

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
NEW BRUNSWICK

AN INTERVIEW WITH DIANE CROTHERS
FOR THE
RUTGERS ORAL HISTORY ARCHIVES

INTERVIEW CONDUCTED BY
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BROOKLYN, NEW YORK
MARCH 23, 2022

TRANSCRIPT BY
RUTGERS ORAL HISTORY ARCHIVES

Kathryn Tracy Rizzi: This begins an oral history interview with Diane Crothers, on March 23, 2022. I am Kate Rizzi, and I am in Branchburg, New Jersey. Diane, thank you so much for joining me for this sixth interview session.

Diane Crothers. Thank you, Kate. It is delightful to see you again. I am Diane Crothers, in Brooklyn, New York. One thing I want to start with, I picked this up and I showed it to my Rutgers Zoom group, and I said, "Do you recognize this?" Can you read it?

KR: It says, "Emasculate the law."

DC: [laughter] They did remember it. I couldn't remember if that was pre-law school or during law school, they did remember it, so it's a thing we did, yes.

KR: You would like to start off today with some reflections, so please go ahead.

DC: Okay, that would be great, things that occurred to me since our last session that I wanted to make sure [I talk about], but stop me if I have told these stories. I just want to make sure they get on the record. When I was working for D.C. Corporation Counsel, first, I was a minimum wage and overtime investigator from like '84 to '88 or so. Then, in '88, I switched over to litigate for Corporate Counsel, and for about a year, I did juvenile cases, criminal cases, drugs, car theft, assaults, stuff like that. Then, I switched to child abuse and neglect and domestic violence. At that time, there were two tracks for the justice system, so that police would bring in a woman who had been abused, and he would be off the clock when he brought her in. He wasn't getting paid overtime or getting paid hourly. If he or she brought in a child abuser, the neglect case would be on the clock. There were two sets of litigation and enforcement statistics, and when you were evaluated, the second one, this off-the-clock stuff, did not count. It was the oddest thing to see this as a system.

I was interested in domestic violence, having experienced some of it myself, and so I took on those cases. The first case that I got an order to protect this woman, she had broken up with this boyfriend. He had stalked her. She was a tiny woman, and when I leaned over her in court, I could smell the Ivory soap coming up from her chest. This guy was stalking her. I got an order, a keep-away order, and I came back and I showed my boss this order, thinking, "He's a prosecutor. He's going to be pleased. This is what we do, protect people." He looks at it, he thinks about it, and he says in this mournful tone, "Diane, sometimes it's hard to be a man." [laughter] That was very confusing. Then, finally, by the time I left and went over to Labor Department, two or three years later, and the Women's Bureau, he had said about me, and I think he said it to me--that is where I tried to form a union of lawyers because of the working conditions and how many cases we had and that we weren't able to do a good job--he told me that I focus discontent. A friend of mine in that office, when I left, he put that on the goodbye card, one of the things they were going to miss about me. [laughter] I think you could kind of say that's a theme that runs through my career, focusing discontent. So, there it was. We would go to court. I remember Gladys Kessler was on the bench at that point, and she said to me one time, "Ms. Crothers, this case is in total disarray," and it was. You'd go in the morning, and you'd have to have five cases ready for trial by nine a.m. and get the right drugs and the right case and the right pistol. It was just chaos. That's why I was trying to form a union.

Because I was so relentless in these domestic violence cases, the D.C. Coalition Against Domestic Violence gave me an award for a public official, because I essentially wouldn't take any prisoners and this was a different approach. I mean, we were going to get an order in each case, so we did. The crowding and the under-resourcing, I think I sent you that D.C. Corporation Counsel article from *The Washington Post* about that period, about how understaffed we were and everybody was quitting and all that, that was my life there. One time, I took over a case like ten minutes before trial. It involved a ninja [star], there's some object that you can throw at somebody and injure them, and this case was about a ninja assault. I'm in court, and the defense counsel, all she's got, because the guy is guilty, all she's got is to yell at me that I haven't turned documents over. She's ranting about that, and so the judge, who's a Black female, Judge Winfield, she says to me, "So Ms. Crothers, when did you get this case? How long have you had to turn over the documents?" I looked at my wrist, and she said, "And don't look at your watch!" [laughter] That's kind of how it was. Excuse me, that was true. Did I tell you the story about establishing the right for women prosecutors to wear pants in court?

KR: No, you have not.

DC: Defense counsel women could wear pants in court, but prosecutors couldn't. This is extremely irritating, and it was 1991. We thought it was the twentieth century, but we were in a southern town, Washington. One day, I'm in the middle of this trial of sexual abuse and rape of two sisters, a teenager and like a ten-year-old by the same stepfather, and I thought, "You know, today's the day. I'm not going to be thinking about skirts. I'm wearing pants, a pants suit." My husband at the time said, "Okay, I'll come see you in jail," because this legal aid lawyer, this guy, had just been put in jail for contempt because he wore green sneakers to court. Now, it wasn't green sneakers. I went to court, and the women in my office, one of them, Marceline Alexander came over to watch me get smacked around and to see if I was, in fact, going to be able to establish this. The woman who was on the bench was a Baptist and taught Sunday school, a Black woman, had headed the Corporation Counsel's office before. She certainly knew what we did and was sympathetic to what we did, but she took the bench. I was standing behind the counsel table, so it wasn't until after she was sitting down that she could see my knees, when I had to go up to the clerk and get a piece of paper, an order. She saw my knees. She did this thing with her eyes. She fluttered them like this. You could see the decision-making in her head that, okay, she would prefer ladylike behavior, skirts; however, the D.C. bench was full of women, relatively speaking, and they were full of feminists, so she knew that she would really hear about it. I'm thinking this. She let it go. I wore this pants suit and finished the trial. I got back to the office, and we had this big party because we could finally wear pants. [laughter] How silly is this? People just can't believe that this had to be done. There was that.

Also, in that trial, one of the things that was very moving to me, and something that has encouraged me throughout, is the way people break rules to make justice. I had a judge in that double sexual abuse case. We get to the end of the case. I get a finding against the dad, and the judge, who was a white female, who I cannot remember her name, she takes her robe off, puts it aside on the chair, comes down off the bench and sits next to the two girls. She says to the ten-year-old, "I want you to know that this is not your fault. Nothing you did made this happen." I have never seen a judge do that, and you hope that's what that kid took from that awful

experience of having to testify about this and have it happen originally. That was one good judge. That was the D.C. bench.

The only other thing, during this period, Gladys Kessler, as I say, was a trial judge before she went on the appellate court. She was a rabid feminist and a pleasure to appear before. There were a lot of things you didn't have to say because she was there. She was part of the group that rewrote the domestic violence law, as best I can remember, and what they were trying to do was to bring it into consistency with regular assaults of non-family members. If you beat a stranger up or broke something in another person's body who was a stranger to you, then you should be treated the way you would be if you did it to your wife or your girlfriend, [and vice versa]. Then, what I recall, and I'm going to have to ask Marsha Greenfield because she was there at the time, what I recall hearing was that the caseload shot up so high when you started to treat violence against women as a regular crime that the courts couldn't handle it. They were swamped. So, you had to choose. That, to me, was fascinating. I don't know if I've told you about this case where I was trying a case where a daughter had gotten, I think, syphilis or some sexually transmitted disease by her dad. Did I tell you about that?

KR: You did. You talked about that one, yes.

DC: Okay. Kessler was the judge on that one, yes. She was terrific. I think that's it. Can I ask for a brief break?

KR: Sure, of course, I will pause.

[RECORDING PAUSED]

KR: Okay, we are recording now.

DC: Okay, great. One of the things that has interested me over the years that came from both my personal experience in my first marriage and my professional experience at D.C. Corporation Counsel was domestic violence and how it worked and how women understood it. At the time when I was doing these cases, it was, as I say, the second double standard about the prosecution of them. It was one of the kinds of cases where your clients would die, and not everybody has that experience. This area though is high risk, and so you have that experience. At the time, there was some article about the most dangerous times for a woman to leave a relationship that is violent, and there were two times. One was when you're pregnant--the most dangerous times that you would likely get killed--and one is when you're pregnant and one is when you leave. Typically, what would happen when women would be assaulted in a relationship or a marriage, people would judge them and say, "Well, why don't you just leave?"

Because I'd had this early interest in film direction and in literature generally, always being a huge reader of fiction and nonfiction, historical stuff, I wanted to create a novel that you could use in women's book clubs to attack the issue of whether women who are being assaulted by men in private relationships have a right to self-determination such that it's acceptable to kill him if this will not stop. I was obviously very interested in self-defense law around that, and of course, self-defense law was built for men. It's built for two physically equal people taking it on. If you

have a knife, the other guy doesn't get to have a gun. That doesn't work if the guy is six-four and the woman is five-two. That first case of mine was very much like that. He was really big and she was really little.

When I stopped working in 2011, I went back to school and got an MFA [Master of Fine Arts] at City College, and it was to work on that novel. That is the novel that I wrote, and I finished it during the pandemic. It is basically trying to tease out all the issues around whether she has a right to do that. That came from that. It's not that I think that's the best solution. But there's an article in the April *Atlantic* I just read last night about a guy in Mississippi who wanted to have the death penalty against him, which is an odd position to take, and so it's a whole article about that by a woman reporter, Elizabeth somebody. What this guy did, and that there was no challenge of, he had a horrible childhood, poverty, all sorts of abuse. He saw his father rape his sister. It couldn't have been worse. Then, he grows up and he marries this woman who's got a daughter and she's two when she shows up on the scene. He raises her for ten years, and then he rapes her. Then, he tells his wife, when they're separated because he thinks she's running around on him and he's telling her this, and she reports him. He kills her, and he kills her in a particularly torturing way in front of the child. So, that's what he's going to get the death penalty for. As I'm reading this, I'm just thinking of how current an issue still this is, of whether you can protect yourself, whether you can protect your daughter, whether you can protect your child. It stays current for me.

KR: To stay on that same topic, when you were a radical feminist in New York City, you brought to the forefront and raised the issue of sexual violence against women. You did the speak-out against rape, the first one, in New York City.

DC: Right.

KR: Then, you worked throughout your career in protecting women, and as a litigator, you worked specifically in the area of violence against women. What progress have you seen made in protecting women?

DC: Well, for a long time, in the '70s, there were shelters specifically for women to be able to go to. I worked in one, in D.C., at one point. I think that they're not as prevalent as they were, but they are still out there. I think it was 2009 when Rutgers did a Ruth Ginsburg day. Fred Strebeigh had written this book, *Equal Justice Under Law* [*Equal: Women Reshape American Law*], and it was about Rutgers and gender. It talked about how Joe Biden, when he was working on the Violence Against Women Act, his clerks looked in the early *Women's Rights Law Reporter* issues to find support for that. But the appropriations for violence against women, they're just struggling every year. I don't think you hear quite the same judgement of women who stay when they are either low income or they're not employed or they'd have to choose poverty for their kids if they leave. I think it's less judgmental, but women are still getting killed for this, and when you're in it, it is very hard to figure out how to get out of it in one piece. When you think of why unequal pay persists, it seems to me one reason it persists is to make women not have a choice of leaving a relationship with a man, because if he's always going to make more money and you are typically going to have kids, you are going to be hooked to the economic provider. It's all a piece of this whole web of what constrains women. It's one of the

resistances to women in high-paid fields, because it changes their behavior maritally. It changes their behavior with the significant men in their lives, and they're more likely to leave. I think the more women have had economic freedom and ability to choose, the more divorces there have been, the more women who are not getting in emergency rooms and getting smacked around. I don't know, it's a great question. I don't really follow it much anymore. I was just in a discussion of the novel, the Toni Morrison novel *Sula*, a couple weeks ago with all white middle-class, upper-middle-class women, and they were expressing horror at the violence in that novel in the Black community in Ohio in the 1890s and then all the way up. They had no idea what it was like to live with that level of control over your life, physical control. So, there's still a huge chasm of privileged people and non, but since I lived in both worlds, then I shoot off my mouth and bring the conversation to a halt [laughter] and say, "Well, you know, that's not true of my experience."

KR: How did you react when the #MeToo movement first broke?

DC: I think one of the most delightful and interesting things about that movement, and it's something I want our Rutgers Law Zoom group to assess, is how when the legal system does not protect women in an equal way, what are the tools that women have? How do they do an end run around something that is not working for them? I remember going to some symposium at Hunter College on the Anita Hill hearings a million years ago and listening to Catharine MacKinnon talk about what it was like to represent women in sexual harassment cases. She said, "You can do all your briefs ahead of time and that's all good and well and everything, but then you're in court and your client walks in and she has a body," and it's like she's got breasts. There's a picture of Jessica Chastain on the internet right now and she's standing there with two huge, I don't know, papayas, oranges, whatever it is; I'm thinking, "Who set this picture up?" [laughter] There's that issue of the body and how sexuality is seen as located in the female body rather than shared by all the bodies.

There's a woman named Joy Press who is writing a book about New York Radical Women, Redstockings, and New York Radical Feminists, just that little window of time, for the MeToo generation because she wants them to understand what came before. I don't know if I mentioned that to you that I was interviewed by her. I sent her documents about that.

I think it's great. The two things that are interesting about it to me legally and politically are that a sexual harasser is rarely a one-off, and so you will get this guy on the repetitious behavior. If you can put one woman out there, other ones will come up. It's like what brought Andrew Cuomo down, which was fabulous to watch. You'll be hearing about this guy for years and his bad behavior, and that's what it took, one woman, another woman, another woman. Unfortunately, that means one woman is not equal to one man because a man only has to have a crime against him, but she's got to have a tribe. On the other hand, women are not so frightened of what it will do to their careers. I mean, in employment discrimination litigation, that's why I got interested in class actions and in systemic reviews because the women would be trashed and most people will not step forward if they're going to be trashed. It's like watching Ketanji Jackson. Take this confirmation hearing. If you're going to sit there, you are going to be trashed. Now, she's got a great deal of self-control and she's developed that over the years, but when they ask her what your LSATs were, I'm thinking of those yahoos at Harvard who hung the

Confederate flag outside their windows and I'm thinking, "Is anybody asking about their SATs?" [laughter] No, they're not. [Editor's Note: The confirmation hearings of Ketanji Brown Jackson were taking place in March 2022 at the same time of the interview. On February 25, 2022, President Joe Biden nominated Jackson to be an Associate Justice of the Supreme Court, filling the vacancy left by the retirement of Justice Stephen Breyer.]

KR: What was it like for you when you were living and working in Washington, D.C. during Bill Clinton's impeachment?

DC: Remind me when he was impeached.

KR: It was the late '90s.

DC: The late '90s, okay.

KR: What do you remember about when the whole controversy broke with Monica Lewinsky and Linda Tripp and all that?

DC: Yes. My dad was visiting me during part of that, when it hit the paper about the blue dress and the semen and all this, and I thought, "You know, I've talked politics and history with my dad for decades, but we're not going to be talking about this." [laughter] I'm trying to think. He got in in '92. He signed the Family and Medical Leave Act, which was huge. That was the first bill he signed, and then he's getting impeached in like '98-'99, around there, yes, and I'm trying to remember. I'm over at OFCCP [U.S. Department of Labor, Office of Federal Contract Compliance Programs] by then. I'm out of the Women's Bureau. When I was at the Women's Bureau, I was telling my granddaughter this story yesterday, in 1980, when Ronald Reagan was elected and then I went to live in Washington in '82 or so and my son was born in '78, so he's four or five during Reagan's attack on everything I hold dear, and people would say, "Oh, you live in Washington. Have you taken your son to the White House?" I would say, "I'm going to wait until there's someone good in the White House." [laughter] That's how we got into this whole discussion, Maya and I, about the quality of presidents, the ones from California, Nixon, Reagan, all this. During Bill Clinton's presidency, in the first few years when Hillary was overreaching herself with trying to reform healthcare and my boss, Ruth Shinn, was trying to drag her back and say, "Well, there's thing called the Federal Administrative Practices Act and really you can't ..." and no one wanted to hear it. But when you get to be president, the learning curve is unbelievable, so there we are.

During that period, there was an event at the White House for the Women's Bureau, something we were doing, maybe it was this report, *Working Women Count*, and Karen Nussbaum was the head of the Women's Bureau, a fabulous organizer, labor union person, a feminist. We went to the White House finally--I went to the White House finally. We're standing there on this ropeline inside some huge room and Hillary's there and then Bill comes in. I was reading *No Ordinary Time* about Roosevelt, at the time, in a book group, and in the book, Doris Kearns Goodwin was talking about the incredible magnetism that Roosevelt had and the loyalty that people had to him and what they would do for him as his executive staff. Bill Clinton walked into that room. Now, at that time, he is like an overweight, fast-food eating, big-red-nosed guy.

Well, he came in, and you could feel this tsunami of sex. It was the most extraordinary [thing], and I thought, "This is what they're talking about about Roosevelt." [laughter] He came to the line, and I thought, "You know, I would hate to be married to this guy. This is the worst." [laughter] He came down. It was just that whole thing of, "There's no one in the universe but you."

I don't know if you've ever read that book about him by [David] Maraniss about him as a student at Georgetown Law, Bill Clinton--I mean, he was at Yale, but I don't know what the Georgetown connection was. Maybe [David] Maraniss was in school with him, I can't remember, an undergraduate. Bill Clinton, because of his knowledge and attention to other people, could tell you what would be on every single exam because he was so good at the politician part of his life. Then, when they're finally going after him and doing all this, in my experience, organizations run by men are full of this stuff and they were certainly, when Hillary made the mistake of explicitly saying it's a vast right-wing conspiracy, that's the nature of politics. That's what we've got now. That's what we had then. I don't remember much more about it.

When I first came to work at the Labor Department in '91, George Herbert Walker Bush and Dan Quayle's pictures were all over the place, so that was not a real high standard to meet, to my mind. Then, Bill Clinton gets in and he does something for women and families, and he had a lot of policy stuff that was good. I mean, during that administration, we were fighting at OFCCP to revamp our regulations. I was the Chief of Regulations. We were trying to revamp the affirmative action regulations. One of the things we were trying to get was to get corporations who were federal contractors to reveal compensation data by race and sex, because, as with the New York City government or any complex system, you can design job titles and structures to obscure inequality, but if you look at money and who's getting paid money, you could see it. It all comes out like it's invisible ink. All of a sudden, you can see it. That was a huge fight. I remember one day I was at a jazzercise class on Saturday morning, and Donna somebody, from the Women's Legal Defense Fund, came in and she said that [Vice President Al] Gore was meeting with somebody or other and we were going to get this data. It was just huge. [laughter] We did get it for ten minutes, before the Republicans were in the White House again. That's why feminists were so quiet about him [Clinton], [because of] the policy stuff, yes, and also the ubiquity. If you're going to really bring down everybody who behaves like he behaved, there's going to be nobody left working in Washington except women. [laughter] That's probably an overstatement. [laughter] I don't know that Al Gore was cut of that cloth.

KR: Regarding affirmative action, there are several legal challenges to affirmative action that are going on right now. I have a two-part question for you. How would you counter arguments against affirmative action, and then how is an affirmative action policy properly implemented?

DC: Boy, big questions, Kate. It's been a long time since I had to worry about this, at work anyway. I think one of the huge problems with affirmative action or with laws about violence against women or inequality generally is you are playing to the group that has been most advantaged and you have to convince the group that really does not have personal experience of what you're talking about. Now, some people think that the reason *Roe v. Wade*, that we got that decision, was because justices had daughters, and that may be true. They said that about Blackmun. But I think with affirmative action, because people need to work and need jobs and

need money, there's no disinterested observer in this. It's very much a zero-sum game, that's the perception, and that if you allow one group to advance, then your group is not going to have the untrammelled access that you think is because of your merit rather than the color of your skin or your genitalia. It's one of the reasons I didn't choose to litigate as a career. There's a lot of disappointed, angry, bitter people who tried to do that their whole lives and did do it and did have incremental change, but it's extremely tough. In the civil rights cases of, what, 1877, the court is saying, "Whoa, we can't make Black people the special darlings of our court system. We can't give them special rights." This is ten minutes after the end of slavery. You still get that attitude. I mean, look at Ted Cruz on giving it to Jackson about critical race theory, that white people are inherently racist, the insistent overstatement of white fears and fragility. You get that in court as well as anywhere else, so I think it's an extremely difficult thing. Look at legislatures; it's why you couldn't have abortion rights through legislatures and why one court could actually expand that right. That's a pitiful answer to your first question. [Editor's Note: Justice Harry Blackmun wrote the majority opinion in the Supreme Court's landmark decision *Roe v. Wade* (1973), ruling that the due process clause of the Fourteenth Amendment provides a fundamental "right to privacy" that protects a pregnant woman's liberty to choose whether to have an abortion. The civil rights cases being referred to above are the five legal cases that the Supreme Court consolidated in 1883 and subsequently ruled that the Civil Rights Act of 1875 was unconstitutional. As a result, southern states enacted into law previously informal policies of racial segregation, thus beginning the Jim Crow era in the South.]

It's like the fight here in New York City about these special schools and whether you take a test to get in, and it's just this one test. For the Asian American community here, which is extremely diverse in itself, that has been a real pathway for them into the middle class and upper-middle class. However, most of the kids in New York City schools are Black and Hispanic, and they're not getting into those schools. There was recently an article about that, about the manipulation of the LSAT, for instance, to get a top rating or a better rating in *US News and World Report*, that the way we're structured as a society is to revere and reward what we think of as meritocratic and it's just a long slog of attacking those ideas, that this is not meritocracy. For instance, my granddaughters were in elementary school, and Maya was going to go to middle school. So, I'm looking at how they decide who goes to what middle school. My kids live in District 15, which has a very long reputation as a bunch of liberals and pro-diversity, and so this should be an easy sell, relatively. But in her school at that time, one of the screens for getting into a good middle school was your attendance. Now, when you were in third grade, exactly who was responsible for getting you to school on time? It is not an eight-year-old. I'm looking at, "What do you not see about this?" You are rewarding middle-class, stable, two-parent families, with a mother at home or she's got a nine-to-five job or she works part time, all this stuff that's structural. I thought that was insane and I thought the blindness of that, that you can't see that you're rewarding people like yourself. I think those are extremely difficult issues.

I should say that I'm a person for whom those standardized tests work very well. I always test in the top one or two percent. I had a doctor father who went to Yale. I grew up in a stable, two-parent household with a mother at home. When I took my last standardized test to get into the MFA [Master of Fine Arts] program, I took the GRE [Graduate Record Examination]. I had huge pain in one hip and I was going to get a hip replacement, but they were going to try one last thing and give me cortisone shots. They gave me this cortisone shot, which I couldn't put off

because the deadline was coming, and I woke up that morning and I said, "Oh, look, the world is a wonderful place." I thought, "You are high." I looked it up and there's a thing called cortisone buzz. [laughter] I went and took this test, and, man, did I ace that thing. [laughter] I mean, I was free associating; you ask me an essay question and I'll give you six books with titles that I read. So, it shouldn't depend on a test. What was your second question? It was a more global one even. Did I answer that? What was that?

KR: My second question is, in your experience, how is an affirmative action policy properly implemented?

DC: I can tell you one way I didn't get a job with the Library of Congress once. I was working in Washington at the Labor Department, OFCCP. The Republicans had won the White House, and they were starting to kick out anybody at the top levels who had civil rights experience and was a Democrat. I knew they were going to come for me either sooner or later, so I needed to get another job. So, I'm interviewing with the Library of Congress. I said in answer to a question that I think the law supports that if you have two people who are equal in quantifiable qualifications and you have an all-white or a disproportionately white or a disproportionately male workforce, you can hire the person of color or the woman. That was enough for me not to get that job.

When I was the head of diversity for New York City government, we had to write a city-wide equal employment training. I had a great guy working for me at that point, a lawyer who was originally from the Dominican Republic. He wrote it, and then I edited it. What we did was take every case and get to the edge of the boundary of what that case found. It was still within the law, but it affirmatively stated what you had to do. I understand from the law department that that training occasioned a lot of discussions, but nobody could find anything that was wrong about it, under the law. I think there are things like this, part of it is a way to understand it, like when I was doing this for city government, New York City government, there I could take compensation data and I could break it down by race and sex cross-agency. So, I could show somebody that ninety percent of their hires who were white men were preferred in thus and such a way. If you could show people the data about the skew toward particular groups, then sometimes the next hire, the next set of promotions, you could make a case that would show that you need to equalize it. But without that data, it's immovable because people will always find a way to critique the qualifications of whoever it is. If the unit is one, you will never win that argument, but if you show the pattern, people who aren't open to it at all can see a pattern. I had EEO [Equal Employment Opportunity] offices at each of the agencies, the forty agencies, and a guy in one agency, a Black man, told me that his boss, who was a white female lawyer, if she understood the skewing of salaries within her agency, he had every faith that she would address it. That was when we got a new boss, and all hell broke loose, as life will. [laughter]

KR: As a lifelong feminist, what do you think are the successes of second wave feminism, and what do you think are the shortcomings? What still needs to be done?

DC: Well, of course, one of the most difficult things is the intersectionality debate and making sure that when you are trying to change a policy or practice, that you have taken into account people who don't resemble you either by skin color or by social class, educational opportunities.

Because we are Americans, one of our most fundamental beliefs is this rampant individualism. On the one hand, it's a great strength. It's what democracy is founded on, in many ways. On the other hand, it really makes us think that we deserve our good fortune and that other people who don't have it, don't deserve it and haven't worked as hard. I think that's just going to be difficult forever.

I think second wave feminism gets trashed, to my mind, unreasonably because there weren't enough Black women, working-class women, dah, dah, dah, in these different groups. Did I tell you? I probably did tell you that I was in this *Women's Role in Contemporary Society*, this book in 1970, and in that, I'm quoted as saying, "Everybody needs to form their own groups, and we need to have all these different viewpoints." I mean, I certainly think that that issue of combining and including different voices is key to any political movement. So, I think that that's probably the biggest challenge. That's why with this Rutgers group, now that women as a group have parity in law school admissions--they're at forty-eight or fifty percent--can we take the self-interest that drove our interest in that and look at another group that doesn't have fifty percent of the population, which would be African Americans and have the afterlife of slavery to contend with. [Editor's Note: The New York City Human Rights Commission, headed by Eleanor Holmes Norton, held the first public hearings in the country on discrimination against women. The hearings took place from September 21 to 25, 1970. Records of the hearings became the book *Women's Role in Contemporary Society, the Report of the New York Commission on Human Rights*, published in 1972.]

I think the successes have been--the speak-out was a huge success. It's a great technical advance to have people say, "I had this experience." In fact, we were just talking about this at a leadership alliance meeting at my church because the Women's Leadership Alliance is having the Sunday church service that happens to fall on Mother's Day. We were talking about what we should do. I said, "You know, one thing that I don't think a lot of people understand about abortion is that most people who have abortions are mothers." I think that that ought to be front and center, that being a mother, what is driving these women to get an abortion if they already know what it is to be a mother? They're trying to protect their existing children. Sixty percent of them or whatever are in their twenties, so not to say that you learn much over the time, but you certainly can make more mistakes in your twenties that are serious than later. I sat down and wrote something about those two facts and about my own life and when I had an abortion, and I said it to the woman who's in charge of setting that up, that service. I thought, "Am I really ready to get up in front of the whole church and say, 'I had an abortion?'" Well, yes, I am, but that's a big thing because people are going to bring stuff to you and at you. Now, I softened it by saying, "Two years later, I gave birth to my wonderful son." So, I recouped my motherhood credentials at the end, but I did say in this piece that having motherhood thrust on me when I didn't choose it, when it was a birth control failure, is very different from a wanted child and that every kid has a right to that. Without the second wave, would I be standing up in church and saying that? No. I mean, I may not anyway; they may think it's too raw.

Also, one of the things I noticed when I'm talking to my peers from Rutgers, I was both an activist enough and fortunate enough to be in the right place at the right time. Before I went to law school, I was a feminist, who surfaced nationally. I was in *The New Yorker*. I was on *The Dick Cavett Show*. When I went to law school, these other women had different experiences

from me of being silenced, and I think that's a huge thing that the second wave has done is to encourage women not to be silent. A friend of mine in this lifelong learning program, she's a rabid feminist as well, and she does this thing in a class discussion, where a woman says something and it drops to the bottom of the sea and no one picks up on it, and she always picks up on it and makes a point piggy-backing, because that's what happens to women's thoughts. Whether she agrees or not, she just picks it up and goes forward, so you wouldn't have seen that before the second wave.

KR: What about shortcomings of second wave feminism?

DC: Well, it's hard for me to see it as a shortcoming because I was in the civil rights movement and then the Black Power movement came in and then the women's movement and the lesbian-feminists and you were oppressing other women if you weren't a lesbian, all these growing pains of any political movement, where different leaders arise and different philosophies arise. It's so vibrant and so vital to have a space for everything. There was a piece in the paper yesterday, this young woman, who I don't know, Rebecca somebody maybe, wrote a book, she is both kind of from a left and a right perspective and it's about women's current sexual behavior. It's talking about sex positivity. Did you see that? Yes. Sex positivity wouldn't be around if we didn't have a second wave, this whole discussion of this. When this woman is talking about this guy she is sleeping with and how he likes to choke her and is this okay, the fact that this is now in *The New York Times*, a debate about is it okay to choke your girlfriend, that's good. That's a positive. That's sex positive. [laughter] As Michelle Goldberg said in that article, she married young, so she's really out of this. Well, my husband died almost twenty years ago, so I have not been terribly active since, so I'm kind of out. [Editor's Note: Michelle Goldberg wrote an opinion piece for *The New York Times* on March 21, 2022, entitled "A Manifesto Against Sex Positivity," in response to "Rethinking Sex: A Provocation" by the *Washington Post* columnist Christine Emba.]

KR: I want to ask you about the pandemic. You live in New York City. What have your experiences been like over the course of the pandemic? What has it been like living in New York City? I was wondering if you could just talk about your experiences.

DC: You're going to make me cry. The pandemic showed me deeply how much of a doctor's daughter I am. At the beginning, in New York City, when there was constantly sirens and these hospitals and the morgues and the refrigerated trucks and all this, the way I got through those early weeks was I watched all the reruns I could of *ER* because I was in an emergency room where people were wearing themselves out trying to save lives and it was so restorative to realize what was happening in these hospitals. Then, the fact that hospital staff did not have PPE [personal protective equipment] made me livid. Then, the whole notion of vaccinations I also saw from a medical family perspective of, "So you're not going to get vaccinated and you're going to ask these poor doctors to treat you when you could have avoided this?" I acted like I was an ER [emergency room] doctor through the whole thing. [laughter] My dad was not an ER doctor. He was a pediatrician. But I just kept thinking, "What are you saying to the healthcare professionals?" A couple weeks ago, the Mississippi Historical Society had their annual meeting. I was thinking about going, but this is the home of no vaccinations. I finally bugged

them enough, because I'm a member, and I said, "Can you make Zoom out of this?" So, they did finally make Zoom, and I got to watch it.

Also, because of my work in government systems, to me, the most interesting and difficult questions are how you manage a government in the middle of this to protect lives. That's one of my big difficulties during the last administration was the complete lack of care, that people would die because you were being a fool and insensitive. I'm hoping to go to London and Paris in June, but the chances that Boris Johnson will grow up between now and then are slim. It's unclear whether I will get to go. To me, these are the most interesting questions. It's like when you're working in New York City government, there's 400,000 employees that you are looking after in some way and you're trying to figure out the systems of how this works and how to intervene with limited staffing to save lives, to create equality. These have always been the most interesting questions to me.

The other good thing about the pandemic, a couple good things, we have Zoom. I can talk to you. I can go to meetings that I could never go to before. The African American Genealogy Group of Philadelphia, I can go to their stuff all the time. So, there's all that. Then, I did manage to finish my novel, which, if you let me out of the house, I can always find other things I'd rather do than sit there and look at that page. But now I'm back, I've got this memoir class, so I'm back into the writing as well. Maybe it's changed me to make me not such a raving extrovert, I don't know. [laughter]

Then, also, all the management of the vaccine questions within an extended family. Everyone's got their own take, and I am not queen of the world. In our family, we didn't quite vaccinate the children fast enough, and so they all got it right before Christmas. But live and learn, that's how you learn.

KR: I want to ask you about your involvement as a Rutgers alum, so if you can talk a little bit about your law school women's group and any other alumni groups that you have been involved with?

DC: Okay. You know, I do have this thing that my--I once had a terrific secretary who was very underemployed. She had a master's in social science. She used to file my stuff correctly, and here's something filed under affirmative action. It's an editorial by *The Times* in 1975, saying "Affirmative Chaos." Apparently, I wrote a letter arguing with them about it and went on in great length. I should reread that. When I was Director of Affirmative Action at Staten Island Community [College], we founded an organization called the New York State something for Higher Education for Equality, I don't know what it was--let's see.

KR: The "Affirmative Chaos" editorial of *The New York Times*, you talked about in one of our former sessions.

DC: Okay, good.

KR: You actually read from the article.

DC: Excellent. Okay, all right, so we covered that. Rutgers alum and during law school, that's a big question. Can we take another break? I can see you drinking coffee. You're a young person.

KR: It's green tea, yes.

DC: Green tea, all right.

KR: Yes.

DC: I'll be right back.

KR: Okay, I'm going to pause.

[RECORDING PAUSED]

KR: Okay, we are back on recording.

DC: Did I ever tell you that when I was in high school and I had a job after school, because I was very bored in school, I would go do my job at New Britain Machine and I would type and this was one of the things that kept me going to school was realizing I didn't want to type numbers for [the rest of] my life. I would go home and I would do whatever little homework I had. Then, I'd have dinner, and then right after that, I would try to psych myself into time travel and go to sleep. What I would do was to think of a country and a century that I wanted to visit at night. One of probably the most vivid dreams I ever had that way was something about the Greek Cypriot revolution, and there was some ship with a lot of red brocade on the walls. So, when you're asking me a question about 1971, it is very like that. It's like, "Let me go back to that girl who was so intimidated that I missed registration for one day about going to law school." Also, being, as usual, weird and different from other people, I showed up and there were a lot of women, almost half, but I had not gone straight through undergraduate school. I didn't even have a bachelor's degree, and things made me mad that other people seemed able to deal with. We had a women's group that we formed, and I think the year before me, they might have formed the first one because Donna Lieberman, who is the head of the New York Civil Liberties Union, was the year ahead of me. At one point, she thought that women were dropping out, and she called us all together and started shrieking at us about what it took to get us in and we were to not drop out.

I didn't admire my professors. I just saw a lot of clay feet, and I also took things so personally. If somebody made a joke about fat women, although I wasn't fat, "You're talking about me, bozo." That is not what I ever heard about from other women.

At the time, it really helped to have a very sexy boyfriend, who was introducing me to opera, was a fabulous cook, very good looking. I had some respite from all this stuff as well. He didn't take it as seriously either. When we graduated, somebody said about him that if there was a prize for having the highest-grade-point average and going to the fewest classes, he would have gotten it. That's the kind of guy I ended up with for three years.

Then, over the years, the only contact I've had with Rutgers is like when there's a Ruth Ginsburg day and I go back for that, and then lately with this Rutgers African-American Alumni Alliance that I've been a member of and have gone to meetings of that, but now Kendall Hall has transitioned away from being president there. It remains to be seen what the extraordinarily-composed group of men are that will be running that, so I don't know how that will go. We'll have to see. [Editor's Note: In 2009, Rutgers Law School held a symposium to celebrate the legal career of Supreme Court Justice Ruth Bader Ginsburg, who taught at Rutgers Law School-Newark from 1963 to 1972.]

This Rutgers Zoom group that has come out of the effort by former co-dean David Lopez to record Ruth Ginsburg's impact on us, that has been quite fascinating. It has led me down paths that I haven't thought about for a long time and that are really suited to the way my mind works. When I was in law school, I realized that one of the reasons that I have irritated my teachers for so many years, particularly in high school, all the way up, is that my mind works across categories. Somebody's trying to do a linear thing, and I just can't get with the program. I am just looking at it across. It's like right now for me to discover, because of an argument we're having at Quest [Lifelong Learning Community] about the curriculum and demasculinizing it, which we've pretty much successfully done over the last two years, I started looking at women's studies in universities and found this book, *The Politics of Women's Studies*, which was edited twenty years ago, but is happening at the same time that we at Rutgers were fighting for a women in the law course. Then, I find this article in the Columbia [Journal of Gender and Law], Herma Hill Kay is talking ten years ago--and she wrote a lot of these casebooks with Ruth Ginsburg--she says explicitly that in the early '70s, when they were putting these courses and these casebooks together, that there were two routes. There was the get a women in the law course, and then there was the whole legal curriculum, because of course, ninety percent of the law students are never going to take that course and they're never going to take a civil rights course. You can say for both gender and race--I mean, in evidence law, we learned that flight was a way to prove guilt. Well, lots of Black men flee the police for reasons unrelated to guilt. Is that still being taught? I'd love to know. That has led to me into looking at what casebooks are out there now, and they've gone through seven or eight editions. Now, there's this one--did I mention this one to you?--this *Gender and Law: Theory, Doctrine, and Commentary* and what the table of contents are in it? Have I told you that stuff? [Editor's Note: *The Politics of Women's Studies: Testimony from Thirty Founding Mothers* is edited by Florence Howe. The article being referred to above is entitled "Claiming a Space in the Law School Curriculum: A Casebook on Sex-Based Discrimination," by Herma Kay Hill, Professor of Law at the UC Berkeley School of Law (2013).]

KR: No.

DC: Okay. There's this book, a casebook, two hundred dollars unfortunately, by Katherine T. Bartlett, who I don't know, Deborah Rhode, who I do know something about, she has just died, and it's called *Gender and Law: Theory, Doctrine, and Commentary*. 2020 it was published, and this is the eighth edition. Just in terms of the table of contents, this is no longer what it used to be when I used to teach this stuff. It used to be employment, education, family law, abortion, contraception, violence against women, these topic areas. This table of contents starts with "Formal Equality," "Substantive Equality," and then it gets interesting, "Non-Subordination," a

whole way to organize analysis on that, and under that is sexual harassment, domestic violence stuff, and then, "Difference." Is that difference among men and women, difference among women? There's an article by Dorothy Roberts, who used to be at Rutgers, "Spiritual and Menial Housework." Now, nobody was writing about that fifty years ago. Then, "Autonomy" is the last one, I think. The range of what is now fought for and expected and litigated for has changed. I am interested in what's happened with the rest of the law school curriculum. I have just written a long thing to Kim Mutcherson [Co-Dean and Professor of Law, Rutgers Law School] asking that question. My finding Aleta Wallach was part of that question as well because she--have I told you this story about listening to her at Rutgers as a lecturer?

KR: No, you have not.

DC: Okay. I'm at Rutgers. I'm not fitting in terribly well. It's 1972 or '73. I'm sitting in a chair in like the student lounge, and I still remember the chair. Aleta Wallach comes to give a guest lecture because she's either auditioning for a visiting job or maybe a permanent job at the law school. She's this tiny little woman, and I have read two articles by her before she shows up. One was the "Comparative Legal Status of Soviet and American Women," which is the first thing I have ever read which suggests that American women don't have everything that other women have. That is mind-blowing to begin to look comparatively. The second article she wrote, and this is brave when you're trying to get a job at a law school, "The Premenstrual Syndrome and Criminal Responsibility." That is somebody who is writing for an audience of women who want to be freer. She comes in. She gives this lecture, and the lecturer is about the search for the father in illegitimacy law. Her position is, "Babies are born. They're legitimate per se." She just does this whole thing on the attack of the incredibly important search for the father, and I'm thinking, "You are not getting this job. You are so not getting this job." Of course, she didn't get the job. But she, at UCLA, at the same time, was forming the first student-taught women and the law course, so that's one reason she's interested in these changes. I think Kathy Lorr and I are the only people interested in that, that I've been able to determine, but, to me, that is fascinating because when you have these silos, when you have the legal profession, which is its own silo, legal schools, and then you have all these other universities that are bringing women's studies forward in English and history and sociology, et cetera, as far as I can find out, they haven't really meshed, and so what does that do to the law school curriculum generally? One thing I want to do is--do you know if the Newark Law School library is open now to non-students?

KR: The library in New Brunswick is open again.

DC: How about the Newark one, though?

KR: I don't know. I do not get emails from them, but I would think they are open.

DC: Okay, so one thing I want to do is go and look at all the casebooks and see what they're using because I have talked to them about that and whether they have the casebooks from when I was in school, which they apparently do not. But that would be fascinating, to take something like criminal procedure and just smack up fifty years and look at what's in there and how violence against women is taught, how rape is taught. I'll be happy in that library. [laughter]

KR: Well, I have reached the end of my questions. At this point, I would like to ask you if there is anything else you would like to add?

DC: I don't think so. You have been so comprehensive about the whole thing. My friend, Lorraine, who I did Project Second Chance with all these years ago, she said to me the other night that she was trying to calm her brain down enough to go to sleep and she started fantasizing, "What if Diane and I did a course at the OLLI in Ashland, Oregon on a fifty-year lookback on Project Second Chance?" [Editor's Note: OLLI is Osher Lifelong Learning Institute.] It has been so helpful to me to look at all these questions with you and your interest. Also, I have to say, when I look at other stuff, like even Emilye Crosby, who is a great civil rights historian, when I watch her interview people on the Library of Congress and that grant that they have with the Smithsonian, it's an hour and a half of people who have lots to say. For instance, I'm watching the Mississippi Historical Society thing and I see this woman, whose name escapes me, from Hattiesburg, a Black woman, a little bit younger than I am, and she's talking about integrating the schools, becoming a Legal Services lawyer, representing, when Black boys would get thrown out of school for an entire year because of a scuffle in the hallway and getting them back into school, and all this stuff she's done, and I know when I'm listening to her that there's so much more and it's just an hour and a half. I just want to tell you how I express my appreciation to you for the depth of your questions and your intellectual focus and your political focus on this stuff, because it's just lightyears from what this conversation could have been. You look at this stuff by women lawyers and how they ascended the ranks and blah, blah, and it's just, "And then what was your next job, and what did you think about ..." I mean, oh, my God, what a wasted opportunity. I watched somebody do Herma Hill Kay and I'm thinking, "She's got so much more to say." You have asked me everything under the sun, certainly more than I ever could have thought of, so thank you.

KR: Thank you, I appreciate that. Diane, thank you so much for doing this interview series with me. It has been an absolute pleasure, and we will continue talking off the record.

DC: Okay, thank you.

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Reviewed by Kathryn Tracy Rizzi 4/13/2022
Reviewed by Diane Crothers 9/18/2022