INTRODUCTION TO ISSUES ARISING FROM ADVISING A SMALL MINORITY-OWNED BUSINESS
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INTRODUCTION TO THE PROGRAM

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WELCOME

• I AM SAM THOMPSON, A PROFESSOR OF LAW AND DIRECTOR OF THE CENTER FOR THE STUDY OF M&A AT PENN STATE LAW
  • I WILL PROVIDE BRIEF INTRODUCTIONS TO:
    • THE PROGRAM AND OUR SPEAKERS,
    • THE IMPORTANCE OF THE PROGRAM IN HELPING TO CLOSE THE WEALTH GAP BETWEEN WHITE AND MINORITY COMMUNITIES
INTRODUCTION: TOPICS AND SPEAKERS

• OUR SPEAKERS ON CORPORATE AND SECURITIES ISSUES IN ADVISING MINORITY BUSINESSES ARE 1 KAY GORDON, A PARTNER AT NELSON MULLINS IN NYC, AND 2, SABRINA CONYERS A PARTNER AT NELSON MULLINS IN CHARLOTTE, N.C.

• OUR SPEAKER ON TAX CONSIDERATIONS IN ADVISING A MINORITY BUSINESS IS ERIC SOLOMON A PARTNER AT STEPTOE & JOHNSON IN WASHINGTON, DC.

• FINALLY, OUR SPEAKER ON SBA FINANCING INITIATIVES IS DANIEL SYLVESTER, A PARTNER AT HOLLAND AND KNIGHT IN CHICAGO.

• CAVEAT: SINCE WE ARE COVERING ALL OF THESE IMPORTANT TOPICS IN AN HOUR, WE CAN ONLY FOCUS ON THE HIGH POINTS.
LET'S START WITH A LOOK AT SOME "BASIC INEQUALITY FACTS" PRINCIPALLY FROM GOVERNMENT DOCUMENTS, RELATING TO:

[1] RACIAL INEQUALITY IN INCOME,
[3] RACIAL INEQUALITY IN THE OWNERSHIP OF WEALTH

- **MEDITAN HOUSEHOLD INCOME IN 2019 BY RACE WITH CHANGE FROM 2018 TO 2019: SEE FIGURE 1, P. 12**

<table>
<thead>
<tr>
<th>RACIAL GROUP</th>
<th>MEDIAN HOUSEHOLD INCOME (MHI)</th>
<th>INCREASE IN MHI FROM 2018 TO 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASIAN</td>
<td>$98.2K</td>
<td>10.6%</td>
</tr>
<tr>
<td>WHITE NOT HISPANIC</td>
<td>$76.1K</td>
<td>5.7%</td>
</tr>
<tr>
<td>WHITE INCLUDING HISPANIC</td>
<td>$72.2K</td>
<td>5.9%</td>
</tr>
<tr>
<td>HISPANIC ANY RACE</td>
<td>$56.1K</td>
<td>7.1%</td>
</tr>
<tr>
<td>BLACK</td>
<td>$45.4K</td>
<td>7.9%</td>
</tr>
</tbody>
</table>

- **THE RATIO OF BLACK TO NON-HISPANIC WHITE HOUSEHOLD INCOME WAS 0.60, WHILE THE RATIO OF HISPANIC TO NON-HISPANIC WHITE HOUSEHOLD INCOME WAS 0.74. NONE OF THESE RATIOS WERE STATISTICALLY DIFFERENT FROM 2018.**

• POVERTY RATES SEE FIG 8 P. 19: BETWEEN 2018 AND 2019, POVERTY RATES DECLINED FOR ALL RACE AND HISPANIC ORIGIN GROUPS.

<table>
<thead>
<tr>
<th>RACE</th>
<th>POVERTY RATE 2018 &amp; 2019</th>
<th>DECREASE IN POVERTY RATE FROM 2018 TO 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASIAN</td>
<td>10.1%, 7.3%</td>
<td>2.8 PERCENTAGE POINTS</td>
</tr>
<tr>
<td>WHITE</td>
<td>8.1%, 9.1%</td>
<td>1 PERCENTAGE POINT</td>
</tr>
<tr>
<td>HISPANICS</td>
<td>17.5%, 15.7%</td>
<td>1.8 PERCENTAGE POINTS</td>
</tr>
<tr>
<td>BLACKS</td>
<td>20.8%, 18.8%</td>
<td>2.0 PERCENTAGE POINTS</td>
</tr>
</tbody>
</table>

• THUS, BEFORE COVID, NEARLY 20% OF BLACKS AND 16% OF HISPANICS WERE IN POVERTY, MORE THAN TWICE THE WHITE RATE.
BASIC INEQUALITY FACTS: REAL-TIME POVERTY ESTIMATE DURING COVID THROUGH NOVEMBER 2020

- POVERTY RATES SEE TABLE 1: BETWEEN 2018 AND 2019, POVERTY RATES DECLINED FOR ALL RACE AND HISPANIC ORIGIN GROUPS.

<table>
<thead>
<tr>
<th>RACE</th>
<th>POVERTY RATE BEFORE COVID, JAN 2020</th>
<th>POVERTY RATE DURING COVID NOV 2020 AND INcrease FROM JAN 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHITE</td>
<td>9.4%</td>
<td>10.1%, + 0.6%</td>
</tr>
<tr>
<td>BLACK</td>
<td>18.2%</td>
<td>21.3%, + 3.1%</td>
</tr>
<tr>
<td>OTHER</td>
<td>12.4%</td>
<td>12.1%, - 0.3%</td>
</tr>
<tr>
<td>ALL</td>
<td>10.8%</td>
<td>11.7%, + 0.9%</td>
</tr>
</tbody>
</table>

- THUS, FROM JANUARY 2020 TO NOVEMBER 2020, BLACK POVERTY INCREASED BY APPROXIMATELY 5 TIMES THE INCREASE IN WHITE POVERTY AND APPROXIMATELY 10 TIMES THE INCREASE IN “OTHER” POVERTY.
• POVERTY RATES P. 21: LOOKING AT POVERTY MORE CLOSELY, THERE ARE DISPARITIES IN THE PERCENTAGE OF A RACIAL GROUP THAT IS IN POVERTY:

<table>
<thead>
<tr>
<th>RACE</th>
<th>PERCENT OF POPULATION IN POVERTY 2019</th>
<th>PERCENT OF THOSE IN POVERTY IN 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHITE</td>
<td>59.6%</td>
<td>41.6%</td>
</tr>
<tr>
<td>HISPANIC</td>
<td>18.7%</td>
<td>28.1%</td>
</tr>
<tr>
<td>BLACK</td>
<td>13.2%</td>
<td>23.8%</td>
</tr>
</tbody>
</table>

• BOTH FOR BLACKS AND HISPANICS, THE PERCENT IN POVERTY EXCEEDS THE PERCENT OF POPULATION BY APPROXIMATELY 10 PERCENTAGE POINTS. FOR WHITES, THE PERCENT IN POVERTY IS NEARLY 20 PERCENTAGE POINTS BELOW THE PERCENT OF THE POPULATION.
### BASIC INEQUALITY FACTS:

**McKINSEY & CO. “THE ECONOMIC IMPACT OF CLOSING THE RACIAL WEALTH GAP” 2019, FIG 1 P. 5**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>WHITE MEDIAN FAMILY WEALTH</th>
<th>BLACK MEDIAN FAMILY WEALTH AND DEFICIT FROM WHITE</th>
<th>HISPANIC MEDIAN FAMILY WEALTH AND DEFICIT FROM WHITE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>$120K</td>
<td>$15K, $105K</td>
<td>$15K, $105K</td>
</tr>
<tr>
<td>2001</td>
<td>$160K</td>
<td>$13K, $147K</td>
<td>$18K, $143K</td>
</tr>
<tr>
<td>2007 BEFORE THE FINANCIAL CRISIS</td>
<td>$200K</td>
<td>$17K, $183K</td>
<td>$17K, $183K</td>
</tr>
<tr>
<td>2013 AFTER THE FINANCIAL CRISIS</td>
<td>$98K</td>
<td>$10K, $88K</td>
<td>$10K, $88K</td>
</tr>
<tr>
<td>2016</td>
<td>$140K</td>
<td>$17K, $123K</td>
<td>$18K, $122K</td>
</tr>
</tbody>
</table>
BASIC INEQUALITY FACTS: McKINSEY & CO. “THE ECONOMIC IMPACT OF CLOSING THE RACIAL WEALTH GAP” 2019, P. 5-6

• SOME McKINSEY OBSERVATIONS ON THE WEALTH GAP:

• “THE RACIAL WEALTH GAP BETWEEN BLACK AND WHITE FAMILIES GREW FROM ABOUT $100,000 IN 1992 TO $154,000 IN 2016, IN PART BECAUSE WHITE FAMILIES GAINED SIGNIFICANTLY MORE WEALTH (WITH THE MEDIAN INCREASING BY $54,000), WHILE MEDIAN WEALTH FOR BLACK FAMILIES DID NOT GROW AT ALL IN REAL TERMS OVER THAT PERIOD.”

• “OTHER THAN ITS OBVIOUS NEGATIVE IMPACT ON HUMAN DEVELOPMENT FOR BLACK INDIVIDUALS AND COMMUNITIES, THE RACIAL WEALTH GAP ALSO CONSTRAINS THE US ECONOMY AS A WHOLE. IT IS ESTIMATED THAT ITS DAMPENING EFFECT ON CONSUMPTION AND INVESTMENT WILL COST THE US ECONOMY BETWEEN $1 TRILLION AND $1.5 TRILLION BETWEEN 2019 AND 2028—4 TO 6 PERCENT OF THE PROJECTED GDP IN 2028.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?
THE ANSWER FROM:
FORMER CHIEF JUSTICE OF THE DELAWARE SUPREME COURT AND ONE OF THE COUNTRY’S LEADING CORPORATE LAWYERS AND SCHOLARS:
LEO E. STRINE, JR.
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• THERE IS AN ENHANCED INTEREST IN MANY SECTORS OF THE COUNTRY IN ADDRESSING VARIOUS ASPECTS OF RACIAL INEQUALITY, INCLUDING:

  • EDUCATIONAL INEQUALITY
  • EMPLOYMENT INEQUALITY
  • INCARCERATION INEQUALITY
  • INCOME INEQUALITY
  • WEALTH INEQUALITY,
  • C-SUITE INEQUALITY, AND
  • BUSINESS OWNERSHIP INEQUALITY
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• INEQUALITY GENERALLY, AND PARTICULARLY C-SUITE INEQUALITY, HAS RECENTLY BEEN ADDRESSED BY THE CONFERENCE ON RACIAL EQUITY IN CORPORATE GOVERNANCE, WHICH WAS SPONSORED BY ORGANIZATIONS AT: COLUMBIA LAW, PENN LAW, AND STANFORD LAW

• THIS CONFERENCE ORGANIZED A “SERIES OF THREE PANEL DISCUSSIONS . . . TO EXPLORE
  • [1] HOW TO INCREASE RACIAL DIVERSITY IN THE C-SUITE AND BOARDROOM,
  • [2] HOW CORPORATE LEADERS CAN PROMOTE A MORE INCLUSIVE WORKFORCE AND RACIAL EQUITY, AND
  • [3] WHAT (IF ANYTHING) A REBALANCED SYSTEM OF CORPORATE GOVERNANCE CAN DO TO PROMOTE RACIAL EQUITY.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• THE MOTIVATING FACTOR BEHIND THE ESTABLISHMENT OF THIS CONFERENCE WAS POIGNANTLY CAPTURED IN THE OCTOBER 29, 2020 “KICKOFF” REMARKS BY FORMER CHIEF JUSTICE STRINE.

• CHIEF JUSTICE STRINE’S REMARKS WERE TITLED:
  • TOWARD RACIAL EQUALITY: THE MOST IMPORTANT THINGS THE BUSINESS COMMUNITY CAN DO

• JUSTICE STRINE’S INSIGHTS ON C-SUITE INEQUALITY ARE HELPFUL IN FOCUSING HERE ON BUSINESS OWNERSHIP INEQUALITY.
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE:
  
  • “FOR THE PERIOD SINCE 1980, THERE HAS BEEN A STEADY EROSION OF OUR WILLINGNESS TO ADMIT WHAT A GRIEVOUS INJURY WE AS A NATION DID TO BLACK PEOPLE AND THE INADEQUACY . . . OF OUR NATION’S EFFORTS TO REMEDY THAT HARM.”
  
  • “[BY] PROMOTING DIVERSITY AND EQUAL OPPORTUNITY IN GENERAL, . . . CORPORATIONS AND UNIVERSITIES CELEBRATED THEMSELVES FOR INCLUDING ELITES WHO WERE NOT WHITE AND WHO DID NOT SUFFER FROM THE LEGACY OF RACIAL DISCRIMINATION IN THE U.S.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):

  • “[THE] PROGRESS [IN PROMOTING DIVERSITY] DID NOT HEAL THE DEEPER WOUNDS OF OUR HISTORY OF RACISM AGAINST BLACK PEOPLE. RATHER, IT JUST REFLECTED THE REALITY THAT OUR POST-CIVIL RIGHTS WORLD DID PROVIDE MUCH GREATER OPPORTUNITIES FOR DIVERSE PEOPLE WHO HAD ACCESS TO THE RIGHT LADDERS OF PROGRESS.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):
  • “FOR THE BULK OF BLACK AMERICANS, HOWEVER, THESE LADDERS WERE BEYOND THEIR GRASP AND THUS A REMINDER OF HOW UNFAIR OUR SOCIETY CONTINUED TO BE. AND RATHER THAN CONTINUING TO SHRINK, AS IT HAD DONE WHEN THE NEW DEAL/GREAT SOCIETY CONSENSUS WAS IN PLACE, RACIAL INEQUALITY HAS GROWN SHARPLY[.]”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):
  • “NOTHING IN 2020 ABOUT THESE REALITIES IS NEW, FOR EXAMPLE:
    • BLACK PEOPLE HAVE INCOMES FAR LOWER THAN THOSE OF WHITE AND ASIAN AMERICANS AND DEPEND ALMOST WHOLLY ON THEIR WAGES TO SURVIVE AND BUILD WEALTH;
    • BLACK PEOPLE’S WEALTH IS EVEN LOWER THAN THAT OF WHITE AND ASIAN AMERICANS, AND BLACK PEOPLE HAVE LITTLE STOCK OWNERSHIP; . . .
    • BLACK CHILDREN ARE LESS LIKELY TO HAVE EXPERIENCED TEACHERS AND GO TO SCHOOLS WITH ADEQUATE FUNDING[.]”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):
  • “2020 DID NOT REVEAL ANYTHING NEW BUT DID MAKE IT IMPOSSIBLE FOR US TO AVOID A MOMENTARY MIRROR TEST:
    • THAT PEOPLE LIKE GEORGE FLOYD AND AHMAUD ARBERY WERE MURDERED;
    • THAT ESSENTIAL WORKERS NECESSARY FOR OUR ECONOMY TO FUNCTION WERE PAID FAR LESS THAN THOSE OF US WHO ARE NOT ESSENTIAL;
    • THAT BLACK WORKERS WERE MORE LIKELY TO BE ESSENTIAL AND HAVE TO ENDANGER THEMSELVES TO KEEP A ROOF OVER THEIR HEADS;”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):
  • “2020 . . . [MADE] IT IMPOSSIBLE FOR US TO AVOID A MOMENTARY MIRROR TEST (CONT’D):
    • THAT BLACK WORKERS SUFFERED MORE UNEMPLOYMENT;&
    • THAT COVID-19 HIT BLACK PEOPLE EVEN HARDER THAN THE REST OF US.
  • ANY MORAL PERSON CAN’T DENY THE PERSISTENT INEQUALITY OF OUR SOCIETY NOW.
  • BECAUSE INSTITUTIONAL INVESTORS AND CORPORATIONS SUPPORTED POLICIES THAT SHORTED WORKERS AND THE FUNDING OF PUBLIC SCHOOLS, RACIAL INEQUALITY HAS GROWN.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):
  • TURNING TO THE REMEDY, JUSTICE STRINE URGES BUSINESSES TO:
    • “INCLUDE BLACK PEOPLE FAIRLY IN YOUR RECRUITING, HIRING, AND PROMOTIONAL DECISIONS.
    • RECRUIT AT THE HIGHER EDUCATION INSTITUTIONS WHERE BLACK AND LESS AFFLUENT AMERICANS GO.
    • PAY FAIR WAGES, PROVIDE SAFE WORKING CONDITIONS & FAMILY-FRIENDLY SCHEDULES, AND HELP WORKERS BUILD WEALTH.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC?

• IT IS INSIGHTFUL TO FOCUS ON THE FOLLOWING THOUGHT-PROVOKING POINTS MADE BY JUSTICE STRINE (CONT’D):
  • TURNING TO THE REMEDY, JUSTICE STRINE URGES BUSINESSES TO (CONT’D):
    • FUND THE PUBLIC SCHOOLS THAT BLACK FAMILIES DEPEND ON FOR THEIR CHILDREN TO CLIMB THE ECONOMIC LADDER.
    • LOCATE YOUR OPERATIONS IN THE COMMUNITIES WHERE BLACK PEOPLE LIVE AND GIVE BACK TO THEM.
  • INSTITUTIONAL INVESTOR SHOULD SUPPORT THESE POLICIES AND FAIRNESS FOR ALL AMERICAN WORKERS, WITHOUT WHOSE SWEAT AND PRODUCTIVITY OUR CAPITALIST SYSTEM CANNOT WORK.”
WHY ARE BUSINESS LAWYERS ADDRESSING THIS TOPIC? – BEYOND THE C-SUITE

• WHILE JUSTICE STRINE FOCUSED ON HOW THE C-SUITE CAN ADDRESS INEQUALITY, WE ARE FOCUSING HERE ON PROVIDING AN INTRODUCTION TO SOME OF THE BASIC TOOLS THE LAWYER NEEDS WHEN ADVISING A MINORITY-OWNED SMALL BUSINESS AND THEREBY HELPING TO ADDRESS INEQUALITY IN BUSINESS OWNERSHIP.

• AS INDICATED, OUR FOCUS IS ON ISSUES IN THE FOLLOWING THREE AREAS:
  • [1] CORPORATE AND SECURITIES,
  • [2] BUSINESS TAX, AND
  • [3] SBA FINANCING

• LET ME INTRODUCE OUR FIRST SPEAKERS.