

FROM THE CHAIR

As I gazed out at the audience from the podium at Boca during our Seventh Annual Conference last February, my mind sometimes wandered and thought about the composition of the over 200 attendees in the room. First, I looked at some rapt and some sleeping faces to try to get a gauge of whether the audience was enjoying the program and was engaged with the speakers and the material. Then, I couldn't help but think about how much I liked so many in the audience and how, despite our somewhat competitive natures and business rivalries, we really were a very collegial, cooperative, and fun-loving bunch. And further, that despite being from all over the country and of both genders, as the reaction to September 11 confirmed, we were united by the same goals and ideals and committed as a true matter of principle to the First Amendment values that we are called upon to espouse.

However, looking at the group, it was hard not to notice something else—the overwhelmingly white color of the crowd. Although my eyes are starting to go, and the room might well have been twenty-five rows deep, it was hard to identify more than two or three non-whites in the entire group. That image seems to me to be entirely out of whack: Why are there so few minority lawyers in our area of the bar?

As those who know me will doubtless attest, I am not a paragon of PC values. Indeed, at prior Boca conferences, I have been criticized for, among other things, not having enough women as panelists at our plenary sessions. Why, for example, I was interrogated, were there no women on our panels on “The Pentagon Papers—25 Years After” (our keynote plenary session at our first conference), “Watergate—25 Years After” (our keynote plenary session at our second conference) or “Tet—30 Years After” (our keynote plenary session at our third annual conference). The answer strikes me as easy: how many women were involved in the Pentagon Papers, Watergate (well, OK, Rosemary Woods, but she was not really involved in the legal aspects other

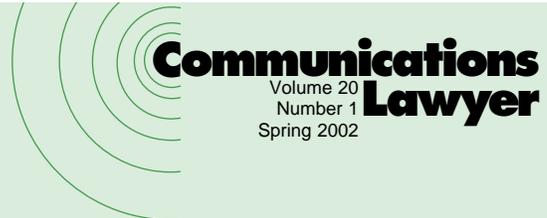


George Freeman

than the spoliation issue), or the Vietnam War. Disagreeing with many of my colleagues, I am disinclined to put a woman on one of those panels largely to provide an image of diversity when the main players, be they Abe Rosenthal or U.S. Attorney Whitney North Seymour, Ben Bradlee or John Dean, and Bernie Kalb or David Halberstam, all happen to be male.

When thirty years from now a thirty-year-later retrospective is held, presumably the politicians, journalists, and lawyers on such panels will be far more diverse. (OK, I'll spare the Monica

Lewinsky joke.) Indeed, when some twenty-five or thirty years from now, we convene to look back at the stolen election of 2000, the panel will doubtless include one female Supreme Court Justice and a female Secretary of State of Florida who seemingly controlled the entire saga. When we look back at hopefully the longest jail term of any journalist in history, we will hear from a woman, Vanessa Leggett. When we gather twenty-five years from now to look back on the War on Terrorism, we will doubtless see two of the president's closest advisors, a black male Secretary of State and a black female National Security Advisor. When (and if) we do an Enron retrospective, the John Dean role turns



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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out to be played by a woman too.

But why has diversity come so slowly to the media bar? To answer that question and try to do something about it, the Forum Governing Board has appointed a committee to look into the question: Chair-Elect Tom Kelley and board members Jonathan Avila and Paulette Dodson. Their charge is to consider what can be done to increase diversity not only in the Forum, but in the media bar as a whole.

In addition, the Forum has so far taken some other small steps: we have elected a diverse Governing Board, and at our last meeting in Las Vegas decided to give one scholarship for our Boca conference to a minority lawyer or student. But that is just a small start.

Diversity should be a paramount interest of all of us, and not only because we are bar leaders practicing in a highly visible and prestigious area. It also makes good practical sense. A diversity of lawyers on teams clearly adds more imaginative and different views and ideas to a legal problem; in addition, at the risk of being overly practical, minority lawyers might be able to better understand and relate to the many minority jurors who typically sit in the big cities where cases against our clients are usually tried.

One area that has been explored is for clients to demand of outside counsel

that minority lawyers be employed on their matters. Although that strategy is praiseworthy, I am not sure what, at bottom, it accomplishes. If, in response, a law firm moves a top-notch minority lawyer from a commercial litigation practice that she enjoys to a media law group that she is less interested in, such a transfer may be counterproductive. It may make the minority lawyer feel that she is being used in a manipulative way, and it may take her from the practice area that she most enjoys and performs best at. (But it is hard to imagine, although maybe I am not altogether objective, that most lawyers, whether they be white, black, or purple, would not eagerly desire to get exposure to our area.)

On the other hand, if, within law firms, there are obstacles to entry into the media groups, that would be a major concern. Yet, it seems quite doubtful that there are barriers to a practice group whose principal lawyers think and speak of themselves as more liberal than most. Moreover, one would think that law firms would be quite willing to place all of their lawyers, and especially their minority lawyers, into practice areas they most wish to enter and in which they believe they will succeed. Why one of those areas is not media law remains the critical question, and one for which there is no easy answer.

In my view, it is hard to determine

what to do about the problem until, first, we recognize there is one and, second, figure out why there are fewer minorities in our practice area than in others. If one goes to other PLI or ABA conferences, although one is not struck with an overwhelming number of lawyers of color, there is little doubt that the proportion of minorities is greater than in the media bar. Once we have unlocked the answer to that mystery, hopefully an action plan can be more successfully achieved.

To help us down this very important path, at our Eighth Annual Conference, at the Camelback Inn Marriott Resort in Scottsdale, February 13–15, 2003, we will devote one session, probably in workshop format, to this problem. I think it behooves us all—not only because of the principles involved, but also because a diverse media bar will enable us to serve our clients better—to attend that session, and to do some serious thinking beforehand about the cause of this situation and the possible strategies to improve it.

We are leaders of a bar devoted to free expression and to civil liberties. Let's agree that this is an area where the speech/activity dichotomy present in some areas of the law does not exist, and that our actions will speak as loudly as our words. ☐