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    Spring in Las Vegas

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From the Chair
By Leslie Pedernales
It is my honor to co-chair the Women in Communications Law (affectionately abbreviated to WICL) committee and to welcome you all to our events and to this newsletter. We hope you will find in these pages a resource for information and an access point to find new ways to get involved with WICL.

I have had the great fortune to be mentored by some of the very pillars of our network of strong professional women attorneys – Robin Luce Herrmann of Butzel Long, Monica Dias and Susan Grogan Faller of Frost Brown Todd, Rosemary Harold of the FCC, Guylyn Cummins of Sheppard Mullin, and Carolyn Forrest of Fox TV. These remarkable women, and so many others, make every gathering of WICL memorable and fun. I am also thankful for my co-chair Catherine Robb of Haynes and Boone and co-chair-elect Jenn Dukarski at Butzel Long for all their help in getting this year off to a great start. We each hope you will join us at any and all of the upcoming events, and also consider getting involved in any of the projects and subcommittees that are described in this newsletter. I look forward to seeing you all at some of the upcoming events, or working with you on projects and subcommittees.

An Interview with Rosemary Harold
By Laura Berman
Earlier this year, WICL member and former WICL newsletter editor Rosemary Harold was appointed Chief of the Enforcement Bureau of the Federal Communications Commission. I had a chance to ask Rosemary some questions about life in both the public and private sectors, the importance of mentoring, and any wisdom she’s gleaned throughout her notable career.

What’s a typical day like for you in the Enforcement Bureau? How much interaction do you have with the other FCC Bureaus, Offices, and the five FCC Commissioners?

There are no truly typical days in this job, unless you count always having a calendar jam-packed with internal meetings (continued on Page 5)
Benefits of Forum Membership

By Cynthia Counts, Robb Harvey, and Lisa Zycherman

As a member of the ABA Forum on Communications Law, you gain access to networking opportunities with the best and the brightest in the media and communications law bar (including practitioners from law firms, media and entertainment companies, academia, and public interest groups), access to CommLawAlert (an email service that delivers the full text of relevant court opinions as soon as they are issued), and more. In addition to WICL, the Forum also has opportunities to network with the ABA’s Young Lawyers Division as well as getting involved in our Diversity Moot Court Competition. We also provide valuable training for young lawyers through our one-day Media Advocacy Workshop, which is held the day before our Annual Conference.

Becoming a Forum member allows you to take advantage of a discounted rate for our Annual Conference, as well as for other Forum events and conferences. Another membership benefit is access to the Forum's quarterly publication, Communications Lawyer. That publication will be sent to you by email if you permit the ABA to communicate with you via email, which we encourage that you do. If you have not received the recent release, contact membership co-chairs Robb Harvey (Robb.Harvey@wallerlaw.com) or Cynthia Counts (CLCounts@duanemorris.com).

Through our conferences and publications, you will gain access to critical and up-to-date analysis and developments in all areas of communications law, including newsgathering and reporting, telecommunications, copyright, new technologies, entertainment, marketing, regulatory affairs, privacy, data security, and internet-related issues.

In August, during the ABA’s Annual Conference, the Forum co-sponsored a panel with the Section on Litigation as a part of the ABA’s Presidential Showcase. The panel was Trump v. the Press and the First Amendment: Fake News, Government Leak Investigations, Alleged Biased Media Coverage, Trump's SLAPP Libel Suits and His Pledge to "Open Up the Libel Laws" - Will the First Amendment Survive?, moderated by George Freeman, Media Law Resource Center, with the following speakers: Floyd Abrams, Cahill Gordon & Reindel, Tom Clare, Clare Locke, Laura Lee Prather, Haynes & Boone, Jim Rutenberg, The New York Times, and David Walsh, The Sunday Times, Dublin, Ireland. Replays are available on C-SPAN.

In 2017, we had an outstanding Annual Conference in New Orleans. We covered issues such as the struggles on college campuses to uphold traditional First Amendment values in the face of demands to clamp down on offensive speech, right of publicity claims forty years after the Zacchini decision, and an evaluation of the Hulk Hogan v. Gawker verdict on the anniversary of Reno v. ACLU.

We have several exciting upcoming events. The Forum is presenting a panel during the International Law Section’s Annual Spring Conference, April 17-20, 2018, in New York entitled, “Privacy and Free Speech in the Digital Age.” We’re currently identifying attorneys to participate on the panel.

In conjunction with the 70th Anniversary of the adoption of the Universal Declaration of Human Rights, the ABA is presenting a program in Paris, France, June 7-10, 2018, and our Forum has been selected to present a panel. Our topic is “Balancing Privacy and the Right to Know in Open Societies.”

This year, the ABA Forum’s Annual Conference will be held March 1-3, 2018, in Napa Valley, California at the Silverado Resort and Spa. In 2017, we introduced a new program to welcome “first-timers” to the Annual Conference, pairing first time attendees with long-term Forum members for the opening reception/dinner. Please consider this our personal invitation that you attend the Annual Conference.

The Media Advocacy Workshop and First Amendment and Media Law Diversity Moot Court competition take place Wednesday, February 28, 2018.

We also will have our Privacy and Data Security Symposium in Washington, DC on March 20, 2018, and our Representing Your Local Broadcaster, FCC and FTC, conference during the National Association of Broadcasters Annual Conference in Las Vegas, April 8, 2018.

We hope you will participate in these exciting upcoming events and, if you are not already a member, we would love for you to join. We invite current members to spread the word about these wonderful benefits and to encourage their colleagues to join the Forum and WICL.
The Napa Experience
By Jennifer Dukarski

Silverado Resort and Spa

For the history buff, the Silverado Resort serves up a treasure trove of stories. A former home to the brother of General Vallejo, the official representative of the Mexican government, the estate has been visited by many American presidents from Abraham Lincoln to Theodore Roosevelt. In addition to politics, the mansion and estate has been a focal point of intrigue, at least as a featured property on the television series “Falcon Crest.”

If history isn’t your cup of tea but you hear the call of the tee box or a feisty round of tennis, the Silverado resort is equally amazing. The resort is known for its two 18-hole championship golf courses and 13 plexi-paved tennis courts. After a hard day of play, the resort also features a 16,000 square foot spa, exercise facilities and salon.

Another one of its true gems is that it is close to more than 400 wineries and beautiful parks, a fact made more important in the wake of the recent fires.

Regional Parks

The Napa fire burned more than just the vineyards and wineries. Napa’s Skyline Wilderness Park faced significant damage in its upper part. The slopes of Robert Louis Stevenson State Park suffered damage along with Sonoma’s Jack London State Historic Park, Sugarloaf Ridge State Park and Trione-Annadel State Park.

Despite the catastrophic damage, local residents have been pressing forward to help restore the trails in these beautiful spaces. As a result of dedicated volunteers, the Oat Hill Mine Trail has been reopened. The Oat Hill Mine Trail, a half-hour from the Resort, follows a stage coach route from Calistoga to Aetna Springs Road in Pope Valley. Named for the mercury mines in the north, the trail passes through volcanic formations, pine and cypress forests, spring wildflowers, and the homestead property and log cabin of Karl Gustov Holm.

Another unique park in the region is the Petrified Forest, which recently celebrated its 100th anniversary. The Forest, considered to be one of the finest examples in the world of an ancient forest, is located in nearby Calistoga in the zone of an extinct volcano known as Mt. St. Helena that exploded 3.4 million years ago. By virtue of weather events and climate in the following millions of years, the ancient Redwood trees remain fossilized, preserving the most delicate details of the wood.

A Very Napa Recovery

Without question, the Napa Valley fires were devastating. The statistics are devastating: dozens dead, over 200,000 acres burned and almost 3,000 homes destroyed. Despite the destruction of wineries including the Signorello Estate in Napa, Patland Vineyards, and Paradise Ridge Winery in Sonoma County and the damage to many others, the wine industry (which generates over $50 billion annually and employs 40% of the Napa County workforce) is continuing to produce and support visitors. With promises to rebuild, we should be prepared for a great experience in the Valley.

Without question, Napa is known for its wineries. Many of the storied properties need no introduction. For potentially unique wine experiences visit:

- Cave Tour and Barrel Tasting at Rutherford Hill; Wine and Art Exploration Tour at HALL Wines;
- Sterling Vineyards Gondola Ride

Similarly, the following are noted as wineries with interesting properties:

- Castello di Amorosa; Domaine Carneros; Artesa; Peju

And for the enthusiast who wants to promote women winemakers, you may want to try:

- Donum Estate; Corison Winery; Domaine Carneros; Rock Wall Wine
Awards and Honors

WICL Member S. Jenell Trigg of Lerman Senter PLLC, who is also Chair of the Forum’s Annual Privacy & Data Security Symposium, and founding member of the Forum’s First Amendment Diversity Moot Court Competition Committee, recently received two prestigious awards.

In September, Jenell received Dialogue on Diversity’s Diversity Award for her pro bono work with the organization and her generous services to the law, economy and in the field of privacy and data security. Jenell was one of the inaugural speakers for Dialogue on Diversity’s annual Internet Data Privacy Colloquium, now in its 8th year. The Diversity Award was presented at Dialogue on Diversity’s 2017 Entrepreneurship Information Technology Conference on September 15 at the AT&T Forum in Washington, DC. An official NGO recognized by the United Nations, Dialogue on Diversity’s mission is “the social and political advancement of women and men from diverse cultural, ethnic, and national traditions, fostering increased economic empowerment through promotion and development of entrepreneurial excellence, technology training, networking, and education.”

Then, in October, Jenell received the Catholic University of America (CUA), Columbus School of Law's Distinguished Alumni Award. The Distinguished Alumni Award is the highest honor bestowed by CUA Columbus School of Law on alumni. This award recognizes individuals who have distinguished themselves through noteworthy achievements in their professional and personal lives. Recipients of this award have translated their CUA Law experience into notable achievements in the public, business or professional realms and bring honor to the CUA Columbus School of Law. Jenell is a 1997 graduate, magna cum laude, and received certification with honors from the Institute for Communications Law Studies (now called the Law & Technology Institute). She is also past President of the Communications Law Institute Alumni Association and currently serves on the Law School’s Board of Visitors. Jenell has also chaired the Institute’s Milestone Award since its inception in 1997, which has raised over $300,000 in scholarship funds.

Get Involved!

There are many ways to become more involved with WICL. Below are some of our upcoming events. You can also read about these and other events in the article entitled Benefits of Forum Membership on Page 2 of this newsletter. We hope to see you at some or all of these events. We also encourage you to take part in the various WICL projects and subcommittees described below. For more information about any of these events or projects, please contact the WICL Co-Chairs.

EVENTS

November in New York City
We are thrilled to meet in New York for two special social events: a dinner-and-a-show night on Thursday, November 9, 2017, to see Come From Away and after theater supper at Café Un Deux Trois; and a networking and educational luncheon at Natsumi on Friday, November 10, 2017.

Annual Forum Meeting in Wine Country
This year’s annual meeting of the ABA’s Forum on Communications Law will be held on March 1-3, 2018, at the Silverado Resort & Spa in Napa, California. WICL

PROJECTS & SUBCOMMITTEES

Newsletter Subcommittee
Responsible for putting together two newsletters each year, the one you are reading now in the fall/winter and one in the spring. Please consider contributing articles, news items about your successes and career, or help in putting the newsletter together. Contact Laura Berman (lberman@lermansenter.com) or Lisa Zycherman (lisazycherman@dwt.com) with any newsletter contributions.

Web Subcommittee
Responsible for overseeing and updating the content on the WICL section of the Forum Committee’s website. We hope this subcommittee will be in close contact with the newsletter subcommittee.
Legacy Interview Project Subcommittee/Joint Subcommittee with the Young Lawyers Division

The project’s goal is to record interviews with experienced practitioners of our Bar who can provide advice on the building blocks for a successful career in media law. A standard interview questionnaire will be provided to the junior attorney interviewers who are solicited and selected by WICL and the Young Lawyers Division jointly. The resulting recorded interviews may be utilized for different purposes. By asking more junior attorneys to conduct the interviews, we hope to get more of you engaged in our Bar. Finally, this will be a wonderful way to document and preserve information on the careers of distinguished members of the Bar. The subcommittee will assist in selection of interviewers and interviewees, coordination of interviews, and editing. We would need three to five members of this subcommittee to help out with the project.

Speaker’s Bureau Subcommittee

Responsible for recruiting candidates from our membership and establishing a list of WICL members who would be willing to speak/present on media/communications-related topics. These candidates would develop presentations on their own field of expertise and could be called upon to speak at WICL and Forum events.

An Interview with Rosemary Harold (continued from Page 1)

about pending enforcement cases or various administrative issues such as hiring, discipline, budget constraints, and the like – plus periodic scrambles to ready high-profile enforcement matters for consideration and votes by the five FCC Commissioners at their statutorily mandated monthly public meeting. I supervise more than 190 career staffers, most of whom are either attorneys or electrical engineers. In addition to the tasks I’ve noted, we also assist the commissioners prepare for congressional meetings or hearings on FCC enforcement matters. And we interact with the public regularly, including individual consumers or companies that file complaints, as well as with the targets of those complaints.

My staff or I also communicate with other FCC bureaus and offices on a daily basis, particularly the Office of the General Counsel and the policy-focused bureaus that craft regulations governing wireless providers, wireline providers, broadcasters, and “multichannel video” providers such as cable systems and satellite TV providers. In certain respects, the Enforcement Bureau has a broader portfolio than other FCC bureaus – we don’t craft the rules for the services subject to FCC jurisdiction, but we enforce most of them (with a few exceptions).

For me, the breadth of EB’s subject matter has been a major part of this job’s appeal. Some of what we do, such as media regulation, is extremely familiar to me – and because of that, the EB folks who handle media-centered enforcement actions probably have fielded more edits from me so far. In other substantive areas, such as telephony regulation, I am still getting up to speed. For example, at my request, my staff has been giving me many tutorials on complex regulatory schemes such as the rules governing “universal service,” which involves funding mechanisms designed to keep voice telephony and basic broadband service affordable for everyone. I’m lucky to have experts in those areas on which to rely when needed, including colleagues in other FCC bureaus.
Could you explain a bit how the enforcement process works at the FCC? Are most actions driven by external complaints or a regulatee’s self-reporting or does the Enforcement Bureau on its own look out for violations of the FCC’s rules?

We receive complaints and/or formulate cases from all the sources you’ve listed – complaints from the public, complaints from rival service providers or whistleblowers, complaints or queries funneled to us from Capitol Hill, and questions we raise on our own after reviewing news reports of one kind or another. In typical cases, if EB’s initial review of the complaint or news report appears to raise a serious enforcement issue, the Bureau crafts a “Letter of Inquiry” and sends it to the target entity, which usually has 30 days to respond. After analyzing the response – including the empirical data we often request – EB may proceed to issue a “Notice of Apparent Liability,” which recites our tentative findings concerning one or more apparent violations of the Communications Act and/or FCC rules. This “NAL” also usually proposes a specific forfeiture for the apparent violation(s). At that point, the entity at issue basically has three options: (1) file legal arguments and additional factual support to rebut the FCC’s tentative findings and conclusion; (2) pay the proposed fine and thereby end the matter; or (3) enter into settlement negotiations with EB.

We settle a lot of cases, and often our consent decrees include a “compliance plan” designed to ensure that the entity’s employees understand the relevant laws and regulations and that they continue to adhere to them. But if a target entity chooses not to settle, we will move to a “Forfeiture Order,” which is FCC-speak for a final decision. If entities refuse to pay the fine, we refer the case to the Department of Justice for collection action in court. A forfeiture order also may have an impact on the entity’s future business in front of the Commission; the agency may weigh the enforcement action in considering whether to grant an application request or how to deal with any future rule violations.

How have your past FCC stints as a legal advisor to Commissioner McDowell and then as Deputy Chief of the Media Bureau helped you in your new role as Chief of the Enforcement Bureau?

It is very helpful to understand the basic dynamics of how the FCC does its work – and it is hard to get that understanding by any means other than experiencing it over a series of years from the inside. I’m grateful that I got to learn how rulemaking works from the Media Bureau perspective; it helps now in interpreting the rules that EB enforces. And I’m grateful that I got to assist Commissioner McDowell and thereby learn how non-Chairman commissioners make decisions and interact with their peers; it helps now in understanding how to help move EB matters through the process.

When you left the FCC last time to return to private practice, did you think you would end up back at the FCC at some point in your career? What led you to return to the FCC?

When I left the FCC in 2011, I wasn’t sure exactly what opportunities might emerge in the future, but I didn’t automatically rule out a return to the Commission. To tell you the truth, my husband – a career government attorney who has worked on Capitol Hill and in another federal agency – was somewhat annoyed with me for leaving the FCC in the first place; he is a huge fan of the benefits of government service. I did not seek out the Enforcement Bureau Chief position, but when it was offered to me, it didn’t take me long to accept it. After watching the FCC operate for so long, from jobs both inside and outside the agency, I knew that being Chief of a major FCC bureau would be both a rare and a wonderful position, for all its administrative challenges. The Enforcement Bureau job in particular offered a great mix: I know enough of the substantive law and internal procedures to slip into place relatively smoothly, but there are enough new laws and rules to master that I won’t get bored anytime soon. Plus, I truly love building teams of smart lawyers to advance a project that will stand up to legal scrutiny – and EB is full of smart lawyers.

How has your experience both in private practice and as a journalist shaped the way you approach your role as Chief of the Enforcement Bureau?

In some respects, my journalism background has more of an impact on how I operate now than does my time since then in two great law firms. Many people – including my husband, at first – have been surprised that I, a media policy wonk, would gravitate to enforcement work. But those
fOLKS didn’t know me in my original professional role as a reporter and editor. Although the tasks – and certainly the ramifications – involved in journalism and law enforcement are distinct, to me there still is noteworthy overlap. In both roles, you gather the facts, assess credibility, determine the truth as best you can, and use the evidence you have gathered to explain that truth in a compelling narrative. All those basic tasks are familiar to me.

My journalism experience also plays out now, as it has throughout my legal career, in my writing and editing. I like to think that I am pleasantly draconian in insisting that people working with me write in “real people English,” whether we are laboring over official documents or drafting explanations of legal matters for non-lawyers. Among other things, that means employing active-voice verbs unless obscurity is required, chopping run-on sentences into pieces that are no more than three clauses long, and using simple Anglo-Saxon words rather than longer terms derived from Latin. In my first FCC stint, having to edit a 100-page report that was poorly written by committee made me so crazy that I commissioned the first-ever “Media Bureau Style Guide,” which drew on the AP Stylebook as one of its sources. And I was delighted to discover upon my return to the FCC this year that the whole Commission now has a coherent style guide – which also looks to the AP for guidance on word usage. I reviewed the whole thing in one sitting and nearly shouted with joy over it. Yes, I am truly a word nerd.

Do you think there will be more scrutiny on FCC license renewals given the President’s comments about the media?

In a word, no. FCC Chairman Ajit Pai has stated quite clearly that “the FCC under my leadership will stand for the First Amendment, and under the law the FCC does not have the authority to revoke a license of a broadcast station based on the content of a particular newscast.” The Chairman’s position doesn’t surprise me. We worked together at the Commission more than a decade ago, when he was in the Office of the General Counsel and I was in the Media Bureau. Through our collaboration on various media-related FCC decisions back then, I came to understand his legal views – and he has been consistent over time in interpreting the Constitution’s restraints on government power.

How have mentors been a part of your career? Likewise, how has mentoring played a role in your career?

Informal mentors have been a significant factor in my career over the years, and those individuals have changed over time as I’ve “grown up” as a lawyer. I’ve been aware since before law school that the best mentoring relationships likely would grow out of working for more experienced attorneys – and that as a young woman starting out in a law firm, chances were that most of my prospective mentors would be male. All of that proved true, and it turned out to be pretty easy to find good supervisors early on who just happened to be men. It’s also possible to find mentors through professional associations such as the ABA or the Federal Communications Bar Association (FCBA), but that takes a bit more diligence on the mentee’s part – volunteering to help organize association events and activities has always been productive for me on that score.

In thinking back on it, my early mentors were all men, but once I had established myself as a smart and reliable lawyer, many of my later boosts up the ladder came from other women. The moral of that story is that you can never have too many mentors, and as you get older, the best outcome is for the line between mentor and friend to blur.

On the flip side, I spend a lot of time “paying it forward” these days by mentoring law students and young lawyers. I’ve been an adjunct professor in Catholic University’s law school for more than a decade, and I think I’ve signed up to be a mentor in nearly every professional association or alumni setting that is relevant to me. For example, I’m on the Board of Advisors for my undergrad alma mater’s public policy program, and one of my tasks is mentoring a student who is pursuing a dual degree in law and public policy. But that mentoring is a pleasure rather than a task because we have hit it off as people. I hope any young lawyer or law student who is looking around for a mentor understands that the role can be great fun for the mentor – so they shouldn’t be too apologetic about approaching people.
Recognizing that you’ve only been in your new role for a short time, what has been the biggest challenge you’ve faced in this role to date? How does that compare to other challenges you’ve faced in over the course of your career?

My biggest challenge now is a management one, not a legal one. Like most federal agencies today, the FCC is consciously aiming to reduce its employee numbers. I think that attrition probably will lead us to the target number, but no matter how good the remaining employees are, there will be new burdens. So learning how to navigate through this, both with respect to advising my supervisors about the practical impacts and helping bolster my staff’s morale, is a skill set I’m acquiring on the job. I imagine that people who have worked in corporate settings have run into much the same thing, but I did not encounter it at either of my two law firms. (And I was lucky enough to leave the newspaper industry in the late 1980s, which turned out to be the apogee for daily newspaper employment – though I had no idea about that at the time.)

What advice do you have for young lawyers who may want to explore higher level positions at the FCC?

I start with the boring-but-true caveat that no one can really chart a career path with no deviations – life by definition is full of deviations. So my annoying-but-true general advice for young lawyers is to (1) take the best job you can get in the early stages of your career; (2) do your very best work at those early jobs because you already are building a reputation, whether you are aware of it or not; and (3) take responsibility for meeting people outside of your office, whether that means prospective clients, possible employers, or just great colleagues who happen to work elsewhere. You never know when a client might become an employer, a friend, a great reference, or whatever. Remember that you can’t rely on your employer to do that networking for you – in some cases it might not be in your employer’s best interest to let other people know just how good a lawyer you are. And be ready to seriously consider unexpected opportunities (which means, among other things, to live a financially prudent lifestyle in private practice if you think you might want to work for the government some day).

Focusing specifically on the FCC front, it helps enormously to be in DC and to get as much FCC regulatory experience as you can. Joining the Federal Communications Bar Association also is critical, even more than signing up for the Forum on Communications Law or WICL. (Sorry, ABA, but it’s true.) Working on Capitol Hill for a Member or a relevant Committee – Commerce or Judiciary – can be very helpful, too. That experience will make a resume stand out when you first apply for an FCC job opening, which are hard to come by these days. Once you get in, opportunities for moving up are there – and working in the trenches with your FCC colleagues can lead to even more possibilities down the road, whether inside the Commission or not, that no one can predict.

When did you initially become a WICL member? How has WICL played a role in your career and what advice do you have for making the most out of WICL?

I joined the Forum and WICL shortly after I started my first job, which means 1991 or 1992. For me, WICL has served as an easy means of keeping fairly up to speed on “media law” of the sort that I don’t do, such as defamation counseling and litigation, but which had been my original impetus for going to law school. It also has given me a chance to explain FCC law to the many litigators in WICL, which has been fun and a great networking opportunity. (How long do you want to give me to explain the net neutrality debate? I can give you the five-minute version, the five-hour version, or the full multi-day seminar!) Finally, it has been a pure joy to get to know so many women attorneys whom I otherwise would never have met.