

From: [Mark Correro](#)
To: [BoardofDirectors](#)
Subject: Support for Larry McDougal
Date: Monday, July 27, 2020 9:12:18 AM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments

I've known Larry for over a decade, have worked cases together, and invited him to speak at numerous CLEs. In all my interactions with him, I've never known him to exhibit any racism. We all need to come together and improve our bar and I think Larry is the person who has progressive ideas to achieve this goal. I support Larry McDougal as SBOT President.

Mark A. Correro

From: [Amy Starnes](#)
To: [BoardofDirectors](#)
Subject: Fw: Board Meeting Inquiry
Date: Monday, July 27, 2020 9:08:12 AM
Attachments: [image002.png](#)

From: Jones, Dirrell [REDACTED]
Sent: Monday, July 27, 2020 9:04 AM
To: Amy Starnes [REDACTED]
Subject: Board Meeting Inquiry

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

The State Bar doesn't need a task force on diversity. The State Bar needs to not tolerate racism, or the latest version of "white supremacy lite" that is being passed off as socially acceptable. McDougal should step down, but his comments are not the problem of the minority members of the Texas Bar. We live and work with overt and covert racism daily. This is not my fight as a black attorney. We don't need a task force that the majority of the State Bar doesn't support in the first place. McDougal's transgressions are at the feet of the majority white members of the Texas State Bar. What are you going to do? Are you okay with this type of behavior?

THOMPSON
COE

Dirrell Jones • Senior Attorney
[REDACTED] Dallas, TX 75201
[bio](#) • [vCard](#) • [web](#)

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From: [Dylan O. Drummond](#)
To: [BoardofDirectors](#)
Subject: Ensuring Steve Fischer's Posts are in the Public Record for the Board's Review and Consideration at Today's Meeting
Date: Monday, July 27, 2020 7:40:36 AM

*** *State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Good morning all,

My apologies for the early-morning email.

Although I see on the agenda for today's meeting that "online commentary by officers *and directors*" is listed under section 7(A), the only materials actually [posted](#) in the [Board Packet Materials](#) under section 7(A) are Larry McDougal's posts—*not* Steve Fischer's. In fact, section 7(A) in the Board Materials is entitled, "McDougal's Posts"—seeming to indicate that his posts are the only ones presented to the Board under section 7(A).

Therefore, to ensure that the Board has seen and reviewed Steve's posts where he repeatedly uses a racist term to refer to a fellow attorney's African-American husband before the Board's closed session today, I am both attaching them and including them in the body of this email below:



Steve Fischer

[REDACTED]

[REDACTED] Only a pattern of ignorance on your part. In other words you did nothing to help civil rights this week except you're still married to a Black . I did not even read all the posts in the deleted thread- I saw the reports - a few accusations and the topic which was posted everywhere and deleted

3h [Like](#) [Reply](#)



[REDACTED]

Steve Fischer did you just say I am married to a black? You have no clue!

3h [Like](#) [Reply](#)



Write a comment...





Steve Fischer

So you married a Black -
now wheres that money?

3h Like Reply



[REDACTED]
How many people of color
oppose the post **Steve
Fischer**?

3h Like Reply

I look forward to speaking with everyone later this morning, and thank you for holding the meeting today to consider Larry and Steve's reprehensible public conduct.

-DOD



From: [Amy Starnes](#)
To: [BoardofDirectors](#)
Subject: FW: Board Meeting Inquiry
Date: Monday, July 27, 2020 8:09:01 AM

From: Maria Dunn [REDACTED]

Date: Monday, July 27, 2020 at 8:08 AM

To: Amy Starnes [REDACTED]

Subject: Board Meeting Inquiry

*** State Bar of Texas External Message *** - Use Caution Before Responding or Opening Links/Attachments

I am a member of the state Bar, 24054207.

I fully support Larry McDougal's statement. He should not be censured or removed as bar president. Black Lives Matters is a political platform. See <https://blacklivesmatter.com/>, e. g. Poll workers should wear wait servers white shirts and black pants, in my opinion to be neutral.

I was traveling out of state last week and just saw the call for comments this morning. I hope you accept my voice and view.

Regards,

Maria Dunn
Houston, TX

From: [Emma Edwards](#)
To: [BoardofDirectors](#)
Subject: Board Meeting Inquiry--Commentary by President McDougal
Date: Monday, July 27, 2020 12:51:11 AM

*** *State Bar of Texas* External Message * - Use Caution Before Responding or Opening Links/Attachments**

To the State Bar Board of Directors:

Lawyers, of all people, should respect and defend the right of free speech. The State Bar of Texas is a quasi-governmental body and, as such, is forbidden from passing a law abridging or curtailing the freedom of speech. Our State Bar President, Larry McDougal, has offered opinions that some people find offensive. Of what use is our guarantee to freedom of speech if it protects only currently orthodox thinking? Lawyers are trained in the art of robust debate, where opinions can be tested by evidence and reason. Let us then put Mr. McDougal's opinions to such a test—free and open debate is the precious treasure safeguarded by our constitutions.

Even a reprimand of Mr. McDougal would abridge and curtail his right to free speech.

Sincerely,
Emma-Louise Edwards
TBN 09982700



Scanned by [McAfee](#) and confirmed virus-free.

TO: BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS

FROM: CLIFFORD D. HARMON, TEXAS BAR NO. 09019300

I address Item No. 8 on the July 27, 2020 agenda of the meeting of the Board of Directors of the State Bar of Texas.

Having reviewed the materials presented in and through the Bar's email to its members, dated July 21, together with outside materials generally addressing the core issues out of which the instant situation has arisen, I make the recommendations and observations to the Board of Directors enumerated below.

1. Introspection and self-examination are always valuable exercises. To the extent that the proposed creation of a Task Force on Diversity, Equity, and Inclusion is intended to provide a formal mechanism for such an endeavor, I support it. But my support is predicated on the premise that the Task Force is to search out objective truth and develop its recommendations based on unbiased findings. The Task Force's investigations may turn up serious issues that the Bar must address, or they may find that little, if anything, new should be done. It must be permitted to reach either conclusion and not be pressured to develop a narrative due to the zeitgeist of our present times. It must be guided by facts and data, asking the hard questions and following wherever the answers may lead. It must not base its conclusions on purely anecdotal evidence, and must certainly not begin from the assumption that systemic racism exists or is a root cause of anything -- unless all facts and data, taken together as a whole -- compel such a conclusion.
2. The proposed name of the Task Force is itself problematic. "Diversity", "Equity", and "Inclusion" have all taken on politically charged and nuanced meanings that imply a foregone conclusion based on first principles that are not universally accepted and are currently hotly contested by large numbers of the population. The very act of naming the Task Force in this manner, therefore, puts its authenticity into question. It should have a neutral name that carries no implication that the Bar is conducting an Inquisition to root out those who stray from a prescribed orthodoxy or to "uncover" heretofore unknown heresies. Something like "Task Force on Bar Treatment of Its Members" would be better. I readily admit that this is not a very clever name, but it is illustrative of the concept.
3. The membership of the Task Force should include viewpoints from all over the spectrum, all of whom should be encouraged and permitted to participate equally.
4. It is not possible to treat this subject without acknowledging that the underlying reason for the exercise was a challenge to #BlackLivesMatter. And in this respect it is important to note that "Black lives matter" and "#BlackLivesMatter" are not the same thing. The first is a statement that in 2020 only a fraction of a fraction of 1.00% of the U.S. population would challenge. The second is a loosely knit political organization who believes that systemic

racism exists in the United States as a matter of faith. The point is made in its own words on its website blacklivesmatter.com under the heading *What We Believe*:

"Black Lives Matter began as a call to action in response to state-sanctioned violence and anti-Black racism. Our intention from the very beginning was to connect Black people from all over the world who have a shared desire for justice to act together in their communities. The impetus for that commitment was, and still is, the rampant and deliberate violence inflicted on us by the state." [Emphasis supplied.]

Recent events have thrust the organization into the center of the national debate, and numerous groups have aligned themselves with it, seemingly without questioning the "systemic racism" premise. But many Black professors, commentators, and political office holders have taken issue with the fundamental assumptions of Black Lives Matter, including David Clarke (Sheriff of Milwaukee County, Wisconsin, ret.), John McWhorter (professor at Columbia), Shelby Steele (senior fellow at the Hoover Institution at Stanford), Jason Riley (*Wall Street Journal* editorial board member), Larry Elder (radio host and political commentator), Glenn Loury (professor at Brown, formerly at Harvard), Thomas Sowell (professor at Cornell and UCLA, ret.), Candace Owens (talk show host and political commentator), and Brandon Tatum (conservative speaker and former Phoenix police officer). Professor McWhorter undertook a study of the egregious cases of police killing of unarmed Black civilians and found that in every case, and within a short time before or after the event, police killed an unarmed White person under virtually identical circumstances, thereby undercutting the narrative that the police were racially motivated in the killing of the Black citizens. A deep dive into the assertions of Black Lives Matter reveals that they rest on questionable foundations that do not uniformly hold up to serious scrutiny. So while the State Bar of Texas should unequivocally endorse that Black lives matter, it should exercise caution in endorsing a political organization whose views may not be in alignment with objective truth.

5. If I can be of assistance to the Task Force, I will gladly volunteer my time to that end.

From: [Cris Houston](#)
To: [Chelsey Barber](#); [Amy Starnes](#); [BoardofDirectors](#); [Cris S. Houston](#); [Jennifer Jenkins Attorney](#)
Subject: Please Read Crisarla Houston's Comments Calling for McDougal's Resignation or Removal - Special Meeting of the State Bar Board
Date: Monday, July 27, 2020 8:14:17 AM
Attachments: [Comments re Larry McDougal to SBOT Board of Directors for Special Meeting July 27 2020.docx](#)

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Dear Ms. Starnes and Ms. Barber:

I hope you are well. Please let me know if someone can read my attached comments during today's special meeting of the Board of Directors. I am unwell and am unable to speak during the meeting today.

I have copied the Board of Directors on this email as well.

Thank you,

Crisarla Houston, Esq.

Sent from my Samsung Galaxy Note. Please pardon any typos.

----- Forwarded message -----

From: **Cris Houston** [REDACTED]
Date: Mon, Jul 27, 2020, 2:51 AM
Subject: Comments Calling for McDougal's Resignation or Removal - Special Meeting of the State Bar Board
To: Jennifer Jenkins Attorney [REDACTED], Cris S. Houston [REDACTED]

Jennifer,

Please see attached for my 3-minute comments.

Cris Houston, Esq.

"Peace is not the absence of conflict but the presence of creative alternatives for responding to conflict ..."

- Dorothy Thompson

----- Forwarded message -----

From: **Cris Houston** [REDACTED]
Date: Fri, Jul 24, 2020 at 12:13 PM
Subject: Crisarla Houston's and Jennifer Jenkins's Call for McDougal's Resignation or Removal: Special Meeting of the State Bar Board
To: <boardofdirectors@texasbar.com>, Cris S. Houston [REDACTED], Jennifer Jenkins Attorney [REDACTED], Amy Starnes [REDACTED]

Dear State Bar of Texas Board of Directors:

We hope you and yours are well. Attached please find a letter expressing our outrage over State Bar President Larry McDougal's social media posts and calling for his resignation or removal.

Please contact Crisarla Houston at [REDACTED] or [REDACTED] if you have any questions.

Thank you in advance for your time and consideration.

Best regards,

Crisarla Houston, Esq.
State Bar of Texas Number: 24048554

Jennifer R. Jenkins, Attorney and Counselor at Law
State Bar of Texas Number: 24094751

"Peace is not the absence of conflict but the presence of creative alternatives for responding to conflict ..."
- Dorothy Thompson

----- Forwarded message -----
From: **State Bar of Texas** <webmaster@texasbar.com>
Date: Tue, Jul 21, 2020 at 12:22 PM
Subject: Special Meeting of the State Bar Board
To: [REDACTED]

STATE BAR *of* TEXAS

Dear Member,

The State Bar of Texas Board of Directors will hold a special meeting at 9 a.m. CDT Monday, July 27. Among items on the agenda, the board will accept comments, discuss, and consider possible action regarding online commentary made by State Bar of Texas President Larry McDougal and other officers and directors. The board also will discuss the creation of a State Bar of Texas Task Force on Diversity, Equity, and Inclusion.

To view the agenda click [here](#).

Click [here](#) to see the board materials, which include the online commentary; a video-recorded apology from McDougal; joint statements issued by bar officers, committees, and sections; and other comments submitted by bar members and the public.

To participate by providing public comments during the meeting, please email

[REDACTED] or call Public Information Director Amy Starnes at 800-204-2222, ext. 1706 (toll free) before 5 p.m. CDT on July 24. Please provide the agenda item number you wish to speak on.

Written comments will be accepted by email at boardofdirectors@texasbar.com until the time of the meeting. To ensure board members have time to review your written comments in advance of the meeting, please submit them by 5 p.m. CDT on July 22.

State Bar of Texas
1414 Colorado
Austin, Texas 78701



Greetings! Jennifer Jenkins and I, Crisarla Houston, appreciate the opportunity to voice our call for Mr. McDougal's resignation or removal. I will be brief.

"To be black in America is to live in a constant state of anxiety."

- Joseph Palmore

Mr. McDougal publicly called Black Lives Matter a terrorist organization and criminalized the organizers and those of us who support them. His patently false statement is dangerous and divisive.

The danger lies in Mr. McDougal's "dog whistles" that incite criminalization and marginalization of black people and others seeking racial justice and equality. The danger also lies in Mr. McDougal's incorrect assessment of the source of terror. Terror is formally defined as fear or anxiety. As Mr. Palmore aptly asserted, black people in America live in a constant state of anxiety, i.e., terror and fear. The reason for this terror is that we endure the life-threatening effects of institutionalized racism, such as the centuries-old police brutality that Mr. McDougal egregiously deems "justice" that "usually happens *before* the trial." Shame on Mr. McDougal for distorting fact and history by mischaracterizing the terrorized as terrorists. Mr. McDougal also wrongheadedly criminalized a poll worker wearing a Black Lives Matter t-shirt.

We cannot support a SBOT president who parrots such dangerous and divisive untruths to mobilize criminalization of Black Lives Matter supporters who lawfully exercise their constitutional right to fight for racial equality, justice, and human and civil rights for black people in America.

Mr. McDougal has publicly ridiculed our female colleague who battles drug addiction. Addiction and other mental illnesses plague a significant number of our dear SBOT colleagues. The SBOT President must lead all of us, including attorneys suffering from addiction and mental illness, with compassion, sensitivity, and respect.

Mr. McDougal's social media posts and refusal to meet with the leaders of the African-American Lawyers Section of the SBOT to discuss a reparative path forward do not reveal one isolated incident of prejudice and insensitivity. The posts demonstrate a pattern of behavior unbecoming of a leader.

Mr. McDougal's apologies do not fix the problem. The fact that Mr. McDougal has refused to meet with the SBOT African-American Law Section representatives to discuss their call to action to repair the harm that his words and actions have caused convinces us that Mr. McDougal's resignation or removal are the only appropriate responses.

We have no confidence in Mr. McDougal's fitness to lead us, two African-American women. He does not possess the judgment or temperament to lead the SBOT toward a more diverse, equitable, and inclusive future.

Thank you,

Crisarla Houston and Jennifer R. Jenkins

From: [Nick Somarakis](#)
To: [BoardofDirectors](#)
Subject: Board Meeting Inquiry
Date: Monday, July 27, 2020 9:04:05 AM

*** *State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

<https://www.google.com/amp/s/www.vox.com/platform/amp/2015/9/1/9239643/black-lives-matter-fox-news>

Here is a link to the 2015 Fox News commentary linking the death of a Harris County Deputy to The Black lives matter group.

They refer to the group as a 'hate group' terror group, and Bill Oreilly said he would do whatever he could to destroy BLM.

In 2015, the time of Larry McDougals post about BLM being a terror group, the speech was in line with the conservative commentators at the time.

I do not believe Mr McDougal can be called a racist based on such statements. He repeated Fox News talking points and conservative rhetoric of the time, but that doesn't mean that 5 years later he should be removed after being duly elected by other attorneys.

Nick Somarakis

My cell is [REDACTED] if you need anything from me.

"We are the music makers. And we are the dreamers of dreams."
-Arthur O'Shaughnessy

From: [Elizabeth Stepp](#)
To: [BoardofDirectors](#)
Subject: Board Meeting Inquiry - Larry McDougal
Date: Monday, July 27, 2020 9:05:58 AM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

I wanted to express my strong opinion that Larry McDougal should step down. I am aware that there may be no mechanism for his removal to be required, which strikes me as an oversight that should be repaired. In the meantime, I would urge Mr. McDougal to review the letters submitted on both sides and ask himself honestly if he can still represent all the members of the State Bar of Texas. In my opinion, he cannot.

As for Steve Fischer, while I believe that he should also resign, ultimately I think that his district should make that decision.

Online comments are no different from other public comments. Perhaps more so when made in a group that is considered equivalent to a local bar association.

Finally, I urge the state bar to adopt section 8.4 or another firm statement and rule against racial or other discrimination. Sadly, the past few weeks of reading and participating in comments online have shown me that we cannot trust other lawyers, even those who are our leaders, to comply with this basic assertion: that no client, attorney, or person should be treated differently due to their race, gender, age, religion, sexual orientation, or indeed for any personal characteristic. I am extremely disappointed (and embarrassed, given that Mr. McDougal has become national and international news), that we have had to come to this formal proceeding because our president and one director are too stubborn, in the face of admitted bad behavior, to do the right thing and resign.

Thank you.

Elizabeth Stepp
TX Bar No. 00788467

--

Elizabeth K. Stepp

Partner

OBERHEIDEN, P.C.

Dallas, Texas 75240

(Telephone)
(Facsimile)

From: [Amy Starnes](#)
To: [BoardofDirectors](#)
Subject: FW: Board Meeting Inquiry
Date: Monday, July 27, 2020 8:14:14 AM

On 7/27/20, 8:12 AM, "Sean T" [REDACTED] wrote:

>* State Bar of Texas External Message * - Use Caution Before Responding
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>

>Terrorism is defined as the use of violence to achieve a political
>objective. BLM groups or people purporting to be affiliated or supportive
>of BLM are engaged in violence across Seattle, Portland, Denver and many
>other ³progressive² cities. BLM riots occurred in Houston and Dallas
>where hundreds of arrests were made of violent vandals and arsonists. To
>ignore reality is a disservice to our men and women in law enforcement. I
>represent members of federal
>Law enforcement agencies such as federal agents of the FBI/ATF/DHS and
>others. The rank and file of these agencies and my family and childhood
>friends serving in the NYPD consider BLM a terrorist organization. This
>is not a fringe opinion but a fact based assessment in the mainstream of
>political thought. Larry Younger expresses an opinion in the mainstream
>of rational thought. Bullies and extortionists aligned with the
>harassment mission of BLM to coerce others into change want him removed.
>This is shameful. People are free to disagree. Where is the condemnation
>of violence by BLM? BLM's official literature on the web calls for
>abolishing capitalism and the nuclear family. The State Bar of Texas
>should not be endorsing such an extremist organization regardless of
>whatever purported noble cause it claims when it's stated mission is to
>overthrow our entire economic system. Stop the bullying. Stop
>the harassment toward rational opinions. End the nonsense. Admonish the
>violent radicals supporting the arson of our cities. Truly defend black
>lives by reprimanding these frauds of BLM who exploit and profit off the
>suffering of others.

>

>Sincerely,

>

>Sean Timmons

>

>TX Bar No 24067908

>

From: [Chielsey Barber](#)
To: [Don Jones](#); [John Sirman](#)
Subject: FW: Larry McDougal
Date: Sunday, July 26, 2020 11:58:51 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Chielsey Barber
Executive Office
State Bar of Texas
[REDACTED] mobile

Please visit the State Bar of Texas' coronavirus information page at texasbar.com/coronavirus for timely resources and updates on bar-related events.

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From: Kathryn Murphy [REDACTED]
Date: Sunday, July 26, 2020 at 11:58 AM
To: Chielsey Barber [REDACTED]
Subject: FW: Larry McDougal

.....
Kathryn J. Murphy

Board Certified - Family Law
Texas Board of Legal Specialization

GoransonBainAusley
FAMILY LAW

[Email](#) | [Bio](#) | [vCard](#)

[REDACTED] Plano, TX 75024 :: GBAFamilyLaw.com

P [REDACTED] F [REDACTED] D [REDACTED] E [REDACTED]



GoransonBain Ausley is open for in-person and remote family law and divorce services. For specific guidance on Covid-19 resources [click here](#).

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From: Barbara [REDACTED]
Sent: Sunday, July 26, 2020 7:34 AM
To: Kathryn Murphy [REDACTED]
Subject: Larry McDougal

Dear Kathryn,

I am writing to you because you are a representative on the state bar board of directors.

I am appalled and offended by the remarks made by the state bar president. They are despicable, racist and sexist. I choose not to be associated with a person with those values.

Please make my voice heard. I insist he resign immediately.

Further, as a member of the family law section who has worked for 35 years to make our CLE the best in the nation, I do not want Mr. McDougal to have a voice or platform on the upcoming advanced family law webinar.

Thanks

Barb

Barbara **D. Nunneley, Special Counsel**

Sullivan & Cook

[REDACTED]
Irving, Tex. 75039
[REDACTED]

FIND US ON THE INTERNET:

www.nunneleyfamilylaw.com

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From: [Coty Hopinks-Baul](#)
To: [BoardofDirectors](#)
Subject: Board Meeting Inquiry re Larry McDougal
Date: Monday, July 27, 2020 1:15:43 PM

*** *State Bar of Texas* External Message * - Use Caution Before Responding or Opening Links/Attachments**

Esteemed Members of the Board of Directors,

Political ideologies have no bearing in evaluating Larry McDougal's comments regarding Black Lives Matter, which is both a rallying call for equality under the law for African Americans and, now, exists as an organization, and a female member of our bar struggling with addiction, as well as the idea that justice is dispensed by police officers rather than being the ambit of our judiciary. These comments indicate, at best, poor judgment. Having poor judgment should be disqualifying. It is hard to understand how touting the idea that police officers rightfully dispense justice by violating the rights of persons to be free from cruel and unusual punishment (like being suffocated under the knee of a police officer) is not disqualifying to serve as the lead spokesman for our State Bar. Mr. McDougal should resign. If he does not, this Board should move to remove him without further ado.

Carlota Hopinks-Baul
Bar No. 24094039

From: [Amy Starnes](#)
To: [BoardofDirectors](#)
Subject: FW: Board Meeting
Date: Monday, July 27, 2020 11:54:32 AM

On 7/27/20, 11:48 AM, "Debra Windsor" [REDACTED] wrote:

>* State Bar of Texas External Message * - Use Caution Before Responding
>or Opening Links/Attachments

>

>I write to urge the Board to call for Larry McDougal and Steve Fischer to
>resign or to remove them from any leadership positions in the Bar. If
>there is no mechanism for removal, it is past time to create one. I also
>support many of the speakers calls for diversity, inclusion, equity and
>implicit bias training. Clearly, from listening the speakers in support
>of McDougal and Fischer, it is sorely needed.

>

>Debra Windsor

To: Board of Directors, Texas State Bar

From: Fred J Meier

Subj: Board Special Meeting of July 27, 2020
Agenda Item 7A
President Larry McDougal on-line comments

Ref: Board Notice of Meeting and Invitation to provide comments
Dtd July 21 @ 1023 pm

Comments on Bar Board of Directors' McDougal Inquiry

Introduction

I have been a member of the State Bar of Texas for over 33 years and have been a licensed attorney for 44 years. I offer my comments in objection to the Board's inquiry regarding Mr. McDougal's personal texts as constituting an unwarranted attack on his constitutionally protected 1st Amendment right of free speech.

Comments

It is egregious that this assault has been initiated by Texas lawyers, made even more odious by reason of its apparent prosecution by the Board of the Texas State Bar Association. Forbid that this inquiry be the foreshadow of an attempt to overturn, by Board fiat, a duly recorded election by the membership of the State Bar. We have well seen enough such ill-advised transparent political actions over the past 3 years.

In addition, it is axiomatic that Mr. McDougal's comments on the applicability of the Electioneering statute are correct as applied to citizens involved in the election process as voters, candidates or advocates; but it should be without question that the statute must absolutely be applied in an even broader meaning of 'electioneering' to an individual who presents at the polling place as a badged "State of Texas Election Official", as was the case here. (Ref. Posed Photo) If there is any question as to the propriety of an item as constituting 'electioneering', as presented by such an official, it must be removed from the polling place so as to avoid even the appearance of being

‘electioneering’. The reported statement by the official involved (as she posed for picture to be taken at the polling place?), “This is not a political statement.”, is the absolute confirmation of what the intent actually is. If not a political statement, why would one need to declare it such in this circumstance? Recall the ancient words of Marc Anthony at the funeral of Julius Caesar: “I come to bury Caesar, not to praise Caesar”. Probably the most infamous ‘non-political’, really ‘political’, utterance in history. Such is clearly the case here.

It is facially not credible to assert that the BLM logo is not associated with a political dialogue directly projected by a recognized political organization in our reality. Given the vast media coverage given the BLM logo and movement, one cannot imagine that a man in the street interview anywhere in this State, even the Nation, could register a response that would not reflect this view. Protest you may, but the uniform appearance of BLM symbolism, logos and well publicized associated actions have long answered the question as to where the “movement’s” affiliations, allegiances and ambitions lie on the political spectrum. (It seems unnecessary to recite the particulars of this history here.) The problem for the argument against Mr. McDougal’s view that BLM is so associated, is that this is virtually a universal public perception. Ergo, BLM has become an identified political entity; thus its logos and identity fall well within prohibitions of the “electioneering” statute.

CONCLUSION

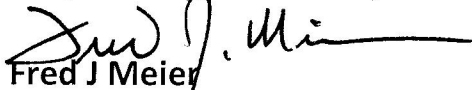
I protest the Board’s actions going forward with this inquiry as being without basis. It is a naked assault on Mr. McDougal’s individual 1st Amendment Rights of Free Speech, and as such is ultimately unconstitutional. If it is a precursor to an attempt to recall Mr. McDougal, it should be plainly labeled as such so as to assure him and the membership full opportunity for due process.

Mr. McDougal did not surrender his personal right to free speech on his election as Bar President, just as the election official involved did not surrender her personal right to free speech upon becoming an election official. Per statute, she just cannot exercise it while working as an election official in the polling place; just as Mr. McDougal should be restrained from presenting his personal speech under color of his official duty as Bar President or as representative of the State Bar of Texas. It cannot seriously be posed that more

than a handful of Texas citizens, other than members of the Bar and his personal acquaintances, could identify him as President of the Texas Bar.

I also urge the Board to take steps to immediately cease adding to the record of the inquiry, submissions including or based on social media history which is neither relevant to the subject matter of the inquiry, or timely enough to be meaningful to the inquiry. I have seen only the 2015 posting by attorney Robert Fickman in the record, which totally fails in relevancy on both accounts. I agree with another commenter that such offers fall under the rubric of the new catch-all "cancel-culture", and are not appropriate here.

Respectfully Submitted,


Fred J Meier

State Bar #13907820

Thank you, Chairman. Board of Directors,

My name is Laura Thetford, and I've been a licensed Texas attorney since November of 2015. I'd like to use my time to discuss an opportunity for positive change in light of the controversy caused by Mr. McDougal's statements, as well as other statements made by members of the state bar.

As it stands, the bar has little authority to consider an allegation against a Texas attorney for discriminatory or harassing conduct. The only clear rule against such conduct is disciplinary rule 5.08. But 5.08 only applies to willfully discriminatory activities in connection with an adjudicatory proceeding.

Thus, I urge you to consider adopting a rule like the American Bar Association's Rule 8.4(g). Rule 8.4(g) states, in relevant part, that an attorney cannot engage in conduct that the attorney knows or reasonably should know is harassment or discrimination on the basis of a protected characteristic, including race or gender, in conduct related to the practice of law. ABA's comments to Rule 8.04(g) explain that the phrase "related to the practice of law" includes "*participating in bar association, business or social activities in connection with the practice of law.*"

A rule like this would allow the Disciplinary Committee to formally consider complaints like those against Mr. McDougal and other members of the state bar. The Committee includes 387 volunteer grievance committee members, both lawyers and non-lawyers, serving on 17 committees throughout the state. This ensures a robust conversation and adequate consideration when an allegation of discrimination or harassment arises.

While some argue that the rule violates the First Amendment, this is not true. Two years after adopting 8.4(g), the ABA responded to critics with an [article](#) explaining the extensive considerations it took before adopting the rule after a three-year long process. For the sake of brevity, I will send that information along with a written summary of this statement after the meeting. It is also worth noting that the article states the amendment to add 8.4(g) passed the ABA House of Delegates by a unanimous voice vote.

Further, it is not a novel idea to restrict an attorney's speech as it relates to the practice of law. Indeed, despite our First Amendment rights, attorneys can be sanctioned for making disparaging remarks about the judiciary, disclosing confidential client information, and discussing pending cases if such discussion will substantially prejudice a proceeding.

Even if there is strong opposition to ABA's 8.4(g) on First Amendment grounds, this should not stop the bar from taking action. At least 25 jurisdictions have a rule in place making it unethical for a lawyer to engage in discriminatory or harassing conduct. The rules of these states provide alternative language for the board's consideration if necessary."¹

Therefore in closing, I urge the Board to take the necessary steps to adopt a rule like ABA's 8.4(g) to prohibit discriminatory and harassing conduct as it relates to an attorney's practice of law. This is a vital

¹ For example, [Indiana](#) prohibits, in its rule 8.4(g), a lawyer from engaging in discriminatory conduct in a "professional capacity." [New York](#) prohibits, in its rule 8.4(h), a lawyer from "engag[ing] in any other conduct that adversely reflects on the lawyer's fitness as a lawyer." [Florida](#) rule 4-8.4 also prohibits discriminatory conduct against other lawyers "in connection with the practice of law."

July 27, 2020
SBOT Special Meeting
Public Comment

step for the bar. It supports the bar's mission of advancing diversity and inclusion in the administration of justice and the law by giving the bar tools to address a situation such as this when it occurs again.

Thank you, and I am happy to answer any questions you might have.

Laura J. Thetford
State Bar No. 24098509

From: [Laura Thetford](#)
To: [BoardofDirectors](#)
Cc: [Trey Apffel](#); [Sylvia B. Firth](#); [REDACTED] [Randy Sorrels](#)
Subject: Re: Joint Letter to the State Bar of Texas
Date: Monday, July 27, 2020 1:21:31 PM
Attachments: [July 27 SBOT Special Meeting \(Public Comment L. Thetford\).pdf](#)

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

I apologize, but I have just one more email. Here is an article from the ABA that discusses other states (in addition to the three I mentioned in the comment letter I just sent) with rules that prohibit discriminatory and harassing conduct by lawyers: https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4/.

Thank you,

Laura

On Mon, Jul 27, 2020 at 1:02 PM Laura Thetford [REDACTED] wrote:
Good afternoon,

Thank you for your time this morning. I've attached my public statement from today which includes a link to an article from the ABA on the constitutionality of ABA Rule 8.4. It also contains links to alternative rules implemented by other states against discriminatory and harassing conduct.

If you have any questions, please do not hesitate to contact me.

Laura

On Wed, Jul 22, 2020 at 3:11 PM Laura Thetford [REDACTED] wrote:
Hi Ms. Starnes and Sylvia,

I am submitting an amended joint letter, attached, with an additional signature. I also added a hyperlink to the ABA comments on Rule 8.4 and made a minor edit to one of the sentences.

Please share this updated version with the board for the meeting.

Thank you in advance, and have a nice week.

Laura

On Fri, Jul 17, 2020 at 8:30 PM Laura Thetford [REDACTED] wrote:
Hello,

Attached please find a joint letter from certain members of the State Bar regarding a proposal to amend Texas Disciplinary Rule of Professional Conduct 8.4, Misconduct. This amendment is proposed in light of certain recent events involving the President of the State Bar.

If you have any questions, please do not hesitate to contact me. We appreciate your attention to this matter.

Sincerely,

Laura J. Thetford
State Bar No. 24098509

Thank you, Chairman. Board of Directors,

My name is Laura Thetford, and I've been a licensed Texas attorney since November of 2015. I'd like to use my time to discuss an opportunity for positive change in light of the controversy caused by Mr. McDougal's statements, as well as other statements made by members of the state bar.

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Even if there is strong opposition to ABA's 8.4(g) on First Amendment grounds, this should not stop the bar from taking action. At least 25 jurisdictions have a rule in place making it unethical for a lawyer to engage in discriminatory or harassing conduct. The rules of these states provide alternative language for the board's consideration if necessary."¹

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¹ For example, [Indiana](#) prohibits, in its rule 8.4(g), a lawyer from engaging in discriminatory conduct in a "professional capacity." [New York](#) prohibits, in its rule 8.4(h), a lawyer from "engag[ing] in any other conduct that adversely reflects on the lawyer's fitness as a lawyer." [Florida](#) rule 4-8.4 also prohibits discriminatory conduct against other lawyers "in connection with the practice of law."

July 27, 2020
SBOT Special Meeting
Public Comment

step for the bar. It supports the bar's mission of advancing diversity and inclusion in the administration of justice and the law by giving the bar tools to address a situation such as this when it occurs again.

Thank you, and I am happy to answer any questions you might have.

Laura J. Thetford
State Bar No. 24098509

From: [Brian Marks](#)
To: [BoardofDirectors](#)
Subject: Comments made by Susan Fischer re Board and Steve Fischer
Date: Monday, July 27, 2020 1:47:54 PM

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments



Susan Fischer

My understanding is there have been 276 letters filed and they are 2-1. Or 3-1. In favor of Larry. Steve and I have been in Washington State and bar officers and directors call him -sometimes-all day long and I think he has worked out an agreement with the major players. From what I can discern all the phone calls have been very friendly. Steve will offer some procedural rules or guidelines before they deliberate. The problem with Steve is no one including him knows what he will say until he's saying it.

4m Like Reply



Sent from my iPhone

From: [Roy Brantley](#)
To: [BoardofDirectors](#); [Amy Starnes](#); [Trey Apffel](#)
Cc: [LarryMcDougalstatebarpresident@texasbar.com](#)
Subject: Some thoughts for our State Bar concerning President McDougal and Director Steve Fisher
Date: Monday, July 27, 2020 9:31:42 AM
Attachments: [image003.png](#)
[image005.png](#)
[20200727093928570.pdf](#)
[20200727095232244.pdf](#)

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Dear Bar Leaders,

These two letters are late I know. However, I am compelled to send them anyway. My hope is that wisdom and reason will reign. Thank you all for your work and concerns for our State Bar.

Sincerely,

Roy Brantley

Roy Brantley •

• College Station, Texas 77845

Fax: (979) 694-8000

[bio](#) • [vCard](#) • [web](#)

Board-Certified – Personal Injury Trial Law
Texas Board of Legal Specialization



July 27, 2020

State Bar of Texas
Texas Law Center
1414 Colorado Street
Austin, Texas 78701

RE: President Larry McDougal

Dear State Bar Board:

This note is written for our State Bar Directors and Leadership to shine as a path forward for our members and society in general. In these dark times, my plea is that we will shine forth a path that will be true leadership.

Larry McDougal's posts as well as statements have offended many. Sadly, it seems like we are following the "gotcha" approach that seems pervasive throughout. We rush to condemn or ignore it. Perhaps there is another approach? Could we shine the light of forgiveness instead?

Larry McDougal has apologized in a statement and in a video. His own son testifies as to his character in a letter to this board. It seems from what I have read that many want our State Bar Directors to cast the first stone. If any of our Directors or those calling for such have not stumbled in life nor sinned, then let them cast the first stone.

This note is not addressing First Amendment rights or freedom of speech but a root issue of our heart attitudes. My hope is to address our hearts in this "gotcha" society. Can we all realize that our words and posts can affect people? Larry McDougal realizes his words can affect people and he apologized.

Rather than make demands of resignation or demands to take certain acts to make amends, perhaps we can come along side our fellow State Bar Member. Let us as State Bar Members take the lead by being kind and supportive toward one another without condemnation. We as a State Bar express this attitude through our great program TLAP.

My plea to our State Bar Directors and members is to choose a better way. The better way is to forgive, accept his apology, and show that we can all move forward together. In this year of 2020, let us have clear vision for our future as leaders. Helen Keller could not see but she had vision and I appeal for us as a State Bar to follow her example:

"Alone we can do so little, together we can do so much." - Helen Keller

May we accept Larry McDougal's apologies and allow him to work to earn the trust of those he offended. Let him serve as he was elected to do so and work to earn the trust of those offended. Let us not ask for his resignation nor make demands on what he can do, but rather let us come along side him and allow him the opportunity to work for trust of all in our State Bar.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roy D. Brantley", with a long horizontal flourish extending to the right.

Roy D. Brantley

July 27, 2020

State Bar of Texas
Texas Law Center
1414 Colorado St.
Austin, Texas 78701

Re: State Bar Director Steve Fisher

Dear Board of Directors:

This letter is written for us to consider a coming alongside approach rather than demanding Steve Fisher resign. I served as a Board of Director Member in Steve Fisher's first term. As a Board of Director, he and I had some different view points. He did not appreciate my understanding of and utilizing parliamentary procedure in our meetings to keep things moving.

My personal experiences with Steve includes such meetings and him calling a fellow Board Member a b---- name out loud in a public gathering. I went to him and insisted he not do such. He stopped. We moved on together.

Later, on a Facebook post, he personally insulted my wife. It took time, but I wanted to visit with him face to face about this insult. I was at a meeting in Bell County and met him face to face about this specific directed insult at my wife. I spoke with him and explained to him that he owed my wife an apology. Susan Fisher was there and can verify this coming alongside of Steve. Months later at the State Bar Convention in Houston, Texas, he apologized to my wife. We moved on to serve the State Bar together.

Perhaps I should have come alongside of my fellow State Bar Member more consistently, in light of his more recent actions.

Let us not throw the baby out with the bath water in this "gotcha" society. He is a fellow State Bar Member. He has value to our State Bar. Rather than seek him to make amends by resignation, perhaps we should come alongside him and work together to make our State Bar better.

If all of our Bar thought like me or just like Steve, we could not accomplish part of our State Bar's mission:


. and promote diversity in the administration of justice and the practice of law.

(State Bar of Texas Mission Statement) - diversity is a thought, as well as anything.

My hope is what we will roll up our sleeves and work together, with not just word or tongue, but in deed and truth.

My hope is that our State Bar will rise above the "gotcha" approach to solving problems. I will volunteer to come alongside my friend, as iron sharpens iron so one sharpens another. May we all come out sharper with Steve remaining as a duly elected director.

Sincerely,



Roy D. Brantley

RDB:kr

From: [Lisa Guerra](#)
To: [BoardofDirectors](#)
Subject: Special Meeting - Comments
Date: Monday, July 27, 2020 9:18:35 AM

*** *State Bar of Texas* External Message * - Use Caution Before Responding or Opening Links/Attachments**

To Whom It May Concern:

There is no reason that persons who reveal an implicit bias that may (and did) influence decisions against the rights of fellow human beings hold positions of leadership in the State Bar of Texas.

I urge the Board to take whatever actions within their power to express to Larry McDougal and Steve Fischer, that, **regardless of their intentions**, their words do indicate this sort of harmful, implicit bias. Due to this fact, they should resign from their positions as a courtesy to the entire legal profession.

Best,
Lisa

Lisa Y. Guerra
Attorney
Licensed in NY, DC and TX (#24112407)

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TAYLOR ADVOCACY GROUP

JUANDALYNN TAYLOR, PH.D., J.D.

SAN ANTONIO, TX 78268

210.896.8582

July 27, 2020

TO: State Bar of Texas
Board of Directors

RE: Special Called Meeting
Public Comments Regarding President Larry McDougal

A Crisis of Leadership: There Are No Out of Context Moments

My name is Juandalynn Taylor and I have studied human behavior and communication for the past 30 years. I also currently work as a mitigation specialist, social scientist, and cultural studies expert with 12 years experiences as a university professor with a Ph.D., M.S. in Communication Studies, and J.D.

Over the past few days, I carefully reviewed the public controversy around Texas Bar President, Larry McDougal's comments regarding the Black Lives Matter organization and other public comments. I am writing to add my voice to the debate over resolutions. My statement below focuses on why constituents generally elect leaders—particularly presidents, links this expectation to a well-understood tort principle, and supports the position that Mr. McDougal should resign.

WHY WE ELECT GOOD LEADERS

Without a doubt, voters made careful considerations regarding Mr. McDougal's ability to get things done when casting ballots for his presidency. His perceived ability to use sway in moving an organization forward is the *sine qua non* or the essential characteristic for a president of any organization. So it's no surprise why people are pondering *how* he might accomplish his objectives. In essence, does Mr. McDougal's use communication as a means of unifying or dividing.

Interestingly, Mr. McDougal posted Facebook comments a year and a day after a three-judge panel ruled unanimously in Knight First Amendment Institute at Columbia University v. Trump, 928 F.3d 226 (2nd Cir. 2019) that President Trump could not block unfavorable tweets, holding that his ability to block twitter participants rests with the declared purpose and ownership of an account. This court advised two things that are important to note here:

(1) Social media comments are political in nature and also inherently linked to the president--whether posted via public or individually held public accounts.



TAYLOR ADVOCACY GROUP

(2) The comments posted on a public platform by public officials are still open to debate of most relevance here.

Judge Barrington expressly suggested that a core democratic value is public debate¹. Judge Barrington also noted about public debate that, “[As] uncomfortable and as unpleasant as it frequently may be, is nonetheless a good thing.” He added, the best response to disfavored speech on matters of public concern is more speech, not less. And so, when Mr. McDougal posted comments on Facebook on July 10, 2020, his words were open to public debate and cannot not be interpreted outside of the context in which they were offered—the times that we are living within. This is how every leader sets the tone for office.

In his own words, Mr. McDougal explained in the July 2020 Texas Bar digital edition that he leads by example. A review of his words from that interview, his public statements since making the 2020 Facebook posts, and subsequent actions stand in contrast to a leader ready for debate on broad issues of public concern, commitment to fully representing diverse views, and preparation to move forward a non-partisan agenda during his tenure as president.

For instance, Mr. McDougal referred to the Black Lives Matters organizations as a terrorist group in 2015 and explained in 2020 that his views have changed. At no point does he explain what his views are. Instead, he states, “I made a comment about how I felt the attire of polling workers should be policed, as to avoid prejudicing voters.”

Mr. McDougal wants us to understand that, as a good citizen, he was using his public platform to speak out on behalf of voters. However, in his attempt to explain his position he fails to correct his misapplication of electioneering law to Black Lives Matters in the first place. Further, in his response he linked serious topics of public concerns that have proved to be divisive—policing, prejudices, and voting. His default to law enforcement language must be understood as implicit bias and not mere default to habit. He consistently refers to this experience as a point of reference, “This behavior is not in keeping with who I am today and the values I have fought for throughout my career in the police force or legal system.”²

When Mr. McDougal choose to make a public statement about his Facebook comments, in the age of zoom and several other platforms, he elected to use a Youtube video. He leads with, “A lot of people have been asking me to make a comment...” It is noteworthy that he is without his hat as he typically adorned in most official photos and occasions. Instead, he is in a t-shirt and perhaps in his backyard. In addition, when Mr. McDougal makes statements denouncing racism, he does it as “attorney and citizen” but never as a human being. None of this indicates he is a leader ready for debate on broad issues of public concern, committed to fully representing diverse views, and preparation to move forward a non-partisan agenda during his tenure as president.

LINKS TO TORTS

In his Youtube apology, Mr. McDougal says the following about the damage his statements caused.

¹ See case generally.

² July 2020 Issue Texas ABA pg. 443



TAYLOR ADVOCACY GROUP

“I believe the organization as a whole has changed over the past four years. I am deeply sorry I made any insensitive comments and for the hurt those decisions caused then and now.”

“I understand that my comments may have been seen as hurtful to our community and members of the Texas Bar Association.”

Again, I find that he uses uncomfortably divisive language by saying “our community” because there is no other direct connection to others being hurt in the statement. To whom is he apologizing? The possible references are too ambiguous to be a meaningful apology. As such, perhaps his efforts must be interpreted through the irony they generate---his unintentional conduct or the biggest tort we have, negligence. So, let us not forget this public discussion on Mr. McDougal’s comments is not a question about race or racism; it is about leadership.

Organizations and members of the bar have eloquently written about the harms Mr. McDougal’s words have generated, so I won’t be repetitive here. However, the people are very clear in their points about the damage that has been. Further, organizations such as Black Lives Matter have been consistently working to correct injustices leading to such factors as African Americans in 2015 and in 2020 representing 12% of the U.S. population and approximately 45% of the prison population; 35% of the population on death row; and receiving federal sentences that are 19.5% longer than similarly situated white defendants and 14% longer than similarly Latino defendants³.

As such, Mr. McDougal should be afforded the opportunity to meaningfully demonstrate the spirit of good leadership and resign with dignity by also setting a tone for social justice.

WHY THE TONE FOR SOCIAL JUSTICE

Let’s all remember, the relationship between Mr. McDougal and Black Lives Matters in 2015 and 2020 is a connection and context that he created and he created alone. They are inextricably link during a time when there needs to be meaningful leadership moving in a helpful direction—not a distraction, not a hiccup, not another wait and see. We are living in a time of serious momentum.

Mr. McDougal’s comments demonstrate that social justice remains an exigency and that it is imperative for leaders to understand the myriad of interests being debated right now. I urge everyone to consider how Mr. McDougal can still be part of the solution and be that man, “Leading by example,” in others ways. Assist in with understanding how to fall back and holding his successor to the same standard. His father was a Marine so perhaps Mr. McDougal can fully embrace the concept that resigning in this instance does not equal retreat. That falling back is a military concept designed to reorganize and “mend every fence possible” as he stated. Mr. McDougal, I ask that you be the example you want others to follow.

Respectfully submitted,

³ U.S. Sentencing Commission. Published Nov. 2017. *Demographic Differences on Sentencing Differences: An Update on the Booker Report*. See pgs. 4-7.



TAYLOR ADVOCACY GROUP

A handwritten signature in black ink, appearing to read 'Juandalya Taylor', with a long horizontal flourish extending to the right.

Juandalya Taylor, Ph.D., J.D.
Mitigation Specialist

From: [Robert Willmann Jr](#)
To: [BoardofDirectors](#)
Subject: corrected comment for meeting of monday july 27
Date: Monday, July 27, 2020 1:19:42 AM
Attachments: [mcdougal_comment_corrected.pdf](#)

* State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments

26 July 2020

Re: Corrected written comment for the special meeting
of July 27, 2020 of the board of directors

To: The Board of Directors of the State Bar

Attached is my corrected written comment concerning
the special called meeting of the board, and
president Larry McDougal.

I had put the month 'June' instead of 'July'
on the first page, and had a typo on page three.

Sincerely,

Robert Willmann, Jr.
Attorney at Law

[REDACTED]
San Antonio, Texas 78246

[REDACTED]
Bar No. 21655960

R. Robert Willmann, Jr.
Attorney at Law
P.O. Box 460167
San Antonio, Texas 78246
Telephone: 844-244-9973

26 July 2020

Board of Directors
State Bar of Texas
1414 Colorado Street
Austin, Texas 78701

Re: Special meeting about State Bar President Larry McDougal; July 27, 2020

Dear Members of the Board of Directors:

Perhaps the useful thing about growing older is that with some knowledge of what has gone on before, analyzing what is happening now comes from a wide perspective, as I look back at having received the privilege of a law license in Texas in 1980.

After first just idly looking at the State Bar message of last week Tuesday about a special meeting July 27, when I looked at it more closely a day later, I hardly recognized the solid legal tradition and constitutional structure of Texas.

Something has gone seriously awry.

Given the short time frame in which to put together a comment, I will make a list of items, in recognition of John McCarthy, the inventor of the LISP computer programming language, with the name standing for LIST Processing.

1. The initial observation is: What is going on? It looks as if some persons want the president of the State Bar of Texas punished for writing something as an individual and lawyer, and not in his official capacity as president of the State Bar of Texas. Is this a trial? It does not look like any trial in which I have ever been involved, including as co-counsel in defense of three capital murder death penalty cases.

2. The complaint—or whatever it might be called—against Larry McDougal can be disposed of smoothly.

3. The Texas Constitution has a Bill of Rights. The free speech provision is Article 1, section 8. It is stronger than the First Amendment to the U.S. Constitution because it gives the right of free speech directly to the person, and is not dependent on state action.

4. From the federal constitutional side, *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (per curiam), states the standard—

[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where

such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

The *Brandenburg* decision fashions this very wide range of protected speech, which may seem surprising to some.

5. Beyond a shadow of a doubt, Mr. McDougal's expressions are very far away from even approaching the boundaries of *Brandenburg*, and are 100% protected speech.

6. After I was born, the *Brown v. Board of Education* U.S. Supreme Court decision was delivered. The position that schools should allow racial desegregation was based on the ideas of color-blindness and non-discrimination. While a student at the University of Texas Law School, I took a seminar on the school desegregation cases.

7. In recent times, however, that language does not appear at the forefront. Instead, the words used are "systemic racism", "diversity", and "inclusion", which are constitutionally meaningless, and in any specific and practical sense, are legally undefinable.

8. Apparently, Mr. McDougal made a note on an Internet Twitter website page of the State Bar of Texas on July 10, 2020, in which he added – after correctly stating that his comments were made in his personal capacity and not in his capacity as president of the State Bar – that he, "was not intending to take a political stance on the social movement of #BlackLivesMatter. I was merely trying to answer someone's question with my interpretation of the law. I meant no offense". Mr. McDougal did not need to add the last three sentences, as we will see next.

9. Robert Bork had a narrower view of the First Amendment's free speech clause than some. During his life he was the Solicitor General of the U.S. in the Justice Department, a federal appeals court judge on the District of Columbia Circuit, and a professor at Yale Law School. Nevertheless, Mr. Bork has made it clear that there was and is no need for Mr. McDougal to qualify his comments or in any way to apologize for them. Mr. Bork said in his little 2003 book, "Coercing Virtue":

The core value of the First Amendment's speech clause is the protection of political speech, speech that informs and guides the political process essential to a republican form of government.

That is a value of our culture, our State of Texas, and the United States. This means vigorous and robust debate, from any viewpoint.

10. One paper in the materials on the State Bar website about this matter is entitled, "Joint statement of State Bar of Texas and Texas Young Lawyers Association leaders regarding comments by Larry McDougal". It is by Sylvia Borunda Firth, the president-elect; Randy Sorrels, immediate past president; Charlie Ginn, chair of the board; Trey Apffel, executive director; Britney Harrison, TYLA president; Victor Flores, TYLA immediate past president; and Jeanine Rispoli, TYLA president-elect. The first sentence says: "Online comments made by Larry McDougal regarding #BlackLivesMatter do not reflect the values of the State Bar of Texas and we denounce them in the strongest terms".

11. I must respectfully disagree, as we say, with that first sentence of the joint statement by the seven persons associated with the State Bar and TYLA. Is a “value” of the State Bar of Texas that a lawyer shall not publicly discuss whether a person wearing a shirt with the words “black lives matter” at an election site might be violating Texas election law? Is it a “value” of the State Bar of Texas that a Texas lawyer shall be censored and be prohibited from expressing protected speech? Is it a “value” of the State Bar of Texas that a lawyer engaging in protected speech as an individual be punished or censured for that expression when he is not speaking in his official capacity as president of the State Bar?

12. The oath taken by all lawyers when admitted to the Bar in this state starts with: “I [name], do solemnly swear that I will support the Constitutions of the United States and of this State ...” The constitutions include the concepts of due process of law and freedom of speech and expression.

13. I was privileged to have shared office space with and worked as co-counsel on some cases with Charles D. Butts, a respected criminal defense lawyer who had served as a director of the State Bar. His wife, Shirley Butts, was the first female judge on a Texas court of appeals. They have both unfortunately left us. I certainly believe that they would be appalled that a president of the State Bar who engaged in free speech would be the subject of a special meeting of the board because he engaged in that speech as a lawyer and individual.

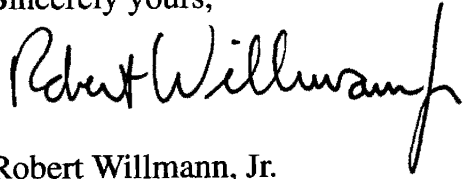
14. When I was coming up, the thought was that society can benefit by being color-blind, and that race should not matter and should not be a consideration. But now, the opposite has been developing, as race is being jammed forward, and people are being denigrated for saying something like, “all lives matter”, or for expressing opinions and engaging in protected speech on subjects other than race.

15. The organization called Black Lives Matter is not off limits as a subject for research, investigation, discussion, or criticism. In fact, it would be useful for attorneys to do their own research and investigation, since one function of a lawyer is to check things out, to be skeptical, and to try to think things through. The fact that the Internet includes the preservation of website pages from the past, as well as full motion video, can help in research and analysis. Think for yourself.

16. The appropriate resolution to agenda item number seven for the special called meeting of the board of directors for Monday, July 27, 2020 is one sentence: “The State Bar of Texas takes no position on comments and online commentary referred to in agenda item number 7”.

I thank the State Bar for providing the opportunity for remarks and comments concerning the special meeting.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert Willmann, Jr.", with a stylized, cursive script.

Robert Willmann, Jr.

From: [Roland Brown](#)
To: [BoardofDirectors](#)
Subject: Larry McDougal BLM etc. issues
Date: Monday, July 27, 2020 7:32:39 AM
Importance: High

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

To: SBOT Board of Directors

The following confirms comments I have made to some of the Directors already.

The form of my comments below is as I've made them to some fellow lawyers in Hays County and, following that, part of my exchange with one of the Board members:

Dear Hays County Colleagues

This email is going out to a few selected members of the Hays County Bar. I'll try to keep it short.

- **PURPOSE:** Encourage you to consider contacting Bar Director, David Sergi, or to share your opinion via the SBOT website about the controversy surrounding social media/online posts by the current State Bar President acting in his personal capacity and not in his official capacity.
- **BACKGROUND:** Larry McDougal, our new State Bar President has made some social media/online posts, one recently and the others several years back, that reflect a significant lack of understanding of racially sensitive issues (as well as gender and chemical dependency issues). The posts are found on the SBOT website. This link might get you there: [State Bar board to meet July 27 on president's online comments. diversity task force](#)

Mr. McDougal has made a formal apology, and both a written and a video version are on the SBOT site.

The SBOT and TYLA have issued a formal statement which is on the site.

Numerous Local Bar associations and other Bar related groups have issued formal statements also found there.

- **YOUR INPUT:** You can express your opinion regarding this issue and how it should be ultimately addressed by the SBOT Board of Directors

by contacting David Sergi directly or by providing either written comment or “live comment” at the virtual meeting scheduled for the Directors on July 27th. Info on how to submit is on the website.

- MY PERSONAL THOUGHTS: Here are my thoughts after having visited with David and having communicated via FB and email with another director; having reviewed the comments made by Mr. McDougal and listened to his video taped apology; having reviewed in relatively cursory fashion the statements of position from a number of Bar related groups found on the SBOT website; and having read some of the often vitriolic comments found on the Texas Lawyer FB page:
 - Black lives matter. That’s a fact, not just a movement. While it’s true that “all lives matter”, we are tone deaf if we think that people of color hear that as an affirmation that their lives matter just as much as white lives. In a perfect world where people had been and were currently treated fairly and equally, we could all rally around the “all lives matter” statement, but that is simply not where we are in the United States of America in the summer of 2020.
 - As lawyers, we are leaders; sometimes of large constituencies and sometimes of small groups – our clients, families, religious and social organizations we are part of. We have been trained to call “bullshit” when others twist the facts or the law to devious ends. We, as individual lawyers, as well as in our positions as members of our bar associations, need to get out in front of this long overdue movement to require fair and equal treatment for every person. To do that, we must challenge those who would squelch the effort by efforts to point at extremists and irresponsible persons whose irresponsible actions of looting, rioting, etcetera are not representative of those who cry out for social justice. We must transcend political differences.
 - We must be human
 - and we must be passionate
 - and we must be right – on the law and on the facts whenever the naysayers misrepresent either.
 - While I cannot parse the sincerity of Mr. McDougal’s apology, it contains affirmations of intention to do better and to take affirmative steps to help the Bar to better. I don’t see how, at this juncture, trying to force his resignation would be a better approach than would be the adoption of most, if not all, of the proposals for moving forward found in the statements of various Bar related organizations found on the SBOT website.

I don’t necessarily think though that the way forward should be dictated by whether or not he’s genuinely “found Jesus”, as long as he’s willing

to pledge his honest effort to speak appropriately in both public and private so long as he is the face of the Bar, and is truly willing to make the Bar a poster child for how to lead our profession, our state, and this nation forward towards real equality, fairness and respect.

I thought his video statement was reasonably genuine (not knowing him, knowing he's dealt with/dealing with a frightening personal health issue, and recognizing his experience as a peace officer, it's hard to make a firm judgment on genuineness), but I suspect that he, like many of us, is a work in progress on that issue. I could spend a long time sharing my own journey which included calling up the only black male who graduated from high school with me back in the days of "freedom of choice" (three out of probably 35 black students in my town "chose" to come over to the previously all-white high school) and arranged to meet with him a few years ago to get some understanding on his perspective on how he was treated back then. It was not necessarily surprising, but definitely eye-opening. The book, "Go Set A Watchman", ostensibly written by Harper Lee as a sequel to "Go Kill a Mockingbird", was the impetus for that visit as well as in forcing me to face my own feelings about race as they existed and have changed over time. I sense Larry isn't a lost cause, and I hope that maybe there is both individual redemption and a chance for the Bar to turn a negative into a really big positive for him, for us, and for the larger society that we live in and serve.

Again, I regret the vitriol that you have had to deal with regarding this issue. I've been disappointed by the lack of professionalism on the part of folks from both sides of the issue. Thanks for serving in these troubling but exciting times.

Respectfully,

Roland Brown
SBN03166500
Licensed 1975

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Wimberley, Texas
ROLAND@ROLANDSLAW.COM



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From: [Jan Horn](#)
To: [BoardofDirectors](#)
Subject: McDougal Resignation
Date: Monday, July 27, 2020 4:07:04 PM

*** *State Bar of Texas* External Message *** - Use Caution Before Responding or Opening Links/Attachments

Date: Fri, 24 Jul 2020 15:25:20 -0500

Subject: McDougal Resignation

As a member of the State Bar of Texas, I was dismayed by the poor judgement shown by President Larry McDougal. At a time when leadership is desperately needed, he instead made offensive and divisive social media posts. I understand he also used Facebook to issue a "legal opinion" on a Black Lives Matter shirt worn at a polling place. He failed to address the issue of a County Judge's authority over a polling place. I hope Mr. McDougal will do the honorable thing and resign as president. Thanks for this opportunity to comment. Jan Horn, Texas Bar Number 09998700

July 21, 2020

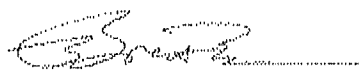
TO: Board of Directors of the State Bar of Texas
RE: Larry McDougal

While I am sympathetic with how much one's thinking about racism can change in the span of 5 years, for me there are two things that reduced the credibility of Mr. McDougal's apologies.

First, his appearance. I do not know Mr. McDougal personally. Of all I know of his public persona, he is pictured wearing a jacket and tie and a cowboy hat: Texas professional, in other words. So, I assume that is how he wants to be perceived in his role as a Texas attorney; I can see he has a full grasp of the importance of his appearance when practicing law. In his video, he looked disheveled and hurried; sort of like he just got through mowing his lawn. He looked like he didn't give a single thought about how he came across or how his fellow Texas attorneys, most of whom like me are having their first impression of him right now, would perceive him. As an experienced courtroom attorney, he undoubtedly knows better than that. I don't think he took his video apology seriously.

Second, his decision to read his apology instead of talking from the heart really threw up a wall. I couldn't tell if he was reading something he wrote, or was reciting something another attorney wrote for him. If it was the former, Mr. McDougal did himself a disservice because I was looking for something from his heart, not his head. If the latter, then he just doesn't understand why he has found himself in this situation on this specific subject matter. I was looking for the real "Larry McDougal"; it feels as if I got a controlled facsimile instead. It was as if he was checking off boxes on a form titled "How to Apologize in Three Easy Steps" instead of doing the hard work of hearing his critics, demonstrating that he understands the issues they represent, and then responding with sincerity and winsomeness.

My heart goes out to Mr. McDougal, professionally. I trust the Board will distinguish between "cancel culture" and "consequences." I hope Mr. McDougal remains a fully licensed member of the SBOT. In my opinion, nothing he has done warrants a formal admonishment or disciplining of his right to practice law in Texas. By all accounts from other commenters, he is a good colleague and ethical attorney. Definitely, Mr. McDougal should feel free to comment in blogs or on social-media posts as much as he wants. But Mr. McDougal ought not to lead the State Bar of Texas because, based solely on his public apologies in print and video, he simply does not have the discretion or the temperament to be its president.



Samuel Brent Thompson
SBOT Member ID 24011603
Fort Worth, Texas

From: [Nicholas Poehl](#)
To: [BoardofDirectors](#)
Subject: SBOT Special Meeting
Date: Monday, July 27, 2020 7:22:00 PM

*** State Bar of Texas External Message * - Use Caution Before Responding or Opening Links/Attachments**

Directors,

While there were a few good fighters today, I have to say I found the Board's collectively toothless response wholly inadequate.

I understand the reality that there wasn't a procedure to remove President McDougal, but the failure to call for censure or a vote of no confidence smacks of abject cowardice. Further, I do NOT understand the Board collectively pretending it had no ability to deal with Mr. Fischer's behavior. A bunch of attorneys caved over threats of... litigation?!?

And then to see President McDougal blame AALS or African Americans in general for not being able to tell him "what works"?!? Inexcusable.

I question the wisdom of even having this special meeting if apparently a decision had been made ahead of time that no corrective or punitive action would be taken and other issues would be tabled until later dates. The Board sent a message today, but I'm not sure it's the one y'all intended. I can't remember who used the phrase "all hat, no cattle" today during the public comments portion of the agenda, but it's particularly apropos after that performance.

Disappointingly yours,

Nicholas R. Poehl
Attorney and Counselor at Law
The Poehl Law Firm, PLLC
[REDACTED]
Kemah, Texas 77565
[REDACTED]