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REMARKS IN CELEBRATION OF STETSON'S LAW LIBRARY AND INFORMATION CENTER

Hon. Ruth Bader Ginsburg*

Two years ago, when this fine building was still a dream to be realized, your good dean asked if I would participate in its dedication. My colleagueship with Dean Moody stems from early 1970s days when we cooperated in endeavors to improve the law of the United States so that women and men would be recognized as individuals equal in stature. Her special invitation to join you this morning was one I could hardly refuse. I cheer Dean Moody and all who share in the making of this grand Law Library and Information Center.

In these remarks, I will take you on a quick tour through the history of the law school library in the United States. It is a history that evolved simultaneously with the development of the law school and of the law itself.

The library we dedicate today scarcely resembles the first law school libraries. This library occupies some 58,000 square feet, houses some 345,000 volumes, and cost nearly $8.5 million to construct. By contrast, when Harvard Law School opened its first li-

* Associate Justice, Supreme Court of the United States.

Justice Ginsburg acknowledges with appreciation the grand assistance of her 1998 Term law clerk, Jay D. Wexler, in composing these remarks.

brary in 1817, the endowment for that facility was $500.[1] Even in those old days, the sum was indeed modest. Joseph Story, who accepted a law professorship at Harvard eighteen years after his appointment to the Supreme Court (without resigning from that post), complained in a letter to the University's President: "It is indispensable that students have ready access to an ample law library. . . . At present [they] are compelled to resort to my own private library."[2] Small size in Story's time was not unique to university law libraries. When President Jackson established the law library at the Library of Congress in 1832, the collection comprised only 2,001 books; 639 of them came from Thomas Jefferson's private collection.[3]

For much of the nineteenth century, law faculty members personally selected nearly all of the books housed in law school libraries.[4] Collections during this period mirrored the ideas of the era's leading law dean, Christopher Columbus Langdell.[5] Langdell's vision of the law as a discipline entirely independent of other social sciences limited the size and confined the scope of these early libraries. Langdell advanced the notion that legal principles could be discerned from reading judicial opinions, principally, appellate decisions.[6] Books on history, economics, or politics had scant utility in his view of proper instruction in the law. Nor was there a compelling need for other materials we now consider uniquely legal. Langdell believed, incredibly by modern standards, that books containing statutes were unnecessary in legal education, and the Harvard law faculty did not vote to obtain legislative materials for the library until 1892.[7]

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1. *See* Christine A. Brock, *Law Libraries and Librarians: A Revisionist History; Or More Than You Ever Wanted to Know*, *in* LAW LIBRARIANSHIP: HISTORICAL PERSPECTIVES 597, 614 (Laura N. Gasaway & Michael G. Chiorazzi eds., 1996).

2. Arthur C. Pulling, *The Harvard Law School Library*, 43 L. LIBR. J. 1, 2 (1950).

3. *See* William D. Murphy, Remarks at the American Association of Law Libraries' 69th Annual Meeting (June 23, 1976), *in* 69 L. LIBR. J. 554, 558 (1976).

4. *See* Christine A. Brock, Remarks at the American Association of Law Libraries' 69th Annual Meeting (June 23, 1976), *in* 69 L. LIBR. J. 528, 550 (1976).

5. *See* Brock, *supra* note 1, at 615.

6. *See* CHRISTOPHER COLUMBUS LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS at vi (1871) ("This growth [of legal doctrine] is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied.").

7. *See* Eldon R. James, Remarks at the Joint Meeting of the American Association of Law Libraries and National Association of State Libraries (June 28, 1934), *in* 27 L. LIBR. J. 157, 158 (1934).

But events around and after the turn of the last century changed the perception of legal educators. Along with the growth of interstate transportation came the need in each state for legal materials from other states. Along with two world wars, and subsequent endeavors to achieve a lasting peace, came an interest in and a need for foreign legal materials. And along with the growth of the U.S. federal government, particularly the rise of the administrative state during the New Deal, came a need for a host of materials dealing with social and economic regulation. No longer could the law school library remain a repository for casebooks and little more.[8]

Legal scholars came to appreciate, too, the need for integration with other disciplines. Roscoe Pound, Harlan Fiske Stone, and their pragmatist colleagues understood that law was not a static set of principles waiting to be discovered by wise men in judicial or academic robes. (Hardly a woman, in those now ancient days, gained permission to wear either sort of robe.) Legislators and judges, not some omniscient spirit in the sky[9] write the law, Justices Holmes and Brandeis helped us to comprehend, and those earthbound decisionmakers have the capacity to shape or change the law to keep pace with the society law serves. This appreciation of the law's interaction with society broadened the profession, and in turn, expanded the role and range of the law school library.

A large impact on the collections of law libraries during the first part of the twentieth century came from what we have long called the Brandeis Brief.[10] That style of brief was introduced in the U.S. Supreme Court in a case decided in 1908, *Muller v. Oregon*.[11] Aided by the labors of Josephine Goldmark, advocate Brandeis presented to the Court a brief loaded with social science data and statistics. *Muller* upheld protective labor legislation (an Oregon maximum hours law) covering women but not men. Reflective of changing times and labor market conditions, over 60 years later, Brandeis-style briefs were used to persuade the Court that protection, to be constitutional and genuinely protective of women, must cover all

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8. *See* Brock, *supra* note 1, at 617.

9. *See, e.g.*, Southern Pac. Co. v. Jensen, 244 U.S. 205, 222 (1917) (Holmes, J., dissenting) ("The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi-sovereign that can be identified . . . .").

10. *See* Brock, *supra* note 1, at 618.

11. 208 U.S. 412 (1908).

workers.[12]

Law libraries in the early decades of the twentieth century expanded their collections to meet the needs of a new generation of lawyers, among them, civic-minded practitioners attracted to Brandeis-style briefing. As Dean Young B. Smith of Columbia Law School wrote in 1928:

> The changes in the professional curriculum and the development of research in law present . . . library problems that have not heretofore existed. While the number of volumes in the Law Library has increased from 56,427 in 1914 to 142,268 in 1928, the present collection consists almost entirely of legal materials. If the study of law is to be more closely integrated with the study of the allied social sciences, access to books and documents of a non-legal character will be necessary.[13]

Law school libraries met this challenge by expanding both the scope and the volume of their collections, and by providing open access to their books, thereby aiding lawyers in practice as well as law students and law teachers.

It was not always that way. The law President Jackson signed in 1832 to create the law library at the Library of Congress, for example, assured access only to the President, Vice-President, Supreme Court Justices, and members of Congress.[14] The Supreme

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12. *See, e.g.*, Brief for American Civil Liberties Union *Amicus Curiae* at 24–26, 45, Frontiero v. Richardson, 411 U.S. 677 (1973) (No. 71-1694); Joint Reply Brief of Appellants and American Civil Liberties Union *Amicus Curiae* at 8–9, 10–12, Frontiero v. Richardson, 411 U.S. 677 (1973) (No. 71-1694); Brief for Appellant at 10–11, 37–41, 62–64, Reed v. Reed, 404 U.S. 71 (1971) (No. 70-4).

13. FOUNDATION FOR RESEARCH IN LEGAL HISTORY, COLUMBIA UNIV., A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 334 (1955) (quoting 1928 COLUMBIA REPORTS 98) [hereinafter FOUNDATION FOR RESEARCH].

14. *See* An Act to Increase and Improve the Law Department of the Library of Congress, ch. CCXXI, §§ 2–3 (1832), 4 Stat. 579 (1846) (providing that the law library shall be subject to the same regulations as the Library of Congress as a whole and that the Justices of the Supreme Court are empowered to make rules regarding who may use the library, subject to the condition that those rules not restrict the President, the Vice President, or any member of Congress from having access to it); Resolution Granting the Use of the Books in the Library of Congress, to the Heads of Departments, to Certain Officers of Congress, and to Ex-Presidents of the United States, Con. Res. 2, 21st Cong., 1st Sess. (1830), 4 Stat. 429 (1846) (providing that the President of the Senate and Speaker of the House may grant the use of books in the Library of Congress to the Secretaries of State, Treasury, War, and Navy, and to the Postmaster General, the Secretary of the Senate, the Clerk of the House, the Chaplains of Congress, and any ex-Presi-

Court, empowered by Congress to make regulations for use of the library, cautiously provided the next year that

> during the session of the Court, any gentleman of the bar having a cause on the docket, and wishing to use any book or books in the Law Library, shall be at liberty, upon application to the Clerk of the Court, to receive an order to take the same (not exceeding at any one time three) from the Library.[15]

By the end of the nineteenth century, law students were permitted to use the collection,[16] and they apparently did so in numbers too large to be accommodated comfortably in the 50 feet square one-room library.[17]

Bar associations were not waypavers in affording access to law library shelves. Thurgood Marshall, for example, was not allowed to use the library at the District of Columbia Bar Association until 1959.[18] But as a student at Howard University in the 1930s, Marshall finished first in his freshman class and his top grades gained him employment as a clerk in the Howard law library. The job required Marshall to stay at the law school until eight in the evening or later, but it put him in close contact with the law school's leader, Dean Charles Hamilton Houston, and other NAACP lawyers working under Houston's guidance to develop strategies for a quarter-century campaign to end racial segregation in the United States.[19] Dean Houston and his colleagues gave Marshall research assignments key to the evolution of the then nascent civil rights move-

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dent when in the District of Columbia).

15. Supreme Court Rule and Order No. XXXIX (January Term 1833), *reprinted in* 42 U.S. (1 How.) xxxiv (1843).

16. *See* THE LIBRARY OF CONGRESS, LAW LIBRARY 1832–1982: A BRIEF HISTORY OF THE FIRST HUNDRED AND FIFTY YEARS 9–10 (1982).

17. *See* Report of the Librarian of Congress, S. REP. NO. 55-24, at 36–37 (1898) (noting: "Attention has been called to the congested condition of the law library, more especially so far as the law students are concerned. We have a room with 2,670 square feet, or about 50 feet square. This cockpit, dim-lighted and inconvenient, with its straggling tables, is expected to accommodate the justices, lawyers engaged in cases, the members of the bar in search of light, as well as law students. Washington is said to have a greater number of law students than any educational center outside of Ann Arbor, and hence the difficulty of their accommodation.").

18. *See* Maria E. Protti, *Thurgood Marshall and the Law Library*, 47 OKLA. L. REV. 75, 80 (1994).

19. *See* MICHAEL D. DAVIS & HUNTER R. CLARK, THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH 57 (1992).

ment.[20] Marshall was not the only great civil rights lawyer to begin his career in the basement library at Howard Law School. Spottswood Robinson, III, later Chief Judge of the D.C. Circuit, and Robert Carter, later General Counsel to the NAACP and then federal district judge in the Southern District of New York, were among the talented, hopeful, and determined students who worked as assistants in Howard's law library.[21]

The growth of law libraries in the twentieth century necessitated professional law librarians. Earlier, law schools apparently hired anyone willing to keep watch over their collections for a pittance. When Yale Law School appointed Reverend William Atwater as librarian in 1873, for example, it offered him $400 a year, although the faculty had hoped that "some elderly man [might] be found who [would] act as librarian for $150 a year."[22] When Frederick Hicks took over the law librarianship at Columbia in 1915, the library was in such disarray that, as one legal scholar of that era had remarked, "the whole collection might have been tossed bodily from the University Library into Kent Hall, and left almost as it fell."[23]

The potential for chaos is ever greater now. A story about a law library in Utah is illustrative. The library was moved to a new location and the movers, endeavoring to do their job diligently, shelved all the Volume 1s together, all the Volume 2s, and so on, regardless of whether the volumes were Supreme Court Reporters or Pacific Reporters.[24] Professional librarians were surely needed to clean up that mess.

Today's law librarians do much more than organize materials on the shelves. They often hold dual degrees in law and library science, and they perform research essential to the practice of law. In this increasingly digital age, law librarians must master the burgeoning sources of on-line information, both legal and non-legal, that lawyers need to represent clients effectively. And in modern times, women

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20. *See id*. at 57–58.

21. *See* A. Mercer Daniel, *The Law Library of Howard University*, *1867–1956*, 51 LAW LIBR. J. 202, 214 (1958).

22. Current Comments, *Yale Law Library Antedates Yale Law School*, 53 L. LIBR. J. 139, 139 (1960).

23. FOUNDATION FOR RESEARCH, *supra* note 13, at 237 (quoting Letter from Moore to Secretary of the University (Sept. 30, 1912), *in* 4 COLUMBIA ALUMNI NEWS 98 (1912)).

24. *See* Marsha C. Thomas, *Utilizing Your Support Staff: Law Librarians and the Legal Community*, UTAH B.J., May 1995, at 15.

occupy leadership places in law school libraries across the nation. We have come a long way from the day when the New Mexico Supreme Court reluctantly allowed the state to employ a woman as the state librarian, only because that court viewed the task as "purely ministerial" and therefore "not incompatible with the ability of a woman to perform."[25] Now nearly half of all directors of academic law libraries — today a constantly challenging position — are women.[26]

Judges rely on law school librarians and the libraries they serve to support and assist law professors in producing academic commentary that illuminates, and yields improvement in, the law. Our legal system gives judges considerable authority to develop the law through litigated cases, much more authority than judges have in most other countries. We entrust that authority mainly to generalists, to jurists who cannot do their job adequately without help from the academy.

Benjamin Cardozo remarked on this need nearly seventy years ago, when he enthusiastically endorsed the formation of the American Law Institute. "The Judge goes upon the Bench," Cardozo said,

> and sees before him a list of names and numbers . . . one case follows another . . . . More and more in such cases we are driven . . . to rely upon the work of a Wigmore or a Williston . . . . It is not to be expected . . . that overnight and at the call of a single case we shall do the work . . . [scholars] have been doing in lifetimes of devoted and intensive effort.[27]

New York's current Chief Judge, Judith Kaye, more recently said, "Parties [and their counsel] do not necessarily have in mind the sensible, incremental development of [the law]. . . . Academic writers therefore become genuine partners in the courts' search for wisdom . . . . "[28] It is true that my colleagues at the Supreme

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25. State v. De Armijo, 140 P. 1123, 1128–29 (N.M. 1914).

26. *See* Laura N. Gasaway, *Women as Directors of Academic Law Libraries*, *in* LAW LIBRARIANSHIP: HISTORICAL PERSPECTIVES 497, 500–01 (Laura N. Gasaway & Michael G. Chiorazzi eds., 1996).

27. Benjamin Cardozo, Remarks at the Third Session of the Nineteenth Annual Meeting of the Association of American Law Schools (Dec. 30, 1921), *in* 19 PROC. ASS'N AM. L. SCH. 104, 118 (1921).

28. Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 319 (1989).

Court are not always of one mind on the value of particular academic writings. Justice Scalia, for example, once charged Justice Stevens (whose father, incidentally, attended Stetson University) with advancing a "head-snapping proposition," derived from "no less weighty authority than a law-review article."[29] Generally, however, all of us agree with Learned Hand, who said of the relationship between law teacher and judge that "each is necessary to the other, each must understand, respect and regard the other, or both will fail."[30]

And as we rely on law faculties, we also rely on law libraries to support their work. The best legal education is a partnership — a close alliance among students, faculty, alumni, members of the bar, university administrators, the public, and the library and its staff. This partnership is exemplified in the facility we dedicate today. Building this library and information center was indeed a collaborative effort. Three years ago Professor John Cooper began the faculty portion of the fundraising campaign. He sought to achieve two goals: in money, $75,000; in participation, 100% of the full-time, tenure-track faculty. He succeeded not only in convincing 100% of the faculty to contribute; he exceeded his monetary target by collecting $100,000. Members of the bar in this area can take just pride in their alliance with such a faculty.

To return to the main theme of my talk, we stand now at a juncture perhaps more critical to the development of the law school library than ever before. The challenges, no doubt, are different. Today's law students would think it bizarre to resort to the private collection of a professor, as in the days of Justice Story, or to search outside the law school for a statute book, as students did when Langdell's vision held sway. Now, the challenges are technological, and the problem is how best to organize and use the ever-growing sources of electronic information that inundate us every day. No longer do students go to the stacks to find a case or rule; they log on to Westlaw or Lexis instead. No longer do students go first to the card catalog (if indeed card catalogs still exist) to locate information on politics, economics, or history; they go to the Internet instead.

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29. Janklow v. Planned Parenthood, 517 U.S. 1174, 1180 (1996) (mem.) (Scalia, J., dissenting).

30. Learned Hand, *Have the Bench and Bar Anything to Contribute to the Teaching of Law?*, 24 MICH. L. REV. 466, 480 (1926).

Faculty and students need no longer soil their hands reading a newspaper or repair to a reading room to retrieve a dog-eared, crumpled issue of their favorite magazine. These too can be found online — on Lexis, Westlaw, the Internet, or all of the above. Libraries, and the librarians who run them, must find ways to make this wealth of information accessible to every student and faculty member. It must often be easier to help the student than the professor, at least the professor who has reached or passed what the French call a certain age. Students now enrolled in law schools have grown up in the computer age. More than a few senior citizen professors, I suspect, are like me — people accustomed to writing with a pen or pencil on a yellow legal pad, and intimidated by the very idea of surfing the net or downloading a file from cyberspace.

The library Stetson today dedicates, I am sure, will meet the challenges of the next century. It has the books, that is plain — over 340,000 of them. But it has much more. In addition to two rooms filled with computers, the library has over 30 study and conference rooms and 150 study carrels, each connected to e-mail, on-line legal databases, and the Internet. Every student can sit down at a carrel, plug in a computer, and do more research without moving an inch than Justice Story, Dean Langdell, or Dean Smith ever imagined could be done in a country full of libraries. And the new library is an inviting place as well. Entering the building, one is greeted by a spacious three-story atrium. And the art displayed in the building is a special delight. It is a place where students, faculty, alumni, and others can engagingly share in the ongoing dialogue of legal education.

People attending this ceremony have contributed in meaningful ways to the construction of this building. As you rejoice in these grand quarters and take pride in the education that will occur here, I anticipate that you will make the partnership a lasting one. I wrote shortly after leaving law teaching for the bench, that legal education is a "shared adventure" for students, faculty, and alumni. May that adventure flourish in the facility we dedicate today.