

President's Message

LAWRENCE R. BACA

Diversity Matters

ONE OF THE initiatives that I have undertaken this year concerns diversity among the membership of the Federal Bar Association. Diversity is important throughout our profession and especially in the judiciary and in the public law office. When I say

“diversity,” I mean it in its big tent meaning not just race, ethnicity, and gender. I was a civil rights lawyer for 32 years; not once did I appear before a judge who was a woman or a minority. When you come in contact with the legal process—whether you are a plaintiff or defendant, a victim or a witness—and you walk into the courtroom and see no one who looks like the man or woman in the mirror, at some point you ask, “Can I get justice here?” Put another way, “Communities that lack a diverse judiciary risk a crisis of confidence among their citizens. Lack of diversity creates a perception that the courts may not be as fair or impartial as they could be, and leads citizens to question the role the courts play in their lives.”¹

This is a great year to talk about diversity; it's in the news. America inaugurated the first African-American President, and he appointed the first Hispanic justice to the Supreme Court of the United States. Justice Sotomayor is also only the third female Supreme Court justice. This brings greater diversity to the Court. The first woman was appointed to the federal bench in 1934, and only 47 years later was a woman appointed to the U.S. Supreme Court.²

The first African-American federal judge “appointed during good behavior” was appointed in 1950;³ 17 years later—in 1967—the first African-American was appointed to the Supreme Court. The first Hispanic was appointed to the federal bench in 1961, and to the U.S. Supreme Court in 2009—48 years later. The first Native American was appointed to a federal judgeship in 1979. Why are these things important? According to a recent study, “Supreme Court Justices also believe that diversity on the bench improves judicial decision making. For example, Justice Powell noted that, ‘a member of a previously excluded group can bring insights to the Court that the rest of its members lack.’ And Justice Ruth Bader Ginsberg has commented that a ‘system of justice is the richer for the diversity of background and experience of its participants.’”⁴

After a contentious oral argument the Supreme Court heard last term in a case about whether the strip search of a 13-year-old girl by school officials looking for ibuprofen violated her rights under the

Fourth Amendment, Justice Ginsberg told *USA Today* that it was obvious that none of her eight male colleagues had ever been a 13-year-old girl.⁵ Clearly, Justice Ginsberg believed that she viewed the child's embarrassment differently than the other justices did.⁶ In 2003, in *Virginia v. Black*,⁷ a case concerning whether the constitutional right to free speech prevented the state of Virginia from banning a cross burning on the lawn of an African-American family, Justice Thomas may have turned the tone of the oral argument when he gave one of the attorneys a short but poignant lecture on how cross burning is seen through the eyes of African-Americans.⁸

Neither of these are examples of judicial reasoning that is based on race or gender. Both are examples of the different voices and life experiences that race and gender bring to the process.

Justices Sandra Day O'Connor and Ruth Bader Ginsburg had a saying: “At the end of the day, a wise old man and a wise old woman reach the same judgment,”⁹ but sometimes the wise old woman needs to educate the wise old man first.

A recent report on diversity in the judiciary states that, “For the effective administration of justice—indeed, for the legitimacy of the courts—we need judges who reflect the nation's full diversity.”¹⁰ According to the Federal Judicial Center's Web site, of the 779 active federal judges, 569 are male and 210 are female. By race and ethnicity, 86 active federal judges are African-American, 59 are Hispanic, eight are Asian-American, and 618 are white.¹¹ Currently, no Native Americans are active federal court judges.¹² Quoting Mary G. Wilson again, “We can do better.” **TFL**



A handwritten signature in black ink that reads "Lawrence R. Baca". The signature is fluid and cursive, with a large loop at the beginning.

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a inexpensive online service that converts your own handwriting into a unique font. To get your own font, you download two worksheets, fill them in with exemplars of your scrawl, scan the exemplars, and send them back to YourFonts. Voilà! A unique font is created that emulates your own handwriting style! You can then add your unique font to the pedestrian fonts already installed on your computer and use it to create and print out letters that you'll send via snail mail that look more personal and have more—well—style. You also can use your new font to “sign” letters and documents that you produce using other fonts and, yes, you can use your own font to “sign” your e-mails.

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For those readers who might want to send e-mails using standard fonts, but with their unique signature in a style that does not look like a crude cut-and-paste job, there is an alternative. You can use your unique signature by turning to the original Windows Mail™. First, scan or (using a digital camera) photograph your signature, then paste the resulting digital file into a Windows Mail message. View and copy the HTML gibberish you've created, using Windows Notepad™ as your viewer. Name the resulting Notepad gibberish file “mysignature.” Then, in Windows Live Mail, go to Tools, Options, Signatures and embed your unique “mysignature” file by importing it there. Resulting e-mails will then automatically bear your unique signature.

Conclusion

Sometimes, you'll find that there are ways to improve Vista's annoying characteristics. You can keep this operating system's useful indexing capability while overcoming its accompanying tendency to slow down other functions by using a simple downloadable add-on WIS Gadget described above. Try it.

Alas and alack, India ink is dead, and the demise of e-mail may not be far behind. However, there are at least a few alternatives to sterile fonts and look-alike e-mails and letters. Try them. See you next year in Cyberia. **TFL**

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Endnotes

¹Press Release, Mary G. Wilson, available at www.lwv.org/fairandimpartialcourts.

²See the Federal Judicial Center Web site www.fjc.gov/history/home.nsf at Milestones of Judicial Service.

³The same judge had previously served as a federal district judge in 1937 in the Virgin Islands, but that appointment had a two-year term limit.

⁴Ciara Torres-Spelliscy, Monique Chase, and Emma Greenman, *Improving Judicial Diversity*, BRENNAN CENTER FOR JUSTICE REPORT 11 (2008).

⁵*Safford Unified School District v. Redding*, 557 U.S. ___ 2009 (slip op.).

⁶As a matter of law, the Court ruled by an 8-1 vote, with Justice Ginsberg in the majority, that the search had gone too far.

⁷*Virginia v. Black et al.*, 538 U.S. 343 (2003).

⁸“... [A]ren't you understating the effects of the burning cross? Now, it's my understanding that we had almost 100 years of lynching and activity in the South by the Knights of Camellia ... and the Ku Klux Klan, and this was a reign of terror and the cross was a symbol of that reign of terror. ... It was in-

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mark law. Alyssa LaRoche was the first user to successfully register a design mark for her “Second Life” avatar, Aimee Weber, based solely on her use of the image in commerce within the virtual world—and this instance may only be the beginning. With this step out of the virtual worlds for trademark registrations, the next logical step is into real-world courts in an attempt to protect the intellectual property in these worlds.

Finally, even though operators of virtual worlds, like “Second Life’s” Linden Labs, are considered immune to prosecution because they are simple service providers, some believe that these operators are the only ones able to really control and prevent the infringement occurring in their worlds and have filed suit against these operators. The latest suit was filed by Eros LLC, a Florida corporation that makes and sells a “SexGen” bed found in “Second Life” that is allegedly counterfeited with great frequency on the site. The plaintiffs in the case allege that Linden Labs has done little, if anything, to control the counterfeiting of the product and has little incentive to prevent the counterfeit sales because of its financial gain from every sale—whether the sale is of a genuine product or one that is counterfeit. Although a court is not likely to take the necessary steps to impose liability on Linden Labs and place the operator outside the realm of a service provider, it will be interesting to see how the court deals with this issue.

Be assured that as the use of these services grows, so will litigation arising from their use. It remains to be seen how real-world law for protecting intellectual property may have to be modified or adapted to protect the virtual world models, just as we are still adapting to protect intellectual property on the Internet. **TFL**

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Endnotes

¹eMarketer, *Virtual Goods Mean Real Dollars* (Aug. 13, 2009) available at www.emarketer.com/Article.aspx?R=1007226#.

²Benjamin Duranske, *Rampant Trademark Infringement in Second Life Costs Millions, Undermines Future Enforcement*, VIRTUALLY BLIND, at virtuallyblind.com/2007/05/04/trademark-infringement-vws/.

³“Second Life” Terms of Service § 3.2 available at secondlife.com/corporate/tos.php.

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tended to cause fear—and to terrorize a population.” See transcript of oral argument at www.oyez.org/cases/2000-2009/2002/2002_01_1107/argument. The Court ruled that the state could ban cross burning but that the statute as written was overbroad in that it declared the act of cross burning prima facie evidence of intent to create fear. Justice Thomas dissented.

⁹Joan Biskupic, *Ginsburg: Court Needs Another Woman*, USA TODAY May 5, 2009 at www.usatoday.com/news/washington/judicial/2009-05-05-ruthginsburg_N.htm.

¹⁰Torres-Spelliscy, Chase, and Greenman, *supra*, note 4.

¹¹Racial, ethnic, and gender terms are those used on the Federal Judicial Center’s Web site, www.fjc.gov/history/home.nsf.

¹²The total number of federal judicial appointments as of Oct. 5, 2009, stands at 3,193 judges serving on U.S. courts: 2,916 males and 277 females. The Federal Judicial Center also reports that, of those appointments, 155 were African-American, 91 were Hispanic, 17 were Asian-American, and two were Native American.

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