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Brooklyn Law School

## Remarks at Brooklyn Law School

New York, New York

October 4, 2000

Thank you all. It's great to be here with the students and faculty of Brooklyn Law School - especially as you celebrate your centennial. I want to thank your Dean, Joan Wexler, a friend and law school classmate of mine, and the first woman dean of this extraordinary school.

Now, a lot has changed since the day I arrived to teach law at the University of Arkansas. I remember my dean telling me I'd be teaching criminal law and trial advocacy. That I'd be running the prison projects. And heading up the new legal aid clinic. Well, I had absolutely no experience doing any of that. And I was already feeling a little overwhelmed when I went to the annual reception for law school faculty sponsored by the County Bar Association.

The President of the Bar took me around introducing me to everyone. And when we got to one of the well-known judges, he said, "Judge, this is the new lady law professor. She's going to teach criminal law and run the legal aid clinic." And this tall distinguished judge with a handlebar gray mustache looked down on me and he said, "Well I don't have any use for lady law professors or legal aid clinics, but we're glad to have you here anyway."

Well, I didn't have much time to doubt my career choice because classes started the next day. So I went to work, desperately trying to stay at least one class ahead of my students, furiously filling out all the paperwork needed to create a legal aid clinic, and recruiting students and volunteers to help. Because, I believed - as this school does -- that representing real clients...especially those who might not otherwise get help...was an integral part of any legal education. And I believed - just as I do now -- that the law, when used right, is our most powerful tool for justice.

And that is, in many ways, what I want to talk about today. Let me ask: How many of you watched the debates last night? O.k., how many of you were studying last night? [How many of you don't want to say what you were doing last night?] Now, obviously I'm a bit biased. But, when people

turned on that debate last night, I believe they saw - in Al Gore - the intelligence, vision and commitment that will make him such an extraordinary President.

And, regardless of their politics, I think people saw what elections are really about - and that is choices. Clear choices about whether we are going to extend this unprecedented economic prosperity to everyone. About whether quality health care and education will be within the grasp of all children. And, choices about the direction of the Supreme Court, and its ability to keep its promise of equal justice under the law.

The fact is, one of the most important decisions you will make about our legal and judicial system will happen before you ever graduate from Brooklyn Law School. Because how you vote on November 7 will help determine whether this century's Supreme Court will safeguard, or erode, our most fundamental rights and responsibilities.

It will determine whether the highest court in the land will continue to interpret our Constitution in a manner that protects our oldest values and reflects our modern life -- or whether it will turn back the clock.

Because our rights and freedoms are just words, without the interpretations of the nine men and women who give them life. They are just words without the Justices who oversee our third branch of government, and provide the necessary checks and balances on the other two.

We often hear people say they want to return to strict constructionism. But what they are really talking about is injecting into the courts a conservative political philosophy out of step with the views of Americans and the needs of these times. The truth is, our Constitution is a living document, which has, over time, helped expand civil rights and civil liberties to all Americans.

We are a better country today because we ended legalized segregation and said separate was not equal. We are a freer country because women have the right to choose. We are a more democratic country because all Americans of voting age have the right to elect their own leaders.

Yet, as the Court begins its new term, there is no shortage of

attacks on these advances - and no shortage of issues - new and old -- that will be voted on before many of you even graduate. This is a Court which has gone 5-4 on some of the most divisive issues of our day. We've had 5-4 rulings striking down parts of the Violence Against Women Act, the Brady Handgun law, and the Gun Free School Zone Act, which prohibited firearms within 1,000 feet of schools.

What happens in the next election will most likely weigh on the scales of justice. The question is, in what direction? We know that the Court will continue to be faced with core decisions about the scope of Congress' authority to pass laws ensuring rights for all Americans. It will be taking up age old-questions about the separation of church and state and new attempts at restricting a woman's right to choose. It will be faced with questions about privacy in the information age, or about enforcing gun safety laws, at a time when leniency in some states can flood other states such as New York with illegal weapons.

Now, George W. Bush has, in the past, indicated that he would nominate Justices like Scalia and Thomas. And we know that members of the religious right have made it a top priority to ensure a Supreme Court which reflects their positions. At a Christian Coalition conference a year ago, Gary Bauer said, "Seven of the nine Supreme Court appointments there now were appointed by Republican presidents. Abortion ought to be over. Gay rights ought to be over. School prayer ought to be back already."

This is not an abstract threat. There could be not only one, but two or three vacancies to fill in the next Presidential term. Since 1937, there has usually been about one seat to fill every two years. But, we haven't had any retirements for more than six years now - that's the longest period of time between appointments in 177 years. So, we are likely to see major changes in the Supreme Court in the near future. And whether those changes will move us forward, or push us back, will be determined by the people we send to the White House and the Senate.

We've had pivotal elections like this before. Back in 1936, when FDR was running for re-election, we had, at the time, a Court that was striking down major elements of the New Deal. But, in the years that followed FDR's victory, the court moved to uphold the government's authority to address the national

economy, and protect the health and safety of workers.

When it comes to protecting the rights enshrined in our Constitution, elections matter. So, don't let anyone tell you differently. This election matters if we want to keep *Roe v. Wade* the law of the land. Back in June, the Court upheld an Eighth Circuit decision striking down an attempt to ban abortion procedures. The vote was only 5 to 4. [And there are now three Justices on record as wanting to overturn *Roe*.]

If we confirm just one or two more Justices who do not believe in *Roe*, the Supreme Court could have a majority to eliminate the right to choose in America. They could have a majority that takes us back to the days of darkness when women died from unsafe abortions, when states were free to ban all procedures, even in the aftermath of rape and incest.

Now, I've thought very hard about the responsibility Senators have to give their full advice and consent on Justices whose appointments are for life, and whose contributions will be felt for generations. And I can tell you this. I will never vote to confirm a Justice who does not support the precedent set by *Roe v. Wade*. I will never vote for a Justice who would undermine the Supreme Court's protections of our most fundamental rights, even as it tackles our newest challenges. And I wish everyone running for the Senate would make that same promise.

But, it's not just on the issue of choice. There are cases coming up this term that focus, for example, on the extent of the government's power to enforce the Clean Air Act and the Clean Water Act. There is a case that asks whether state employees can sue their employers for violating their rights under the Americans with Disabilities Act. There is a case the Court has been asked to review that asks whether the Congress has the power to ban assault weapons. And in the years ahead, there will be countless cases dealing with pivotal issues such as affirmative action, school vouchers, campaign finance reform, and workplace protections.

The question is, who will be sitting on the Supreme Court? And how will they rule? I believe we must continue to demand a modern Court that sees the Constitution as a living document, adaptable to changing times. And when it comes to protecting our fundamental rights and liberties, I believe we need to confirm Justices who will follow precedent, not

politics. Justices who are chosen because of their understanding of the law, the Constitution, and the needs of our increasingly complex and diverse society - not their conservative credentials. Justices who will move us forward, not backwards.

Just during my lifetime, I have watched the changes brought about by the Supreme Court's most important decisions. I was a young girl in 1954 when Brown was decided. And I was in my last year of law school when the court handed down its decision in Roe. We need to be able to count on this century's Supreme Court to continue bringing us closer to our ideals, as human beings and as a nation. That was the reason why I went to law school all those years ago. I know it is the reason why you are here. So, just like so many Brooklyn Law School graduates who have come before, I have no doubt that you will use your extraordinary legal education on behalf of our pressing challenges. But I hope you will also use your voice as citizens to ensure a Supreme Court that will continue to fulfill the promises made by our founders more than two centuries ago. Thank you very much.