



## WSBA BOARD OF GOVERNORS

### *Message from At-Large Governor Alec Stephens*

Sept. 29, 2020

To the WSBA Governors and Officers, the members of WSBA, and members of the public:

I take this time to share with you my observations from the June [WSBA Board of Governors meeting](#) “when all hell broke loose” as comments and suggestions around the board table became heated in regards to minority bar associations and the importance of racial representation on the board. Although it has been several months, I think it is important for me to respond as we, the Board of Governors and legal community, are still grappling with the impacts and how to move forward

My first observation is that the background context for the meeting was a nationwide response to the killing of George Floyd, the surge of the Black Lives Matter movement, a discussion of systemic racism (in the criminal justice system, and in particular policing), a look at the lost and sanitized history of racism in this country, and the fallacy that issues regarding race and racial oppression are a part of our country’s history bearing little to the present. On top of the stress and uncomfortable nature of discussions about race, this meeting was held in a Zoom format due to the coronavirus pandemic social-distancing existence we are in so there was not the opportunity to have face to face conversations in small groups away from the formal settings. This took away the opportunities to check in with each other on how we were handling the personal impact of the coronavirus pandemic, and how we were handling the personal impact of the Racism Pandemic that was now at a fever pitch.

Before I talk about the events of June, and the continuing challenges we are in, I want you to know something that may set me apart from most of you.

- I doubt any of you have had “the talk,” either as a recipient and a messenger as a Black child or to your Black children. The talk is what so many Black parents have done to try to help our children prepare for what they must do when they are in the presence of police. It is a matter of survival that we do our best to teach our children that in situations where, especially, we are stopped or otherwise confronted by police, we must know that the situation can turn on a dime to having a situation where your life is at risk. That to push back or question why we are stopped or to assert rights is a moment where, as a Black person with the wrong cop, we risk physical harm, possibly death, and most likely jail because we dared question why we are stopped. While we talk about George Floyd, I remind you of the circumstances that resulted in the arrest, and jailing and mysterious death of Sandra Bland. If you remember that case or take a look at the initial circumstances the led to her arrest, for talking back, as I watched it I was increasingly apprehensive that Sandra was placing herself in danger, and that danger came to pass. So many Black people in this country can tell you about having received or have given “The Talk.”
- That this moment is for me and perhaps other Governors of Color not a new phenomenon, the a result of the fits and starts, progress and retrenchment, and we are up against an intentional effort to deny, deflect, or shift blame to People of Color for the sordid history of race relations in

our country, and the whitewashing or suppression of that history, and challenging systemic racism as just an excuse, so we have to return to tell our truth and our stories and the stories of our ancestors. This includes the role that our profession has played in setting in motion and solidifying racist beliefs over time and then denying that much of the past harms/crimes against People of Color was and is a social/political/legal arrangement that has never been corrected.

- Black Lives have *always* mattered, just not too many of my fellow countrymen and women, and the notion or response that *all* lives matter perpetuates the myth of equality in our country, when nothing can be further from the truth.

Moving on to the particular events of the June Board of Governors meeting, the comments by Governor Higginson seemed to suggest that minority bar associations (MBAs) should not be a part of targeted outreach to various aspects of WSBA. In post conversation, she suggested that she views MBAs as separate organizations and questioned why they would be a part of that outreach.

A part of the lost or covered up history of race in this country is a part of the history of why MBAs have come to be. There are three reasons I offer:

1. How many of you have heard of the National Bar Association? We all know of the American Bar Association (ABA). But did you know that a primary reason for the National Bar Association coming into existence in 1925 was because Black attorneys were not *allowed* to join the ABA. That change did not happen until 1943, but as a matter of course, that was still not the case regarding ABA affiliates in southern states. By the way, a similar situation exists for the formation of the National Medical Association in 1895 due to segregation of doctors in the South.
2. [Under GR 12.2 \(c\)](#), Washington State Bar Association will not: “(2) take positions on political or social issues...” I intentionally left off the rest of the rule because if WSBA cannot take positions on political or social issues, where does that leave lawyers of Color or LGBTQ+ lawyers, or women lawyers or lawyers with disabilities who want to serve and support their respective communities? Instead of arguing what WSBA should be allowed to do, as a group of lawyers because of their interests along those lines, MBA members can get on with providing legal assistance and other activities in support of their communities under their own organizations to address a need in our communities.
3. Racism (what my focus and this George Floyd moment and Black Lives Matter is about) does not show up only in police conflicts with Black people. Racism permeates our society and manifests in our profession. You may recall the story of Washington Supreme Court Justice Charles Z. Smith: early after graduation from the University of Washington with high honors, he still could not get a position in the major law firms in the Seattle area because he was Black. You may recall that U.S. Supreme Court Justice Thurgood Marshall was not allowed admission to the University of Maryland Law School in his home state because he was Black and attended Howard University Law School (an historically Black college and university) instead. You may not know that in 1902, the Washington Supreme Court denied Takuji Yamashita admission to the state bar because he was not a member of “any branch of the white or whitish race.” The MBA organizations are a safe place for persons with a particular affinity group to share their pain, see how they can respond to microaggressions, seek support, network, and help attorneys and law students and other legal workers grow within the profession.

To not include MBAs in outreach efforts for participation or comments is to turn our Diversity, Equity, and Inclusion policy and program on its head. Those efforts include getting more attorneys who are MBAs also engaged with WSBA on its various boards, councils, commissions, and sections. It is

important to have a broader spectrum on those entities and in our activities. So what about the white lawyers? I guess I need to understand how white lawyers are not and have not been involved or participants in WSBA activities on its boards, councils, commissions, and sections or in local bar associations.

I don't know if the Board of Governors is yet prepared to take up and listen to why the comments regarding MBAs was both harmful and hostile. While I know that Governor Higginson apologized to me, that was not an apology to the MBAs and this should not be a one-to-one transaction. This event took place at a board meeting, and simply because a Governor made a comment that is painful and hurtful to MBAs and lawyers of color does not absolve the Board of its role in making it right.

Another area was the discussion regarding the selection of the At-Large Governor to succeed me for the seat I am vacating at the end of my term. In that instance, there were three areas in which I was exorcised. This is a part of my lived experience. I note what had been said and written about the seats:

Under WSBA's Bylaws, the purpose of the At-Large board position is to increase diversity and representation on the board, and the position is to be filled by a WSBA member who has "the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represents some of the diverse elements of the public of the State of Washington."

Familiarity: I was genuinely concerned that some of my colleagues were leaning toward a candidate who has always been among us. I don't know how this fits with increasing diversity and representation on the Board or addressing underrepresentation in governance or represent some of the diverse elements of the public. It stands to reason that those for whom we are familiar has an advantage over others, but the outcome means we will have a voice at the table that fits our comfort level and familiarity. How does that candidate meet the objective of the Bylaw?

Geographic diversity: When last I checked, the Board of Governors already has geographic diversity by virtue of the congressional districts for the election of nearly 80% of the Board of Governors. At the very least, the argument should be further developed and should have been paired with other aspects of the Bylaw.

But my strongest objection was related to the efforts to justify a finalist who had military service and a position that we need to be "color-blind" in selecting our future board member. I was troubled that race and the other areas of historical under-representation were to be nullified or made subsidiary to other elements, even when the Bylaws express recognition of those elements that would not be color-blind. In my lived experience, the issue of color-blindness is a prelude and justification to taking an action where candidates of color are not selected. I have had situations where great candidates of color were overlooked, and the shield of justification around not increasing diversity is to lean on the altar of color-blindness, even though the lack of people of color is evident. This also overlooks the years when we have not been at the table. As it relates to the At-Large Governor positions, race and other areas of underrepresentation matter. They are important and need to be factored-in, not willfully overlooked. To do otherwise is to stand the purpose of the Bylaw for the inclusion of At-Large Governors on its head. For those who are hostile to the seat, work to change and eliminate the applicable Bylaws if that is your position, but do not subvert the purpose of the Bylaw to fit or justify making other choices.

Again, this is an area in which I know there have been many comments and criticisms of the positions that were taken. I do not leave it to those who want to advance the primacy of color-blindness. The questions are: what position should the Board of Governors advance in the future and what response should the Board of Governors give on this issue in the immediacy?

Since that fateful two-day meeting in June, many of the Board of Governors have participated in workshops centering on anti-racism, and at the last meeting of the Board of Governors in September, we received a presentation on WSBA's Diversity, Equity, and Inclusion policies and program. WSBA President Kyle Sciuchetti has committed to regular workshops on these issues, so this is more than a "one-off" activity, recognizing that a third of the Board of Governors turn over every three years. I support regular and continuous workshops for the Board of Governors, and I also hope the Board now has more of a foundation to respond to the issues raised by MBAs and others from a heightened awareness of the issues. I trust that the Board of Governors will make wise decisions on how it responds and how WSBA can contribute to helping us become a more perfect union, with liberty and justice for all. We should all be able to agree that, indeed, Black Lives Matter.

—Alec Stephens, At-Large Governor 2017-2020