am." He said, I don't want to use his language because it's very profane, but he basically said, "I don't come across as a very nice person." And he said, "That works for me but it doesn't work for you." He said, "You are a nice person." And he said, "You've got to find out, just be who you are because if you're not, you come across as a phony and people will know you're a phony." But it took a long time. When I started appearing in Court, I always wore pockets so that I had some place to put my hands so that people wouldn't see them shaking. And, you know, my voice would quiver. It was very, very difficult.

Ms. Flanagan: And was he, it sounds like he was – Was he kind of a "the bark is worse than the bite"? I mean, he was a gruff, ...

Judge Smith: Absolutely...

Ms. Flanagan: ...hard-talking guy, but actually very supportive of you, it sounds like.

Judge Smith: Very supportive, and very supportive of – After me, he always had at least one woman working for him, and he mentored all of us and was supportive of all of us. And I think all of us benefited greatly.

Ms. Flanagan: Did he have daughters?

Judge Smith: No, he had two sons – and four wives!! I think the secret was just be careful not to be one of his wives and that worked fine.

Ms. Flanagan: So, did you work with him in one way or another through your entire career?

Judge Smith: No, I worked with him until, from '75 to '81, and then, no maybe '75 until about '79, and then I think he knew and I knew – He was very controversial in the firm, and I think we both realized that I was never going to make partner if that was the only experience I had. And so I stopped working for him at that point. But we remained very good friends.

Ms. Flanagan: Was it hard for you to get work with other partners?

Judge Smith: No, because – What happened was that Aetna brought in the Dalkon Shield cases, and they very much, Aetna very much wanted a woman to be part of the team and to be a constant. And because I needed something else to do and Aetna wanted something and because I think in that litigation my age was an advantage because it was, well because of the subject matter and that



I could take some positions and understand and, I think, cope with some of the issues in a much better way than a younger, say perhaps a single woman might not be able to. Because we were dealing with infertility and all sorts of things that I had an understanding of what they meant and what their loss meant and all sorts of things. So, it was... But then, when Robbins went into bankruptcy, of course, that was the next major issue because I went home one night with 600 cases and came into work the next day and had none. So that was kind of the next...

Ms. Flanagan: Had you made partner before that happened?

Judge Smith: I had made partner before that happened, thankfully. So, yes.

Ms. Flanagan: And how did you bounce back from that?

Judge Smith: Well, that was, I mean that was another whole phase because I really didn't know, you know, what I wanted to do. And the firm was very supportive and said take your time, look around, there's all sorts of people that would be delighted to work with you. But what I discovered is what there were, were people who wanted me to work for them, and I couldn't do that anymore. I had tremendous responsibility for the Dalkon Shield cases, and I didn't want to go back to being someone's support system. And so, one of the things that happened is several of the partners asked me to run for the management committee while I was going through this period and, because I had time, I thought that would be a good thing to do, which I did. And I was elected.

Ms. Flanagan: And that had to have been really quite a, both a compliment to you and really a coup since it was basically all men that were voting for you.

Judge Smith: It was. No, it was. And I think my – I mean, I do think my partners, by then, my partners at Bronson did respect me and they did like me. And so, I think that their asking me to do that was a genuine tribute, and I was always very pleased by it. But what I discovered is that I had gone to law school, to college, in part because I got tired of being a room mother, and suddenly I was a room mother again.

Ms. Flanagan: But a well-trained one.

Judge Smith: A well-trained one, right. And I didn't have to bake cupcakes for them.

Ms. Flanagan: How long were you in management at Bronson?

Judge Smith: I was in management until I left for the Bench – from about '84 till '86 I was in management.

Ms. Flanagan: And were you also practicing or were you full-time management?

Judge Smith: I was practicing but I was – I had a varied sort of potpourri of cases. I was still looking and trying different things, and what I realized is that I never loved being a lawyer – a trial lawyer, at least. I mean, it was always stressful for me. It was always – The conflict part of it and being the aggressor always was difficult for me. It goes against the grain of what I try to be as a person, frankly. And sometimes, days that I felt I had done the

best work for my client, I felt the worst about myself as a person. And I didn't like that. And I sat down and I thought about it and I realized...

#### Telephone Interruption

Anyway, what I realized is that I had no more goals as a lawyer. I had tried a big case. I'd managed big cases. I'd become the first woman partner at Bronson. I'd been on the managing committee. There was really nothing that I – If I sat down and tried to make a list of, “What do I want to accomplish as a lawyer there?”, there was nothing left. And I wasn't that happy, without a goal what there was just wasn't important enough to me.

Ms. Flanagan: Let me go back to one thing you said earlier, when you said that it didn't, the skills and the day-to-day combat that a litigator goes through was not a good fit with who you are. And you said that some days delivering the best thing you could for the client was also something that went seriously against the grain for you as a person. Are you saying that it's because you didn't necessarily think it was a fair result, that you got your client more than they deserved?

Judge Smith: No...

Ms. Flanagan: Or just it was the combat?

Judge Smith: It was the combat. In order to, and I'm not saying – I always felt that I was an ethical lawyer. I never felt I did something underhanded or dirty or dishonest. But I think that a good trial lawyer – an effective trial lawyer – at

times has to take advantage of the weakness of others. I mean, if it's there, you've got to acknowledge it and use it. And I just got tired. And maybe it was because of the Dalkon Shield. Maybe it's because I saw too many people who were weak and vulnerable. And so, that's what I meant.

Ms. Flanagan: Okay. And just kind of looking big picture at your years at Bronson, I mean, it sounds like you actually had a mentor.

Judge Smith: I did.

Ms. Flanagan: And did you feel like that was the general experience at Bronson? That mentoring was actually part of the culture or did you just get lucky?

Judge Smith: I think it depended on – I think it was part of the culture. I don't think it was a trained part; it wasn't a corporate policy part. And I don't think everybody had a mentor, but I think there were a lot of trial lawyers at Bronson – and I can only speak to the trial lawyers because those were the people I really knew the best – who simply mentored people. It was part of their nature, and if you were lucky enough to be under one of those people, you got mentored. So I don't know that I would say that it was part of the atmosphere at Bronson, but I would say that I thought a lot of mentoring went on at Bronson.

Ms. Flanagan: Did you find a network in the Bar Association or the Bar community at large that was supportive of you?

Judge Smith: No, but I didn't look for it, Sarah. Again, I just always had a lot on my plate. The practice kept me very busy. Through a lot of the years my daughter was still at home, my younger daughter. I had friends outside and responsibilities, so I didn't really get involved in the Bar. I did find that, and we could talk about that another time, when it came time, when I started applying for the Bench, I found a remarkable amount of support from people I had no right to really expect it from because I hadn't, it wasn't that I'd earned my dues with a lot of them.

Ms. Flanagan: And did you, yourself, mentor younger associates coming into the firm?

Judge Smith: I did. I was on the hiring committee for Bronson for a long time and my primary focus internally was trying to increase the number of women at Bronson, and so there were a number of women, including the one I'm having dinner with tonight, whom I encouraged to come to Bronson and whom I had a role in hiring. And I tried very hard to see, to help them and to try to make sure they never regretted it and that I was available for them.

Ms. Flanagan: And did you feel that your efforts on the recruitment committee and on the management committee did help to pave the way for more women to be successful at Bronson?

Judge Smith: I do. Yes, I did, rather. I mean, by the time I left, there were a number of at least first-level partners and starting to be more general partners, so I like to think that I made a difference at Bronson. I hope I did.

Ms. Flanagan: And then, when you were at Bronson, were you in State Court more than Federal Court, or which Court was your battlefield?

Judge Smith: It was pretty mixed because of the Dalkon Shield, because there was an MDL. Was it MDL or did they have the MDL or was it just a – Spencer Williams had several hundred Dalkon Shield cases. And even in the aviation cases it was mixed because there were a couple of, several, the biggest aviation cases I had tended to be in Federal Court, so it was probably half and half.

Ms. Flanagan: And what was your – In the years that you were a practicing attorney, what was your general impression of the quality of the Bench in San Francisco, Federal and State?

Judge Smith: I thought the Superior – I thought the Federal Bench was excellent, of course, and terrifying. But no, I liked it, and I liked the San Francisco Superior Court. I had a high regard for – I dealt with, for example, I remember going to San Jose and having Ed Panelli be one of the Superior Court judges that I dealt with down there. And, of course, I dealt with Gene Lynch, and so I thought it was pretty good.

Ms. Flanagan: Okay, well, we'll end the session here and then when we pick up next time, we'll pick up with how you turned your attention to a possible position on the Bench.

Judge Smith: Okay, sounds good.

Ms. Flanagan: Thank you.