

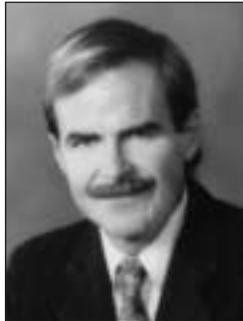
FROM THE CHAIR

As we begin the 2003–2004 ABA year and my second as your chair, I will use this column to celebrate the work of a past chair of the Forum and to outline our projects and goals for the year.

I have only praise for the Forum's first chair, whose roots, like mine, are firmly planted in Denver. I'm speaking, of course, of Richard M. Schmidt, Jr. When Dick Schmidt became founding chair of the Forum in 1979, he had already achieved national prominence as a lawyer representing both broadcasting and print media. In 1972, Dick represented the *Miami Herald* before the Supreme Court in the *Tornillo* case, which was a successful First Amendment challenge to Florida's right-of-reply statute. By establishing a broad principle of editorial autonomy, *Tornillo* has drastically limited content regulation of print media and has proved beneficial to all media in tort and other litigation.

Dick is perhaps best known for his thirty-five-plus years as general counsel to the American Society of Newspaper Editors (ASNE), which feted him last August for, in the words of Michael Gartner,¹ "inoculating generations of editors with the wonder of freedom and lobbying generations of politicians to keep that freedom safe." Gartner exalted Dick as "our hero, our savior, our counselor, our defender, our friend" and then quipped, "and that's not bad for a broadcaster." Dick spent the first half of his career in Denver, first on the air and then as an advocate for the television and radio industries.

Although I fully share ASNE's admiration for Dick, today I choose to write about his Colorado roots. After a Kansas upbringing, Dick enrolled in the University of Denver College of Law in 1945, turning down offers from both Stanford and Chicago. Dick had just undergone a spinal fusion necessary as



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a result of polio, which made Denver welcome because of its good climate and proximity to home. At that time, Denver's law school was still in its rooms above Mapelli Brothers' Meat Market on the edge of downtown.

Dick's speech/debate teacher at Butler County (Kansas) Junior College knew folks in radio in Denver who employed him as an on-air personality to

help cover his bills. No one who knows Dick will have any difficulty imagining him behind the mike. He started at KOA (known as the "blowtorch" because of its high-watt transmitter) for 40 cents an hour in 1947 (the year I was born); he ended at KYMR for a buck an hour, where he hosted programs such as "Meet the Boys in the Band," which featured musicians like Mel Torme and Lionel Hampton, and interviewed celebrities such as Dorothy Lamour, Victor Mature, and S.I. Hayakawa (then a part-time jazz critic).

He was and remains full of stories that make the heyday of radio sound as raucous and untamed as today's drive-time fare. For example, on KYMR, he and his partner invented a gag character named Murdo McFarquhar. When someone by the name of Murdo complained, they changed the character to Fardo McMurquhar. Dick used to tell of a radio station he represented after he became a lawyer that conducted a lottery in which the prize was "the keys to a new Cadillac." Indeed, the prize was just such a set of keys—no less, no more.

Dick limited his radio appearances to election night coverage after he started his legal career. He began as a deputy district attorney, which offered him trial experience (against lawyers that included future Supreme Court Justice Byron White) but did not necessarily coincide with his passions. He opposed the death penalty, and represented Luis Jose Monge, the last person executed on Colorado's death row before the *Furman v. Georgia* hiatus. His opposition to the death penalty had been strong

enough to survive the death of his mentor and law partner, Merrill Knight, who was murdered by one of Knight's relatives whom he and Dick had been trying to help.

Dick is responsible for the first rule in the United States authorizing cameras in courtrooms. The Colorado Supreme Court commissioned one of its justices, O. Otto Moore, to conduct a trial to determine whether the state's Judicial Canon 35 should be amended to permit cameras in certain cases. Dick represented the broadcasters that supported the proposal, but it should be noted that the Colorado Bar Association tried to hire him to oppose it.

The high point of the hearing was the testimony of a TV technician, who declared that cameras could be used in the courtroom in such a way that none of the participants would be aware of them. When Justice Moore asked the witness how he could be sure of that, the witness replied, "Well, we are televising this hearing, and it isn't interfering with the proceedings." He then turned on a TV set, and, to Justice Moore's astonishment, a live picture of the courtroom appeared. Dick, with the assistance of the court clerk who had given him access to the courtroom the night before, had a hidden camera bay constructed. Justice Moore was so delighted that when the full court later assembled for argument, Moore pulled the same stunt and the court quickly adopted the rule.

Dick left Colorado for Washington, D.C., during the 1960s; he accepted a

Communications Lawyer (ISSN: 0737-N7622) is published quarterly by the Forum on Communications Law of the American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611. POSTMASTER: Please send address corrections to ABA Service Center, 750 North Lake Shore Drive, Chicago, IL 60611.

Communications Lawyer is aimed at attorneys and other communications specialists. It provides current practical information, public policy, and scholarly articles of professional and academic interest to its members and other readers.

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Forum Chair Thomas B. Kelley (tkelley@faegre.com) is a partner in the Denver office of Faegre & Benson LLP.

number of appointments under the Johnson administration and then (after turning down the opportunity to be appointed to the Federal Communications Commission) joined the firm of Cohn & Marks in 1968, where he remains today. The following year, I joined Dick's former Denver law firm, the principal firm representing newspapers and broadcasters in Colorado, and heard endless stories of his exploits and antics. To this day, Dick remains one of Denver's favorite dinner speakers, always armed with a hilarious set of both new and recycled anecdotes and quotations, such as the one he attributed to Maurice Mitchell, once the chancellor of the University of Denver, defining education as a "process of casting imitation pearl before genuine swine" and my personal favorite, attributed to Yogi Berra, "You should always go to other people's funerals, because if you don't, they won't go to yours."

Notwithstanding his illustrious career and lifetime achievements, Dick has always remained down-to-earth

and selfless. He has been a father confessor to many of us who have suffered growing pains in breaking into the ranks of lawyers who represent media organizations.

I turn now to the coming year, which promises to be another exciting one for the Forum. The planning committee is hard at work organizing the Annual Conference, which will return to Boca Raton, next year in January (22–24) instead of February. It may be the best yet. Greg Schmidt (who provided much of the above information about his father) has taken over for the retiring Jerry Fritz to cochair (with Guylyn Cummins) the program "Representing Your Local Broadcaster," which will be presented in April 2004 in conjunction with the National Association of Broadcasters convention in Las Vegas. In the wake of the success of our well-attended right-of-publicity program at the ABA convention in San Francisco last August, we will attempt a reprise at the 2004 convention to be held in Atlanta.

Our most important project again will

be the initiative to achieve diversity among the lawyers who represent media organizations and participate in our Forum. We will continue to build our mentoring client in-house internship and annual conference scholarships projects, present another program at the National Minority Lawyers conference in June, and include a diversity meeting as an adjunct to the Annual Conference in Boca Raton. Finally, I have appointed a committee consisting of Kelli Sager (Davis Wright Tremaine LLP in Los Angeles), Peter Canfield (Dow Lohnes & Albertson in Atlanta), and George Freeman (New York Times Co.) to consider nominations for four seats on the Governing Committee that will be filled at the election at our annual meeting on January 23, 2004.

In my next column, I will report the results of their work.

Endnotes

1. Gartner is a lawyer, editor and co-owner of the *Tribune* in Ames, Iowa, a former president of NBC News, and winner of the 1997 Pulitzer Prize in editorial writing.