

Address by Hon. Juanita Kidd Stout

Regional Meeting, Anchorage, Alaska
October 9, 1983

All of us are aware of the history of our organization. It began when eighteen young women formed the Women Lawyers Club in New York in 1899. It became the National Association of Women Lawyers in 1911, and, at the time of the first national meeting, in 1923, when there were few women lawyers, the Association had 500 members. Here we are today, sixty years after that 1923 meeting, with less than 1200 members. We have a net gain of fewer than 700 members in the last 60 years even though now there are at least 70,000 women who are lawyers. Something is wrong. Either we have not had a viable and attractive program, or we have not had an active and effective recruitment program, or both.

The Constitution of the National Association of Women Lawyers provides for associate membership of any woman who is attending law school, and who has successfully completed at least two years of law studies. Even though today at least one-third of all law students are women, according to information from our executive director, there are only about 25 associate members of our organization. Again, such a small number of associate members, from such a large pool of students, indicates that either we have not had a viable and attractive program, or we have not had an active recruitment program.



Our Constitution also sets forth a "fourfold object" of the organization: "(1) to promote the welfare and interest of women lawyers; (2) to maintain the honor and integrity of the profession of law; (3) to aid in the enactment of legislation for the common good and in the administration of such laws, to secure justice for all; and (4) to do all things necessary to promote and advance these objects and purposes."

As individuals, we can maintain, and have maintained, the honor and integrity of the profession. Very few women lawyers have been disbarred, suspended, or have faced any other kind of disciplinary action. No woman lawyer was involved in Watergate or Abscam or in any of the lesser national scandals in which most of the male-factors were lawyers.

In my opinion, we have not fulfilled the other objects of the organization in a

satisfactory manner. They require not only individual action but group action. They require a live, energetic, enthusiastic, working organization with a viable and attractive program.

At the time the National Association of Women Lawyers was founded, women lawyers had many concerns - the admission of women to law school, their admission to the bar, and their admission to the voting booths of this Nation being paramount. The Association had programs geared to those concerns, and lent its forces to those battles which have been won. Today, we are facing other significant battles for which we need an energetic, enthusiastic and working organization.

Even though we are becoming members of the bar in record numbers and are participating actively in the elective process, we have not attained our just share of power positions, either in public office or in the private practice of law.

Let us look first at the position of women in public positions - in the judicial, legislative and executive branches of federal and state governments, areas which may be considered the natural habitat of lawyers.

The ascension of women to the bench has been slow. At the federal level, the first woman was appointed in 1934 when President Franklin Delano Roosevelt appointed Judge Florence Allen to the U.S. Court of Appeals for the 6th Circuit. Fifteen years later, in 1949, President Truman appointed the first woman to the U.S. District Court when he appointed Judge Burnita Shelton Matthews to the U.S. District Court for the District of Columbia. Twelve years passed before President Kennedy appointed Sarah Tilghman Hughes to the U.S. District Court for the Northern District of Texas in 1961.

In 1966, President Lyndon Johnson appointed Constance Baker Motley, a black woman, to the U.S. District Court for the Southern District of New York, and, in 1969, he appointed Shirley Hufstедler to the U.S. Court of Appeals for the 9th Circuit. When President Carter took office, only 5 women served on the federal bench. He appointed 41 during his term. Nineteenth and six-tenths per cent of the Carter Circuit Court appointments and 14.4% of the District Court appointments went to women.

Presidents Nixon and Ford each appointed one woman to District Courts. President Reagan appointed the first female Supreme Court Justice in 1981. He has appointed 106 judges so far. They include only one woman to the U.S. Court of Appeals and only three to District Courts. He has appointed one to the District of Columbia Superior Court and one to the U.S. Court of Claims.

Even though there are now 50 women on the federal bench, 73% of the U.S. District Courts have no women jurists, and 33% of the U.S. Circuit Courts have no women jurists.

At the state level, there are 23 women on the highest courts, however, two-thirds of the states still do not have a woman on the highest court.

According to the latest statistics available from the National Center for State Courts, approximately 325 women sit on the state courts of general trial jurisdiction, some 370 sit on courts of limited jurisdiction, and approximately 225 serve as administrative law judges. Of this total of 944 judges, Governor Jerry Brown of California appointed about 100. New Hampshire has no women judges, however, and Delaware, Montana, Nevada, North Dakota, South Carolina, Vermont, and

West Virginia each has only one.

Relatively few women lawyers have had the opportunity of clerking for Supreme Court Justices. Mr. Justice Douglas appointed the first one, Lucille Lomen, in 1944. Twenty-two years later, Mr. Justice Black appointed Margaret Corcoran. During this Term, seven of the 30 clerks are women. Two of them are employed by Mr. Justice Blackmun, Chief Justice Burger, and Associate Justices Marshall, Powell, Rehnquist, and O'Connor, each has one woman among the four clerks each Justice may employ.

Women are even scarcer, or non-existent, in the state and federal legislatures, in the offices of the state attorneys general and the U.S. Attorney, and in the offices of Lieutenant Governor and Governor, most of which positions are filled by lawyers.

Even though we have no governors, we have at least one woman who is general counsel to a governor. Governor Mark White of Texas has appointed Myra McDaniel as his general counsel. At the time of her appointment, Governor White said, "I made the appointment because she's talented. She happens to be black and she happens to be a woman." A retired Supreme Court Justice of Texas said of her, "Her competence, vision and intelligence are remarkable."

In the private practice of law also, few women are found in positions of power. According to a recent survey published by Flaherty and Nash in *The National Law Journal*,¹ of 9,210 partners in 151 of the country's largest firms, only 296 are female. Thirty-two of the 151 firms have no women partners. Women have made gains in entry-level positions in law firms, however. In the 151 law firms, there are 2,356 women associates. As Flaherty and Nash point out, as these

women associates gain seniority, the partnership percentage is likely to rise.

There is another factor about which we must be vigilant and that is the sex discrimination along the road to partnership. On this issue, the *Hishon* case which is to be heard this Term by the United States Supreme Court is of interest.

Elizabeth Anderson Hishon, an honors graduate of Columbia Law School, was hired in 1972 as an associate with the firm of King & Spaulding of Atlanta. The partnership, which consists of 50 active partners and approximately 50 attorneys who are associates, has an "up and out" policy by which an associate is considered for partnership at the end of the sixth year. If the partnership doesn't invite an associate to become a partner, the associate is allowed to remain with the firm only for such reasonable period of time as necessary to secure other employment.

Elizabeth Hishon was considered for partnership in May 1978 but was not invited to join. She requested reconsideration but, at the conclusion of the May 1979 partnership meeting, the result was the same. Ms. Hishon left the firm December 31, 1979 but, before leaving, she filed a sex discrimination claim with the Equal Employment Opportunity Commission. In due course she filed a complaint in the District Court of the Northern District of Georgia. Incidentally, according to the news media, at the time the complaint was filed, King & Spaulding, which was founded in 1885, had never had a woman partner. Since the filing of the complaint, King & Spaulding has taken in two women partners.

The complainant did not contend that Title VII applies to all law partnerships in selecting new partners. She did contend that King & Spaulding,

because of its age, its size, and the provisions of its partnership agreement, is not in substance a partnership but more nearly resembles a giant corporation operating under a trade name (both of the partners for whom it was named having died long ago) and having a virtually perpetual existence as a separate institution quite apart from its individual members. For this reason, she argued that new and junior partners are nothing more than employees and hence amenable to Title VII.

King & Spaulding admitted that it is a partnership which has an existence apart from its individual members but said, first, that partners are not "employees" within the meaning of Title VII and, second, that admission to partnership is not a "term, condition or privilege of employment," to which that Act relates.

The District Court considered only one issue: whether title VII of the Civil Rights Act of 1964, Sec. 701 et seq. as amended 42 U.S.C.A. Sec. 2000e seq., applies to a law firm's decisions regarding its partners. It decided that it did not and Ms. Hishon's complaint was dismissed.

District Judge Edenfield wrote in his opinion:

"In a very real sense a professional partnership is like a marriage. It is, in fact, nothing less than a 'business marriage' for better or worse. Just as in marriage different brides bring different qualities into the union - some beauty, some money, and some character - so also in professional partnerships, new mates or partners are sought and betrothed for different reasons and to serve different needs of the partnership. Some new partners bring legal skills, others bring clients. Still others

bring personality and negotiating skills.

"In both, new mates are expected to bring not only ability and industry but also moral character, fidelity, trustworthiness, loyalty, personality, and love. Unfortunately, however, in partnerships, as in matrimony, these needed, worthy, and desirable qualities are not necessarily divided evenly among the applicants according to race, age, sex, or religion, and in some they just are not present at all. To use or apply Title VII to coerce a mismatched or unwanted partnership too closely resembles a statute for the enforcement of shotgun weddings."²

From this pronouncement, which is reminiscent of the language of *Bradwell v. Illinois*, 83 U.S. 130 (1873), written 110 years ago, Ms. Hishon appealed to the 11th Circuit.

The U.S. Court of Appeals affirmed³ and held that Title VII does not apply to those decisions dealing with the formation of partnerships. Judge Tjoflat, in dissent, agreed that Title VII would not apply to the discrete decision whether to take on a new partner but, he agreed with a third argument complainant made and said, "when the partnership decision inextricably and inevitably is a decision whether to terminate employment," Title VII does apply.

The United States Supreme Court granted certiorari January 24, 1983.⁴ Argument has not been scheduled. The Connecticut Women's Education and Legal Fund, Inc., and the Women's Bar Association of Illinois have filed *amicus* briefs on behalf of the complainant.⁵ The National Association of Women Lawyers has not.

As we fight on the sex discrimination front to be admitted to existing partnerships, we must be alert for unique opportunities to establish our own.

One young lady in Philadelphia, Evelyn M. Goldstein, did just that. She is a pharmacist who graduated from law school in 1980. Mrs. Goldstein recognized the need for a "pool" that could not only provide the lawyers to try the cases but which also could supply the technical expertise to analyze them as well. The partnership also practices "preventive law." It advocates an alternative approach to litigation by anticipating problems before they arise and avoiding them.

Mrs. Goldstein, along with Sherryl Perty, a woman lawyer who formerly was a biochemist, established a partnership in which there are nine other partners, all men, spread out across 10 states from coast to coast. In addition to the legal training which each partner has, their expertise includes cardiothoracic surgery, pediatrics, neurosurgery, radiology and nuclear medicine, obstetrics and gynecology, internal medicine, radiology, and surgery. In their practice of "preventive law," they observe data, survey past experience associated with similar data, and form a hypothesis on preventive risk. They then formulate a preventive plan. They do work for physicians, hospitals and companies that manufacture drugs and medical products, as well as advisory work for other law firms that represent medical or scientific concerns. Occasionally they will do plaintiff's work if they think the cause is right; mostly they do defense work.⁶

In a recent conversation with Mrs. Goldstein and Mrs. Perry, they emphasized the importance of assessing ones background and finding some area of expertise which can be combined

with law to make a unique and saleable skill. They pointed to computer science as offering endless opportunities for specialization as computer litigation, civil and criminal, becomes commonplace. It is an area about which few lawyers know anything.

From this brief sketch of our position, both as women lawyers and as an organization of women lawyers, some conclusions are inescapable.

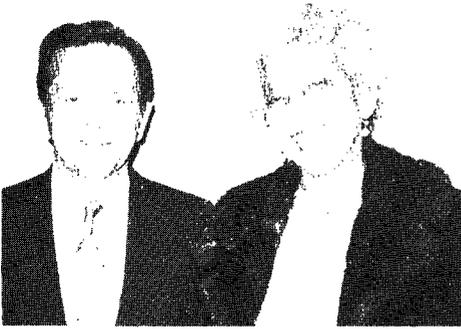
The first one is that we must develop a viable and attractive program which will be inviting to new members. We must launch a recruitment campaign among practicing lawyers in every state and among students in every law school to increase our membership. In numbers there is strength and, as unions, civil rights organizations, and various lobbies have demonstrated, there is a high correlation between the strength of an organization and the results it obtains.

We must recruit, recommend and support, financially and otherwise, women for elective and appointive office. We must make sure that women lawyers are involved in the selective and elective processes for whatever offices are available, and we must support those candidates for governor and President who support us. We must support women who are fighting legal battles for the elimination of sex discrimination, and we must be alert for opportunities to establish our own partnerships especially in new and unique areas of practice.

We have come a long way since our founding in 1911, and since that first national meeting sixty years ago but we have a long, long way to go. There must be a continuous fight to eliminate existing discrimination and to forge new frontiers. A revitalized National Association is essential. Let us return to

(Continued on page 12)

1983 REGIONAL MEETING



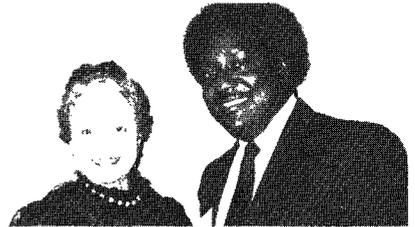
US Senator Ted Stevens (AK) M. Ashley Dickerson (AK), NAWL President



Atty. Harry Branson (AK) who introduced keynote speaker, Judge Stout. M. Ashley Dickerson (AK) NAWL President



M. Ashley Dickerson (AK) NAWL President, Max Gruenberg (AK) - 1st male AK member of NAWL, Speaker, Family Law Seminar



Judge Juanita Kidd Stout (PA), State Senator Walt Furnace (AK)



Many Boxx (AK) President, Delta Sigma Theta Sorority presenting gift to Judge Stout



Tawana Wilson (AK) President, Women's Business & Professional Club Presenting gift to Judge Stout (PA)



Lynn T. Ferrell (AK), Mary Ann Foley (AK) Chairperson, Regional Meeting, M. Ashley Dickerson (AK) NAWL President

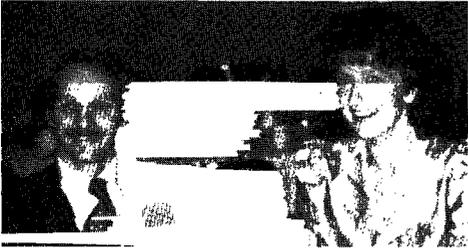
HIGHLIGHTS—ANCHORAGE, ALASKA



New Alaska members: Shelby Davison, Lynn Allingham



Claire E. Morrison (MI), Judge Kathleen Ryan Dacey (MA), NAWL delegate to ABA House of Delegates, Mary Ann Foley (AK), Kathy McGuire (AK)



Mary Hughes (AK) President, Alaska Bar Association seated with her husband, Andrew Eker



Pete Carter (AK), Brunch Activities, Coordinator, Charles T. Ferrell (AK), Tour Coordinator, M. Ashley Dickerson, NAWL President



Judge Kathleen Ryan Dacey (MA), M. Ashley Dickerson (AK), NAWL President, Ann W. Lake (MA), Editor/Business Manager, NAWL



At the President's Home: Virginia S. Mueller (CA), NAWL Recording Secretary, Ann W. Lake (MA)



The President's Home (AK), Indoor swimming pool and sauna in rear. It snowed during Regional Meeting.

our respective jurisdictions with a determination to strengthen our local programs to recruit members, to look for present or potential appointive and elective positions to be filled, to locate and support qualified women candidates to fill them, and to form our own partnerships if we are foreclosed from existing ones.

About the Author

Hon. Juanita Kidd Stout, Judge of the Court of Common Pleas, Philadelphia, and the first black woman to be elected to a court of record in the United States, is a graduate of the University of Iowa and the School of Law of Indiana University. She holds eight honorary doctorate degrees and was inducted into the Oklahoma Hall of Fame in 1981.

FOOTNOTES

¹Francis J. Flaherty and Pati Nash, *Women & Minorities: The Gains*, *The National Law Journal*, pp. 1, 8-11, December 20, 1982.

²25 EPD P31, 703; FEP Cases 1303 (1980)

³678 F. 2d 1022 (1982)

⁴51 U.S.L.W. 3544 (No. 82-940)

⁵51 U.S.L.S. 3553 (Jan. 25, 1983)

⁶See Mark E. Rust, "Prevention the Policy at MD Law Firm," *American Medical News*, September 9, 1983, p. 31

Marvin R. Halbert, "Sherryl R. Perry on Her Dual-Degree Science Firm," *Pennsylvania Law Journal-Reporter*, May 30, 1983, pp. 11-12

Gail Appelton, "Unique Firm's Partners Have Dual Degrees - Combining Law and Medicine," *The National Law Journal*, May 16, 1983, pp. 10, 35.

NAWL RESPONDS TO MALE CALL!

In a vote which shattered the precedents in force since its founding in 1899, the NAWL membership voted at the 1983 Annual Meeting to admit males to membership. First male attorneys to join were Chesterfield Smith of Tampa, FL and Bob Geltzer of New York, NY. Shown below are Chesterfield Smith receiving congratulations from NAWL Past President Ann W. Lake (MA) (*left*), and new NAWL member Bob Geltzer celebrating at Atlanta with his wife Elise, also a new NAWL member (*right*).

