



WHY DO WE CARE ABOUT Diversity?

ON FEB. 12, 2005, FORMER SECTION CHAIR JOSE Feliciano will receive the “Spirit of Excellence” Award from the ABA’s Commission on Racial and Ethnic Diversity in the Profession—a well-deserved honor for an extraordinary individual. The award will be presented at the ABA Midyear Meeting in Salt Lake City. In 2003-2004, our Section was awarded a place on the Commission’s Honor Roll for our diversity efforts.

Among the reasons for the Section’s recognition in this area are the work of our Diversity Committee, our annual Forum on Expanding Opportunities for Minorities and Women in ADR, and Access ADR Project (which provides mentorship and support for minority mediators and arbitrators) pioneered by two of our Section Council members, Homer La Rue and Marvin Johnson. Beginning in August 2005, the Section will be led by our first African-American chair, Robyn Mitchell.

At such a moment, I think it makes sense to reflect on why diversity has been a major priority of our Section and why, instead of resting on our laurels, we should if anything increase our efforts.

Reasons to increase our efforts

First, we have a long way to go if our objective is to make the legal profession mirror the diversity of our society. Only 3.9 percent of lawyers in the U.S. are African-American (as compared with 12.3 percent of the U.S. population); only 3.3 percent of lawyers are Hispanic (as compared with 12.5 percent of the U.S. population), and the representation of other racial and ethnic minorities is likewise below their proportion of U.S. population, as is the representation of women (only 28.7 percent). This is not entirely surprising, when one considers how recently the most blatant forms of racial, ethnic and gender discrimination were dismantled. It was not until 1943 that non-white lawyers were permitted to join the ABA, and not until 1986 that a concerted effort was made to increase their membership and involvement in the organization.

Second, far below the radar screen that protects women and minorities from the most obvious forms of discrimination, there are subtler forms of discrimination and exclusion in the legal profession and in our society that operate just as effectively to discourage full participation and involvement of women and people from diverse racial and ethnic backgrounds. Such obstacles are created, for example, when the opinions of people from diverse backgrounds are given less credence than

majority views. The stain of racism and sexism continues to color our relationships with each other, and probably will continue to do so for many generations. The ABA’s initiatives in the area of diversity seek to foster discussion and awareness of the subtle obstacles as well as the obvious ones.

Third, as professionals who care about making the world a better place, we know that we can deliver services more effectively if our ranks of lawyers, mediators and arbitrators represent all walks of life. I recall, from my own caseload, an employment mediation involving allegations of race discrimination—the successful resolution of that case was due in no small part to the fact that my co-mediator was African-American.

Finally, our ability to function successfully as a multicultural, multiracial society in an increasingly small world depends in no small measure on our understanding, compassion and respect for each other as individuals. For many of us, our work presents greater opportu-

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nities than any other aspect of our lives for interaction with people who are not like us. If life, as some say, is nothing if not an education, the course on “cultural competence” should no longer be an elective—it needs to be a requirement.

Our Section Council is trying to walk the talk on this issue, not only by supporting and encouraging the initiatives described above but also by scheduling a retreat this coming fall on diversity issues. (Our Section is not alone in doing so—the Litigation Section, for example, has regularly conducted diversity training for its leadership and members, and has included a diversity consultant every three years at its leadership meetings.) As mediators we often talk about our work as “making a safe place for a difficult conversation.” What better way to exemplify our mission than to create an environment in which difficult conversations can take place in our organizations.

Personal reflections

Some might ask, “What is there to discuss?” I would like to try to answer that question in a personal way.

When I was growing up in a comfortable, mostly white, mostly Jewish neighborhood of Baltimore, a nascent civil rights movement was seeking to desegregate

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the city's amusement parks, swimming pools, schools and department stores. I joined the picket lines and demonstrations of the civil rights movement not only because my concerns about anti-Semitism led me to empathize with others who faced discrimination but also because it was, simply put, the right thing to do. The pursuit of racial justice occupied a central place on the national agenda in the 1960s when the ideals of my generation were formed. But two stubborn facts have remained part of my consciousness since that time. First, the material conditions of life for millions of people from diverse racial and ethnic groups in our society have improved very little since the days when Martin Luther King was alive.

Second, as a white male, I am keenly aware that I have lived a different life and grown up in a very different culture than my female and non-white colleagues. I can go for walks at night without having to worry about being sexually assaulted. I have never been groped or ogled at work. I have never had a detective follow me around a department store because someone thought I was going to steal something. I have never had a cab

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driver pass me by because of the color of my skin. I have never been pulled over by a police officer because my color did not match the complexion of the neighborhood I was driving through. I have never been physically excluded from an antiquated courthouse or public building by barriers to my mobility. And in my work as a lawyer and mediator, I have never worried that, simply because of my gender, race, ethnicity or a disability, someone would take my views less seriously than they deserve. Having lived a relatively charmed life in all of these respects, I know that my ability to work shoulder to shoulder with people who have not depends in part on my openness to their history, their experience and their perspectives.

In our daily conversations with each other, we often—inadvertently—rub salt into the wounds that our society has inflicted. I have frequently used the expression “rule of thumb”—I was unaware, until a Section Council member pointed it out to me, that many women find the expression offensive because it refers to a discredited legal theory that it was permissible for a husband to strike his wife with a stick as long as it was no stouter than his thumb. Then there are those instances where sensitivity seems misplaced: There were news reports a few months ago that a café in Scotland does not permit patrons to order “black coffee” because it is a “racist phrase,” and instead requires patrons to order “coffee without milk.”

Goals

One of my goals in urging the Council to take up the question of diversity issues is not to create a catalog of what can and cannot be said in our meetings, but rather to talk about creating new norms, based on mutual trust, that permit us to deal with each other frankly and forthrightly about sensitive issues that arise, regardless of whether they arise from or have an impact on our differences. The key concept is, as we all know, very simple: to treat each other with respect. But there is another key concept as well, and that is to foster an understanding of how the world looks to people from other backgrounds.

Applying these concepts is not always so easy. It seems to me that we are, in our day-to-day interactions with each other, called upon to manage some complex tensions between

(a) Wanting to be assertive about diversity issues when we feel offended about the way someone has spoken to us or others, while at the same time not wanting to appear hypersensitive;

(b) Wanting to be proud of our heritage and recognized for our differences without being judged by them or having people make assumptions about us based on our differences; and

(c) Wanting to understand and inquire about each other's differences while at the same time not causing people to feel self-conscious about them.

Talk about difficult conversations! Addressing issues of this kind is not a “crunchy-granola,” “Kumbaya” type of exercise—we are talking about interpersonal engagement of the most serious kind.

I hope the example of our Section Council in scheduling a retreat this fall will serve as a model for our committees and other entities in our Section, where the door needs to be opened for such conversations to occur.

The ABA as a whole is growing and changing in this regard. One of the tangible signs is that, after 117 years of being led exclusively by men, the ABA elected Roberta Cooper Ramos and then Martha Barnett several years ago to serve as president of the Association. This past August, Dennis Archer, the first African-American president of the ABA, was succeeded by our second African-American president, Robert Grey. Goal IX of the ABA is “to promote full and equal participation in the legal profession by minorities, women, and persons with disabilities.”

Back in the '60s, civil rights activists asked: “Are you going to be part of the problem or part of the solution?” In our Section, I hope we will continue to address the problems that remain in the area of diversity and commit ourselves to working toward solutions.