

THE 2002 SANDRA DAY O'CONNOR MEDAL OF HONOR RECIPIENT – MARY JO WHITE

Remarks of Lauren Makar:

Welcome students, faculty, alumni and guests. My name is Lauren Makar and I am this year's chair of the Women's Law Forum.

During the summer between my first and second year, I externed for Judge Duffy in the Southern District. It was either my first or second week with the judge, I was sitting in the court room with the other externs observing a sentencing hearing. A fairly young AUSA was handling the case and did something "displeasing" to the Judge.

I know Mary Jo, Judge Duffy roared, and I don't think she would approve of this. The Judge then proceeded to make his day very, very difficult— and I learned 2 things— well 3 things, that day: how to use "fungible" in a sentence; never, ever to tick off Judge Duffy and that this woman, Mary Jo White, had earned the respect of Judge Duffy.

Ms. White graduated Phi Beta Kappa from the College of William and Mary and after receiving her masters in psychology from the New School, went on to Columbia Law School to graduate at the top of her class. She clerked for Judge Marvin Frankel after earning her JD, and later was hired by US Attorney Robert Fisk as an assistant us attorney in the Southern District, where she prosecuted her first terrorism case.

After several years as an AUSA, she took a job at Debevoise and Plimpton where she defended high profile clients, such as the New York Times, and where she was one of the first women to make partner in the firms history.

It is written that Ms. White became antsy in private practice, and itched to return to public service. In 1990 she was hired as chief assistant to Andy Maloney, the US Attorney for the Eastern District of New York. She was the first woman chief assistant in the New York City Area. I read in a New York Magazine article that what sealed the deal for US Attorney Maloney was a meeting with Ms. White at the University Club where she ordered a beer instead of a more

stereotypical white wine that “ladies usually like.”¹

In 1993, President Clinton appointed Ms. White as the US Attorney for the Southern District of New York. Often referred to as the most prominent US Attorney’s Office in the country and the toughest prosecutorial district, Ms. White was the first woman appointed to the post. Her 8 years as US Attorney have been remarkable:

- The convictions 4 of the terrorists responsible for the 1993 bombing of the World Trade Center, and during her first year as the US Attorney, no less.²
- The conviction of Sheik Omar Abdel Rahman, a blind Egyptian cleric, and 9 others for terrorism plots to blow up the United Nations and other NY landmarks.³
- The conviction of Mr. Ramzi Ahmed Yousef for a foiled plot to blow up American airplanes as they flew over the Pacific Ocean⁴
- The investigation and indictment of Osama Bin Laden for terrorism conspiracy⁵
- The conviction an Algerian man in a plot to blow up Los Angeles International Airport during millenium celebrations⁶

¹ Nina Burleigh, *White Power*, N.Y. MAGAZINE, July 9, 2001, available at http://www.newyorkmag.com/page.cfm?page_id=4926&postion=3 (last visited Mar. 6, 2002).

² U.S. v. Salameh, 856 F. Supp. 781 (S.D.N.Y. 1994). Four defendants (Mohammed A. Salameh, Nidal Ayyad, Mahmud Abouhalima, and Ahmad Mohammad Ajaj) were convicted for committing various acts in relation to the bombing of the World Trade Center on February 26, 1993. *Id.* at 782. Mary Jo White represented the United States along with J. Gilmore Childers, Henry DePippo, Lev. L. Dassin and Michael J. Garcia, Asst. U.S. Attorneys. *Id.*

³ U.S. v. Rahman, 189 F.3rd 88 (2nd. Cir. 1999). This case involved ten defendants, including Sheik Omar Abdel Rahman, who were convicted of seditious conspiracy and other offenses arising out of terrorist conduct. *Id.* at 103.

⁴ U.S. v. Yousef, 927 F. Supp 673 (S.D.N.Y. 1996). The defendants were charged with conspiring and attempting to bomb numerous commercial airplanes. *Id.* at 675. Mary Jo White was the United States Attorney representing the United States, with J. Gilmore Childers, Dietrich L. Snell, Michael J. Garcia as Assistant United States Attorney. *Id.*

⁵ U.S. v. Bin Laden, 116 F. Supp. 2d 489 (S.D.N.Y. 2000). The defendants were charged with crimes that related to his association with a terrorist organization. *Id.* at 491. Mary Jo White was the United States Attorney representing the U.S., with Kenneth M. Karas, Patrick J. Fitzgerald, Michael J. Garcia, Paul W. Butler, Andrew McCarthy, Assistant United States Attorneys for the U.S. *Id.* at 490.

⁶ *Algerian Convicted in Bombing Plot*, N.Y. LAW J., Vol. 226 No. 10, July 16, 2001, at 4.

- Convictions of 4 men for the 1998 bombings of the American embassies in Africa.⁷
- Racketeering prosecutions against organized crime members, including John Gotti⁸
- The prosecution of Operation Uptick, an investigation into the mob's Wall Street involvements.⁹
- And numerous securities fraud cases involving many high profile defendants.¹⁰

In total, she has indicted and convicted more than 24 people involved in global terrorism during her term. She has become the nation's pre-eminent prosecutor of international terrorism. Her colleagues describe her as smart and tough, "a tough cookie." (says former NYPD commissioner Bill Bratton). In addition, she is a devout Yankees fan, a former (I don't know- maybe current) motorcycle rider, and, at least I've read, enjoys Tina Turner concerts.

Clearly, Ms. White, you've earned the respect of your colleagues, of your peers, and of your subordinates. Along with Kimberly and Caryn, I am delighted and privileged to present you with this year's Sandra Day O'Connor Medal of Honor in recognition of your achievements in the field of law and public service on behalf of the students here at Seton Hall Law School.

⁷ Mark Hamblett, *Four Men Found Guilty in Attacks on Embassies*, N.Y. LAW J., Vol. 225 No. 103, May 30, 2001, at 1.

⁸ *United States v. Locasio*, 6 F.3d 924 (2d Cir. 1993). The Circuit Court affirmed the convictions of Frank Locasio and John Gotti for various RICO violations, which resulted in life sentences for both men. *Id.* Central to the prosecution in the District Court wiretap evidence that had been obtained over an eight-year period. *Id.*

⁹ Operation Uptick was a large-scale sting operation carried out against white-collar criminals. Elkan Abramowitz and Barry A. Bohrer, *Mary Jo White's Legacy*, N.Y. LAW J., Vol. 227 No. 5, Jan. 8, 2001, at 3. The Southern District's Securities Unit, in cooperation with the F.B.I., operated a phony investment bank, collecting over 1,000 hours of recorded conversations to implicate 120 defendants - the largest number of securities fraud defendants in the history of the United States. *Id.* Among the many defendants were members of all of the active organized crime families in New York. *Id.*

¹⁰ See, e.g., *United States v. Manas*, 272 F.3d 159 (2d Cir. 2001) (affirming convictions for securities fraud, wire fraud, and commercial bribery); *United States v. Hussey*, 254 F.3d 428 (2d Cir. 2001) (affirming convictions for conspiracy to commit securities fraud and securities fraud); *United States v. Sangemino*, 136 F. Supp.2d 293 (S.D.N.Y. 2001) (resulting in guilty plea by defendant for securities fraud, mail fraud, and wire fraud).

Remarks of Mary Jo White:

Thank you. I am deeply honored and touched to have been selected as this year's recipient of the Sandra Day O'Connor Medal. To receive recognition in the name of such a distinguished jurist and public servant and true trailblazer for women in the legal profession is indeed a high honor.

The personal example and clear thinking of Justice O'Connor serve as important beacons for all women (and men) in—or thinking about careers in—the legal profession. The example she has set—and continues to set—inspires and humbles at the same time. In 1981 (the year I left the SDNY United States Attorney's Office for the first time to return to private practice), Sandra Day O'Connor became the first woman appointed to the United States Supreme Court.¹¹ Her path there has become a well-known part of the history of progress of women in the law. But it bears always remembering and repeating that this top 1952 Stanford Law School graduate and member of the Stanford Law Review could not get a job at any national law firm, except as a legal secretary, because she was a woman.¹² It is almost impossible for me, a law school graduate some 20 years after her and now over 25 years ago, let alone for you of more present-day vintage, to even relate to the overt discrimination against women that Justice O'Connor confronted in 1952. But it happened—and not so long ago in the greater scheme of things.

When she speaks of her own career now, Justice O'Connor calls the progress of women in the legal profession a "revolution."¹³ She is right. As evidence, Justice O'Connor cites some of the very impressive, present-day statistics: women are now over 30% of the lawyers in the United States¹⁴; we are well over 40% of the law graduates¹⁵; up to about 1/4 of our United States Attorneys have been women in recent years¹⁶;

¹¹ *Sandra Day O'Connor*, available at <http://www.supremecourthistory.org/myweb/justice/o'connor.htm> (last visited Mar. 22, 2002). Justice O'Connor was appointed to the Supreme Court by President Reagan in 1981. *Id.*

¹² *Id.*

¹³ Sandra Day O'Connor, *Madison Lecture: Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1548 (Dec. 1991).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 1549.

20% of the nation's judges are now women¹⁷; almost 50% of the starting associates in major New York law firms are women¹⁸; nearly 15% of the partners are women.¹⁹

There have also been many "women firsts" that have followed Justice O'Connor's appointment to the Supreme Court. Judith Kaye, a prior recipient of the Sandra Day O'Connor Medal of Honor, is the Chief Judge of New York State's highest court.²⁰ We have now had our first woman Attorney General²¹ and Deputy Attorney General²² of the United States, as well as the first woman Secretary of State.²³ And, on a more mortal level, I have just completed a nearly 9-year tenure as the first woman to serve as the United States Attorney for the Southern District of New York. There are countless other examples in the legal world and in nearly every other profession. All of this is good. There has been dramatic progress for women. But much remains to be achieved.

What we are seeking, of course, is the day that it is no longer news that a woman has been appointed or elected to any high position. The focus should be on the person and his or her qualifications, not on gender. This business of numbers and women firsts can be—and is—overblown sometimes. But we should also not kid ourselves—some numbers do matter. As Justice O'Connor has said: "Until the percentages [in the legal profession] come close to 50%. . . we cannot say we have succeeded."²⁴ Justice O'Connor is right again.

The numbers and percentages do matter to how much clout and comfort we have in any given professional setting. They also matter to

¹⁷ Phyllis A. Kravitch, *The Burnita Shelton Matthews Memorial Lecture in Law: Women in the Legal Profession: The Past 100 Years*, 69 *MIS. L. J.* 57, 70 (Fall 1999).

¹⁸ Jonathon D. Glater, *Women are Close to Being the Majority of Law Students*, *THE N.Y. TIMES*, March 26, 2001, at A1.

¹⁹ *Id.*

²⁰ *State's First Female Chief Judge Unanimously Confirmed In The Senate*, *BUFFALO NEWS*, Mar. 18, 1993, at 20.

²¹ Martin Kasindorf, *Reno Confirmed, 98-0*, *NEWSDAY*, Mar. 12, 1993, at 4.

²² Carol E. Dinkins became the first female Deputy Attorney General of the United States in 1984. *Mrs. Dinkins' Opportunity*, *THE WASHINGTON POST*, May 23, 1984. At the time, Ms. Dinkins occupied the highest office ever held by a woman in the Justice Department. *Id.*

²³ Madeline Albright became the first United States Secretary of State in 1997. *Senate Panel Gives Albright the O.K.*, *USA TODAY*, January 21, 1997, at 9A. More information available at <http://secretary.state.gov/www/albright/albright.html> (last visited March 31, 2002).

²⁴ O'Connor, *supra* note 13, at 1549.

how attractive a particular profession or job setting will be to other women making career and life choices.

The most dramatic illustration of this point for me came early in my tenure as United States Attorney when I also served as Chair of Attorney General Reno's Advisory Committee, which consisted of 15 U.S. Attorneys from all over the country and whose function was to advise the Attorney General on policy matters.²⁵ In my capacity as Chair, I traveled to Washington one morning a week for over a year to attend the Attorney General's weekly executive staff meetings which were attended by all of the top Justice Department officials: the Solicitor General of the United States,²⁶ the Deputy Attorney General,²⁷ and all of the Assistant Attorneys General in the Department—about 25 people in all, most appointed by the President of the United States and confirmed by the Senate—a pretty heavy-duty group. For the first time in my career, the women in this high-level, high-powered setting outnumbered the men. And I don't think it was my imagination that the men, in this unfamiliar environment, were somewhat chilled and reticent about expressing their views and making arguments, while the women were more comfortable and spoke up more freely. In other words, the atmosphere and professional climate were defined, at least to some extent, by the numbers. This may seem obvious. But, at least for me, it was a revelation of sorts. Maybe we women have been outnumbered for so long in power settings that we just don't consciously think about it or the impact it may have on us. But the imbalance in the numbers is a reality that continues to exist and operate on us in ways that I think are not conducive to optimal performance and success. So we must all continue to strive for greater representation for women in these power settings and all settings in the legal profession. Women firsts are important, but they are just the beginning.

Justice O'Connor talks about another important theme about

²⁵ The Committee, created in 1973, advises the Attorney General on policy matters and law enforcement issues. See http://www.usdoj.gov/opa/pr/Pre_96/January95/028.txt.html (last visited March 31, 2002). Mary Jo White was appointed to the Committee in January 1994. *Id.*

²⁶ The solicitor general from 1993 to 1996 was Drew S. Days, III. Solicitors General of the United States, available at <http://www.usdoj.gov/osg/aboutosg/sglist.html>, last visited March 31, 2002.

²⁷ Philip Heymann was Deputy Attorney General until March 28, 1994, when he was succeeded by Jamie S. Gorelick. *Congressional Testimony Before the Committee on the Judiciary, Subcommittee on Terrorist, Technology and Government Information*, 1995 WL 11095768, October 18, 1995 (testimony of Jamie Gorelick).

women in the law that particularly resonates with me. And that is that we must not let our gender dictate or define our views or how we go about our jobs—and we should take issue with those who do try to categorize us or our views based on our gender.²⁸ Justice O'Connor worries, as do I, that a new brand of stereotyping which she calls the “New Feminism” may be threatening to replace the so-called “Cult of Domesticity” that in the bad old days was invoked to hold women back from entering and succeeding in the legal profession.²⁹ The “Cult of Domesticity” was the label given to the view that women are different in nature from men and in a way that suits us for motherhood and home life, but not for the rough and tumble and rigor of a professional life.³⁰ Those views have thankfully been mostly put to rest, both by the jurisprudence of employment discrimination law and in the minds of most men and women. But the “New Feminism,” which includes the notion that there may be some kind of definable “True Woman,” also threatens to group women into a simplistic, overly generalized category of beings who purportedly think and act alike and have universal and peculiarly female opinions on nearly all subjects.³¹

This modern-day brand of stereotyping may, for example, have led some misguided commentators to conclude that Justice O'Connor's judicial decisions, which often constitute the “swing” vote on the Court,³² as somehow to have derived, not from her independent thinking and logic, but rather, from her femininity, female way of thinking, or from the supposedly well-established tendency of women to want to mediate disputes rather than to fight or litigate.³³ Pretty crazy stuff, but such views of professional women obviously persist, as do questions about our ability to do certain jobs in the profession.

I vividly recall one experience I had with such persistent attitudes about women. It occurred a few years ago when I was at a legal conference attended by a number of judges and moguls of the private bar, many of whom had been Assistant United States Attorneys in the

²⁸ O'Connor, *supra* note 13, at 1549.

²⁹ *Id.* at 1547, 1549.

³⁰ *Id.* at 1547.

³¹ *Id.* at 1553-54.

³² *Id.* at 1553.

³³ Katie Couric, *Justice Sandra Day O'Connor Looks Back*, Jan. 25, 2000 at <http://msnbc.com/news/693392.asp?cp1=1> (last visited Mar. 22, 2002). Justice O'Connor says “she doesn't want to be a judge or justice that speaks with a different voice because she is a woman. She is a justice who happens to be a woman.” *Id.*

SDNY United States Attorney's Office early on in their careers. By the time of this conference, I had served as United States Attorney for about four years and the Office had successfully prosecuted some of the cases you heard about in my introduction, including a number of major white collar crime prosecutions and very challenging international terrorism and organized crime cases. At a cocktail party during the conference, one very gracious and highly admired legal giant came up to me and complimented me on the job that I and the Office were doing. I thanked him and then started to go on to discuss another topic with him. But he went on, continuing his praise, and saying something over and over again that I didn't understand. He said that I had really proven a lot to a lot of people. Eventually, I asked him what he meant. He said: "You have shown that a woman can do the job of the SDNY United States Attorney. A lot of us, including me, doubted that." The lawyer talking to me was the famous Milton Gould, who has since passed away.³⁴

Well, there is good news and bad news in this anecdote. The good news is that Mr. Gould thought I was doing an ok job—thank goodness, because I was evidently on trial as the representative of women in general for the position. It is also good, I guess, that I had no idea what he was talking about. The bad news, of course, was that it still remained a question for some in 1997 whether a woman could do this particular legal job. We do have to remind ourselves from time to time that there are still such pockets of doubt and resistance to women holding at least certain positions and that we are probably being more carefully and critically scrutinized than our male counterparts. But we are up to the continuing challenges. Enough personal meandering.

Let us return to Justice O'Connor's concern about stereotypes.³⁵ There is obviously no such thing as "The True Woman" or a single set of points of view that all or most women hold. Some of us favor the death penalty, others are against it. The same is true of men. Some women are for gun control, others are against it. Some favor raising taxes, others don't. Some women, like some men, are pro-life, while

³⁴ *Obituaries*, N.Y. LAW J. March 4, 1999, reprinted at <http://www.lawschool.com/cornellsun.org/obituaries.htm> (last visited Mar. 20, 2002). Mr. Milton Gould was one of New York City's most prestigious litigators. *Id.* Before his death at the age of 89, he was counsel at LeBoeuf, Lamb, Greene & MacRae. *Id.* Among his high profile clients were Donald Trump, Leona Helmsley, Yankee owner George Steinbrenner and Greek shipping mogul Aristotle Onassis. *Id.*

³⁵ O'Connor, *supra* note 13.

many others are vigorously pro-choice. The point is that women are individuals and we must resist every effort to be stereotyped, either as to what opinion we hold or should hold, or as to what job we can have or should want to have. We need to be—and feel free to be—ourselves and to be judged and treated as the complicated individualists that we are.

We also need to avoid setting goals for ourselves just because women haven't been there before—only men have. I do not seek for women to become 50% or 51% of every grouping or profession. For example, I have no aspiration for women to become 50% of the convicted felons in our jails nor necessarily 50% of their jailors. And I think it is a good thing that women are woefully underrepresented in the domestic militia movements that seek to bring down our Government. Women bring unique perspectives and dimensions and insights to issues and problems. We don't want to lose those unique qualities that can effect such positive societal change in the hunt for professional equality and success.

We should lay to rest, once and for all, the tired adage for success for women published in *Fortune* magazine several years ago: "Look like a lady; act like a man; work like a dog."³⁶ Hopefully, today's version of that advice at least reads: "Look like you want to; act like yourself; work like a dog." Two out of three may be the best we can hope for.

What we want the 21st century to be is as close to a "ceilingless"³⁷ century as is possible to attain, where women and men have equal opportunity, equal pay, and the freedom and acceptance to be themselves without confining stereotypes that either limit us or define us. What is today regarded as "success" in the legal profession is expanding and diversifying.³⁸ Women, in particular, I think, are taking the lead in redefining success—money, positions of traditional prestige, partnerships in large law firms—are not the only or even primary yardsticks. Overall job satisfaction, public service and a more sensible

³⁶ Jaclyn Fierman, *Why Women Still Don't Hit the Top*, FORTUNE, July 30, 1990, at 40.

³⁷ Rene Redwood, *The Glass Ceiling*, IN MOTION MAGAZINE, at <http://www.inmotionmagazine.com/glass.html> (last visited Mar. 20, 2002). Ms. Redwood describes the glass ceiling as a "artificial barriers that deny women and minorities the opportunity to advance within their careers." *Id.*

³⁸ New Jersey Supreme Court Chief Justice Deborah T. Poritz stated that one third of all lawyers are women, and that women will make up a majority of law students entering law school in the fall of 2002. Maria Vogel-Short, *Women Who Refuse To Be 'Type' - Cast*, N.J. LAWYER, October 22, 2001, at 3. However, the Chief Justice noted a lack of diversity in the judiciary, observing that one in ten judges is a minority and one in five is a woman. *Id.*

and satisfying balance of our professional and private lives are growing in importance as the barometers of success for both men and women.³⁹ These are positive developments, but we must keep striving. We must also do everything we can to help other women coming behind us to enter and succeed in the legal profession at every level.

As we strive for equality for women in the legal profession, there could not conceivably be a better role model than Justice Sandra Day O'Connor whose life and career stand and shine as the best evidence of what women can and have achieved in the legal profession—and against much greater odds and barriers than any of us face today. But perhaps what is even more important than all of her hard-fought success is the fact that Justice O'Connor has achieved all that she has by being herself and by being true to the person that she is and wants to be. That is courage; that is integrity; and that is the message of her life and career that we all should take to heart and follow.

³⁹ Mie Kennedy, *Work Demands and Family Responsibilities - An Exploration of Problems and Solutions* at <http://www.1clark.edu/~soan221/96/work&family.html> (last visited Mar. 20, 2002). Ms. Kennedy states that there is a new trend that men and women are leaving the high powered jobs to low stress, low paying jobs in order to have a more balanced life. *Id.*