



MESSAGE FROM THE PRESIDENT

BY RICHARD POCKER, ESQ., PRESIDENT, STATE BAR OF NEVADA

NOW TRENDING: UNDER THE RADAR

“Now trending.” Is there any more alternatively exciting, alarming or annoying 21st century phrase? Whether used to direct me to the latest pictures posted by the assorted Kardashian sisters, or to alert me that U.S. Rep. Alexandria Ocasio-Cortez or President Donald Trump are tweeting again, I am often left to wonder about such declarations: “trending” according to *whom*? It is one of the sad facts of modern life that anyone with a smart phone and too much time on their hands can proclaim a “trend.” Given the importance of paying attention to what is happening around us and noting the emergence of new developments in the world and in our profession, how do we sort the wheat from the chaff in this trending world of ours?

This month’s edition of *Nevada Lawyer* provides valuable assistance in this regard. Addressing national legal trends impacting Nevada, our contributors direct our attention to the developments and changes in the legal landscape most likely to impact the substantive aspects of our practice. Their insights and observations are valuable, and as I usually do with respect to more substantive legal analysis, I defer to my more scholarly colleagues on those subjects. Nonetheless, there are other less obvious trends and developments, many of them under the radar and

counterintuitive in their impact on the legal profession, that are also worthy of attention.

Admittedly, the observations that I make below are partly based on the very same variety of electronic “trending” stories about the legal profession I called into question in the preceding paragraphs. Whether it is the gossip-column quality of such stories or the fear of being “out of the know” that drives me to read them, I confess to occasionally consulting the online equivalents of *People* magazine or the *National Enquirer* for lawyers. The legal profession never struck me as fertile ground for sensational journalism. And while most of them utterly fail in their transparent efforts to make selected “Big Law” attorneys seem exciting, desirable or consequential (after all, we have all met some of these “legal lions” and frankly, they really aren’t all that interesting), these journalists, often inadvertently, give us some valuable insight into important trends happening below the surface in our society and profession.

Witness the trend of legal social justice efforts becoming more personal. The electronic media are obsessed with the potential positive impact of millennials and Generation Z on the legal profession. For example, an inordinate amount of news coverage and virtual space has been dedicated to discussing the Pipeline Parity Project, a group of law students at prestigious law schools aiming to pressure law firms to abandon the use of binding arbitration agreements with respect to their legal staff, which coincidentally includes law student summer associates. A recent

report on the project’s “Dump Venable” initiative, encouraging law schools and students to boycott the prestigious Venable law firm, applauded the activism of today’s law students and their preference for social justice projects. However, reading between the lines, the story reveals an alarming trend for such activism to be largely self-interested, which like the law-school student efforts to advocate for an easier California Bar Exam, portends friction and a far more complex future relationship between current lawyer leaders and the rising millennial/Generation Z attorneys. There is more to this picture than meets the eye.

Also revealed by recent coverage is the trend of the legal profession’s serious and realistic attention to mental health issues. A news story celebrating the recent admission of an autistic law school graduate to the Florida bar reveals a more positive underlying trend. While the young lawyer’s perseverance and accomplishment in the face of her challenges is remarkable, the bigger story may be the tacit recognition by society at large that mental health conditions are more pervasive and less disqualifying than previously thought. After all, it’s hardly astounding that autistic people are out there practicing law. Anyone over the age of 30 has litigated with or against lawyers who could be the poster children for any number of conditions described in the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV. Some might even say that mental peculiarity is the secret sauce for successful litigation. If clients were honest, they would gladly admit that they would rather succeed

than have a normal lawyer. It is just becoming more acceptable to say so and to embrace neuro-diversity.

A third trending story reported a looming showdown in Detroit between the Michigan disciplinary authorities and one of the city's premier criminal defense attorneys, precipitated by his confrontation with a young female city prosecutor and his prior social media posts regarding the sagging pants and underwear of a lesbian lawyer at a training program. (Seriously? No, I am not making this up.) Was he "mouthing off to a prosecutor" and committing an ethical violation, or merely insisting upon receiving the respect due him based on his years of experience? (When I was a prosecutor, "mouthing off to a prosecutor" seemed like a critical part of a defense lawyer's job description ... go figure.) The First Amendment comes starkly into play here, and given that *all* of the attorneys are members of minority groups, this controversial case has the potential to complicate the civility debate with no simple, civil outcome in sight. The long-feared collision between free speech and measures such as American Bar Association (ABA) Model Rule 8.4(g) is at hand.

One need not look to the legal scandal sheets and puff pieces to run across other examples of little-noticed, seldom-discussed, yet eminently important trends in the legal profession. At the ABA's Mid Year Meeting a few months ago, I was part of a small working group loosely directed at the prospects for increasing diversity in bar associations. The eccentric, but brilliant leader of the Washington State Bar Association astutely noted that such efforts routinely floundered because people over 50 years of age and those under 30 years of age have totally different views on the meaning and value of a diverse environment. Lawyers in their 40s are too busy earning a living and strengthening their careers to spend much time on this type of debate. The older group sees the goal of establishing a diverse organization to be an effort to open opportunity

to all individuals, their differing sex, religious and ethnic characteristics notwithstanding. The younger group seeks to highlight those differences in the interest of changing the profession – or at least the conversation – so as to accommodate specific needs of each subgroup. Needless to say, many were resistant to hearing his conclusion that a coherent stab at diversifying the profession requires coming to agreement on a useful definition of diversity's goal. This conflict and frustration is with us for the near term, and it will need to be addressed in a more thoughtful fashion. Without consensus on this definition, the trend may be more conflict, not progress.

Speaking of the ABA, its recent decline in membership and influence is a harbinger of a larger phenomenon in the legal profession: the fragmentation and lack of cohesion in the legal community. Fifty years ago, the ABA could plausibly claim to speak for America's lawyers. Lewis Powell, president of the ABA in the 1960s, was appointed to the U.S. Supreme Court. Such was the influence that organization exercised and the respect

accorded to its leaders. Today, not so much. Wandering around its meetings you will seldom encounter the giants and heavyweights of the American legal community. They have moved somewhere else in the professional universe, and until they are lured and welcomed back to the ABA, unity of professional purpose and the strong voice of the American legal system will be largely absent from some of the most important debates the nation has ever experienced.

Every one of these observations and developments has the potential to radically change – for better or worse – not only the way we practice law, but the conditions under which we attempt to do so, not to mention the legal community in which we practice. And almost every one of those trends, encouraging or alarming, can be altered or at least influenced, if we endeavor to pay attention. In an age of stimulus overload and trending conformity, we must do so. In the immortal words of the designers of the Ohio Turnpike Authority of my youth, "Stay Awake. Stay Alive."

