



## Racial Equity Workshop for WSBA Civil Rights Section:

Saturday, January 30, 2021  
9:15 am – 12:15 pm

### Suggested Pre-Workshop Assignments:

- Please complete this [pre-training survey](#)
- [WA Supreme Court Statement](#)
- Dr. Leticia Nieto, [3 articles from Beyond Inclusion, Beyond Empowerment](#)

1. **Introductions and Community Agreements** (9:15-9:30 am, 15 minutes)  
We will start our training by intentionally creating a space for members of the WSBA Civil Rights Section’s Executive Committee to be in community with one another during today’s training and the year ahead.
2. **The Why** (9:30-9:50 am, 20 minutes)  
We will help connect how anti-racism and equity work necessarily connects with personal and organizational values and mission. Participants will have an opportunity to share their “why” for doing this work and identify what motivates them to move with urgency in these tumultuous times.
3. **Foundational Concepts** (9:50-10:30 am, 40 minutes)  
We will go over foundational concepts such as equity vs. equality, structural racism, 5 levels of equity work, microaggressions, and introduce the ADRESSING model.
4. **Break** (10:30-10:35, 5 minutes)
5. **Setting the Scene** (10:35-11:20 am, 45 minutes)  
In order to incorporate more equitable and community-centered approaches to advocacy work, it is critical that justice workers consider the ways that white supremacy culture, saviorism, and traditional civil rights litigation has shaped the present landscape.
6. **Lawyering with the Cause** (11:20-11:50 am, 30 minutes)  
Participants will start to learn the importance of community partnership-building and community accountability, as well as learn to break the mold of lawyering and explore the shift towards movement lawyering.
7. **Break** (11:50-11:55 am, 5 minutes)
8. **Next Steps/What Now** (11:55 am-12:15 pm, 20 minutes)

Given the limited time, we will begin to surface and examine priorities for the WSBA Civil Rights Section. JustLead will close out the session with an opportunity for reflection and group discussion that can be a catalyst to engage in vision and values setting.



## Racial Equity Workshop for WSBA Civil Rights Section

### Facilitator Biographies



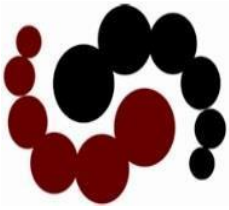
**Michaela Brown** (she/her) is a deeply curious, over thinking, heart in hand lover of people and history. Her background in collective impact organizing and commitment to advancing a world where everyone belongs has led her to serve in many community capacities focused on advancing individual and collective learning around diversity, equity, and inclusion (which includes her role as the Director of Community Learning for Excelebrate Success, an education equity partnership, and in her roles as a race equity facilitator). Her formal education in history and leadership studies combined with her passion for multi-cultural education, identity development, and community healing has brought her to the JustLead Team ready to grow with and cheer on change makers across Washington state.

As a multi-racial woman, Michaela finds power in the ability to hold the complexities of our interconnected lives and leans on the mantra by adrienne maree brown: “Where we are born into privilege we are charged to unlearn any myth of supremacy, where we are born into struggle, we are charged with claiming or dignity, joy and liberation.” Emboldened by the brilliance of our ancestors as well as modern revolutionaries, Michaela in her wholeness seeks to cultivate learning spaces that are relational and transformative.



**paige hardy** (they/them) is a bipolar, mixed race (Korean and white) person, self-described troublemaker, and occasional attorney. paige is deeply invested in imagining a world where justice means that people are able to thrive, participate according to their ability, and have their needs fully met, where accountability does not replicate carceral systems, and white supremacy is dismantled. paige believes this work necessitates both an individual and collective response and invites everyone to be part of that work.

paige has worked as a staff attorney with the King County Bar Association’s Volunteer Legal Services program, helping low-income King County residents vacate criminal convictions and defend against consumer debt issues. Immediately prior to joining JustLead, paige worked at the Washington State Bar Association working with various stakeholders on public service, pro bono, and DEI matters.



**Civil Rights Law Section**  
WASHINGTON STATE BAR ASSOCIATION  
**Executive Committee Meeting**

MEETING MINUTES  
WSBA – Civil Rights Law Section  
December 14, 2020  
(DRAFT)

PRESENT: Tobin Klusty, Chalia Stallings-Ala'ilima, Laura Sierra, Molly Matter, Mickey Moritz, Stephan Yhann, Bridget Bourgette, Tim Brooks, Cameron Sheldon, Sarah Derry, Jamie Hawk

1. **Motion to Amend the November minutes.** Approved.
2. **Motion to Amend the Previously Adopted October minutes.** Approved.
3. **Annual Report.** Tobin finalized and sent off to WSBA.
4. **Annual Retreat.** Scheduled for January 30. At that time, we will have our equity training with JustLead. This gives us enough time to plan out 2021 events and/or projects. Tobin encourages anyone who wants to attend the meeting with JustLead to inform objectives and structure. This training will ultimately inform the structure of our next annual report. Feel free to contact Tobin via email, cell, or otherwise.

In addition, it might be good for all of us to let Tobin whether we have done that work before. Tobin will send out a poll to see where everyone is at.

Do not hesitate to approach Tobin with ideas as to CRLS projects. He will put it in the planner for us to discuss logistics/feasibility. Two potential ideas include (1) a newsletter and (2) CLEs.

5. **Legislative Research Committee.** Cameron summarized the process by which the LRC will filter through legislation and the EC votes on position statements. That is fully detailed in a up email to the invite for today's meeting with attachments – feel free to email Cameron to receive a copy.
6. **WSBA Request for CRLS Input on USPS.** President Sciuschetti asked CRLS whether we are willing to take a position on the recent changes to USPS.

Molly suggests we get involved as the efforts to gut USPS were due to undermine mail-in ballots in the election. Mickey urges caution and thoughtfulness as to how we proceed because we do not want to undermine confidence in USPS.

Stephan agrees, and suggests that we acknowledge legitimacy of USPS as a functional institution while getting involved.

Laura suggests that we point out the issue with the mailbox rule and general procedural process that is embedded in our federal and state rules. In addition, our message should be that politicizing USPS adversely impacts our legal system.

Tim states that we should stress that USPS is mandated by the Constitution and ask for justification for modifications to it on the eve of the Election.

Laura adds that the letter that made it to WSBA as to USPS raises concerns as to lack of blue boxes, necessity of going into a physical office during COVID, and lack of tracking. This should have consensus on both sides of the aisle.

Tobin adds that perhaps we can start by addressing issue at hand and the purpose of these changes. In addition, we can discuss the necessity of USPS for essential right to vote, the continuation of business, and legal service of process.

7. **Vote to Take Position on USPS.** Approved. Position statement TBD at a later time and after consultation with other Sections.
8. **Vote to Approve USPS Position Statement for GR 12 Purposes.** Approved unanimously by all EC members present. (Jamie Hawk joined meeting at this time and joined the vote.) This meets the 75% threshold required by 2020 WSBA Legislative Policy.
9. **Equity and Diversity Task Force.** No updates at the moment.
10. **REJI Video Update.** Molly – looking forward to reviewing the video and giving her final approval. She will share the video once she does.
11. **Update Regarding Election of BOG Member At-Large.**

Laura – encourages everyone to get out to vote. We may know the result by the end of this week.

Chalia – could not find her ballot in her email last week, so she reached out to WSBA asking for it. Paris at WSBA responded immediately and was very helpful – so there is support to figuring it out and it appears to be very secure. Shoutout to Laura for going through this whole process (and Alec!). This has been a very encouraging process with strong advocates who want to make change in our profession.

Molly – maybe we can send out a reminder email to CRLS members giving the subject line. Jamie echoes this sentiment.

**12. Reimbursement for Rewards.** Bridget has been reimbursed for performer. Outstanding is cost of postage (~ \$70). Bridget does not intend to file for reimbursement for the latter given the length of the process.

**13. Discussions with Membership.** We might host a monthly or bimonthly Zoom forum for membership to chime in as to things they would like to see. We can also discuss this at annual retreat. In addition, it would help to identify interesting things going on at the moment (e.g., Racial Justice Task Force 2.0). Could be a great way to find something who would like to offer a CLE. This is a great recruitment technique, too. Voices support for bimonthly or quarterly. Quarterly could be better so as not to inundate members with emails. And quarterly means we can do other things in the interim.

**14. Vote to Approve Quarterly Office Hours.** Approved.

**15. Discussion with Pro Bono Section.** Pro Bono Section reached out to ask whether CRLS would be interested in discussing voting rights issues during February, which is Black History Month. Tobin and Molly met with them as well as Tracy Flood, the initial chair of CRLS. Tracy is going to write an article for February. Then Molly will put something forward in March as to local events and what we are seeing in Washington State – including Eastern Washington. Equity and Diversity Task Force. Jamie has also been asked to write an article on voting rights restoration around the same time.

Meeting adjourned.



WASHINGTON STATE BAR ASSOCIATION  
**Civil Rights Law Section**

January 23, 2021

**RE:** February 2021 Bar Exam

Chief Justice Steven C. González  
The Honorable Justice Charles W. Johnson  
The Honorable Justice Barbara A. Madsen  
The Honorable Justice Susan Owens  
The Honorable Debra L. Stephens  
The Honorable Sheryl Gordon McCloud  
The Honorable Justice Mary I. Yu  
The Honorable Justice Raquel Montoya-Lewis  
The Honorable Justice G. Helen Whitener  
WSBA President Kyle Sciuchetti  
WSBA Interim Executive Director Terra Nevitt

Dear Chief Justice González, Justices of the Washington Supreme Court, President Sciuchetti, and Director Nevitt:

I am writing on behalf of the Civil Rights Law Section of the Washington State Bar Association (WSBA) to join the American Civil Liberties Union's call to add a diploma privilege option, in addition to the planned remote Bar exam, for qualified February 2021 applicants.

This letter is written solely on behalf of the Civil Rights Section of the Washington State Bar Association. This does not express the views of the Washington State Bar Association, nor its Board of Governors.

**The Civil Rights Law Section is taking a position in support of allowing the diploma privilege option for ALL bar applicants<sup>1</sup> to the February 2021 Bar Exam for the following reasons:**

- ExamSoft's proctoring software has a face-detection problem that disproportionately impacts applicants of color. ExamSoft's software records students while they complete remote exams and monitors for signs of academic dishonesty. The first time a student logs into their exam portal, they upload a photo of themselves; then they are prompted to take another selfie before beginning future exams, which the software checks against their original photo.<sup>2</sup> Research shows that facial-recognition algorithms consistently make errors in identifying Black and Brown faces than they do white ones.<sup>3</sup> In September 2020, multiple non-white test-takers reported that the software could not identify them due to "poor lighting."<sup>4</sup> This has forced test-takers of color to take added and burdensome precautions to ensure that their skin tone does not lead ExamSoft remote test monitoring

<sup>1</sup> Including LLMs.

<sup>2</sup> <https://www.theverge.com/2021/1/5/22215727/examsft-online-exams-testing-facial-recognition-report>

<sup>3</sup> <https://venturebeat.com/2019/12/20/u-s-government-study-finds-racial-bias-in-facial-recognition-systems/>

<sup>4</sup> <https://www.theverge.com/2021/1/5/22215727/examsft-online-exams-testing-facial-recognition-report>

software to raise red flags.<sup>5</sup> This is a problem that can delay test takers or bar them from starting exams altogether.<sup>6</sup> And while facial recognition flags raised while a person is taking a bar exam will not necessarily halt a test, it may raise red flags that cause human reviewers to later “assess” the exam.<sup>7</sup> The shortcomings of this technology present additional challenges for vulnerable communities and perpetuate discriminatory biases.

- ExamSoft’s proctoring software also has a behavioral-detection problem. As many as 1/3 of all examinees on a recent California Bar Exam were flagged as potentially cheating by this algorithm.<sup>8</sup> According to Examsoft, the Artificial intelligence looks “for any anomalies that could indicate academic dishonesty.”<sup>9</sup> The specific list of “anomalies” is not published and examinees are not notified when potentially problematic behaviours are flagged by the software. Therefore, examinees have no way of knowing if they must modify their behavior while taking the exam to be in “compliance.”
- ExamSoft’s proctoring software presents privacy & security concerns. To administer the test, ExamSoft stores and collects examinees’ biometric and other personal data. Storing large collections of private or personally identifiable information creates an unreasonable security risk. In July 2020, as just one example, ProctorU, one of the world’s largest online collegiate proctors, suffered a data breach that disclosed personal information on nearly a half million of its users.<sup>10</sup> Because ProctorU has the same technical limitations, ExamSoft uses many of the same practices and procedures.<sup>11</sup> Therefore, the use of ExamSoft raises concerns of having a similar data breach as ProctorU.
- No alternative to ExamSoft’s proctoring software is available until July 2021. Washington bar applicants who object to ExamSoft’s proctoring software and its attendant shortcomings must wait until July 2021 to sit for an in-person examination in Yakima.<sup>12</sup> As such, employment opportunities will hang in the balance for reasonably cautious test-takers. Bar applicants should not be forced to choose between a problematic and potentially discriminatory exam and no exam at all. For most law school graduates, this is an illusory choice, for whom a delayed exam will cause a tremendous financial burden on top of crushing student debt.

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The Washington Bar’s mission includes supporting greater access to, and inclusion in, the legal system. See GR 12.1(j). The Bar exam is stressful and challenging at the best of times, but these are not the best of times. Examinees have already had to overcome many unprecedented challenges due to the COVID-19 pandemic.

Given the discriminatory and technologically flawed nature of ExamSoft’s software, the intended use of this software for the administration of the February 2021 bar examination is antithetical to the State Bar’s mission of protecting the public and increasing access and inclusion in the legal

<sup>5</sup> <https://venturebeat.com/2020/09/29/examssofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/>

<sup>6</sup> <https://www.theverge.com/2021/1/5/22215727/examssoft-online-exams-testing-facial-recognition-report>

<sup>7</sup> <https://venturebeat.com/2020/09/29/examssofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/>

<sup>8</sup> <https://www.theverge.com/2021/1/5/22215727/examssoft-online-exams-testing-facial-recognition-report>

<sup>9</sup> <https://examsoft.com/resources/proctoring-invigilation-exam-day-guide>

<sup>10</sup> <https://www.ehackingnews.com/2020/08/online-exam-tool-proctoru-breached-half.html>

<sup>11</sup> See <https://www.proctoru.com/faq>; see also <https://examsoft.com/resources/proctoring-invigilation-exam-day-guide>

<sup>12</sup> <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/lawyers/qualifications-to-take-the-bar-exam>

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January 31, 2020  
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profession. GR 12.1(a) and (j). Forcing applicants to take this problematic examination or forego licensure will reduce, not expand, access to justice - particularly for applicants of color.

The Civil Rights Law Section looks forward to partnering with the Supreme Court's task force to re-examine admission and licensure and make recommendations for improvement in light of the inequities experienced by the then July 2020 examinees.<sup>13</sup> We respectfully submit that the circumstances leading up to the prior grant of diploma privilege are more pressing and palpable today. Fairness and equity demand the same option be afforded to February 2021 applicants.

For these reasons, we urge you to allow the diploma privilege option for the February 2021 Bar.

Thank you for your consideration.

Respectfully Yours,

/s/ Tobin S. Klusty

Tobin S. Klusty  
Chair,  
WSBA Civil Rights Law Section

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<sup>13</sup> Letter from Chief Justice Debra L. Stephens "Re: Petition for Extension of the Order Granting Diploma Privilege" (June 25, 2020).