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EDITOR’S NOTE

How Telling are the Stories We Don’t Tell?

Picture your 10th-grade history textbook: mashed corners, worn binding, a list of names on the inside cover dating back 20 years or more. Now try to remember what was written inside that textbook. Did you ever question it? Did you ever think about who wrote it, or who influenced how certain topics were covered?

A recent article in the New York Times entitled “Two States. Eight Textbooks. Two American Stories,” reviewed eight common social studies textbooks in California and Texas (two of the country’s biggest markets for textbooks). The Times found that the books differed on topics such as immigration, gun rights, gender and sexuality, and race. On the topic of race, for example, redlining and restrictive deeds are discussed in the California textbooks. In the Texas editions, nothing on the topic of racial housing discrimination appears.

According to the Times, although the books are from the same publisher, list the same authors, and were all published in 2016 or later, the text is customized based on state laws and social studies standards, as well as feedback from state panels. The article noted that the panel that reviewed the California textbooks was made up of educators selected by Democratic Gov. Jerry Brown. In the case of the Texas panel, those appointees were selected by the Republican-majority State Board of Education and were a mix of educators, parents, and business and religious representatives.

When you think back on your 10th-grade history textbook, did you ever think that its contents were influenced by your community’s prevailing political views? Probably not. But at least to some extent, that seems to be the reality. Although the Times reported that textbooks have improved substantially in recent years—becoming more uniform in content regardless of location—there is clearly more room for improvement.

What we teach in schools not only reflects what we value as a society, it also informs the next generation of voters, politicians, and educators. If we don’t pay attention to the stories we are telling—and the stories we are not telling—the cycle of misinformation and inequity will continue. Which brings me to one of the themes in this issue of NWLawyer: Black History Month.

When Carter G. Woodson founded Negro History Week—the
Editor's Note

CONTINUED >

tradition that would eventually become Black History Month—in 1926, he was frustrated with the way American history was portrayed. He wrote that African Americans and their contributions to history were being “overlooked, ignored, and even suppressed by the writers of history textbooks and the teachers who use them.”

According to the NAACP, Woodson thought that, given some time, people “would willingly recognize the contributions of [B]lack Americans as a legitimate and integral part of the history of this country.”

Almost 100 years later, we still haven’t fulfilled Woodson’s vision.

For this issue, we wanted to honor the tradition of Black History Month while also acknowledging that we can do better throughout the year to incorporate stories about the current and historical contributions of Black lawyers in Washington. We believe in the value of Black History Month, but we also recognize that the stories and issues discussed in February are relevant and important year-round.

This February, we include a profile of Lem Howell (page 28), a now-retired civil rights and personal injury attorney with a long and distinguished career in which he took on more than 20 cases involving police killings, most of them of African American men, fought for greater police accountability and de-escalation, and was a driving force behind changes to King County’s inquest process.

“I don’t think you can exaggerate the contribution to justice Lem has brought to this city,” says Seattle lawyer Jeff Campiche. “He’s a man who could stand up to the system and did.”

On page 10, read Loren Miller Bar Association (LMBA) President Raina Wagner’s guest column, in which she discusses the impressive past and present work of the LMBA, Black History Month, and more.

Also in this issue: a story about a new mobile legal vehicle called the Justice Bus (page 34), a Q&A with the Washington Supreme Court’s new Chief Justice Debra L. Stephens (page 14), and a close look at the impressive past and present work of the LMBA, Black History Month, and more.

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Stay Tough on Drugs

The Lisa Daugaard story ["When the Paradigm Starts to Crumble"] in the November 2019 NWLawyer contains proposals that the criminal justice system for drug offenders be replaced by treatment options including cooperation among police, defense and prosecution lawyers, and caseworkers. The article claims that the LEAD (Law Enforcement Assisted Diversion) process had reduced recidivism by 60 percent, but this may refer only to the pilot, [the] privately funded Seattle Belltown project, nor is there any comparison to results with other disposition methods.

In my experience over many years as a contract public defender and defense lawyer, almost no clients wanted to change their lives. They understandably wanted to avoid criminal sanctions. Possibly Lisa Daugaard and the Seattle Police and others have found a way to change this, but I have my doubts. It is hard enough for motivated, educated people such as lawyers to change bad habits, as we all know, and it is unlikely that people with drug problems and perhaps lack of other support would find it any easier, or even worth the effort. Of course, my recollections are only mine, and not the entire story, but they are a meaningful model and worthy of consideration.

Society has reasons for making drug involvement criminal. Users become less able, and reliant on society to support them, and they often lead unsatisfying cold lives. This applies to marijuana and liquor, but the impact of liquor and marijuana is less than that of other controlled substances, such as heroin, crack, methamphetamine, and their kin. The punishment model makes a statement that it is wrong to use drugs, and I think this is a good thing, whereas the LEAD model makes it a “public health issue.” It seems to me that the LEAD program is a backward way of decriminalizing drug offenses, even though the Legislature to date has declined to do so.

I believe there is an easy yet painful way to minimize drug use. Young people get used to drug offenses and prosecution by involvement in juvenile court, and they realize that the sanctions are bearable, and they note that drugs are fun and sociable and profitable, so they continue to abuse, and become more and more immunized to the criminal justice system even as they receive longer sentences. If juveniles on their very first offenses received moderate sentences of detention, with work release for school, the appeal would decline and hopefully more of the young would find criminal sanctions a blemish, rather than a source of notoriety. I know this is heresy but it might help. Certainly, as Daugaard points out, something should be done.

Roger B. Ley
Portland, OR

Silence is Not Golden

The elitist ideology behind Michael G. Malaier’s letter “Leave Climate Science to the Climatologists” [Inbox, November 2019 NWLawyer] bodes ill for the future of freedom of speech. The author chastises NW-Lawyer for printing a letter from Roger B. Ley concerning the downsides of the state Legislature’s approach to climate change via CETA, the Clean Energy Transition Act [Inbox, October 2019 NWLawyer].

Malaier states, “If we are to make any headway in this uphill battle against climate change, we must first stop indulging the whims of lay people pretending to know more about climatology than climatologists themselves.” This is a call for censorship.

If Malaier does not agree with Ley’s views, he is free to say why. He did not do that. Instead he demands that NWLawyer refrain from printing Ley’s letter.

But the search for truth is poorly served by shutting down opposing and alternate views. NWLawyer did the right thing in printing Ley’s letter.

As John Stuart Mill aptly stated in Chapter 2 of his essay “On Liberty,” “If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”

Patricia Michl
Ellensburg

Don’t Whitewash the WSBA

I found the captioned article ["Back in the Summer of 1969," December/January NW-Lawyer] interesting mostly for the remarkable ability of the writer to avoid noting that all those pictured appear to be white males. Granting that that was the way it was, it seems odd not to mention it, and not to celebrate that perhaps the biggest change in our profession since 1969 is not technology (as suggested in the article), but the diversity now evident in the fact that the two officials addressing those old men were a woman (the outgoing chief justice of the Washington Supreme Court) and a man of South Asian descent (the new WSBA president).

We don’t have to exercise self-flagellation over the obstacles historically placed in front of women and people of color trying to enter our profession, but pretending that it didn’t happen is inappropriate.

Mark de Regt
Redmond

CORRECTION: Due to a production error, the Dec. 2019/Jan. 2020 Ethics and the Law column stated it was part one of a two-part series, though it was not. We regret the error.
It is with mixed emotions that we, all the members of Wallace, Klor, Mann, Capener & Bishop, P.C., announce the retirement of one of the founders of the firm, our good friend and much valued partner, John L. Klor. Although we will all miss having John in the office on a regular basis, he has well-earned the opportunity to devote more time to his family, including his wife, Judy, grown daughters and his granddaughter.

As many of our clients and friends know, John is a native of Vancouver Washington. He attended the University of Washington before graduating from the University of Kentucky, where he received his undergraduate degree. He secured his law degree with honors from Drake University School of Law. Following law school, John returned to Oregon to begin his legal career where he has practiced workers’ compensation defense in Oregon and Washington for more than 40 years. In addition to his workers’ compensation practice, John’s practice also included insurance defense, personal injury defense, labor law matters and he was often asked to serve as an arbitrator. John served in numerous bar positions over the years concerning legal ethics and professional responsibility.

We will miss seeing John on a daily basis, but know he will continue to make a great impact on the lives of those around him.
For decades, McKinley Irvin has helped clients navigate through some of life’s most difficult challenges. Our attorneys are known for their relentless pursuit of successful results, whether representing individuals in financially complex divorce or high conflict parenting disputes. But perhaps our most noted distinction is our steadfast commitment to protecting what our clients value most.
Lawyers as the Vanguard of Change

“It may be true that the law cannot make a man love me, but it can stop him from lynching me, and I think that’s pretty important.”

— Dr. Martin Luther King Jr.

Our nation was born forth on the backs of many people, but it is unquestionable in my mind that without lawyers being in the vanguard, our radical experiment with and attempt at democracy would have failed. This was in an era of history that was very much organized around the idea that inequality was not only the best way to deliberately structure the world but that such inequality was endorsed by the spiritual powers of the universe itself. Just as remains the case today, the lawyers of the time were people with access to knowledge and training in thought experiments and analysis. The debates over the course of the revolution through the 1770s and 1780s featured lawyers both vigorously advocating and critically compromising their ideological positions in order to reach an imperfect consensus.

When I say imperfect, I do not mean that in a negative sense but in an admiring sense; for opponents and proponents of new ideas to compromise and find common ground while struggling with zealously hot emotions over the most heated issues is the pinnacle of dispute resolution and peace making. The seed and framework of our nation was based on the idea of liberty for all, and some lawyers had to trust that the structure they were building—though it did not result in the liberty they envisioned in the immediacy—would do so in the long run. I believe history has proven them more correct than not. And although our nation, like any human creation, is imperfect and unjust in part, it continually advances the cause of liberty even as it experiences setbacks. And every advance, like the Revolution itself, has been carried forward by lawyers. From the Declaration of Independence, to the Emancipation Proclamation, to the 19th Amendment, and onward, our nation’s lawyers have played midwife to uprooting the idea that liberty can be given to some and taken from others based on their identity.

I was thinking about this idea recently as I was planning for my parents’ wedding anniversary. I have mentioned previously that by origin I am Bengali, but I am also Irish and Italian. When my parents met here in the United States, their marriage would have been unlawful in vast swaths of our nation. By virtue of their being from different “races,” anti-miscegenation laws could have seen them jailed, fined, and had their legal status as a couple nullified.

Luckily for us, a very brave interracial couple, Mildred and Richard Loving, and a team of lawyers launched a class action lawsuit that changed history. And just like the American experiment, that lawsuit had setbacks and reversals that required the tenacity, the diligence, and the professionalism of lawyers to see it all the way to the Supreme Court.

On June 12, 1967, in Loving v. Virginia, the U.S. Supreme Court, having listened to the lawyers before it and having reviewed the records and work of many other lawyers, unanimously struck down anti-miscegenation laws in 16 states. A court ruling is of course just a court ruling, and it took additional time and effort by lawyers to prevent executive bodies from trying to enforce such laws. While these prohibitions were rendered unenforceable by Loving v. Virginia, South Carolina did not remove them from its books until 1998, and Alabama finally did so in 2000. In Alabama, only 60 percent of voters voted for the removal of the anti-miscegenation rule.

In the year 2020, it can be difficult for some to appreciate how recently these laws were in existence and how popular they were. Even as a bar, collectively, the vast majority of us began practicing long after 1967. Only 424 members of our members that are eligible to practice today can pass on firsthand knowledge of being a lawyer in those times. Indeed, one might think that this is mere historical trivia, but did you know that eight states still require couples to declare their racial background when applying for a marriage license and the license will be denied if this information is not provided? Lawyers for three couples recently initiated federal litigation against Virginia over the issue.

But there are direct lessons from Loving v. Virginia that bear on the challenges we face today. The Lovings were not a wealthy couple; in fact, they struggled financially after being forced out of Virginia as a condition of their suspended jail time. They could not have achieved the outcome they did without the legal aid they received from

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Rajeev D. Majumdar
WSBA President

Majumdar focuses his practice on real estate, civil litigation, municipal prosecution, and business-oriented law in Blaine, Washington. In 2015, he received the WSBA Local Hero Award for his work in improving public access to civil legal aid and advocating for homeless youth. In 2016, he was elected by the members to serve on the Board of Governors. He can be reached at rajeve@northwhatcomlaw.com.
attorneys devoted to justice. Lawyers and groups of lawyers, contrary to some negative stereotypes, are not purely mercenary beings.

In addition to their inherent ethical commitment to seek justice for their clients, lawyers are uniquely poised to advance justice in their own communities. Lawyers are members of every segment of our population and they make their way through life by understanding how their communities deal with conflict. And all of those communities are different, whether they are defined by geography, common interest, economic tier, or practice area. Often, lawyers are intimately part of the group seeking redress. Indeed, one of those three couples that I mentioned who are currently challenging Virginia’s racial identification laws comprises a lawyer and a law student. Then again, I would be remiss not to point out that lawyers will and do appear on both sides of any issue. They reflect the communities they are a part of.

Here in Washington, one of the many groups of WSBA members that has been at the forefront of representing their communities since 1968—actively engaging in discourse about social change, mentoring young attorneys, and donating their services to those who need it—is the Loren Miller Bar Association. Its long existence is a testament to the influence lawyers can have on society when they band together and take the time to get involved. [See page 10].

Our Bar Association does its best not to involve itself in politics, but it definitely supports its membership in having the freedom and ability to negotiate and debate change. The Washington State Bar Association is here for its members no matter what side of an argument they are on. Our nation has been able to successfully navigate its transitions because of its independent judiciary, its civil liberties, its commitment to the rule of law, its clear processes and procedures, and the freedom of its lawyers to assist others. These are things that the WSBA fights for.

Because as long as humans exist, they will generate new ideas and experiment with thought, and society will change. And as long as society has to negotiate change, lawyers will be needed to aid in reaching compromises and to present the new ideas that keep liberty advancing onward to ever improve this imperfect world.

When my Italian-origin (Neapolitan, really) grandmother and my Irish-origin (County Clare) grandfather wanted to get married in the 1940s, it touched off a huge argument about the sins of interracial marriage. I suspect that for most people in our state today, the issue of the mixing of the Irish and Italian “races” would be a non-issue. If we as a profession can help resolve today’s disputes effectively and with thorough discourse, my hope is that people will someday have the same non-issue perspective about many of the hot issues our state and our nation are dealing with today.

NOTES:

1. According to Webster’s New World College Dictionary (4th Ed.), a thought experiment is “a test in which one imagines the practical outcome of a hypothesis when physical proof may not be available.”

2. Counting only active attorneys in 1967 who today are members who have the status of active attorney, inactive attorney, honorary, judicial, and emeritus. Suspended members are not included in that total.

3. Some actual trivia: In 1855, the Washington Territory had anti-miscegenation laws that prevented whites, Blacks, and Native Americans from intermarrying; these laws were repealed in 1868, long before statehood.
It is my great pleasure to be introduced to readers as a guest columnist in NWLawyer. I am the 2019-20 president of the Loren Miller Bar Association (LMBA), the 38th president in the history of the organization—well actually, the 37th, if you consider the fact that Gary D. Gayton, one of our organization’s founders, served twice!

It is heady territory. Along with Mr. Gayton—a U.S. attorney under Robert Kennedy who later became a legendary Seattle civil rights attorney and a board member or president on more than 60 nonprofit boards—LMBA past presidents (with years of presidency) include:

- **Founder Lembhard Howell (1976-1978)**, Seattle civil rights attorney who was recently honored with a lifetime achievement award from Tabor 100 (and who is profiled in this issue);
- **Hon. LeRoy McCullough (1978-79)**, King County Superior Court judge who is the former chief judge of the Norm Maleng Regional Justice Center and former presiding judge of King County Juvenile Drug Court;
- **Hon. Monica Benton (1993-1995)**, who recently retired from the King County Superior Court and led the LMBA when the National Bar Association, of which LMBA is the Washington chapter, held its annual convention in Seattle;
- **James F. Williams (1998-1999)**, shareholder at Perkins Coie LLP and the Seattle managing partner and firmwide chair of the business litigation practice;
- **Karen W. Murray (2002-2003)**, leader and senior attorney at Associated Counsel for the Accused, co-chair of the King County Bar Association Dr. Martin Luther King Jr. Luncheon Committee (with Judge Jones), and mentor extraordinaire;
- And many, many others.¹

It goes without saying that I am honored and humbled to be included with these esteemed former presidents. But the résumés of the folks on our presidential roll call, while impressive, do not really make the Loren Miller Bar Association what it is. Since its founding by 13 Black, male attorneys in 1968, the LMBA has grown to a membership of hundreds of Black attorneys and allies throughout Washington. We were founded as a civil rights organization, and we continue to live and practice those ideals today. Here’s what we’re about:

**ACTIVISM:** Throughout the 1960s, ’70s, and ’80s, LMBA attorneys worked on behalf of clients alleging racism and discrimination. This included representing local African American student athletes who alleged discriminatory practices by their university coaching staff, and representing Claude Harris—who would go on to become Seattle’s first African American fire chief—when white firefighters brought a reverse discrimination lawsuit against the program that promoted him. Though our association no longer represents individuals and groups as

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¹ Raina Wagner is a senior associate in the litigation practice group at K&L Gates LLP. A native of New Jersey who grew up in Arizona, Wagner first moved to the Pacific Northwest in 2005, when she worked as a journalist. She lives with her husband and two teenagers in Seattle.

**Equity Needs More than a Month**

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BY RAINA WAGNER

During the Shirts Across America 2018 spring break trip, Ruby Bridges spoke to student volunteers and parent chaperones about integrating New Orleans schools in 1960. From left: Alexis Lipscomb, Meeraf Alemayehu, Ruby Bridges, Morgan Young, Bella Bartlett, and the author. The young women are all from Seattle and 2018 graduates of Holy Names Academy.
their direct attorneys, we continue to stay active in this space by joining amicus briefs in civil rights cases as they work their way through Washington courts. In addition, the LMBA continues to work in partnership with other minority bar associations on matters of great importance to all of us, such as the current dispute between the city of Seattle and the Community Police Commission over whether the recently approved collective bargaining agreement between the city and police union violates the Consent Decree between the city and the U.S. Justice Department.2

MENTORSHIP: In keeping with the spirit of mentorship at the WSBA, the LMBA has a longstanding mentorship program that connects legal practitioners with Washington law students. Over the years we have found that one-on-one pairing of mentors and mentees could lead to inconsistencies, depending on the matchups. Our recent mentorship chairs—including Hon. Tanya Thorp, LMBA Immediate Past-President Erika Evans, and current Co-Chairs Hon. Anita Crawford-Willis andandra Kranzer—have launched a biannual program that connects enthusiastic mentors and mentees in a hosted evening program with a structure that encourages career guidance, interview practice, and fun. From these simple evenings, students are encouraged to follow up with one or many of the mentor volunteers they met, leading to organic, energetic mentoring relationships between our professional and student members.

COMMUNITY ENGAGEMENT: LMBA members connect with our communities by sponsoring and volunteering at events such as the annual Youth and Law Forum. Many of our members provide person-to-person legal advice as a group supporting the KCBA Neighborhood Legal Clinic in Kent. At our annual holiday party, our members generously participate in the food or clothing drive to help families in need. The NBA story is one small chapter of America’s civil rights story, a story that is still far from over. In fact, the story isn’t even all that old. I was struck by the relative recentness of our path toward integration when I accompanied my daughter and her friends on a home-building program to New Orleans in 2018. During our spring break trip, we attended a presentation by Ruby Bridges, who as a child was the first to integrate the all-white school district in Louisiana in 1960—only 60 years ago this nation was still in the midst of desegregating. Bridges may be a grandmother, but one look at her youthful face shows clearly how recently these events played out.4

This is one of the many reasons that my organization and I stand firm in the position that we must continue to strive for equality of all people in our region, our state, and our country. In the wake of President Barack Obama’s term in office, the phrase “post-racial society” has been thrown around, as if we as a nation should simply press pause on all efforts to obtain an equal and diverse society, as if notions such as Black History Month have become obsolete.

In my judgment, Black History Month is as relevant as ever. This is the time each year when we reflect on and honor the accomplishments of Black Americans.5 While its predecessor, Negro History Week, dates back to the 1920s, Black History Month was only officially recognized by the U.S. government in 1976, during the administration of President Gerald Ford. Again, this is recent history. Black History Month has always been closely connected with education, and in some schools students still learn more about great Black Americans during the short month of February than they do during the rest of the school year.

Perhaps someday, Black History Month, Women’s History Month (March), Hispanic Heritage (Sept. 15–Oct. 15), and the like will no longer be necessary because the contributions, culture, and importance of all people will be reflected in our history books, education system, workforce, and economy. Until then, such months are more than words on a calendar; they are an annual trigger of mindfulness. To be mindful of our multicultural and multiethnic nation and the richness of our history. And to be reminded of how far we have come and how far we have yet to go.6

NOTES:
1. For more a complete list of LMBA past presidents and more information on our current Executive Board and founders, visit www.lmba.net.
3. A local organization, Shirts Across America, sponsors multiple home-building and home-repair trips to New Orleans over winter, spring, and summer breaks. Learn more at www.shirtsacrossamerica.org.
4. Ruby Bridges is being honored in our region, as the Northshore School District Board voted in December to name its new elementary school after the civil rights icon. Ruby Bridges Elementary School is scheduled to open this fall.
5. Countries around the world also celebrate Black History Month (sometimes in other months), focusing on the culture and historical importance and contributions of people from the African Diaspora.
Budget Reforecast: Finding Opportunities Through a Real-Time Cost-Center Analysis

Welcome to 2020, the year of perfect vision! The WSBA is taking that theme to heart as we embark on a rigorous analysis of our budgets and actual revenue and expense trends—a budget “reforecast,” if you will—that we expect to yield not only a sharper picture this fiscal year but a budgeting model with fine-tuned accuracy for years to come.

Before getting into details, congratulations are in order: In December, the WSBA once again—marking several decades in a row—received an unqualified (“clean”) financial audit with no comments or adjustments from the accounting firm Clark Nuber. I’d like to personally thank the hard work of former Chief Operations Officer Ann Holmes, current Chief Financial Officer Jorge Perez, and all of the WSBA financial staff. This type of audit gives us great confidence that the data on our financial statements is true and accurate. As you are hopefully aware, the Board of Governors also authorized an additional independent audit this year, which will focus on the processes in, and execution of, our Fiscal Policies and Procedures Manual. This type of audit is good practice for an organization, and it examines whether day-to-day financial processes and controls follow procedures and policies as written. It goes deep into the financial data and can result in recommendations for refinement toward industry best practices. Stay tuned for results from this second audit later in the spring.

The reforecast, however, is the internal process whereby we expect to really delve into the financial weeds to reconsider our budgeting philosophy as necessary. For context, let’s first consider how the WSBA has consistently outperformed its budgets (higher revenue and lower expenses than projected) and, importantly, why that process may have led to some missed opportunities and misunderstanding, even as it has kept the WSBA on strong financial footing.

In recent years, we have budgeted very conservatively, which is a reasonable and a viable model to account for unpredictable variances. Essentially, our budgets have been built on projections of the minimum revenue and maximum expenditures one could reasonably expect in the coming year. (For example, a conservative model for budgeting for expenses would account for 100 percent of volunteers receiving expense reimbursements to which they are entitled, even though historically perhaps only 60 percent submit these expenses and are reimbursed.) At the end of the year, we expect revenues to exceed expectations and expenses to fall short of budgeted amounts. In fiscal year 2019, which closed on Sept. 30, 2019, for example, revenue was approximately 4 percent more than projected in the budget, so we finished the year approximately $1 million above budget. That’s a great outcome, due in large part to prudent and disciplined fiscal management from the Board of Governors and the WSBA Executive Team.

But here is where misunderstanding and opportunity costs can come in. When we outperform—or finish the year with expenses under and revenue over—our budget, that excess revenue goes into reserve accounts. This has two results: First, we operate with a budget philosophy that relies on drawing down these built-up reserves. Some members have expressed concern that this looks to them like continual “deficit” spending, and indeed, in some years our budgets have shown more expenses than revenue. While this is part of intentional and conservative budgeting, it has incorrectly led some to...
question the WSBA’s financial soundness. Second, when our budgets do not align with actual revenue, we are unable to reliably use those funds in short- and long-term planning for opportunities, such as stable/reduced license fees, needed technology upgrades, or investments in new programs or member benefits.

Let me reemphasize: Conservative budgeting has held the WSBA in solid financial stead for many years. What we are aiming for through the reforecast is more of a balanced conservatism that will allow us to capitalize on actual revenues. The reforecast is basically an alignment of all the budget assumptions we made back in mid-2019 with the actual revenues and expenditures to date. Our goals are to establish a baseline for the 2021 budget and a reliable projection model built on comparative year-over-year statements, actual results trend analysis, projections of current events, and departmental financial performance analysis.

In other words, via the reforecast we are taking a deep dive into the cost centers to really understand and build a budgeting process that allows us to capitalize on actual revenues and expenses. Along the way, we will diligently look for areas of efficiency (we have already combined some staff positions, for example).

At the risk of sounding like a broken record, my pledge as treasurer is to put members front and center and demonstrate value and responsibility in all that the WSBA does. For the second year in a row, the Board of Governors has implemented no increase in license fees for lawyers, with a modest increase for LLLTs. The total cost for lawyers will actually decrease because of a $5 reduction in the Client Protection Fund Assessment, also recommended by the Board. The reforecast, alongside our additional audit for processes and executions, should give us great confidence moving forward that we are maximizing resources, while also respecting and serving our members.

NOTES:
1. As approved by the Washington Supreme Court in December.

ONLINE > We want your participation: The complete schedule of Budget and Audit meetings and WSBA Board of Governors meetings is at www.wsba.org.

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Adamson v. Port of Bellingham, 192 Wn.2d 178, 438 P.3d 522 (2019); 923 F.3d 728 (2019) (recognizing liability of Port as premises owner)

Ingenco Holdings v. ACE American Insurance Company, 921 F.3d 883 (9th Cir. 2019) (reversal of district court summary judgment in insurer’s favor as to all risk policy coverage)


Brunson v. Lambert Firm and Bechtel National, 757 Fed. Appx. 563 (9th Cir. 2018) (Court upholds district court confidentiality rulings in qui tam action)


Sampson and Raymond v. Knight Transportation et al., 193 Wn.2d 878, 448 P.3d 9 (2019) (amicus brief for WTA/ATA supporting income averaging)

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Setting precedent, at an unprecedented rate.
Q. What does it mean, logistically and philosophically, to go from being a justice to the chief justice?
A. The chief justice is the principal spokesperson for the judicial branch, so moving from justice to chief justice involves assuming significant administrative responsibilities. Philosophically, I see my role as supporting and advancing the good work that so many people are doing throughout the court system. The goal of being chief justice is not to “wield power,” but instead to facilitate the efficient and effective delivery of justice.

Q. What is your leadership vision for the court and legal profession?
A. My vision is for a justice system that is accessible, inclusive, and fair. Courts are a vital part of our community, and the chief justice can set the tone for the entire judiciary by being a committed and engaged community member. That means listening, showing respect and appreciation, and always giving my best.

Q. What are Washington courts doing that is great, leading-the-nation work?
A. Washington has long been a leader in the equal justice movement, dating back decades to the Supreme Court orders creating the Access to Justice

WASHINGTON SUPREME COURT
Meet the New Chief Justice

On Jan. 6, Hon. Debra L. Stephens was sworn in as the 57th Chief Justice of the Washington Supreme Court. Chief Justice Stephens was unanimously elected by her colleagues after former Chief Justice Mary Fairhurst announced her retirement in late 2019. NWLawyer caught up with the new chief, to learn more about her background and to find out how she’s settling in to the new role.
In 2019, Hon. Debra L. Stephens was unanimously elected by her colleagues as the 57th Chief Justice of the Washington Supreme Court. Gov. Christine Gregoire appointed Chief Justice Stephens to the Washington Supreme Court on Jan. 1, 2008. That fall, she was elected to serve a six-year term and reelected in 2014. Prior to her appointment, Chief Justice Stephens served as a judge for Division III of the Court of Appeals. She is the first judge from that court to serve on the Washington Supreme Court, as well as the first woman from Eastern Washington to do so. A native of Spokane, Chief Justice Stephens attended Gonzaga University School of Law as a Thomas More Scholar and subsequently taught there as an adjunct professor. She and her husband of over 30 years have two grown children. She enjoys skiing, golf, tennis, and spending time with her extended family at the Snake River.

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Q. Who is one person who has significantly influenced you in your legal career?
A. There is never just one person. In addition to my family, who have given me constant support and encouragement, my legal career has been shaped by my former colleague, Bryan Harnetiaux of Spokane. He was the first lawyer I saw argue before the Supreme Court (while the court was visiting Gonzaga) and I later took a class from him while in law school. I started working with him just after my clerkship, and his guidance and mentorship shaped the way I practiced law. Anyone who knows Bryan will tell you he is an exemplary lawyer and human being. He’s also a wonderful playwright, and I’ll be participating in a reading of his short play about Myra Bradwell later this spring. [An interview with Harnetiaux and excerpt from MYRA can both be found in the April 2019 issue of NWLawyer.]

Q. Since being elected chief justice, have you received any good advice that you have taken to heart?
A. Absolutely. My colleagues who have been the chief justice before me have told me that you can’t try to be everything to everyone. You will succeed if you give your best, work hard, listen well, and stay true to yourself. I guess that’s good advice for any position!

Q. What is one piece of advice you would give to lawyers arguing cases before the Washington Supreme Court?
A. There is no substitute for preparation. The best advocates prepare not only to make their argument, but also to understand why the court might agree with their opponent’s argument—and then try to persuade us otherwise.

Q. What can the legal community do together to bolster the public’s trust and confidence in the legal system?
A. We should do as much community service as we can to show people that lawyers and judges truly want to make a positive difference in society. I believe that is the reality of the legal community, but...
Meet the Washington Supreme Court’s New Chief Justice

CONTINUED >

we could do more to bring it to life every day, in both big and small ways.

Q. What does your family think about your new title?
A. They’re very proud of me, but no one is calling me “chief” at home. And my husband will still never (willingly) let me beat him at pickleball (or tennis, or golf).

Q. What would your family say about day-to-day life with a judge—are judicial and legal skills often put to good use when negotiating curfews?
A. You obviously haven’t met my kids—there is no way I can out-negotiate them. However, I think my work as a lawyer and a judge has helped expose them to broader issues and encouraged their personal interest in social justice. They are dedicated citizens of the world.

Q. How, if at all, do your ties to Eastern Washington inform your judicial decision-making and legal outlook?
A. I was born and raised in Spokane and practiced law there my entire career, so that will always be home. Like anyone, my outlook on life is necessarily shaped by my personal history, but I try not to be parochial or to make too much of an East-West divide. I think it is important to have members of the Supreme Court who come from different places, backgrounds, and perspectives, and I am proud to serve on the most diverse court in this state’s history. Yes, I will always be an Eastern Washingtonian, but first and foremost I am a Washingtonian and I serve the entire state.

Q. If you had a “walk up song,” for when you entered the courtroom, what would it be?
A. Hmm—maybe “Tell It Like It Is” by Aaron Neville.

Q. What is your most-embarrassing guilty pleasure?
A. I like to listen to EDM [electronic dance music] when I go out walking—actually, I don’t mind a little Backstreet Boys, though *NSYNC is better. 😅
WASHINGTON STATE BAR ASSOCIATION
Office of the President

Nominations for the 2020 APEX Awards

Colleagues:

The nomination process for the 2020 APEX Awards has begun. APEX stands for Acknowledging Professional Excellence, and these awards are an opportunity for those of us in the legal profession to honor the heroes among us—those who knock down barriers every day to ensure and protect the right to justice for all. Please take the time to nominate an individual or group that is deserving of statewide recognition. Those who work for justice do so tirelessly and passionately, but often behind the scenes; I believe it is absolutely important to spotlight and celebrate such work as a way to inspire and ignite others, to show the true nature of lawyers’ work to the public, and to provide a much deserved-thank you to our legal luminaries.

Now is the time to nominate. You can find more information and the nomination form at: www.wsba.org/awards. The APEX Awards are by the legal community for the legal community, and your nominations help us recognize colleagues who are making lives better in every community throughout the state. Your voice matters.

In service,

Rajeev D. Majumdar
WSBA President

Deadline for APEX Award nominations: March 23, 2020

- Angelo Petrus Award for Lawyers in Government Service for a significant contribution to the legal profession, the justice system, and the public
- Award of Merit for a recent, singular achievement
- Justice Charles Z. Smith Excellence in Diversity Award for a significant contribution to diversity in the legal profession
- Legal Innovation Award for programs, processes, or technology that advances or streamlines delivery of legal services
- Lifetime Service Award for a lifetime of service to the legal community and the public
- Norm Maleng Leadership Award (presented jointly with the Access to Justice Board) for leadership characterized by love of the law and commitment to access to justice
- Outstanding Judge Award for outstanding service to the bench and for special contribution to the legal profession at any level of the court
- Professionalism Award for professionalism in the practice of law, as defined in the WSBA’s Creed of Professionalism
- Pro Bono and Public Service Awards (Individual & Group) for outstanding cumulative efforts in providing pro bono services or for giving back in meaningful ways to others, to the community, or to the profession
- Outstanding Young Lawyer Award for significant contributions to the professional community, especially the community of young lawyers, within their initial years of practice
- Sally P. Savage Leadership Award in Philanthropy (presented jointly with the Washington State Bar Foundation) for donors, volunteers and supporters who focus on advancing justice and diversity

www.wsba.org/awards
Lawyers have long served as directors for both corporations and nonprofit organizations. According to one comparatively recent survey, for example, approximately 40 percent of public company boards included lawyers.1 From a law firm’s perspective, board service has traditionally been seen as a way to cement relationships with key corporate clients and to network in local communities through nonprofit organizations. From the perspective of corporations and nonprofit organizations, having a lawyer on the board is often viewed as a unique asset in an increasingly legal-centric environment.

Although board service can provide benefits to lawyer-directors and their law firms, board service can also present distinct risks—especially when the corporation or nonprofit involved is also a law firm client. In this column, we’ll look at five areas that lawyers and their law firms should evaluate when considering whether a firm member should also serve as a director of a law firm client: (1) conflicts; (2) attorney-client privilege; (3) insurance coverage; (4) competence; and (5) corporate knowledge. This is not intended to be either an exhaustive list or a catalog of issues that arise for every lawyer-director. Rather, it is simply intended to represent some of the more commonly arising issues.

BY MARK J. FUCILE

**CONFLICTS**

Conflicts for a lawyer-director can arise from both the role as lawyer and the role as director.

On the lawyer side, RPC 1.7(a)(2) governs conflicts between a lawyer’s business or personal interests and the interests of the client involved.3 Comment 35 to Washington RPC 1.7 addresses lawyer-director conflicts and uses the illustration of a lawyer-director who—as a lawyer—is approached about advising a corporation on matters involving the actions of the board on which the lawyer serves. Whether the conflict may be waived under RPC 1.7(b) will turn on the specific circumstances and ordinarily entails a careful review of the lawyer’s participation as a board member in the issues involved.

On the director side, statutory and decisional law typically impose fiduciary duties of ordinary care and good faith on directors.4 ABA Formal Opinion 98-410 (1998), which provides a comprehensive national survey of lawyer-director issues, uses the example of a lawyer-director who—as a director—is asked to participate in the selection of counsel for matters that would be particularly lucrative to the lawyer-director’s law firm.5 The ABA opinion notes that whether lawyer-directors should recuse themselves turns on the applicable substantive law of corporate governance rather than the RPCs.7

**ATTORNEY-CLIENT PRIVILEGE**

Courts have long drawn a line between legal and business advice provided by lawyers—with the former generally accorded protection under the attorney-client privilege and the latter usually not. 8 This can have important practical consequences for lawyer-directors given the potential overlap.

With business advice, if privilege is not available, the lawyer may become a fact witness in later litigation over the matters concerned. In that event, the lawyer-witness rule—RPC 3.7—may come into play. RPC 3.7(a) generally prohibits a lawyer from acting as trial counsel if the lawyer is a “necessary” witness. Under RPC 3.7(b), personal disqualification can ripen into firm disqualification if the testimony from the lawyer-witness will be adverse to the lawyer’s client.
ABA Formal Opinion 98-410 counsels that lawyers should keep legal advice separate from business advice in an effort to preserve privilege:

“[I]t is vital that the lawyer who also serves as a director be particularly careful when her client’s management or board of directors consults her for legal advice. The lawyer-director should make clear that the meeting is solely for the purpose of providing legal advice. ... When appropriate, the lawyer-director should have another member of her firm present at the meeting to provide the legal advice.”

Given the sensitivity of privilege, the ABA opinion suggests that lawyer-directors discuss this area with the other board members and with executives at the client-organization when they join the board involved.

INSURANCE COVERAGE
Most legal malpractice insurance policies cover just that: errors and omissions arising out of law practice. By contrast, serving as a director may be excluded—depending on the policy—because it is primarily a business activity. From the risk-management perspective, therefore, it is critical to determine whether a prospective board position is covered by the law firm’s malpractice policy or separate directors and officers insurance provided by the company or nonprofit concerned.11

COMPETENCE
Particularly with smaller nonprofits, lawyer-directors may be viewed by their fellow directors as authoritative voices on all things legal. Today’s practice reality, however, forces most of us into relatively narrow niches, and a lawyer-director may not necessarily have substantive expertise on the particular legal point confronting the board. In that situation, lawyer-directors need to be diplomatic enough to decline to provide legal advice in an area beyond their competence. Simply because legal advice is provided pro bono to a nonprofit does not exempt it from the regulatory duty of competence or the civil standard of care.12 Even if they are not able to advise on a particular matter, lawyer-directors are often in an excellent position to identify other lawyers within their firms or the community at large who can provide the specialized advice required.

For lawyers who are invited to join a board, particularly a board of a nonprofit organization, who may not be familiar with the duties of a director, the Attorney General and the Secretary of State have a joint booklet available online oriented around board service for charities and other nonprofits.13

CORPORATE KNOWLEDGE
Engagement agreements are a key tool of law firm risk management. Among other benefits, an engagement agreement that defines the scope of the representation concerned will assist the law firm in avoiding blame for events beyond what it was hired to do. Having a firm lawyer as a director of a client, however, can lessen that benefit. With a firm lawyer on a client’s board, it becomes more difficult on a practical level to argue that the firm was not aware of or involved in matters within the client-organization that may later become the subject of litigation that attempts to blame the law firm.

Risk is often sharpest when a lawyer serves on the board of a business that is closely held and takes in customer money for private investments.

This risk is not a reason to either stop using engagement agreements or to avoid having a firm lawyer on a client’s board. At the same time, the risk should at least be examined when a firm considers whether to approve having one of its lawyers serve on a client’s board. Although circumstances vary, this risk is often sharpest when the business is closely held and takes in customer money for private investments. When seemingly successful businesses later turn out to be Ponzi schemes, their law firms are usually on the short list of litigation targets for de-advocated investors—with the claim being that the law firm “should have known.”14

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NOTES:
2. Some of these issues—such as insurance coverage and competence—can arise even if the organization involved is not a firm client.
3. Other conflict rules may also come into play. For example, a lawyer-director might be offered the opportunity to invest in the client business involved—triggering RPC 1.18(a) on investments in law firm clients. Comments 13 and 14 to RPC 1.13 and Hicks v. Edwards, 75 Wn. App. 156, 876 P.2d 953 (1994), discuss the special considerations involved in shareholder derivative litigation.
4. See, e.g., RCW 23B.08.700 (standards for directors); Riss v. Angel, 131 Wn.2d 612, 632, 934 P.2d 669 (1997) (“Directors have a fiduciary duty to exercise ordinary care in performing their duties and to act reasonably and in good faith.”).
5. WSBA Advisory Opinions 1068 (1987) and 1686 (1996) also discuss lawyer-director issues.
6. Id. at 10.
7. Id.
9. Id. at *6 (footnote omitted).
10. See, e.g., Continental Cas. Co. v. Smith, 243 F. Supp. 2d 576, 581-82 (E.D. La. 2003) (declaratory judgment action by malpractice carrier arguing no duty to defend or indemnify because lawyer’s actions arose from work as a corporate officer rather than as a lawyer).
11. Although RCW 4.24.264(1) provides immunity from personal liability for discretionary decisions made as the director of a nonprofit organization, there is an exception for gross negligence.
I hesitated a lot before writing this article because I don’t want readers to conflate innovation with technology. Some of the most wonderful innovations in the legal world have nothing to do with technology (e.g., John Strohmeyer’s Four Seasons approach to client service\(^1\) or Aastha Madaan’s flexible payment options\(^2\)). One mantra every innovative lawyer must cling to is “process before technology.” Lawyers who chase exciting technology (aka myself, sometimes) will inevitably waste time, money, and the patience of their clients and coworkers. Instead, innovative lawyers should focus first on crafting brilliant processes and then see where technology can fit within those processes.

That said, there is a baseline of technology without which lawyers will find it incredibly difficult to innovate. I’m not talking about artificial intelligence (AI) research robots or even electronic discovery (“e-discovery”) tools. What I’m talking about is the basic technology that anyone can use (and many of you already do). Without further ado, here are the five types of tech tools every innovative lawyer needs.

**5 Essential Tech Tools for the Innovative Lawyer**

**BY JORDAN L. COUCH**

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I. **Cloud-Based Office Tools**

I feel pretty safe assuming that every reader has an email account and a word processor. This is undeniably the most essential tool for any office, especially legal offices, which are notorious for their copious volumes of documents and emails. Many of you are probably already using the cloud-based Office 365 or G Suite (that’s what I’m using right now) tools. If not, it’s time for an upgrade. Cloud-based tools offer all the same features as the standard software you’re used to, but with the advantage of your work being easily accessible from anywhere, on any device, with the ability to seamlessly collaborate with others. For example, I started this column at my office; now I’m in an elevator writing on my phone. Additionally, as I will discuss later, when all of your basic tools are cloud-based, you can make them communicate with each other, which will save you time by avoiding duplicative work and automating repetitive tasks.

Lawyers should focus first on crafting brilliant processes and then see where technology can fit within those processes.
II. Document Storage

Do you have an office server where you store all your letters and motions? Why not put all of your documents there? Case research, memos, notebook pages... whatever you have. And why not put it all on a secure cloud server? That way it's accessible anywhere and it's easy to share files with others (especially files too large to share by email). You can even buy reusable notebooks that, simply by taking a photo on your phone, allow you to save your notes to a cloud server folder of your choice.

The most common objection I hear about cloud-based document storage stems from security concerns—that if files are on the cloud, they are easier to hack. Allow me to assure you once and for all that Google, Dropbox, Microsoft, or any other reputable cloud-storage service is far more secure than any law firm I know. They have backup generators for their backup generators. They have biometric security doors. They have armed guards protecting their servers. So while there are always risks, you’re better off trusting your security to Dropbox than the server locked in a closet in your office.

III. Workflow

Business is the enemy of innovation. Many lawyers I speak with feel they never have time to improve on their practice because they have too much work to do. Data from Clio’s 2019 Legal Trends Report provides some good evidence that lawyers are right to feel that way. The average small-firm lawyer typically only bills for 2½ hours in an eight-hour day. This is where good workflow tools can help. When you’re wearing multiple hats and handling a variety of different cases, you need a way to stay on track. Thankfully there are great tools out there to fit any type of workflow and any type of personality. Whether you like simple checklists...
IV. Practice-Management

I suspect practice-management software is the most controversial tool on this list, but I would argue that for an innovative lawyer it’s no less essential than your office tools. And yet only 53 percent of lawyers have practice-management software available to them in their firms. Jack Newton, CEO of Clio, often says that his biggest competition isn’t another tech company, it’s a legal pad and a pen. This despite the fact that, in Jack’s words, “[practice-management] software gives lawyers the competitive advantage in delivering client-centric, tech-enabled experiences that today’s consumers expect.” But if 47 percent of attorneys are getting away without any practice-management tools, why is it essential?

Bob Ambrogi may have put it best when he said, “It is the one tool that seamlessly weaves together all the essential elements of a law practice, thereby enhancing efficiency and minimizing risk.” But I also like what Washington attorney Shreya Ley had to say on the subject: “Our memories aren’t as good as we think they are and, in order to have satisfied customers and not be in a stressed panic, it’s necessary to have systems, documentation, and processes in place.”

practice-management software gives you that.

“There are two situations where a lawyer doesn’t need practice-management software,” Warren Agin of Elevate Services told me. “First, when she doesn’t have a practice. And, second, when she doesn’t want to manage it.”

If you’re reading this, I have to assume that neither of these apply to you; and if I’m right, you need to have some cloud-based practice-management software backing up your firm. It’s how you formalize processes and it’s how you track data to determine how your firm can be improved.

V. Connectors

As I mentioned earlier, one of the key advantages of using all cloud-based tools is that they can communicate with each other. A lot of tools have that feature built in. Trello—my preferred workflow tool—syncs with my Outlook email. Clio—my practice-management software—syncs with Dropbox where I store documents. Wherever my tools don’t have features built in to them, I use a connector. Zapier and IFTTT (If This Then That) are the two most popular connectors. Essentially what connectors do is allow you to automate processes between various cloud-based systems using simple “if this happens then do that” statements. Want a series of documents to be generated when you open a new estate planning matter? A connector can do that. Want to notify a client every time you get an update on their case? A connector can do that.

The possibilities with connectors are truly endless. That’s why they are essential for innovative attorneys; connectors allow you to build efficiencies by automating repetitive tasks across your other tech tools.

CONCLUSION

Though you absolutely need to have a tool that covers each of these five areas, it’s not essential that you have a different tool for every category. Many tools will cover multiple needs. Office 365, for instance, is often used for office tools but it also comes with cloud document storage and a few workflow tools. Clio and CASEpeer are practice-management software tools that incorporate document storage, workflow tools, and a variety of other functions. Explore your options and find the tools that work best for you.

NOTES:

9. You may have noticed that I didn’t delve deeply into specific tools in this article. I felt that was best left for a separate article, but the good news is, I already wrote that article! And did a full CLE about it, available for free here: www.pugetsoundlegal.net/blog/2017/7/11/tech-tools-to-streamline-and-automate-your-law-practice.
SERVING ALL OF WASHINGTON AND THE NATION

Let us exceed your expectations. NAEGELI Deposition and Trial continues to set the bar by offering the highest level of litigation support services for the legal community. Since our company’s inception in 1980, we have been leading the industry and pushing the boundaries of innovation. NAEGELI utilizes only the most qualified professionals to assist you and your client at every stage of the legal process.
To Write with Flow, Use the Old-to-New Connection

BY BENJAMIN S. HALASZ

You’ve probably had the experience of reading a paragraph in a legal document, getting to the end, and realizing you need to start over. For some reason, you are not following the argument. So you start over, concentrate hard, and maybe the second time it makes more sense.

In many of those cases, your initial confusion is due not to a lack of focus on your part—but rather to the writer’s failure to smooth your way from idea to idea. The writer instead scattered new information across the path, causing you to stumble.

One way writers can avoid this problem is to begin each sentence with old information that connects easily to the new—put more concisely, the “old-to-new connection.” Your mind then moves smoothly through the sequence, and you understand it the first time.

Take a second to skim these two passages, borrowed from the start of Henderson v. United States.¹ The first is a modified version that doesn’t use the old-to-new connection, but otherwise presents the same information. Next is the original, which uses the old-to-new connection. Which do you find easier to get through?

1. Individuals facing serious criminal charges sometimes turn over their guns to government agencies. Any convicted felon may not possess a firearm under 18 U.S.C. § 922(g). For the situation where some other third party or a firearms dealer who seeks to sell guns receives them from a felon instead, we must consider what a court is allowed to do under § 922(g). If it would allow the felon to later control the guns, so he could either use them or direct the use, then § 922(g) bars the transfer.

2. Government agencies sometimes come into possession of firearms lawfully owned by individuals facing serious criminal charges. If convicted, such a person cannot recover his guns because a federal statute, 18 U.S.C. § 922(g), prohibits any felon from possessing firearms. In this case, we consider what § 922(g) allows a court to do when a felon instead seeks the transfer of his guns to either a firearms dealer (for future sale on the open market) or some other third party. We hold that § 922(g) does not bar such a transfer unless it would allow the felon to later control the guns, so that he could either use them or direct their use.

If you’re like me, you’ll find No. 2 smoother and easier to read quickly. Now try these two, based loosely on language in Christensen v. Ellsworth² about interpreting a statute. I’ve again put the old-to-new version second; and this time, I’ve italicized new information and bolded old:

3. The legislature’s intent is what the court must determine in interpreting a statute. “Plain meaning” is the first location to look for that purpose. The context of the statute in which the provision is found shows the ordinary sense of the words. The language of the statute should be harmonized with that contextual framework. Legislative history can show a court the intent where the statutory language is susceptible to more than one reasonable interpretation.

4. A court’s objective in construing a statute is to determine the legislature’s intent. That intent is found first in
a statute’s “plain meaning.” Plain meaning may be determined from the context of the statute in which that provision is found. That context should be harmonized with the language of the statute. If the statutory language is susceptible to more than one reasonable interpretation, then a court may resort to legislative history.

Again, I find the second easier to read. It flows better, and that helps me understand the concepts more quickly. It has what some authors call “cohesion.” With the first, I stumble and have to go back to reread.

This cohesion emerges because the author began most sentences with information the reader is already familiar with. The author has presented new, more complicated information at the end of the sentence. This is the old-to-new connection: old information at the start of sentences connected to new, complicated information at the end.

Sometimes information is old because readers expect it from the context of the piece; for example, when the Supreme Court refers to itself (“We”) at the start of a sentence in passage 2. And other times, the old information was just presented in the prior sentence; for example, when the author re-uses “plain meaning” in passage 4 (rather than rewording it as “ordinary sense of the words” as was the case in passage 3). Once an author has presented new, complicated information, it becomes old, and it can be used to present more new information. And that creates linking between sentences, that sense of flow.

Yet even when dealing with complicated subjects, experienced authors frequently disregard this principle, making it harder to understand their writing. This disregard happens, at least in part, because for an author, nothing is new. The author is already familiar with all of the concepts prior to writing. When I write a brief about § 922, I already have researched all the law, facts, and cases, so it doesn’t bother me to see any of them at the start of a sentence. But to help my readers, I need to be deliberate about using the old-to-new connection, at least where I want to create that sense of flow.

If you’re in one of those situations, here are three ways you can generate the old-to-new connection.

First, you can start each sentence of a paragraph with the same subject, one that is familiar; that way, you’re very likely putting new information at the end. Or, similarly, you can use a limited number of familiar subjects. That approach is taken by Justice Kagan in the first paragraph in Sturgeon v. Frost, a land-use case from Alaska:

This Court first encountered John Sturgeon’s lawsuit three Terms ago. As we explained then, Sturgeon hunted . . . he traveled . . . To reach his favorite hunting ground, he would pilot the craft over . . . a unit of the federal park system managed by the National Park Service. On one such trip, park rangers informed . . . Sturgeon complied . . . But soon afterward, Sturgeon sued . . . The lower courts denied . . . This Court, though, thought . . .

The topics are complicated, but the subjects are simple. And the opinion struck me as readable and interesting. Are these passages too simplistic, too monotonous? More on that in a minute—but for me, no.

A second technique is to link your sentences, using the information at the end of one sentence to start the next sentence. That happens in passages 2 and 4. For instance, in passage 2, “individuals facing serious criminal charges” become “such individuals.” “Section 922(g)” comes at the end of the second sentence and near the beginning of sentences three and four.

 Passage 4 is more direct. “Legislature’s intent” at the end of sentence 1 becomes “that intent” in sentence 2. “Plain meaning” is at the end of sentence 2 and the beginning of 3. “Context” is near the end of 3 and the beginning of 4, etc.

A third technique is to use “echo words”—words that are explained earlier in a passage, and then repeated later, to link a passage together while also making it easier to understand. This is similar to the second technique, but the words are spread throughout a passage rather than placed in adjacent sentences. I’ve used different colors of highlighting to show the echo words in this passage, from a Judge Posner criminal opinion:

We are mindful of speculations in some judicial opinions that a district judge could properly deny a motion to dismiss a criminal charge even though the defendant had agreed to it. These opinions say that such a motion should be denied if it is in bad faith or contrary to the public interest, as where “the prosecutor appears motivated by bribery, animus towards the victim, or a desire to attend a social event rather than trial. The “bad faith or contrary to the public interest” formula is also found, though not necessarily in those words, in . . . We are unaware, however, of any appellate decision that actually upholds a denial of a motion to dismiss a charge on such a basis. That is not surprising. The Constitution’s “take Care” clause (art. II, § 3) places the power to prosecute in the executive branch, just as Article I places the power to legislate in Congress. A judge could not properly refuse to enforce a statute because he thought the legislators were acting in bad faith or that the statute disserved the public interest; it is hard to see, therefore, how he could properly refuse to dismiss a prosecution merely because he was convinced that the prosecutor was acting in bad faith or contrary to the public interest.
Not only does Judge Posner link this passage together with echo words, he uses the tri-part division of government—likely familiar to many readers—to create a rhythm of executive, legislative, judicial with verbs expressing their functions (prosecute, legislate, enforce). The overall effect is to create a clear, unified paragraph.

So what’s the catch? I think there are three. First, the opening sentence has to start somewhere. Pick something familiar to your readers. A party, a court, or even something outside the legal system but concrete. Avoid starting with abstract, unfamiliar concepts (“§ 928,” “Context,” “Determining this case”).

Second, an author might complain that repeatedly starting with the same subject is monotonous. While I remember being taught that, I think it’s not as much of a concern when applied to complicated topics like law. I don’t get that feeling of monotony when I read opinions that have a limited number of subjects in a paragraph. Instead, they feel clear and simple; and I appreciate that feeling, given that the topics are often arcane.

Third, there’s a certain artificial “cuteness” that comes about if you do too much linking and echoing. I do think that you need to mix up the techniques and use short introductory phrases to make sure you’re not overusing the same sentence structures. But those disadvantages are outweighed by what you gain in making your writing flow.

NOTES:
5. In re United States, 345 F.3d 450, 453 (7th Cir. 2003).
"Weaver’s Welcome" was created for the lobby of the new Burke Museum at the University of Washington by the artist team of Preston Singletary (Tlingit), Brian Perry (Port Gamble S’Klallam), David Franklin (non-indigenous), and WSBA member Anthony Jones (Port Gamble S’Klallam). The piece is a modern sculpture using bronze and cast glass based on historic indigenous artistic traditions of the local Coast Salish people, including local Native sculptural and weaving traditions. “Weaver’s Welcome” greets guests of the museum in a traditional Coast Salish sign of welcome, with its hands raised and palms facing upward. The geometric patterns carved into its surface pay tribute to Coast Salish weaving traditions, and the bead-inlaid box at the base of the sculpture is inspired by a historic piece from the Burke Museum collection.

Meet the Artists

- The art of Preston Singletary (far left) has become synonymous with the relationship between European glass-blowing traditions and Northwest Native art. His artworks feature themes of transformation, animal spirits, and shamanism through elegant blown-glass forms and mystical sand-carved Tlingit designs. Recognized internationally, Singletary’s artworks are included in museum collections such as the British Museum (London), the Museum of Fine Arts (Boston), the Seattle Art Museum, the Corning Museum of Glass (Corning, New York), and the Smithsonian Institution (Washington, D.C.).

- Brian Perry (second from left), whose traditional name is Hopi-Cheelth, is an enrolled member of the Port Gamble S’Klallam tribe and a longtime traditional artist and carver. Perry has applied Northwest and Coast Salish Native American artistry to traditional and modern media, including canoes, totem poles, and public art installations. His work is featured in the Port Gamble S’Klallam Tribe’s Point Casino in North Kitsap County, and the collections of the Stillaguamish Tribe, among others.

- David Franklin (third from left) is a prolific public artist and sculptor based in Indianola who trained in traditional Northwest Coast Native American style carving and artwork under renowned totem pole carver Duane Pasco. Franklin has created diverse works of art in a variety of media including metal, glass, and wood. His works are featured at the Kitsap County Administration Building, Portland Fire and Rescue Station 21, and the Port of San Diego, among other places.

- Anthony Jones (far right), whose traditional name is k’aqeyxən, is an enrolled member of the Port Gamble S’Klallam tribe and an attorney for the Tulalip Tribes near Marysville. Jones practices a variety of traditional Coast Salish arts including carving, weaving, and drum making.

SPOTLIGHT ON LOCAL ART
In 1996, police were called to a house in Seattle’s Central District by a woman who said her boyfriend was choking her and threatening to kill their baby. As police arrived, the boyfriend, Edward Anderson, a 28-year-old African American, ran out the back and across a vacant lot. With officers in pursuit, he jumped a cyclone fence, catching his pants in the wire. He was lying on his back, one leg up in the air, when an officer leaned over the fence with his service revolver extended. The officer testified at the subsequent King County inquest hearing that he was probing in the

The life and (legal) times of Lem Howell

BY LYNN THOMPSON

Lem Howell at his Seattle home.
(Howell) would raise his voice, pound on the table, and on behalf of the family ask, “Why did my loved one have to die?” He held our feet to the fire.

LEO POORT, legal advisor to the Seattle Police Department from 1977 through 2009

Photo by WSBA staff

to the Seattle Police Department from 1977

dark, telling Anderson not to move, when his gun accidentally discharged—a foot from Anderson’s throat.

More than 20 years later, attorney Lembhard “Lem” Howell, who represented Anderson’s family at the inquest hearing, still grows angry recalling details of the case.

“It takes 8½ pounds of pressure to make a Glock go off! How can it be accidental? I was furious,” he said.

Over a 50-year legal career, Howell took on more than 20 cases involving police killings, most of them African American men. In an era before cell phone videos and dash cams, Howell repeatedly challenged the official version of fatal shootings and questioned whether the use of deadly force was justified. Despite his passionate efforts on behalf of the victims’ families, inquest juries who were asked whether an officer reasonably feared for his life almost always sided with the police.

But Howell’s advocacy led to multiple reforms in the King County inquest hearing process and changes to police procedures, including an increased emphasis on de-escalation tactics. Long before the launch of the Black Lives Matter movement, colleagues say Howell was a passionate advocate for a community that often felt powerless in the face of police violence.

“How he would raise his voice, pound on the table, and on behalf of the family ask, ‘Why did my loved one have to die?’ He held our feet to the fire,” said Leo Poort, legal advisor to the Seattle Police Department from 1977 through 2009—a period that encompassed seven police chiefs and many of Howell’s highest-profile cases.

Howell’s willingness to take on these cases arose from a deep sense of injustice. He said he saw a pattern of excessive use of force by police against Blacks and a criminal justice system that repeatedly exonerated officers in fatal shootings.

“We can’t have police acting as judge, jury, and executioner,” Howell insisted, growing more incensed as he spoke. “It’s no different than lynchings in the South. It goes back to slavery, to the idea that Black lives have no meaning, that it’s OK to kill Blacks. It angers me that it still happens today.”

Howell’s earliest police accountability cases unfolded in the early 1970s during the height of protests and unrest in Seattle’s Black community. Ron Ward, a former president of the Washington State Bar Association, said it is not hyperbole to say Howell showed tremendous courage in challenging fatal shootings by police in an environment that could be dangerous—and even deadly—for such advocates. As an example, Ward pointed to the 1969 assassination of Edwin Pratt, executive director of the Seattle Urban League and an advocate for equal education and fair housing for African Americans, who was gunned down outside his Shoreline home, a crime that remains officially unsolved.

“Lem was taking on ... police misconduct cases against a backdrop of a society which sometimes wreaked murderous retribution on those who stood up for the rights of the marginalized and under-represented,” Ward said. And, he added, Howell did it with “fierce tenacity and consummate professionalism.”

In his earliest efforts, Howell said, he found King County’s inquest system stacked against the families of victims of police shootings. The county coroner, an elected official and former deputy sheriff who had neither legal nor medical training, presided over inquests. Attorneys had to submit questions in writing, could present no evidence, and were not allowed to question witnesses, most of whom were police officers.

In 1970, Howell represented the family of Larry Ward, a 22-year-old Vietnam veteran shot as he fled the scene of an attempted bombing at a real estate office in Seattle’s Central District, where 30 bombings had occurred over the previous 15 months. Black activists, suspicious of the police version of the killing, encouraged the community to attend the inquest, and they did. Approximately 600 people showed up.

During his investigation for a subsequent civil suit, Howell received information that Ward had been set up by an FBI informant who’d promised to deliver the Central District bomber in exchange for leniency in his own criminal case. But at the time of the inquest, Howell had just two certainties: that Ward couldn’t be the Central District bomber because he’d only been back from Vietnam for two months, and that his killing wasn’t necessary.

According to press reports, the inquest hearings were characterized by disruptive protests and Howell’s attempts to cross-examine police witnesses. The coroner rejected many of his written questions, but Howell was able to ask why, if the police had the real estate
office surrounded, did they have to shoot Ward? Why couldn’t they have captured him?

Howell won an unprecedented 3-2 ruling by the inquest jury that Ward had died by criminal means. But the victory was short-lived. The coroner refused to issue a warrant to arrest the officer who had shot Ward and the county prosecutor refused to file charges.

When Howell went to King County Superior Court to try to compel the officer’s arrest, an angry crowd of about 5,000 gathered in front of police headquarters to show their support for the coroner’s and prosecutor’s decisions. Interviewed by reporters, many of the protestors claimed that law and order in the city would collapse if the police were held accountable for actions they took in the line of duty.

King County Superior Court Judge LeRoy McCullough, who worked on the Ward case as a young law student, said Howell’s outrage at the killing was important not just to Ward’s family but to the African American community.

“He didn’t soft-pedal the issue of racism. He argued that the police were out of control and were especially aggressive with Blacks. He used the legal system to tell them, ‘You’re better than this. We’re going to hold you to a higher standard.’”

Poort, the former police department legal advisor, said the “circus-like” atmosphere of the Ward inquest led to significant changes in the county’s inquest system. Under new rules adopted in the early 1970s, a judge would now preside over the proceedings, a county prosecutor would present the evidence, and jurors would be chosen from the same pool of citizens used for the county’s civil and criminal trials.

“Lem was right and the police were right. It wasn’t a fair and dignified system,” Poort said.

BUILDING A REPUTATION

Born in Jamaica in 1936 and raised in the Sugar Hill neighborhood of Harlem, Howell said he had advantages that American-born Blacks did not. Everyone in Jamaica, from shopkeepers to the prime minister, was Black. And the rigorous English education he received during his childhood prepared him to succeed when his family moved to New York City when he was 10 years old. His father, a merchant seaman who was more aware of the obstacles to Black success in the U.S. than his young son, encouraged Howell’s education. Howell recalled his father pointing to his head and saying, “What you have up here, no one can take away.”

Howell served four years in the Navy and attended New York University Law School, graduating in 1964. He came west on a Ford Foundation fellowship to study state government in the Washington governor’s office. When the fellowship ended, he clerked for the state Supreme Court and then worked as an assistant attorney general.

Howell opened a private legal practice in Seattle in 1968 and quickly established a reputation as a champion for civil rights and equal justice.

Around that time, construction unions in Seattle weren’t admitting African Americans. Black tradesmen picketed at federally funded construction projects, including Harborview Medical Center and the King County Administration building. When the county executive issued a change order requiring the contractor to hire Black trainees, the white union workers walked off the job. Howell sued in federal district court and won an injunction requiring the construction workers to go back to work. The U.S. Justice Department sued the same unions, and a court ordered that Blacks make up 30 percent of future apprenticeship classes.

A decade later, Howell represented Black firefighters, promoted through the city of Seattle’s affirmative action program, on appeal. White firefighters had sued claiming...
Howell opened a private legal practice in Seattle in 1968 and quickly established a reputation as a champion for civil rights and equal justice.

County Bar Bulletin when Howell was honored as the 2016 Outstanding Attorney, praised him as an early mentor and said Howell’s success—as evidenced by the baby blue Mercedes he drove at the time—“gave us law students hope.”

Howell said his successful private law practice also allowed him to continue to take on police deadly force cases pro bono.

In 1984, a man with a mental illness, Robert Baldwin, fatally stabbed a King County sheriff’s deputy trying to evict him from the Yesler Terrace housing complex. Seattle police surrounded the apartment and after a 17-hour standoff, broke down the door and killed Baldwin. At the inquest, Howell presented the medical examiner’s report and accompanying photos that showed Baldwin had been shot 21 times in the back, including by police submachine gun fire. The inquest jury found the shooting justifiable.

Howell, representing Baldwin’s son, brought a civil suit against the police for negligence and violation of civil rights. A jury agreed that the police contributed to Baldwin’s death, but found that Baldwin’s actions were the overwhelming cause. The jury awarded just $93.60 to his son, a verdict Howell nevertheless called a moral victory because several members of the police SWAT team resigned.

“The police portrayed themselves as heroes for killing a cop-killer, but after the inquest, after the public learned how many times Baldwin had been shot in the back, they weren’t heroes anymore,” Howell recalled.

The public furor over the shooting, including a protest march in front of the King County Courthouse, prompted Seattle Police Chief Patrick Fitzsimons to call in several national experts to review what officers could have done differently. Their lengthy report led to changes in the way officers staffed and responded to standoffs, said Poort, the police legal advisor. “Credit Lem and the cases he handled for calling police conduct into question. He’d ask: ‘Could you have done this? Could you have done that? Was there an option other

reverse discrimination. The Washington Supreme Court upheld the city program and one of the firefighters, Claude Harris, went on to become Seattle’s first African American fire chief.

Howell’s advocacy on behalf of Black construction workers also led to a successful career as a personal injury attorney specializing in construction site accidents. Over the years, he won million-dollar verdicts on behalf of workers injured or killed on the job. Judge McCullough, writing in the King
than lethal force? He may have been the first advocate for de-escalation in King County.”

Howell’s advocacy on behalf of the victims of police shootings sometimes cost him friends. He and Norm Rice, the city’s first African American mayor, used to celebrate their early May birthdays together with lunch at the Columbia Center tower. But, after the 1996 Anderson shooting, in which the young man was fatally shot while lying on his back, entangled in a fence, Rice backed the officer’s account that the shooting had been accidental. Howell said the two have been merely cordial since.

Reached by phone, Rice said police shooting deaths were the worst things he dealt with as mayor. About the Anderson case he said, “A fleeing felon incident is hard to judge. There might be a little gray there, and in those cases, you have to take the word of the officer.”

Told of Rice’s response, Howell started yelling. “He wasn’t fleeing! Once he got hung up in the wires, he represented a threat to no one. You don’t excuse murder. I’m so angry!”

Howell’s decades-long crusade against police misconduct won a measure of vindication in 2011 when a landmark U.S. Department of Justice investigation found that Seattle police routinely used excessive force and showed a troubling pattern of biased policing. The department remains under federal oversight as it implements reforms.

Changes have also been ordered to the county’s inquest hearings. In 2017, King County Executive Dow Constantine suspended all inquests out of concern that the process, intended as a fact-finding inquiry and public airing of the circumstances surrounding fatal police shootings, instead gave the impression of exonerating law-enforcement officers.

In May 2019, Constantine reinstated the proceedings while also introducing changes that include providing the families of those killed by police with paid legal representation and focusing on the department’s use-of-force policies and training rather than on the police officer’s subjective state of mind.

Howell argues that the changes don’t go far enough. Retired judges will still run the proceedings and they may have personal biases. He noted that two of the three retired judges named to the new inquest panels have already recused themselves from two pending cases, including that of Charleena Lyles, a pregnant African American mother shot to death by police in her apartment in 2017. The former judges said they could not preside over that or a second case because they have had “professional dealings with the Seattle Police Department,” according to a Seattle Times report. Howell is also concerned that any officer-involved fatality will still be investigated by the agency the officer works for rather than an outside agency.

**CREATING A LASTING ‘CONTRIBUTION TO JUSTICE’**

Lem Howell, who is 83, closed his law practice in 2012, but attorneys who represent the families of those killed by police still turn to him for advice. Jeff Campiche, a Seattle lawyer representing the family of 20-year-old Tommy Le, who was shot in the back by a sheriff’s deputy in 2017—allegedly for wielding a pen that was mistaken for a knife—said Howell has provided him inspiration and a detailed critique of the inquest process.

“I don’t think you can exaggerate the contribution to justice Lem has brought to this city. In a clear and convincing voice, he makes us look at the real issue: Why are we not encouraging police departments to retrain officers in less lethal tactics? He’s a man who could stand up to the system and did.”

Campiche said he’s encouraged by the shift in public attitudes toward police shootings. He noted that in 2018, more than 60 percent of Washington voters approved changes that will allow police to be criminally prosecuted if they use unnecessary deadly force. The measure also calls for police training in de-escalation techniques and dealing with people in crisis.

Howell’s own views waver between Dr. Martin Luther King’s famous observation that the moral arc of the universe bends toward justice and a more pessimistic appraisal. He noted that in the two years since the county suspended the inquest proceedings, 12 people were killed by law enforcement officers in the county, most of them people of color.

“There has been some progress,” he said, “But there is still so much to be done.”

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**Lynn Thompson** is a retired Seattle Times reporter. She previously covered politics for the Washington Journal, a regional legal newspaper, and from 1982 to 1989 served as the first executive director of the Washington Defender Association. She can be reached at lthompsonetimes@gmail.com.
Paul Chemnick and Gene Moen opened the door to their new firm in 1980. Pat Greenstreet joined them a few years later, and the partnership began to focus its practice on medical/legal claims. For the past 25 years, it has limited its practice to such cases. Our tag-line remains: “Medical Malpractice. It’s all we do.”

Paul and Pat retired, and Tyler Goldberg-Hoss became a partner. Gene and Tyler have been joined by associates Catherine Mee Moen, Carl-Erich Kruse, and Morgan Cartwright, and they continue the firm’s dedication to representing those who have been seriously injured as a result of medical negligence.
ROAD AHEAD: MOBILE JUSTICE & MOVEMENT LAWYERING
There’s the hum of a diesel engine and legato chatter filtered through a megaphone. It’s a crisp, sunny October morning in 2018 and a group of about 50 people are pinballing between used lawn care equipment, bicycles, and vehicles at a King County lot, trailing an auctioneer in a golf cart as he sells off the lot piece by piece to the highest bidders.

Within the crowd is the staff from the Benefits Law Center (BLC). After years of planning, fundraising, and problem-solving, they’re hoping to turn an idea into reality—a project at a Venn diagram nexus of legal innovation, access to justice, and plain-old common sense.

But first they need a bus.

In a video BLC posted to Instagram, Executive Director Alex Doolittle speaks directly to the camera, with rows of retired county vehicles in frame behind her—and for someone spending her Saturday bus hunting, she sounds really excited.

“I’m here at the King County bus yard and I am shopping for a bus,” Doolittle says in the video. “I’m going to turn it into a mobile legal vehicle so that we can deliver services from anywhere.”

About a year later, in September 2019, BLC officially hit the road with its retrofitted county 2008 Starcraft bus, the first mobile legal unit in the state, according to BLC—they call it the “Justice Bus.”

More than just a novel way to take a law office on the road, the Justice Bus represents a major shift in the way lawyers can help the communities they serve. The project is both an acknowledgment of challenges in the legal system and part of the process toward making things better.
occasionally meeting clients in less ideal public locations like a coffee shop. By summer 2018, BLC secured additional funding to purchase a mobile legal unit and a month later it had a bus.

Daniel Parker joined BLC in 2017, two years out of law school at Seattle University, and with the specific intent to be the first BLC mobile attorney. So it didn’t strike him as odd to be out bus shopping a year into the new job.

“When I started this, I knew it was going to be not-your-typical-lawyer role,” he said.

Parker is now one of two mobile attorneys, the other being Becca Maloney, who graduated from the University of California, Irvine School of Law, moved to Seattle, and came into contact with BLC while working with local legal aid organizations. When the second mobile attorney slot opened in January 2019, she was all in.

“I was more than excited to hop on board,” Maloney said.

On a recent afternoon, Maloney and Parker both literally hopped on board to walk through the Justice Bus. A bit of redesign, courtesy of the American Institute of Architects Seattle Committee on Homelessness, transformed the old utilitarian rubberized floors, red vinyl bench seating, and characteristically bus-ey interior into something more inviting for clients. Today, the Justice Bus is filled with the soft yellow glow of ceiling-mounted rim lighting. There are privacy curtains for the windows, new flooring, and ample seating and desk space for clients to meet with their mobile attorney—even enough space to accommodate a full family when needed. The bus came pre-equipped with a wheelchair lift, and now has an unmistakable teal paint job and BLC branding to make it easily identifiable for new clients. Parker and Maloney have a kettle to warm up coffee and tea, space heater, and mobile Wi-Fi hotspot, all of which are powered by a dedicated battery to keep things humming when the engine’s off. It’s a new concept for BLC, so there are still a few kinks to work out.

“It’s a slow roll,” Parker said. Sometimes literally, like when he almost got himself stuck while trying to navigate 5 tons and 20 feet of Justice Bus out of a narrow library parking lot.

According to BLC staff, theirs is the only bus of its kind in Washington. Similar projects are peppered throughout the U.S. in places like California, Kentucky, Ohio, Connecticut, and Chicago.

The buses associated with these programs don’t come cheap. Legal Aid of the Bluegrass in Kentucky, for example, launched its Justice Bus project with a comparatively newer and costlier 2017 Mercedes Sprinter van, with an estimated price tag between about $28,000 and $34,000.

The initial specs for BLC’s Justice Bus were far higher than what ultimately was spent, and Doolittle credits the savings to building relationships within the community. The early plan to pick up a new sprinter van turned out to be more Rolls-Royce than Mystery Machine, with an estimated purchase cost of about $80,000 to $90,000. Through the connections BLC had already established, Doolittle learned that she could get a bus on the cheap at auction. BLC scored its 2008 Starcraft bus for a measly $1,965, leaving plenty of budget for mainte-
For more information on the concepts covered in this article, check out the following links.

**TRAUMA-INFORMED CARE**
- Washington State Health Care Authority: hca.wa.gov/about-hca/trauma-informed-approach-tia
- National Council for Behavioral Health: thenationalcouncil.org/areas-of-expertise/trauma-informed-behavioral-healthcare
- Center for Social Innovation: c4innovates.com/training-technical-assistance

**ECONOMIC AND RACIAL JUSTICE**
- JustLead Washington: justleadwa.org/learn
- Washington Race Equity & Justice Initiative: warej.org/resources
- Shriver Center on Poverty Law: povertylaw.org
- Alliance for Equal Justice: alliancforequaljustice.org/singlepage/
- WSBA Diversity Stakeholders List Serve: To sign up, email diversity@wsba.org.

**CLEARING ROADBLOCKS**
In a way, the Justice Bus is the physical manifestation of a deeper BLC philosophy that attorneys need to reframe their perspective, not just on how they should solve a client’s legal issues, but on the realities of life that prevent people from accessing legal aid in the first place.

“There is a system built to be efficient for lawyers and judges,” Doolittle said. “So the question is: How can it be better built for clients?”

The Justice Bus helps solve one of the logistical barriers to legal aid, but BLC attorneys are constantly looking for new ways to better understand their clients’ unique lived experiences.

“We think about it all the time,” Maloney said. “Getting to that point takes practice and a great amount of thoughtfulness.”

“We go into a space understanding we are not the ones dictating services,” Parker added.

Doolittle agrees: “Our original mistake was deciding we were going to do a thing, then go out and do it without talking to anyone else.” BLC has since recognized community partnerships as a critical nexus between BLC’s legal services and community engagement. These partnerships help BLC understand what members of the community need in order for BLC lawyers to develop more impactful solutions.

One of the organizations BLC talks to is the Multi-Service Center (MSC), which provides education and employment assistance, shelter and food, and other resources in multiple locations around South King County.

Robin Corak, CEO of MSC, said many of its customers (MSC’s preferred term for people who use its services) face not only transportation challenges, but multiple constraints on their time and energy just to have their basic needs met.

“It’s a long day for some of our people,” Corak said. “And if they’re working, often times it’s just a matter of them having to take time off of work, and hopefully they can work around that. But it certainly can be a challenge for some of our customers.”

Some customers lack ID and other essential documents, or they’re facing an eviction, or spend most of their day traveling and waiting in line to bathe and get a meal. And often there are past traumas that shape all interactions and can mean the difference between getting the help they need or being churned through and spit out right where they started.

“I think that sometimes life circumstances are so overwhelming, particularly if you’re trying to apply for Social Security,” Corak said. “So in those situations a case manager might give a customer a referral [to a lawyer], but when the customer steps out there the barriers might be so overwhelming.”

Other services—like legal aid clinics—can easily go unnoticed and underused. Many people who utilize MSC, Corak said, aren’t even aware of the possibility of getting legal help unless there’s a partnership between the legal provider and the community organization that facilitates a smooth connection between intake at a shelter, for example, to a referral for legal aid.

“It’s kind of this if-you-build-it-they-will-come [approach],” Corak said. “But it doesn’t always work that way. … Visibility and presence in the community [go] a long way; I
think that’s why the partnerships are so critical. A lot of the people that come to us don’t know about all the [legal] services we provide; they just know we’re a food bank in the area."

Then there’s the emotional toll that comes from scheduling appointments to access services. When someone is spending much of their time and energy scrambling for adequate food, shelter, and medical care, seeking legal services might not make the cut on their to-do list, especially if those services require another trip or scheduling hassle.

“We forget that when someone’s in crisis, their mind’s just in survival mode,” Corak said. “If we give somebody a whole chunk of things to do, it can be overwhelming.”

A BEND IN THE ROAD
One driver of a more holistic approach to delivering services is trauma-informed care, which Corak said takes into account how “understand some of the behaviors that seem to be one thing, but they’re really related to trauma; it will teach you to make sure to the best of your ability that [you’re] not retriggering people in how [you’re] asking questions.”

“A lot of times, people just need to be heard,” Corak said. “They just need a safe space to share information and be heard.”

That idea—engaging with people on a personal level before throwing legal advice at them—is part of a push toward "movement lawyering," a fundamental shift in approach to delivering legal aid.

One of the many organizations at the forefront of this concept in Washington, working to bolster a network of legal and community leaders, is JustLead Washington.3

“When you get all the way down to what we’re trying to collectively accomplish when we speak of equity, we are talking about shifting power,” said Omid Bagheri, JustLead’s director of equity and community partnership. “And power looks a few different ways. It is access to resources, information for those in marginalized communities who are subject to exclusionary policies. On an individual level, it’s shifting the power of lawyers to their clients. Oftentimes lawyers have been taught they always have something to offer, they know what’s best, the client will not know what’s best. We would say this paradigm becomes a barrier to ensuring clients, and especially those who are being marginalized by unjust policies and systemic issues, receive the legal support they actually deserve.”

Bagheri says this dynamic extends to other professions as well, especially those that require highly technical higher education, but in a legal context it boxes out the lived experiences of “people who are most affected by injustice” and perpetuates systemic failures.

“We have to be able to say, organizationally, we don’t have all the answers,” Bagheri said. So what could this shift in power look like on the ground? “Most practically, it is organizations creating and incentivizing time and resources for legal advocates to go out in the community, build relationships for the long term with leaders in the community instead of the status quo, which depends on people needing to come to the organization, come to the lawyer to get what they need, which is not possible for most people who need support and especially for communities of color already dealing with systemic issues aimed at them.”

The early fruits of this idea are codified in the Washington Race Equity & Justice Initiative (REJI) Organizational Race Equity Toolkit,4 which JustLead developed in partnership with the Washington State Office of Civil Legal Aid, Washington State Access to Justice Board, and dozens of other legal aid organizations around the state that have made a commitment to do race equity work. These include BLC and legal advocates already working to advance these strategies within the legal field. One section of the toolkit outlines a community-centric process toward “developing accountability and partnership with communities of color,” and details how legal professionals can engage with community stakeholders and collaborate with those who are most affected by racial injustice.

“When applied to community partnerships, we are ensuring that organizational decisions are understood and justified by the communities that may benefit or be harmed most,” the toolkit states in its introduction. “Those working within the law and justice community in particular have a unique responsibility to ensure that the potential impact of strategies and decisions are understood. With our power to do good, we must also stay vigilant of our power to unintentionally commit harm.”

JustLead is also in the process of finalizing a “Community Partnership Guide.” An early draft provided to NWLawyer describes a “movement lawyering mindset,” and the “process through which advocates contribute their legal knowledge and skills to support initiatives that are identified by the community and enhance the community’s power.” It highlights “upstream thinking” aimed at preventing further injustice in the future beyond bandaging immediate legal problems.

“It’s about creating a broad network of folks who understand this work and are willing to shift resources in this way: that’s going to increase justice for all people,” Bagheri said. “… Justice will not be achieved with the way we’ve been doing things.”

It’s yet to be seen what impact something like the Justice Bus can have on delivering services. Will it be the catalyst for similar projects elsewhere, or just one novel idea in addressing one of the symptoms of the bigger challenges in the legal system? Right now it’s too early to tell, but so far the feedback from BLC clients has been positive and the things BLC attorneys are learning about their clients’ needs have only spurred more improvements. Back at the BLC offices, when Doolittle, Parker, and Maloney were asked about the project’s success so far and where they think it could go, they spoke of it like any work in progress: sure, it’s no panacea, but things are going well and there’s loads of potential.

“I do think it has the ability to change the landscape of legal aid by adding to it and making it more accessible,” Doolittle said. “... There are still ways to improve the practice of law.”

NOTES:
2. https://onejustice.org/probonojustice/justice-bus-project/
3. Several WSBA staff members serve on the JustLead Board of Directors.
is pleased to announce successful completion of litigation support re

HEALTHCARE PROVIDER v. HEALTHCARE PROVIDER

Defense expert for Healthcare provider where plaintiff brought claims of intentional interference with economic relations and misappropriation of trade secrets. Analyzed customer base, franchise agreement, financial statements, and other relative documents to determine claims were invalid and no damages existed. Prepared exhibits for trial or settlement purposes.

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As of Jan. 1, 2020, Washington became the fifth state in the United States to offer paid family and medical leave benefits to employees. This article will cover the basics of the Paid Family and Medical Leave (PFML) Act as well as answer some of the most frequently asked employer questions.

Q. Who administers the law?
A. The law is administered by the Washington Employment Security Department (ESD), the same state agency that handles unemployment insurance.

Q. What is the law's purpose?
A. The law creates a statewide insurance system for paid family and medical leave funded by employer- and employee-paid premiums, similar to Washington’s current unemployment insurance system. Both employee advocates and business groups participated in drafting the law, which was passed in 2017. The law’s stated intent is to create a system that balances family stability and economic security. RCW 50A.05.005.
Q. Which employers are covered?
A. The law covers virtually all employers (except the federal government) with employees within Washington state. See RCW 50A.05.010(6). Employers must either participate in the state plan or offer a “voluntary” (self-funded) plan that is preapproved by the ESD and is at least as generous as the state plan. The law applies differently depending on the employer’s size. For example, employers with less than 50 employees are not required to pay the employer’s portion of the premium.

Q. Which employees are covered?
A. Employees who perform all or most of their work in Washington are covered, as are certain employees who work in other states and have a particular connection to Washington, such as a base of operations, manager, or residence in the state. RCW 50A.05.010(4)(a), (7)(a); WAC 192-510-070. To be eligible for benefits, employees must have worked a total of 820 hours for any employer in Washington during either the last four full calendar quarters or the first four of the last five full calendar quarters. RCW 50A.15.010.

Q. What premiums does the law require?
A. The law assesses a total premium of 0.4 percent of an employee’s wages up to the Social Security cap on all wages paid after Jan. 1, 2019. RCW 50A.10.030. The ESD currently interprets wages to include almost all remuneration except tips. See RCW 50A.05.010(25)(a); WAC 192-510-025; https://paidleave.wa.gov/reporting. The employer is responsible for approximately 63 percent of the total premium, and the employer is responsible for the remaining approximately 37 percent. See RCW 50A.10.030. An employer may deduct the employee’s portion of the premium from each paycheck or choose to pay the entire premium and receive an income tax credit.

Paid Family Medical Leave Act Scenarios

**SCENARIO 1**
Concurrent Usage

- **JAN. 2020:**
  - A. Nina Normal gives birth and applies for Paid Family Medical Leave (PFML) benefits.
  - B. Lucy Lucky gives birth and applies for Family and Medical Leave Act (FMLA) and PFML.
  - [C] JAN. 1, 2020: Lucy applies for and begins receiving PFML family leave benefits.
  - [D] MAR. 25: Lucy stops receiving PFML benefits and is entitled to job restoration.

**RESULT**
Nina is entitled to **16 weeks** of job-protected leave related to this pregnancy.

**RESULT**
Lucy is entitled to **24 weeks** of job-protected leave related to this pregnancy.

**SCENARIO 2**
Leave Stacking (2019-2020)

- **OCT. 2019:**
  - B. DEC. 25:
    - [C] JAN. 1, 2020: Lucy applies for and begins receiving PFML family leave benefits.

**RESULT**
Lucy is entitled to **24 weeks** of job-protected family leave in one year.

**SCENARIO 3**
Leave Stacking (Caregiving)

- **FEB. 2020:**
  - A. FEB. 3, 2020: Carl Caring’s mother-in-law is hospitalized. Carl takes paid family leave under PFML.
  - B. APR. 27: Carl’s PFML benefits end, PFML job protection expires.
  - C. JUNE 1: Carl’s spouse is in a biking accident. Carl takes caregiving leave under FMLA.
  - D. AUG. 24: Carl’s job protection under FMLA expires.

**RESULT**
Carl is entitled to **24 weeks** of job-protected family leave in one year.
Washington’s Paid Family and Medical Leave Act is in Effect: Are You Ready? Continued

Q. How does the ESD calculate employer size?
A. The ESD uses two different methods to determine employer size. For purposes of premium collection and small employer assistance grants, on Sept. 30 of each year the ESD will average the total headcount of covered employees during the previous four full quarters to determine employer size for those years. WAC 192-510-045. For purposes of employment protection (detailed below), the ESD will consider whether the employer employed 50 or more covered employees during 20 or more calendar workweeks in the current or preceding calendar year. RCW 50A.35.010(6); WAC 192-700-015.

Q. How do employers pay premiums and report hours?
A. Each quarter, employers must submit a report to the ESD detailing the hours

Shannon Lawless is a member of Ryan, Swanson & Cleveland PLLC, where her practice focuses on representing employers. She has developed a particular focus on Washington’s Paid Family and Medical Leave Act, advising companies of all sizes in preparing for the historic implementation of this law. When disputes arise, Lawless represents employers in federal and state court lawsuits, arbitrations, negotiated and mediated settlements, and government investigations. Before joining her current firm, she clerked for former Chief Justice Mary Fairhurst of the Washington Supreme Court. She can be reached at lawless@ryanlaw.com.

and wages paid to covered employees, and remit the employer’s and employee’s portion of the premium. See WAC 192-540-030-.050. Employers report and remit premiums online; instructions and details are available at https://paidleave.wa.gov/reporting.

Q. What benefits do employees get?
A. The law provides partial wage replacement during two types of leave: medical leave (for the employee’s own serious illness or injury) and family leave (leave related to the birth or placement of a child, to care for a family member during serious illness or injury, and certain absences relating to a family member’s military service). The amount of wage replacement is a portion of the employee’s wages up to a maximum of $1,000 per week. RCW 50A.15.020; WAC 192-610-051. Each year, eligible employees may receive up to 12 weeks of paid family or medical leave, up to 16 weeks for a combination of paid family and medical leave, and up to 18 weeks for pregnant employees with serious health conditions that result in incapacity. Id.; WAC 192-620-026.

Q. Which family members are covered?
A. The Washington PFML Act contains a broader definition of “family member” than the federal Family and Medical Leave Act (FMLA). RCW 50A.05.010(10). Covered family members include the employee’s child, regardless of age or dependency status; spouse; registered domestic partner; parent; sibling; grandchild; grandparent; and spouse’s parent or grandparent.

Q. Must employers hold employees’ jobs open?
A. In most cases, an employer is required to restore an employee to their job or an equivalent position after paid family and medical leave if: (1) the employer employs 50 or more employees, (2) the employee has been employed by the current employer for at least 12 months, and (3) the employee has worked for the current employer for at least 1,250 hours during the 12 months immediately preceding the leave. RCW 50A.35.010; WAC 192-700-005.

Q. Does employment protection run concurrently with the FMLA?
A. Job protection under the FMLA and Washington’s PFML Act runs concurrently when employee eligibility and qualifying events align. RCW 50A.15.110(2). However, in many instances PFML benefits and FMLA will not align, such as if an employee uses up their FMLA leave in 2019 and then takes PFML in 2020, or if an employee uses PFML to provide care for a family member who is not covered by the FMLA. Employers should track job protection separately under the FMLA and the PFML Act because of these differences.

Q. How does PFML interact with other types of paid leave?
A. Employers may choose but may not require employees to supplement their PFML benefits with other types of paid leave, including salary continuation, accrued paid sick leave, vacation, or paid time off (PTO). RCW 50A.15.060(2); WAC 192-500-180. The ESD’s current proposed rules state that supplemental benefits (i.e., paid leave taken while an employee is also receiving PFML benefits) should not be reported to the ESD. WAC 192-620-030.

Q. Can an employer self-insure?
A. Employers may offer a state-approved voluntary plan that provides equivalent or more generous paid family and medical leave benefits than the state plan. RCW 50A.30.015. Fewer than 300 employers in Washington currently have approved voluntary plans.

Q. Where can employers get more information?
A. The ESD’s page for PFML can be found at paidleave.wa.gov. Employers may also reach the ESD’s customer care team at paidleave@esd.wa.gov or 833-717-2273.

NOTE: This article is intended for general informational purposes only and is not legal advice. It is based on the PFML statute and regulations as of Oct. 6, 2019. Rulemaking is ongoing and an amendment to the statute is expected during the 2020 legislative session, so this information is likely to change.
Top Three Reasons to Join the ABA

What you gain from an American Bar Association membership

BY JAMES F. WILLIAMS

Do you have a good sense of what the American Bar Association (ABA) does? Do you want to make the most of your membership? Would you like to join or get more involved? Here are the top three reasons your ABA membership has value.

1 The ABA amplifies your voice. The ABA is the trade association for America’s lawyers, and with more than 400,000 members, the ABA is the world’s largest professional association. Though impressive, that statistic alone does not fully explain why Washington lawyers should be interested in joining. Your answers to a few questions might shed some light on the potential value of a membership.

First, do you believe lawyers should be heard on issues affecting the justice system and the rule of law? Do you want to ensure that someone is defending the integrity of the courts or protecting the interests and independence of the profession? If you answered yes to any of these questions, the ABA can amplify your voice. One lawyer rarely can affect public policy. But when the ABA speaks, when the ABA president stands up for human rights, when the organization unleashes its formidable government advocacy operation to address pending legislation, or when it files a U.S. Supreme Court amicus brief on constitutional issues, the impact is far greater.

The ABA’s House of Delegates—which includes representatives from the nation’s state and local bars, the ABA sections, and national legal organizations—sets the policies that determine the areas in which the ABA can advocate. At the ABA’s Annual Meeting in August 2019, for example, the House of Delegates considered topics such as consent in sexual assault cases, emerging legal and ethical issues regarding artificial intelligence, management programs to improve legal ethics, and broadband internet access for rural communities. When you participate in the ABA, you help ensure that lawyers are heard—that you are heard—on important issues.

2 The ABA expands your network. Do you believe you can benefit, both personally and professionally, from getting to know lawyers across the country in the same legal area as you? If you are, say, an antitrust or employment lawyer, would it be valuable to discuss key developments with leaders in the field? If your legal practice focuses on science and technology, international law, or litigation, would it be advantageous to assess the rising challenges with diverse and accomplished experts from around the globe?

The ABA offers opportunities both to learn and to develop relationships with potential clients, academics, and other practitioners. The ABA provides these opportunities through its sections and forums focused on domains such as intellectual property, civil rights and social justice, business law, and family law; through its Diversity and Inclusion Center; and through its divisions serving law students, young lawyers, senior lawyers, judges, government lawyers, and solo and small firm practitioners. These groups meet, sponsor programs, and publish useful materials available to members on the ABA website.

3 The ABA takes you to exciting destinations. If you like to travel and experience different parts of the world, the ABA provides the perfect platform to do so in combination with opportunities for professional development. In the past, meetings have been held in London; Miami; Vancouver, B.C.; and San Francisco. Over the next several years, the ABA annual and midyear meetings will be held in cities like Austin, Chicago, New Orleans, and Toronto. These are world-class cities that are worth the journey.

The bottom line is that the ABA has an open door and is waiting for you. Whether you are a brand-new lawyer or retiring from the practice, a jurist or law school professor, the ABA has a place and a community of colleagues who would love to have you join them.

James F. Williams is the Washington State Delegate to the ABA House of Delegates and the managing partner of the Seattle office of Perkins Coie. The ABA’s constitution provides for a state delegate from each of the 50 states, Puerto Rico, and the District of Columbia. State delegates are elected by the members of the ABA in the state and serve for a term of three years. Williams was elected in March 2017 as the Washington State Delegate with over 67 percent of the vote. Reach Williams at jwilliams@perkinscoie.com.

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More than 70 million people worldwide have been displaced by wars, violence, and persecution, according to the United Nations High Commission on Refugees (UNHCR)\(^1\). That number continues to grow. But increasingly, these migrants are joined by others who are escaping from environmental harm associated with climate change—such as drought and extreme heat—and extreme weather events—such as hurricanes, flooding, and wildfires. Those in the first group, displaced by wartime conflicts and persecution, are recognized as "refugees" and afforded legal protections under a 1951 international convention. Those in the second group, displaced by environmental damage, are not. This article explores how, in the absence of established treaties or laws, arguments for extending legal protections to climate migrants are being developed.

In 2018, over 17 million people were displaced within their own nations' borders because of natural disasters, most of which were weather-related hazards, particularly storms.\(^2\) The World Bank estimates that by 2050, Sub-Saharan Africa, South Asia, and Latin America will be faced with 143 million "climate migrants" seeking to move within their countries' borders, putting pressure on other populations within those regions.\(^3\) Closer to home, the U.S. has also experienced record-setting heat waves, drought, hurricanes, wildfires, and floods that threaten a population’s ability to remain in place.\(^4\) Even temperate Washington state has seen increases in average temperatures, flooding, and periods of drought, as well as record numbers of wildfires.\(^5\)

As noted earlier, there currently are no treaties or laws protecting climate migrants. Those who cross international borders in order to escape environmental damage are not recognized as refugees under the 1951 Convention Relating to the Status of Refugees. Enacted following World War II, the 1951 Convention, and the subsequent 1967 Protocol, recognized persons fleeing the persecution of wartime conflicts. Refugees and asylees must have "a well-founded fear of being persecuted" for reasons specific to the individual, such as race, religion, membership in a particular social group, or political opinion. Climate change is not named among those reasons. The migrant attempting to escape life-threatening drought or flooding will not be able to make the requisite showing of persecution, and those moving within a country's borders are never considered refugees. For example, when a native of the South Pacific island nation of Kiribati sought refugee status in New Zealand (which defines refugees under the language of the 1951 Convention), the High Court of New Zealand concluded that the petitioner did not fit within the Convention's definition.\(^6\)

UPDATE: As this article went to press, the U.N. Human Rights Committee affirmed the petitioner's deportation on the specific facts of the Kiribati case, but went on to rule that individuals facing life-threatening climate change—either through sudden-onset events (such as intense storms and flooding) or slow-onset processes (such as sea level rise, salinization, and land degradation) might be granted asylum if deportation would violate their right to life. This ruling could facilitate the success of future climate change-related asylum claims.

The root causes of forced migration, however, are frequently intertwined. Climate change can lead to conflicts over water or viable farmlands, and...
individuals fleeing those conflicts may meet the Convention’s definitions (e.g., Somalis who fled to Kenya to escape drought and food insecurity, as well as armed conflicts related to those factors, were recognized as “refugees”). The concept of “nexus dynamics” recognizes that multiple factors, including conflict or violence and environmental changes, are a toxic mixture causing displacement. UNHCR recommends that persons displaced across borders due to nexus dynamics should:

qualify as refugees within the meaning of the 1951 Convention or the 1969 OAU Convention, or, when they do not fall within the criteria for refugee status, they should be granted a complementary protection status where applicable under national law.

But given current political debates over refugees and asylees under the 1951 Convention, it seems doubtful that nations will agree to expand the Convention’s protections anytime soon. In the absence of treaties or international laws, however, planning for the effects of climate displacement continues by the U.N. and

The concept of ‘nexus dynamics’ recognizes that multiple factors, including conflict or violence and environmental changes, are a toxic mixture causing displacement.
other entities, increasingly within the context of the Paris Agreement, regardless of whether migration occurs within or across national borders. At the Conference of the Parties 24 (COP24) in December 2018, the parties for the first time adopted guidelines specifically addressing migration (both internal and cross-border) related to climate change. That same month, the U.N. General Assembly adopted the Global Compact on Migration. The compact’s discussion on climate change is limited, but it acknowledges climate change as a growing driver of migration, and references “complementary” forms of protection for those who do not meet the definition of “refugee.” The UNFCC Task Force on Displacement has already developed tools and guidance for nations and regions to use while addressing displacement caused by the impacts of climate change, and UNHCR worked with Georgetown University to create extensive guidance on planned relocation in the face of environmental changes.

Other entities have also commenced planning for climate-related migration. Launched in 2012 by Norway and Switzerland, the Nansen Initiative builds on the 2010 Cancun Agreement on climate change. The Initiative’s goal is the promotion of “international and cross-border” related to climate change, particularly in the global south region, is expected to increase. Petitions to international bodies increasingly argue that the actions driving climate change constitute human rights violations. In early 2019, the residents of the Torres Island Straits petitioned the U.N. for relief, alleging that Australia has violated the plaintiffs’ human rights by failing to take action on climate change which threatens the islanders’ homes, culture, and livelihoods.

Plaintiffs in Juliana v. United States et al. (D.C. No. 6:15-cv-01517-AA), brought suit in 2015 before the U.S. District Court for the District of Oregon, alleging the U.S. government’s actions regarding fossil fuels violate plaintiffs’ constitutional rights and the public trust doctrine. The trial court denied the government’s motion to dismiss, concluding that “a right to a climate system capable of sustaining human life is fundamental to a free and ordered society.” At the time this issue went to press, the trial was on hold. Oral argument on interlocutory appeals and a preliminary injunction was heard in June by the 9th Circuit (No. 18-36082), but as of this writing, no ruling has been issued. Regardless of that case’s outcome, it seems likely that petitioners forcibly displaced by climate change will continue to seek relief from the judicial system, advancing new legal theories to support protection of, or restitution to, “climate migrants.”

PART II.

Pursuant to a variety of legal theories, for a determination of whether and to what extent nations can be held accountable for forced displacement due to climate change.

A decade ago, the Alaskan Inupiat island village of Kivalina brought suit against 24 energy companies, seeking compensation (including funds to relocate Kivalina’s residents) for the loss of sea ice that protected the island from destructive Arctic storms. The suit (under a federal common law nuisance claim) was unsuccessful, but litigation over damages attributable to climate change, particularly in the global south region, is expected to increase. Petitions to international bodies increasingly argue that the actions driving climate change constitute human rights violations. In early 2019, the residents of the Torres Island Straits petitioned the U.N. for relief, alleging that Australia has violated the plaintiffs’ human rights by failing to take action on climate change which threatens the islanders’ homes, culture, and livelihoods.

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NOTE:

3. (World Bank, Groundswell, 2017). More recent research indicates that worldwide impacts have been underestimated with regard to sea-level rise, suggesting, e.g., that some 200 million people currently reside in areas which will be permanently lost to sea level rise by 2100; “Flooded Future, Global Vulnerability to Sea-Level Worse Than Previously Understood,” Climate Central, October 2019.
5. “4th National Climate Assessment – Northwest,” id. “Puget Sound State of Knowledge Report,” UW Climate Impacts Group, 2015. Washington State experienced a record 1,850 wildfires in 2018, the most on record according to the Department of Natural Resources (exceeding the 1,500 wildfires of 2015, in which over a million acres burned and 230 homes were destroyed).
9. The October 2018 Special Report on Global Warming of 1.5 degrees Celsius from the Intergovernmental Panel on Climate Change (IPCC) compared the effects of increased warming (above pre-industrial levels) at 1.5 and at 2 degrees Celsius. If global temperatures increase 2 degrees Celsius (the IPCC estimates that at current emission rates, we will reach 1.5 degrees Celsius by 2040), the increase would expose approximately 37 percent of the world’s population to extreme heat waves every five years, produce severe drought for 411 million people worldwide, and expose up to 80 million people to flooding due to sea rise by 2100 (IPCC, October 2018). Somewhat fewer people will be affected at 1.5 degrees Celsius, but the figures are still severe. “No Time to Waste,” UW Climate Impacts Group, 2018, p. 3. CIG has calculated that the world will reach the 1.5 degree mark by 2030.
10. At the annual COP, the UNFCC parties assess progress in implementing the Convention and negotiate global climate policy.
11. COP 25 was held in Spain in late 2019 with specific agenda items addressing climate-forced migration.
12. Climate Impacts Group, College of the Environment, University of Washington.
JAMS Welcomes Mediator/Arbitrator


Spent 20 years as a commercial litigator with a focus on real estate and finance; represented multiple Fortune 100 companies and individuals and handled complex, multi-party cases through trial and appeal in state and federal courts.

Honored her ADR skills with extensive training at the Straus Institute for Dispute Resolution at Pepperdine University School of Law and Northwest Dispute Resolution conferences.

Works diligently to understand parties’ positions and uses her exceptional problem-solving skills to resolve **banking, real estate, business/commercial, construction, construction defect, insurance, professional liability** and **bankruptcy** matters.

Contact Business Manager Michelle Nemeth at 206.292.0441 or mnemeth@jamsadr.com.
TOP TAKEAWAYS

1. The Board of Governors approved several WSBA Bylaw changes:
   - Limit any individual’s term as executive director to 10 years, with the ability of the Board to extend the term in two-year increments via a supermajority vote.
   - Change the definition of required quorum for meetings to a simple majority.
   - Change the composition and election process for at-large governor positions, including removal of dedicated seats for two community (non-WSBA member) representatives and one Limited License Legal Technician (LLLT) or Limited Practice Officer (LPO)—instead, all qualified license types will be allowed to run for open district and at-large seats (with the exception of the Young Lawyer representative); and election of the Young Lawyer and Diversity at-large positions will occur via membership votes rather than Board selection (with candidates on the ballot put forth by the Washington Young Lawyers Committee and Diversity Committee, respectively).
   - Allow governors to serve two terms (of three years) instead of just one.
   - Increase flexibility in the timing of Section elections to coincide with mid-year meetings.

   These bylaw changes are now subject to approval from the Washington Supreme Court, pursuant to the court’s directive in October 2019.

2. The state’s “short” legislative session began Jan. 13 and is scheduled to adjourn March 13. The WSBA is actively focusing on bills related to legal professionals and the legal profession, promoting a bar-request bill (SB 6037), and monitoring bills of interest to sections. Please note: According to all indications at this point, there will be no resuscitation of any bill to change the state Bar’s authorization or structure.

3. The Washington Supreme Court has ordered a proposed amendment to Admission and Practice Rule (APR) 26 published for public comment, with a comment deadline of April 30. The amendment would require lawyers in private practice to carry mandatory malpractice insurance, with defined exceptions; in response, the WSBA president will communicate to the court why it declined to endorse the same rule last year (originally brought forward by WSBA’s Mandatory Malpractice Insurance Task Force). The president will also create an ad hoc committee to generate public-protection alternatives to mandatory malpractice insurance.

4. Representatives from the Washington Immigration Solidarity Network, Northwest Justice Project, Washington Defender Association, and ACLU of Washington asked the WSBA to support a suggested new General Rule (GR) 38 to prohibit civil arrests in a Washington courthouse—or while travelling to and from the courthouse—without a judicial arrest warrant or judicial order for arrest while the person is involved with a judicial proceeding or other business with the court. They also asked the WSBA to support an amendment to Rule of Professional Conduct (RPC) 4.4 Comment 4 to extend the existing prohibition on threatening to report or reporting individuals to immigration authorities to both civil and criminal cases. The WSBA Committee on Professional Ethics reviewed and commented on both proposals. The Board of Governors agreed to send comments to the court in support of GR 38; they will ask the court to extend the comment period for the proposed RPC 4.4 amendment to give interested stakeholders time to come to consensus on some minor changes.

5. The Board of Governors also:
   - Approved a policy that expands the WSBA Legislative Review Committee (to up to 35 members) to help it appropriately vet proposed legislation through a wide variety of stakeholders.
   - Approved the appointment of Carrie Umland as 2019-20 chair of the Client Protection Board.
   - Did not approve the WSBA taking action to provide LLLT education at this time.

ON BOARD

News from the Board of Governors and WSBA.
The WSBA Board of Governors determines the Bar’s general policies and approves its annual budget.

A Summary of the Board of Governors Meeting
Jan. 16 and 17, 2020

ONLINE
The agenda, materials, and video recording from this Board of Governors meeting, as well as past meetings, are online at www.wsba.org/about-wsba/who-we-are/board-of-governors.

SAVE THE DATE
The next regular Board of Governors meeting is March 19-20 in Olympia.
Thank You!
With your gifts during license renewal, you renewed your commitment to justice!

✅ YOUR GIFT to the Washington State Bar Foundation supports Washington State Bar Association programs that provide training, networking, and mentorship events to help build a more inclusive profession, as well as programs that create opportunities for legal professionals to serve their communities.

✅ YOUR DONATION to the Campaign for Equal Justice helps our grantees like the Northwest Immigrant Rights Project, Columbia Legal Services, the King County Bar Association and 16 volunteer programs around the state provide critical legal services to individuals and families living in poverty.

We are grateful to everyone who gave this year!

The Washington State Bar Foundation and Legal Foundation of Washington (Campaign for Equal Justice) are public charities. Your donations are tax-deductible to the full extent of the law.
Join a WSBA Board, Committee, or Panel

Bar members interested in serving on one of the WSBA’s boards, committees, or panels can now submit applications. Over 20 such groups will be seeking new members; most positions begin Oct. 1, 2020.

For more information, visit www.wsba.org/joincommittee.

RESOURCES

Free Practice-Management Assistance and Consultations

The WSBA offers free resources and education on practice-management issues. To learn more, visit www.wsba.org/pma.

You can also schedule a free phone consultation with a WSBA practice-management advisor to find answers to your questions about the business of law firm ownership. Common inquiries we can help with include technology adoption, opening or closing a law office, and client relationship management. Visit www.wsba.org/consult to get started.

Lending Library

The WSBA Lending Library is a free service to WSBA members offering hundreds of available titles free for short-term loan. Visit www.wsba.org/library to learn more and see what’s available.

Free Legal Research Tools

WSBA offers resources and member benefits to help you with your research. Visit www.wsba.org/legalresearch to learn more and to access Casemaker and Fastcase for free.

QUICK REFERENCE

Usury rate for Feb. 2020 is 12%.
**2020 LICENSE RENEWAL AND MCLE**

Deadline was Feb. 3, 2020

If you have not completed all mandatory portions of your license renewal, including MCLE requirements and certification, trust account declaration, and disclosing professional liability insurance or financial responsibility, if applicable, you are delinquent and your license is at risk of administrative suspension.

You may complete licensing requirements, including MCLE certification, either online at [mywsba.org](http://mywsba.org/) or by using the License Renewal and Mandatory Continuing Legal Education Certification forms. Visit [www.wsba.org/licensing](http://www.wsba.org/licensing) to learn more.

**ETHICS**

**Ethics Line**

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at [www.wsba.org/for-legal-professionals/ethics/ethics-line](http://www.wsba.org/for-legal-professionals/ethics/ethics-line), or call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

**WSBA Advisory Opinions**

WSBA advisory opinions are available online at [www.wsba.org/for-legal-professionals/ethics/about-advisoryopinions](http://www.wsba.org/for-legal-professionals/ethics/about-advisoryopinions). For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

**WSBA COMMUNITY NETWORKING**

**New Lawyers List Serve**

This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

**WSBA CLE Faculty Database**

Current and interested CLE faculty are encouraged to register in the CLE faculty database. Log in to your myWSBA account, go to “My WSBA Profile” and select “CLE Faculty Database Registration.”

**ALPS Attorney Match**

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at [www.wsba.org/connect-serve/mentorship/find-your-mentor](http://www.wsba.org/connect-serve/mentorship/find-your-mentor), or email mentorlink@wsba.org.

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**BOARD OF GOVERNORS ELECTIONS**

**Interested in Running?**

Application deadline for district positions is Feb. 18

Five positions on the WSBA Board of Governors are up for election in 2020. The open positions represent the following Congressional districts as well as one at-large seat:

- **District 3**
- **District 6**
- **District 7 North**
- **District 8**
- **At-Large position to represent lawyers whose membership has historically been underrepresented in governance**

The three-year term of office begins at the close of the Sept. 17-18, 2020, Board of Governors meeting. These positions are currently held by Kyle Sciuchetti (District 3), Brian Tollefson (District 6), Paul Swegle (District 7 North), Kim Hunter (District 8), and Alec Stephens (At-Large).

**Eligibility:** Any active member of the Bar may run for the office of governor from the congressional district in which the member is entitled to vote. Any active member of the Bar may run for the At-Large position. Exception: For all positions, any Bar member who has previously served on the Board of Governors for more than 18 months is ineligible to run. (Note: The Board of Governors voted at its January 2020 meeting to amend the WSBA Bylaws to extend this to 48 months. This amendment is subject to approval by the Washington Supreme Court.)

**Becoming a candidate:** To run for the Board of Governors, you must complete the application form on the WSBA website at [wsba.org/elections](http://wsba.org/elections). The WSBA must receive the forms for district races by 5 p.m. PST on Feb. 18, 2020. The deadline to run for the At-Large position is April 20, 2020. For all positions, a Bar member may nominate another member by completing the application form. For more information, contact Pam Inglesby at [pami@wsba.org](mailto:pami@wsba.org), 206-727-8226.

**Voting:** The four district-based positions are elected by members in their district. Generally, a member is entitled to vote in the congressional district in which he or she resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 13(f) or, if specifically designated to the executive director, within the district of their primary Washington practice.

The WSBA will use an electronic voting system, and members will not receive a paper ballot unless they request one. Email ballots will be sent on March 13 and must be received by 5 p.m. PDT on April 1.

The At-Large governor will be elected by the Board of Governors at its May 14-15, 2020, meeting in Bellingham. (Note: The Board of Governors voted at its January 2020 meeting to amend the WSBA Bylaws to make At-Large positions elected by all active WSBA members. This amendment is subject to approval by the Washington Supreme Court.)
**DISCIPLINE & OTHER REGULATORY NOTICES**

**THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS** are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at www.wsba.org/news-events/nwlawyer or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.”

As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

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**Disbarred**

Richard A. Laws (WSBA No. 36654, admitted 2005) of Clarkston, was disbarred, effective 11/21/2019, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Kathy Jo Blake acted as disciplinary counsel. Richard A. Laws represented himself. Timothy J. Parker was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

Chris Maryatt (WSBA No. 40619, admitted 2008) of Seattle, was disbarred, effective 12/10/2019, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 5.8 (Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Scott G. Busby and Kirsten Schimpff acted as disciplinary counsel. Chris Maryatt represented himself. Andre M. Pena1ver was the hearing officer. Douglas W. Vanscoy was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation to Disbarment; Stipulation to Disbarment; and Washington Supreme Court Order.

Gary Evan Randall (WSBA No. 15020, admitted 1985) of Woodinville, was disbarred, effective 11/21/2019, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 5.8 (Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Kathy Jo Blake, Coddee McDaniel, and Natalea Skvir acted as disciplinary counsel. Gary Evan Randall represented himself. Randolph O. Petgrave III was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review and Adopting Hearing Officer’s Decision; and Washington Supreme Court Order.

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**Suspended**

James K. Gazori (WSBA No. 19900, admitted 1990) of Shelton, was suspended for three months, effective 11/14/2019, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 1.15A (Safekeeping Property). Joanne S. Abelos acted as disciplinary counsel. Brett Andrews Purtsnner represented Respondent. James D. Hick was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation to Three-Month Suspension; Stipulation to Three-Month Suspension; and Washington Supreme Court Order.

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**Interim Suspension**

Helga Kahr (WSBA No. 16338, admitted 1986) of Seattle, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 11/14/2019, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Amos R. Hunter (WSBA No. 20846, admitted 1991) of Spokane, is suspended from the practice of law in the state of Washington pending the outcome of supplemental proceedings, effective 11/14/2019, by order of the Washington Supreme Court. This is not a disciplinary sanction.

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**ONLINE**

See full details of the notices by accessing the links in the online version: www.wsba.org/news-events/nwlawyer.

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Notice of Hearing on Petition for Reinstatement of James Lloyd White

A petition for reinstatement after disbarment has been filed by James Lloyd White, WSBA No. 14132, who was admitted in 1984, suspended in 2005, and disbarred in 2006. Prior to his suspension and disbarment, Mr. White practiced in several counties in Washington state, including King and Snohomish Counties.

A hearing on Mr. White’s petition will be conducted before the Character and Fitness Board on Friday, April 24, 2020. No later than 5 p.m. on March 25, 2020, anyone wishing to do so may file with the Character and Fitness Board a written statement for or against reinstatement, setting forth factual matters showing that the petition does or does not meet the requirements of Washington Supreme Court Admission and Practice Rule (APR) 25.5(a). Except by the Character and Fitness Board’s leave, no person other than the petitioner or petitioner’s counsel shall be heard orally by the Board.

Communications to the Character and Fitness Board should be sent to Jean McElroy, Counsel to the Character and Fitness Board, Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or to jeannm@wsba.org. This notice is published pursuant to APR 25.4(a).
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Natalie’s practice focuses on the defense of health care professionals and health care facilities, as well as retailers and owners of commercial and passenger vehicles.

Charlie represents insurers in multi-party disputes in environmental and mass tort insurance coverage to providing advice in disputes with individual insureds under homeowners and automobile policies.

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(W.D. Wash. 2010)
City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)
State v. Letourneau,
100 Wn. App. 424 (2000)
Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)
LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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Mercer Island: 1,350 SF available conveniently located between Seattle and Bellevue. Four offices plus reception and work space, in a building with a successful estate planning law firm. Additional space available soon. Contact Andrew Shultz at 206-223-0474 or Andrew.Shultz@colliers.com for more information.

Available for sublease from law firm in Class A space up to 6 offices and 3 cubicles on 38th floor of Bank of America Plaza at 800 Fifth Ave Seattle 98104; three blocks from King County courthouse, shared conference room and kitchen. $1,200 p/office, $400 p/cubicle. Call David at 206-805-0135.


Downtown Vancouver office space for lease in personal injury law firm (approx. 13 x 11.5). Receptionist services, copier, scanner, Wi-Fi, conference room, break room, and free parking included. $1100 per month. Please email joy@etengofflaw.com to schedule a tour.
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Prime office space for rent in downtown Kirkland with views of Lake Washington. Includes access to kitchenette/break room, conference rooms, receptionist, multi-line phone, internet, and free parking for tenant/visitors. Paralegal space also available. Contact Dylan Kilpatric for details, 425-822-2288 or Dylan@kirklandlaw.com.

Downtown Seattle, 1111 3rd Ave, Class A space, receptionist, voice mail, conference room, copier, scanner, phone, gym, showers, bike rack, light rail and bus stop across the street, several offices available now, secretarial space available, share space with an existing immigration law firm, $1,275 per office, 503-294-5060, ask for Jeri.

Private office suites in downtown Seattle starting at $600/month! Located close to courts on the 32nd floor of 1001 4th Ave. Plaza building. Includes internet, reception services, conference rooms, kitchen facilities, fitness center. Call 206-624-9188 or email adm@bscofficespace.com for more information and to schedule a tour.

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Chris Graves

BAR NUMBER: 47536

LAW SCHOOL: Howard University Law School

I am the executive director of Snohomish County Legal Services (www.snocolegal.org). I practice in the areas of landlord-tenant law, family law, and the Victims of Crime Act. I have been both a public defender and a prosecutor. I enjoy performing on stage and screen, playing video games, and being a stand-up comedian. I am licensed before the state and/or federal courts of Mississippi, Texas, and Washington. I can be reached at ChrisG@snocolegal.org.

I became a lawyer because like many lawyers, I wanted to help people. I started out doing criminal defense and prosecutor work, but I’ve been pleased with my ability to make a difference in civil legal aid.

Before law school, I worked as a policy analyst for the city of San Jose, California.

The best advice I have for new lawyers is: The world is round; be mindful of how you treat your colleagues. Today’s opposing counsel is often tomorrow’s co-counsel.

I wish that more lawyers would volunteer—they would find it rewarding and relaxing, ironically. Our volunteers at Snohomish County Legal Services have a great time making an immediate difference in people’s lives without having to record billable hours.

If I could have tried one famous case, it would be: Gideon v. Wainwright. Unfortunately, there are still places in the U.S. where one does not have access to a lawyer for criminal matters. I would have loved to have been part of such a groundbreaking case.

I keep up with legal news and developments by reading NWLawyer, the KCBA Bar Bulletin, and the SCBA (Snohomish County Bar Association) newsletter. It’s hard for me to find time to read anything else.

During my free time I negotiate bedtime with my 5-year-old, write screenplays, ride my bike, play video games, and perform stand-up comedy.

The most memorable trip I ever took was to the Dominican Republic with my wife. There is a rich history in the D.R., and the people, culture, and food were wonderful.

I look up to my mother, father, and grandparents.

I absolutely can’t live without my wok. I really like to cook, and I’ve had the same seasoned wok for about 25 years now. Oh, and my Xbox—I’m a huge video game nerd.

My best recipe I make at home is Asian honey ribs, or marinated chicken and broccoli stir-fry.

I have recently tried or want to try: My dad is learning bass guitar, and I really want to try it. Most of the music I like has really cool bass guitar licks.

I am happiest when my son and I are watching cartoons and eating cereal on a Sunday morning.

I grew up in Cypress, Texas.

My fondest childhood memory is playing arcade games at the local ice cream shop (Huff’s Ice Cream) near my neighborhood; lots of Street Fighter II.

This is on my bucket list: visiting the “Door of No Return” memorial and museum to the Atlantic slave trade, on Gorée Island.

I care about equal justice.

Aside from my career, I am most proud of being a husband and a father.

This makes me roll my eyes: people who cut doughnuts in half—just take the whole doughnut! Now this half-doughnut is sitting there, and I don’t know where it’s been!

My favorite restaurant is Desire Oyster Bar in New Orleans, Louisiana.

I would like to have met Harriet Tubman because she was a renaissance woman and the ultimate patriot—an accomplished abolitionist, activist, soldier, and spy.

My favorite band/musical artist is N.E.R.D. and The Neptunes.

My first car was a 1986 Volkswagen Diesel Rabbit Truck; yeah, I was NOT popular in high school.

If I could get free tickets to any event, I would like to see Ta-Nehisi Coates speak.

I have been telling others not to miss Jo Koy’s comedy special.
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