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GINSBURG: INTERNET SHOULD BRING US TOGETHER, NOT FOSTER ISOLATION

This is the full text of remarks by U.S. Supreme Court Justice Ruth Bader Ginsburg at the dedication of the Rutgers Center for Law and Justice on Sept. 9.

Some five years ago, then Dean Roger Abrams told me of the plans for the building we dedicate today. His enthusiasm was infectious. When I visited Rutgers in April 1995, Roger made sure I would not leave town without agreeing to come back for this ceremony. As he urged, I am pleased to honor that pledge.

Our celebration of Rutgers' grand new facility is a fitting occasion to reflect on what has gone before, on the history of legal education in the United States. To open these remarks, may I take you on a quick tour of that history.

When the nation was new, knowledge of the law was valued for its utility in establishing and preserving a free society. James Wilson, one of the Constitution's foremost framers, was also one of the nation's first law professors -- in fact, the very first law professor to sit on the United States Supreme Court. In his inaugural lectures at what is now the University of Pennsylvania, Wilson said of legal education: "Every free citizen has duties to perform and rights to claim. Unless ... he knows those duties and those rights, he can never act a just and an independent part."

The study of law in 18th century America was not cordoned off from other disciplines; it formed an integral part of the liberal arts curriculum. Wilson himself taught English before becoming a teacher of law, an indication that the appointment of literature professors to law faculties in relatively recent years is not the novelty some suppose it to be. Wilson delivered his lectures on law to undergraduates, as did his law teaching colleagues at other United States universities. In universities abroad -- in the European Union countries, for example -- the study of law remains, initially, a first degree, not the graduate program it has become in the United States.

The character of legal instruction in the United States changed in the mid-19th century. Separate schools of law became the vogue -- professional schools, designed to train practicing lawyers. Some in the academy mocked professional legal training. The noted social scientist, Thorstein Veblen, for example, commented: "A law school belongs in the modern university no more than a school of fencing or dancing." Veblen further displayed his disdain by comparing law professors to athletic coaches. The case method, Veblen thought, showed the intellectual emptiness of legal scholarship. These detractors perhaps were shortsighted. They did not consider whether schools devoted to training practicing lawyers could advance legal learning beyond what could be achieved solely through on-the-job apprenticeships in law offices, the means once commonly used to qualify for bar membership.

In the 20th century, another dimension factored into the law school's charge. Roscoe Pound, Harlan Fiske Stone, and their pragmatist colleagues recognized 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 not-so-good old days, gained permission to wear either sort of robe.) Justice Holmes helped us to understand that the law is written by legislators and judges, not by some omniscient spirit, and that those legislators and judges hold the power to shape or change the law to keep pace with the society law serves.

Law professors of that era were no less ambitious about their role than the law professors in our midst. The pragmatists believed they could, indeed should, take a leading role in reforming both law and society. In 1914, Wesley Newcomb Hohfeld of Yale University, speaking at a meeting of the Association of American Law Schools, told colleagues: "Practicing lawyers are ... too busy with their individual problems and the earning of a livelihood to give the necessary time and energy to the broadest aspect and problems of the legal system," and "they are not so apt to have the detached and disinterested viewpoint that would ordinarily characterize a university law faculty." Full-time law professors, Hohfeld and his colleagues thought, formed the ideal officer corps to lead campaigns for law reform.

Legal educators stepped up their endeavors to advance law reform after the First World War. The nation's most prominent law professors joined with distinguished judges and practitioners to launch the American Law Institute (ALI), an organization devoted to systematizing, clarifying, and reforming the law. Nearly 80 years later, the Institute remains influential, and the role of the legal academy in promoting law reform is solidly established. Several members of the Rutgers faculty, for example, John Leubsdorf and Howard Latin, have played leading roles in ALI projects.

In classrooms and periodical pages, legal educators illuminate and help to improve the law. As a judge, I appreciate the importance of these academic labors. Our legal system gives judges considerable authority to shape the law through litigated cases, far more authority than judges have in most other countries in our world. We entrust that large authority mainly to generalists, to jurists who cannot do their job well without help from specialists in the academy.

Benjamin Cardozo made the point tellingly when he enthusiastically endorsed the ALI's formation. "The Judge goes upon the Bench," Cardozo said, "and sees before him a list of names and numbers. ... [O]ne 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."

Today, we stand at a path-breaking moment for legal education in the United States. One might call it the PC era, and by that I do not mean "politically correct." The affordability of the personal computer, the availability and speed of network access, and the ease of Internet use have created countless opportunities for legal educators to integrate computers into their teaching and scholarship. These opportunities will surely change -- in fact they have already begun to change -- diverse aspects of legal education.

The Internet has made it possible for professors to create Web sites for their classes to supplement course material and simplify administrative matters. Syllabi, assignments, reading lists, model exams and answers, course announcements -- these and more can be posted to Web sites to keep students up to date on what is going on in the course. Many law schools are already using the Internet in this fashion. At Nova Southeastern University Law Center in Fort Lauderdale, Fla., for example, incoming students are required to own a lap-top computer and attend a 10-hour computer training session. Students

there can review syllabi, take exams, and check their grades online. Classes are taped and digitized for the Internet so students granted permission by the professor can review a class session.

Through the Internet, legal instructors can set up "chat rooms" where students can continue discussion after class with other students and even the instructor. These "virtual classrooms" can be used as either an optional forum for students to exchange ideas on, or converse about, a course outside the walls of the school, or they can be a course requirement. For the shy or withdrawn student, hesitant to speak in public, these groups can be a boon. I understand that here at Rutgers, the law school automatically sets up an e-mail discussion list for every course, and that professors encourage students to post to the entire class their ideas and reactions as the course progresses.

Some instructors have used the Internet to bring the law to life by developing interactive, role-playing simulations for their students. Au courant with an issue of more than academic interest, a legal writing instructor at Columbia University Law School asked his students to compose memoranda addressing whether images contained on a fictional Web site violated the Communications Decency Act. The Web site for the assignment included links to the challenged images, the legislative history of the Act, the online version of FCC v. Pacifica Foundation (known to the cognoscenti as the George Carlin seven dirty words case) and an audio recording of the oral argument in that still-controlling decision.

A few law schools have gone so far as to create whole classes that meet not in an actual classroom -- complete with desks and blackboard -- but rather in a virtual classroom, which exists only in cyberspace (though with a living, breathing instructor in control). For example, in January 1996, Professor Andrea Johnson of the California Western School of Law taught an Advanced Telecommunications Law class to students at both the California Western School of Law in San Diego and the Cleveland-Marshall College of Law. The class included 16 students from each school and was conducted at both sites using the Internet, videotapes, and an electronic casebook. And Harvard Law School Professor Larry Lessig, together with Stetson University College of Law Professor Peter Fitzgerald, team-taught a computer and cyberspace law course using something called, by those in the know, multi-user object-oriented (or "MOO") technology. These efforts are transforming legal education in ways that Wesley Hohfeld and Roscoe Pound scarcely envisioned.

And then there is Concord University School of Law, the first completely online law school. Created by Kaplan Educational Centers, Inc., the test preparation company, and billed as an option for those who do not seek a traditional legal education, the school enrolled its first 35 students in the fall of 1998. Lectures at Concord exist only online, and they are available 24 hours a day, seven days a week. Students follow the same curriculum and use the same casebooks as at a traditional law school, but their contact with other students and professors is limited to "virtual" interaction, typically by e-mail or in chat rooms, it has been reported.

I greet the advent of the computer age and its manifold prospects for legal education with cautious optimism. On the one hand, if used as a supplement to classroom teaching and direct contact between students and instructors, the Internet can be an invaluable teaching tool. But I am uneasy about classes in which students learn entirely from home, in front of a computer screen, with no face-to-face interaction with other students or instructors. So much of legal education -- and legal practice -- is a shared enterprise, a genuinely interactive endeavor. The process inevitably loses something vital when students learn in isolation, even if they can engage in virtual interaction with peers and teachers. I am troubled by ventures like Concord, where a student can get a J.D. (though the school is still unaccredited) without ever laying eyes on a fellow student or professor. We should strive to ensure that the Internet remains a device for bringing people together and does not become a force for isolation.

A recent study by the Commerce Department highlights one way in which the digital revolution is not pulling us together. On accessing the Internet, the study shows, the gap between rich and poor, and between nonminorities and minorities, is growing. In 1998, less than 12 percent of African-American households were plugged into the Internet, compared to more than 32 percent of white households. If we are serious about promoting diversity in our learning communities, we must work to make the new virtual world inclusive of all humans in the real world we inhabit.

I am confident that Rutgers will play a prime role in advancing diversity, even as our learning methods become more technologically advanced. Rutgers has long been a leader in promoting diversity in legal education. Notably, in April 1998, when other law schools were retreating from affirmative action, the Rutgers faculty passed a resolution stating: "On the occasion of the 30th Anniversary of the Minority Student Program of Rutgers Law School-Newark, the faculty recognizes the enormous contributions the program has made to legal education, to the legal profession and to society, and reaffirms its commitment to the program." I am pleased to say I had a hand in the development of that program when I served on the Rutgers' faculty, a program designed to enrich the educational experience and advance the liaisons of all participants. And I am also glad that the Rutgers Race & the Law Review has published, in its May/June 1999 issue, my lecture on the topic, captioned Affirmative Action: An International Human Rights Dialogue.

At a time, let us hope temporary, of reduced minority enrollment at state law schools, Rutgers has kept faith with its stated commitment to a diverse student body and faculty. In October 1998, minority students constituted over 31 percent of the student body (155 out of 493), and minorities made up 18 percent (six out of 33) of the full-time faculty teaching Fall classes (in the Spring semester the number will be higher B eight out of 37, or 22 percent). Women composed 49 percent of the student body in the fall of 1998 (243 out of 493 students), and 33 percent of the full-time faculty (11 out of 33). I applaud that record and anticipate that Rutgers will continue to exemplify our Nation's motto: E Pluribus Unum, of many, one.

Shortly after leaving academia for the bench in 1980, I wrote that legal education is a "shared adventure" for students, teachers, and alumni. (May I add, as I hope my presence here indicates, that the adventure also includes those who have traded academia for judicial robes.) The good people assembled here -- students, faculty, staff, alumni, university administrators, and members of the public supportive of the Rutgers School of Law at Newark -- all have contributed in meaningful ways to the creation of this fine building. As you rejoice in these grand quarters and take pride in the education that occurs here, each of you will be able, in James Wilson's words, to "act a just and independent part" in the shared adventure of legal education. May that adventure flourish in the facility we dedicate this afternoon.

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