MESSAGE FROM THE PRESIDENT

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WE HAVE NO SECRETS

It is the time of year to shine the spotlight on Nevada's judiciary, just in time for the parade of evaluations ranging from the Las Vegas Review-Journal's judicial performance survey to the "Best of Las Vegas" balloting. Welcome to *Nevada Lawyer*'s "Meet Your Judges" edition. No one quarrels with the proposition that a conscientious lawyer should make a concerted effort to know the judges before whom he or she will be practicing, and we all recognize that "knowledge is power." Nonetheless, it is one thing to know the details of how our respective judges run their courtrooms, prefer their jury instructions to read, conduct jury selection or handle their trial calendars. It is quite another to be privy to the rest of the quintessentially personal and ordinarily private information about our judges (and even those who just ***want*** to be judges) floating around in the public sphere and in government records. The 21st Century admonition "TMI" comes to mind. And this information raises a fundamental concern: do we really need to know our judges ***that*** well?

While recently researching the governmental treatment of sensitive personal information, I was astounded at how personally intrusive the judicial selection process has become, and how much of the information provided by applicants is available to the general public. With no particular need to know, my review of recent applications for judicial vacancies revealed detailed explanations regarding one applicant's "open container" violation outside a southern California nightclub in the 1980s, an assortment of scoff laws who can't resist speeding on the road to Lee Canyon and the payment of sanctions to the Clark County Law Library for failing to respond to interrogatories. (Seriously? I'm not sure I'm comfortable with a judge who ***didn't*** carry around at least one open container on the streets of California in the 1980s…) In all likelihood, these so-called "offenses" were not the disqualifying factors with respect to any applicant's prospects for appointment. Nevertheless, other than felony convictions or extended sojourns in correctional institutions, is any of this information legitimately worthy of public access or distribution?

The unnecessary confession of minor misdeeds and brushes with the law (it is still an open question as to whether the deluge of administrative proscriptions by various governmental entities even deserves to be equated with the majesty of American law) is only one of the curious aspects of the judicial selection process. Many of the completed applications read like questionnaires people completed for dating services, circa 1985 (such as: I enjoy reading about World War II and practicing my macramé skills. My favorite rock star lawyer is Steve Peek, and I want to be Ruth Bader Ginsburg if I grow up, etc.). Is there any conceivable reason the commission can't explore these interests and preferences in an oral, in-person interview, instead of digitally memorializing them forever, especially when the vast majority of the applicants will ***not*** snare a judge's position? And, although supposedly not accessible to the public, is there any persuasive argument for collecting so much financial and medical information from judicial applicants? The federal disclosure forms are especially granular, requiring information as to particular stocks owned and an uncomfortable, almost prurient interest in previous medical treatments. Have we gone too far in our efforts to vet our judicial officers?

Examination of these questions is not simply an academic matter. What led me to explore the judicial application process in the first place was my concern that our government's procedural tendency toward harvesting personally invasive information could be a significant obstacle to the state bar's efforts to foster and encourage attorney wellness. This exploration has revealed that the Second Carly Simon Rule is true: "We have no secrets." (Don't ask: suffice it to say that Carly Simon is one of the foremost singer-sages of the late 20th century.)

If we are serious about fostering attorney wellness and creating a welcoming atmosphere in which lawyers can seek assistance, or in some cases treatment, for the medical or emotional conditions they are experiencing, we need to assure them that seeking help will not amount to a death knell for their career ambitions. This concern is especially important in dealing with our younger lawyers. While the anecdotal evidence indicates that millennials are more open to sharing personal information, that willingness should not be used to lay the groundwork for future disqualification as to government employment or serving in responsible positions in the community. Encouraging attorneys to unabashedly

seek help and disclose their vulnerabilities may create healthier lawyers in one sense, but could be a roadblock to that attorney becoming one of our happier lawyers when he or she finds out that disclosure of their most intimate struggles is required to be considered for judicial positions, security clearances, military service or even some private positions with great responsibility.

Confronting this anomaly will, of course, require advocating for bureaucratic change: never an easy task. But there are precedents. In 1993, a handful of prospective staffers for the Clinton White House were running afoul of the FBI background investigation regarding past drug use. According to one FBI agent serving at the time, the problem was solved by modifying the questions slightly to replace "Have you ever used cocaine?" to something akin to "Have you used cocaine in the past three hours?" Okay, not really. But the standards have evolved far too slowly to remove the stigma associated with certain behaviors and characteristics. The 20th century hand-wringing about how and if to consider an applicant's sexuality or sexual preferences is already a thing of the past. Nonetheless, the overt and secret discrimination against those who have faced challenges involving their mental and emotional health remains the last bastion of societal and institutional bigotry. It is truly the most important civil rights challenge.

Admittedly, the easiest solution might just be a question of honoring a person's right to privacy and exercising wise discretion. There is a proven, better way to handle such matters. Decades ago, as I was preparing to leave the U.S Attorney's Office, I was under consideration for a significant position at the U.S. Department of Justice. After a highly professional interview with Attorney General Richard Thornburgh concerning my legal experience, I was taken by Thornburgh's slim and athletic special assistant and right-hand man, Robert Mueller, to a windowless Justice Department hideaway office decorated with those colonial-era prints and dusty 19th century law treatises so characteristic of high-end federal government offices in the 1990s. Long before being tasked with investigating Russian collusion, he was the trustworthy and discrete interrogator of potential political appointees as to drugs, sex and other assorted indiscretions. The questions were tough, probing and intensely personal; after all, this was the George H.W. Bush era, when it was still possible that you might have done something that would embarrass the president. When it was over, there were no notes, no tapes, no files: just relieved smiles all around. And the republic survived. If you don't believe me, you can Google it or find it in government records. Oh, wait; you can't. Thankfully! **NL**