REMARKS

Chief Justice Jean H. Toal of South Carolina

Wow. What a wonderful introduction. Rosemary, thank you so much for that.

This is a special moment for me to be at a *Law Review* function. The happiest years of my life in law school was spent as a member of the *Law Review*. What a wonderful extracurricular activity. There, I learned what it meant to really engage deeply in looking at legal principles and translating them analytically.

But that wasn't the most important part of that experience. Engaging with other law students led to a lifelong group of friendships that have lifted up someone who was very different as I entered law school. And I'll never forget the confidence that my fellow classmates had in me. The advocacy that my friends on the *Law Review* gave to me led to my efforts to being in the profession and provided an early lesson to me in how important it is to leave the ladder down.

Well, let's not talk about me for a moment, although I've been asked to maybe say a few things about my career, I think Rosemary's done a gorgeous job shining up and embellishing my credentials.

But I want to set us in a little bit of context. You know, in the last thirty years the number of women lawyers has increased so substantially in the profession that we forget where we came from. But the American historical background fills more than 200 years, and not just a couple of decades.

The year is 1783. Elizabeth Freeman, a slave, appeared before the Massachusetts Supreme Judicial Court, demanding her freedom. She claimed the under the State's Bill of Rights as a native born American she was free and equal. Can you imagine the courage it took for someone in her position to go to a court and advance this kind of an argument?

The Court was so impressed with her argument they granted her the relief she sought, her freedom. Two years later, Lucy Terry Prince addressed the United States Supreme Court. She's believed to have been the first woman to do so. Prince, an African American

woman, successfully defended a land claim before the United States Supreme Court as a lay advocate for herself in 1795.

It's not known exactly when women began to practice law in the United States, but as Rosemary's alluded to, many legal scholars believe that Margaret Brent was the first woman lawyer in America and she's a very interesting story.

She arrived in the Colonies in 1638 and was soon appointed as counsel to then the Governor of Maryland, Lord Baltimore. The Colonists were so impressed with her legal capabilities that they addressed her very respectfully as Gentleman Margaret Brent. The highest compliment they could pay. She was a great lawyer. She handled over a hundred and twenty-four major cases within the eight-year period that she practiced in Maryland, but she was never allowed a voice in the political arena because of her gender.

Despite Brent's early start, women didn't officially begin to practice law until 1869 when Belle A. Mansfield convinced an Iowa judge, Francis Springer, to interpret the masculine words in the Iowa Constitution to apply to women as well as the men.

Well, the first woman law student to matriculate at a law school of the United States was Lemma Barkaloo. She was a Brooklyn woman who in 1868 traveled to St. Louis to get an education in the law because no eastern law school would admit her. She was probably one of the women that Dean George Templeton mentioned in his diary. He was the Dean of the prestigious Columbia Law School in this state. But he wrote, "[a]pplication from three infatuated Young Women to attend [Columbia] Law School. No woman shall degrade herself by practicing law in New York especially if I can save her."

1869, Myra Bradwell was refused admission to the Illinois Bar because as a married woman her contracts were not binding and contracts of course are the essence of the attorney-client relationship and therefore Illinois denied her the ability to be a lawyer because she could not write an enforceable contract. The Court made this proclamation, "God designed the sexes to occupy different spheres of action. It belongs to men to make and apply and execute the laws."

The United States Supreme Court agreed with Illinois in Myra Bradwell's case. This is Justice Bradley from the highest court in this nation citing the natural differences between man and woman as the reason Bradwell could not be admitted: "A man is or should be woman's protector and defender. The nature and proper timidity and delicacy which belongs to the female sex evidently unfits it for

many of the occupations of civil life."

1870, Aida Kepley became the first woman in the United States to graduate from law school and practice law in the United States as a law school graduate.

1872, Charlotte Ray was the first black woman lawyer in the United States and the first woman lawyer in the District of Columbia. And I love this quote from the Trustees of Howard University Law School. At that time you were examined by the Trustees of the law school. Well, that would be a daunting prospect, ma'am, with your degree to have a bunch of us Trustees sit there and examine you. That's what Charlotte Ray had to endure. And here's what they said, "[t]his colored woman who reads us a thesis on corporations not copied from books but from her brain, a clear, incisive analysis of the most delicate legal questions." They were just astounded.

She was brilliant, she was Phi Beta Kappa, she was an honors graduate, she should have had national recognition, but instead she died in obscurity because of the prejudice against her by reason of her race and her sex.

But women in the nation's capital had no greater advocate of our place in the legal profession than one of my favorite figures from the early struggles of women to achieve equality in this country, Belva Lockwood.

She was the woman responsible for opening the Federal Courts to women lawyers, and in 1879 she became the first woman lawyer to argue a case before the United States Supreme Court. But it was not an easy road. She had to get a special bill passed by the United States Senate to change the admission requirements that the Court would not itself change in order to be admitted.

She was an enormously popular figure in many circles at that time. She even ran for President of the United States in 1884 on the Equal Rights ticket, and her reasoning was this; even though women could not vote, there was nothing in the Constitution to stop them from running for political office. She knew how to read closely.

Now, it shouldn't surprise you that the male legal establishment was not as welcoming to Belva Lockwood as they are today. She tried to plead her case in 1874 before the U.S. Court of Claims where she did a lot of practicing. And Judge Charles Gray silenced the courtroom, looked over his glasses and said to Belva Lockwood, "Mistress Lockwood, you are a woman." Belva, it was said later, "[f]or the first time in my life I began to realize it was a crime to be

a woman. Too late to put in a denial, so I pled guilty."

But what she said—what she did, she knew she was loyal to her client and that the client's calls came first, and for that reason she hired a male replacement to argue her client's cause before the United States Court of Claims, but she complained, "[h]e said very badly in three days what I could have said well in an hour."

You know there are a lot of nineteenth century pioneers that went before people like me. I think about so many of the courts that are so different now. The Wisconsin Supreme Court for example has been headed for over thirty years by Shirley Abrahamson, one of the icons in the legal profession of this country.

But in 1875, Wisconsin told Lavinia Goodell she could not be admitted to the State Bar. The Chief Justice then said, "[t]he practice of law was unfit for the human character to expose women to the brutal, repulsive, obscene events by a court where life would shock a man's reverence for women." This is a written decision by courts in this country. She died of rheumatic fever in 1941, and the newspapers actually said, there's proof, that practicing law was dangerous to a woman's health.

Now, I like the reaction that the Governor of Connecticut had to the application for a young woman to practice—to go to Yale Law School. At that time, the Governor of Connecticut had some authority to recommend folks for attendance at Margie Marshall's alma mater, and this is what he had to say, "A young lady that's applied to me for permission to become a student of law." He's writing to the Dean of the Yale Law School, "Are you advanced enough to admit women to your school? In theory, I'm in favor of their studying and practicing law provided they are ugly." He meant well. It's not fair to have a handsome woman before the jury.

Now, Clarence Darrow, you'll love him, he is just one of the likes of the trial bar, a beacon of capability and a stout representative of the cause of the unpopular And here's what he had to say to a group of women lawyers in 1925. This is to me the best illustration you can possibly have of the fact that you look right at people sometimes and don't see who you're talking to. He said to these women, "You can't be shining lights at the Bar because you are too kind. You have not a high grade of intellect. You can never expect to get the fees men can make. I doubt if you can even make a living."

This is Clarence Darrow to a group of women lawyers. He would have been torn limb to limb even if he had been in little ole South Carolina.

Another male attorney of the period: "A woman can't keep a secret, and for that reason and no other, I doubt if people will ever consult a woman lawyer."

This is Clara Shortridge Foltz. She's the first woman lawyer in California. She was first woman Deputy District Attorney in America. She got a little testy when an opposing lawyer suggested in open court she should be home raising children. And she said, "[a] woman had better be in almost any business than raising men such as you."

But, you know, if you would—it's an interesting thing that although we didn't get to vote until 1920, by 1914 women were admitted to the Bar of every state in the country.

But despite those hard won battles, Victorian attitudes about women continued well into the twentieth century and certainly well into the time that I attended law school.

Dean Harlan Fiske Stone, "over his dead body would women be admitted to Columbia Law School." Fortunately he was appointed Chief Justice before the first woman was admitted in 1927 at Columbia Law School.

But, you know, at Yale male students would stamp and call fire when women were sighted in classrooms in the '20's, but they were progressive compared to other schools. Harvard Law School did not admit women until 1950. Notre Dame Law School did not admit women until 1969, a year after I graduated from law school. Washington and Lee Law School did not admit women until 1972, and I suspect the reason is because that's the year the American Bar Association finally changed its accreditation policy only then, in 1972, to say that a law school was not going to be accredited unless admissions were open to all, including all women. The A.B.A. admitted women to membership in 1918, but frankly, women were not impacted at all in the leadership of the biggest legal association of lawyers in America until pretty recent years.

In 1910 just over one percent of the legal profession was made up of women, by 1930—two percent.

But the '30's slow economic times slowed participation of minorities and you can see in your own law school that admissions right now are down a little bit for women. The economy has something to do with that, and it certainly did with our progress in the profession.

We really didn't move much past those single digit percentages in participation in the profession until the 1970's, and frankly it was almost ten years after I was admitted to practice in 1968 before we

really saw the entry of women in any numbers in the legal profession. When I graduated from law school in 1968, in South Carolina only ten women actively practiced law in the state, and only two had ever argued a case for a client in a courtroom.

Women were not permitted to serve on South Carolina juries as I began my entry into the legal profession. Fortunately the rest of the country had ratified that 19th Amendment to the Constitution so South Carolina women would vote and they could serve on federal juries. They could not serve on State court juries at that time.

I toiled in the library of that large law firm of sixteen lawyers, the biggest in the state, carried the briefs of the guys that tried the cases, and got my first break as a litigator because women were finally allowed on juries about six months after I began my practice. And there were a lot of exemptions from service at that time, all job-related, all involving jobs men had and we did not have. And that's where a lot of women started showing up on juries and even being the majority of juries.

And my colleagues would go to present their cases before these juries and look straight at those women and not see them and make some of the most demeaning arguments you can conceive of. Those women would just deadpan it, they didn't react. They got back in that jury room and then socked it to our clients.

And so down in the depths of the library, toiling away for the others in the law firm, I was approached by the senior partner for litigation, not in a very enthusiastic voice saying, "Toal, we're putting you in a courtroom. We've got to have somebody that can talk to those women." And I never looked back. I became a litigator and had the privilege of litigating for many different interests, including the interests of women.

Eslinger v. Thomas, my Senate page case that's been referred to. I'll never forget, I had done civil rights litigation, because I was very much involved in civil rights, not a typical thing for a white southern women to be involved in, but I was very involved in voter registration and civil rights demonstrations as a student and as a young lawyer. But I didn't know much about gender litigation.

When I got this case, I started reading to my horror. It wasn't compelling state interest the State was going to have to prove. In fact, I couldn't believe they were even going to take this case to court and defend such a practice as it did. It was just a rational relation. And the rational relation was that old protective notion that the women might be put in compromising positions delivering

papers for the Senators Office in the evening, and therefore the State was going to protect these women by excluding them from this job.

Well, I happened to have some help in researching this, and I went to a young woman who was a young professor, was an adjunct from Columbia University in Rutgers. She headed up the Senate with a study of women in politics. She helped me write that brief that finally convinced the Fourth Circuit, not a bastion of liberalism, that this discrimination was unconstitutional and had to be eliminated.

Her name was Ruth Ginsburg and she never forgets to ask me every time I see her about how our joint client is and how she faired the legal profession. Ruth put the ladder down and pulled a lot of us along.

So I tell you this little bit of my history, and now that all the history of women whose names for the most part you don't know, on whose shoulders the burgeoning number of women who are in the profession and making their way slowly towards its leadership, and on whose shoulders they stand, including this one young lawyer.

Thank you.