

Opinion: It's up to everyone to be fire safe

By Joanne Marchetta

Nevada and California suffered destructive wildfires last year. Nevada saw 768 fires burn more than 1.3 million acres. California experienced the deadliest, largest, and most destructive wildfires in its history. Just a few hours-drive from Tahoe, more than 40 people died and thousands of homes were destroyed in the wine country and North Bay last October. In Southern California, the Thomas Fire ravaged communities and forest lands last December with damaging flooding and landslides piled on after the fire subsided.



Joanne
Marchetta

California's five largest fire years since 1950 have all occurred in the last 12 years, and we know that climate change is making forests and communities more susceptible to catastrophic wildfire. The last four years were all among the hottest on record in California. Wildfire season in the Western United States is now two months longer than it was 40 years ago, making a devastating wildfire possible any time of the year.

Unprecedented tree mortality from the recent five-year drought, the most extreme on record in California, continues to increase the threat of large, damaging wildfires. There are

now more than 129 million dead trees in the state. Forests in the Tahoe basin are faring better than forests in the foothills and Southern Sierra, but the number of dead trees on national forest land at Tahoe has grown each year from 35,000 in 2015 to 72,000 in 2016 and 168,000 in 2017.

The Angora Fire in 2007 remains our starkest reminder of the risk wildfire poses at Tahoe, and how quickly our lives can change in a matter of days, if not hours. We must keep the threat of wildfire in mind and prepare now, before the next fire ignites.

Agencies are working together to reduce the wildfire threat on Tahoe's public lands. Since 1997, partners on the Tahoe Fire and Fuels Team have treated more than 70,000 acres to thin forests and reduce the amount of hazardous fuels in them, particularly in the wildland urban interface where forests and communities meet. This work is critically important for healthy, resilient forests, improved ecology, and to reduce the risk of catastrophic wildfire. Partners are working to treat the remaining 50,000 acres of wildland urban interface at Tahoe over the next 10 years.

We are also working on innovative projects like Lake Tahoe West, a multi-agency partnership to speed up forest thinning and fuel reduction projects on 60,000 acres of the West Shore and incorporate other projects to improve water quality and recreation opportunities.

The Tahoe Fire and Fuels Team is showing how agencies can partner and work together across jurisdictional boundaries to promote healthy forests and reduce wildfire risk. But agencies cannot prepare Tahoe communities for wildfire on their own. There are important steps that visitors and residents can and must take.

First among them is preventing wildfires. More than 90 percent of wildfires at Lake Tahoe are caused by people. An illegal

campfire left unattended started the Angora Fire that quickly burned more than 3,000 acres and 254 homes. Please be mindful of this risk while recreating at Tahoe.

There are important steps homeowners and residents can take today to prepare for Tahoe's next wildfire. It's not a matter of if we will have another wildfire, it's a matter of when. If you have not already done so, call your local fire district to ask for a defensible space evaluation and then manage the vegetation on your property to help protect your home from a fire. Rake up the pine needles in your yard each spring, removing them from roofs, decks, and brush. Have an evacuation kit ready to go and an evacuation plan for your family. Sign up for emergency notifications from your county, including not only your cell phones but any land line phones. This will help ensure you receive accurate, timely, and actionable information during an emergency.

Finally, consider joining the Tahoe Network of Fire Adapted Communities. This program, run by the Tahoe Resource Conservation District, is recruiting volunteers to work with their neighbors and local fire agencies to boost wildfire preparedness and create fire adapted communities at Lake Tahoe.

Wildfire is a serious risk at Lake Tahoe, but it is also a natural and important part of our landscape's environment. By continuing to work together and preparing now, we can minimize the amount of damage that Tahoe's next wildfire will do to communities and the environment. Please join us today in this important work to keep Tahoe fire safe through what is expected to be another dangerous fire season.

Joanne Marchetta is executive director of TRPA.

Opinion: We may be trapped in a debt spiral

By George F. Will, Washington Post

From Scotland, where Adam Smith pioneered systematic thinking about economics, comes an adjective, “carnaptious,” that fits people who are allergic to economic euphoria. It means cantankerous. Let’s think carnaptiously about this fact: The interest rate on 10-year Treasury bonds recently rose briefly to 3 percent, and soon may move above this. This is more than evidence of the economy’s strength. It also is a harbinger of a coming day when the great driver of the national debt will be ... the national debt. Pour a Scotch and read on.

The economy’s growth, which slowed in 2018’s first quarter, is not brisk; it still is not even the 3 percent that is the low end of presidential boasting. At the end of this month, the economy will amble into the 10th year of the expansion that began in June 2009. This month is its 108th, making it almost twice as long as the average expansion (58 months) since 1945. Unless Mr. I Alone Can Fix It has banished the business cycle forever – modesty would not have prevented him from mentioning this – a contraction is somewhere in America’s future. It might begin in fiscal conditions resembling today’s because this is now normal: trillion-dollar annual budget deficits while the economy is at full employment. (The 4.1 percent unemployment rate is impressive, even given the decades-long decline in the work force participation rate.)

Read the whole story

Opinion: Remembering Bill Morgan's contributions

By Clem Shute

We at the Tahoe Regional Planning Agency are mourning the passing of Bill Morgan. In the pantheon of people who have contributed mightily to the agency's success, Bill is in the top tier. He was executive director from April 1, 1985, to Sept. 30, 1989, one of the most tumultuous times for TRPA. There is a high likelihood that there would be no TRPA if Bill had not been at the helm and found ways to bring disparate parties together.



Clem Shute

In the spring of 1984, the Governing Board adopted the 1984 Regional Plan. Many are not aware that there was a plan adopted then because of the events that followed its passage and eventually led to the more well-known 1987 Regional Plan. It is the period between the adoption of the two plans when Bill played a decisive role.

The hearings leading to the adoption of the 1984 plan revealed deep disagreements between California and Nevada and between development and environmental interests. The controversy can be described fundamentally as different visions of the amount of development that should be allowed in the Tahoe basin. The day after the 1984 plan was approved by the TRPA Governing Board, the state of California and the League to Save Lake

Tahoe filed a lawsuit in federal court seeking to void the plan and stop all development in the basin until, in their view, a proper plan could be adopted. A federal judge agreed and ordered a development moratorium at the Lake.

At this point, "all hell broke loose." Nevada believed California had overstepped its bounds by, in effect, transferring TRPA's powers to the federal court. This was so serious to Nevada that it threatened to withdraw from the bi-state Compact. Developers were beside themselves as they were prevented from having permits issued. Local governments were concerned about lost tax revenue from new development. California and the environmental groups believed this was justified because the 1984 plan allowed too much development. Into this boiling cauldron stepped Bill Morgan.

As executive director, Bill convened a consensus building workshop which included all the interests in the basin ranging from representatives of both states to representatives of major developers and environmental interests and Realtor associations and the League of Woman Voters, both groups that had not been involved on a day-to-day basis. His stated goal was to come up with a regional plan by consensus. Everyone was willing to give it a try, in large part because of the respect Bill commanded in every quarter. The story goes that at the first meeting, during the lunch break, a Realtor offered a League to Save Lake Tahoe representative an apple, which was only taken after he was assured it did not contain poison.

Convening such a group is one thing. Keeping it together and working through all the issues is another. As it turned out, the group met for several days each month for about two years. It was during this difficult time that Bill's skills shined brightest. First, he led in identifying issues and proposing solutions. He was courteous at all times. On more than one occasion, someone would walk out in disgust. Bill would follow them to the parking lot and in his quiet, persuasive way bring them back. Everyone trusted him to be an honest broker. He

also had to keep Governing Board members informed of the progress of the consensus group so that they would be willing to accept the plan when it emerged.

In 1987, consensus was reached. The results were presented publicly through hearings and the Governing Board ultimately adopted the Regional Plan. The lawsuit was settled. The two states and all the other interested parties had learned to talk to each other. The bitter controversy ended as did the risk that the Compact would be voided.

Without Bill's intellect, integrity, honesty and diligence, it would not have happened. This is accomplishment enough, but there is an even longer lasting legacy that is at the core of how TRPA operates today. That is collaboration. As our Governing Board's recent strategic planning retreat demonstrates, all TRPA initiatives today are underpinned by partnering with the interested parties to work toward the common goal of achieving the environmental thresholds. Bill set the path forward. He will be missed.

Clem Shute was appointed to the TRPA Governing Board in 2011 by California Gov. Jerry Brown.

Letter: Questioning how best to deal with VHRs

By Brandie Jordan Griffith

Will SCA's VHR initiative be the answer for South Lake Tahoe?

By now most have heard of the initiative sponsored by the Sustainable Community Alliance (SCA) which calls for

maintaining regulation while making some minor changes to the current code. I appreciate that people keep bringing items to the table for consideration and their initiative has a few items worth expanding on. I see they are focused on finding a solution to the VHR crisis, but what I see lacking is a focus on the community as a whole.

I am not afraid to throw bad ideas around (I have plenty) as sometimes you need a few bad ones to come up with a great one. I won't pretend to thoroughly understand the implications of each change, but a few of the items listed in the SCA's initiative have me questioning.

My biggest concern (not addressed in the measure) is a lack of sustainable infrastructure. Over the last decade our tourism count has grown by leaps and bounds, but the roads haven't. At times it is a wonder how we can handle the person/car count that pours into the basin on any given weekend. The roads into Tahoe have not been adjusted to handle the traffic that currently plagues us. This is evidenced every Sunday when the mass exodus commences and is most painful in the winter when weather is present. On numerous occasions I was held hostage in my vehicle for hours while trying to get from the Y to Meyers. Side streets were as bad if not worse due to Google Maps. Most people know that you just don't leave the house on Sundays but not everyone has a choice. One would expect some traffic and that is one of the inconveniences of living in a beautiful tourist destination, but the amount of traffic that we had to deal with was just wrong on every level. South Lake Tahoe was not designed to accommodate the number of tourists that we have allowed to come. We need to do a negative impact study that calls for an emphasis on fire and safety. South Lake Tahoe has become over-tourismed.

Worth noting is the amount of energy, expense and manpower that it takes to clean up after the numbers. I hear an outcry for beach cleanup already, but it is not just the beaches that need extra attention ... it's the informal sledding hills,

roadways, parking lots and food establishments. We need all hands on deck after every major holiday and three-day weekend.

Part of being a "Sustainable Community Alliance" is focusing on issues that are concerning to the residents and to the area in general. If we are to come to a peaceful agreement regarding VHRs, then there are larger issues that need to be addressed, not just parking and noise. It is difficult to see anything "sustained" in this initiative other than cash flow produced for and from vacation rentals.

How do we trust that City Council can assemble a fair committee that would focus on the needs of the community while regulating VHR, especially when this measure makes declaration for two of those members to be VHR owners? It seems that council is failing on most levels to follow the suggestions of any committee they appoint, so what will make this committee effective? It is reasonable to think that the panel will have some influence on council and their decisions, so it is of upmost importance that said panel be unbiased. Yeah, good luck with that.

Suggestions regarding occupancy are a step in the right direction. Less people, less problems, less cars and less impact=good ... and it is admirable that they have made provisions for prohibiting use of noise-related equipment and permanently prohibiting issuance of licenses to VHRs caught operating without a permit. Although it looks good on paper, it is of little importance to the family living next door to a VHR that loses sleep every weekend from hot tub parties and general noise.

The measure also requires the city to create and provide VHR operators with a pamphlet of conduct that is distributed to all VHR occupants. I believe that the pamphlet approach has failed miserably in most arenas ... no one reads them and people still don't think the rules apply to them.

Another item that this measure moves to do is forbid the renewal of a VHR permit should the operator not generate \$1,500 of TOT during their 12-month licensing period. I believe this to be the most opportunistic component of the entire initiative. This guarantees that mega renters will stay in business (let's not try and call it anything else, because that is what it is) while the lower volume mom-and-pop type rentals will be forced to rent more days in order to keep up with the new requirements. So, essentially it will force the little guy out and create a more elite rental society. The city is already giving preferential treatment and issuing VHR permits to new McMansion construction (Herbert) that hasn't even passed inspection yet.

This cancels out the occupancy reduction effort because now smaller VHRs have to rent more to keep up. More nights rented, more people, more problems, more cars and more impact.

Would people be more inclined to support this measure if it had any meat on the bone? For instance, how about phasing out a percentage over time to reduce the number of rentals to a more manageable number... say cut it down near 30 percent to 1,000? Cap the county where they are at and keep them under that number? How about instead of a "pamphlet" we implement a standardized terms and conditions rental agreement that is from the city of SLT? In this agreement, they either e-sign or hard sign the contract and provide an "incident deposit" at the time of rental to be refunded when they check out without citation. If there is a citation issued, they simply do not get their deposit back and it goes directly to the city. No different than a damage deposit on a rental car. People will comply more often if there is a real threat of cost.

Should the initiative pass, what about putting five residents from the community that are not associated with VHR in any other way than living amongst them? At that point the threat of a ban would be gone and the residents would have a much more realistic and proactive approach, given some time to

accept the situation.

Finally, the initiative requests a five-member special VHR committee to make recommendations to City Council regarding allocation of some TOT to housing programs. Do we really need another committee for this and what housing programs are they referring to? This does not make clear who, what, how much ... but again it looks good on paper.

And about those long-term tenants that are worse. They have been around forever and they aren't going anywhere. If we see a rental that lacks a minimum standard in cleanliness, etc., shouldn't we as residents be calling them in to the city? A possible motion on the owners to get the yard cleaned up? Or is more productive running around snapping photos and then posting them on Facebook? If the owner of the long-term rental gets a notice to clean it up and doesn't, then we should be sending Clean Tahoe over there to do it for them, followed by a bill for services rendered. If they don't pay the bill, they get a lien. Of course, not all long-term renters are the problem, especially when it is their wallets that are open during slow season, supporting local businesses.

This is not a pro or anti-VHR platform. I am pro community, pro peaceful enjoyment of property, pro sustainability. This community has the ability to come together when it matters. A thank you is in order for the Realtors and VHR/business owners took time to put something together and I am sure that they believe it will make a difference in bringing a peaceful co-existence. Should it pass, I hope that they are right.

Brandie Jordan Griffith is a resident and Realtor at Realty World Lake Tahoe.

Opinion: SLT uses Craigslist for city attorney listing

By Kathryn Reed

Government agencies pay thousands of dollars for recruiting firms to find top level executives. Part of their job is to place the ads in select locations where those types of professionals look for jobs, part is to do the background checks, part is knowing many in this small pool of applicants and knowing the jurisdiction with the opening in order to find that perfect match.

Their expertise is such that the contract usually comes with a warranty of sorts if the new hire doesn't stay a certain length of time.

The South Lake Tahoe City Council last month hired Prothman Executive Recruitment to find city manager and city attorney candidates.

Minutes from the April 17 meeting say, "It was the consensus of council to prioritize the hire of an interim and permanent city manager but to recruit for both city manager and city attorney at the same time."

On Prothman's website only the city attorney position is listed. Prothman has listed the city attorney job on **Craigslist** as well.

Apparently Prothman finds Craigslist a viable platform because the firm put up the city manager listing for Emeryville there as well.

However, those in the know have told *Lake Tahoe News* that using Craigslist is highly unusual, even a bit unprofessional.

Lake Tahoe News asked all five council members what they

thought of using Craigslist for the city attorney position. No one had an opinion they chose to share.

As for why the city manager position isn't at least on Prothman's website, that too remains a mystery.

Lake Tahoe News asked the five where Prothman was listing both of South Lake Tahoe's jobs. No answer.

It really is scary to think of the power and incompetence these electeds exhibit as a whole, and the majority do individually.

Three seats are up in November – Wendy David, Austin Sass and Tom Davis. Candidates may file papers with the El Dorado County Elections Department starting July 16 and will have until Aug. 10 to turn them in. If an incumbent doesn't file, that date is extended to Aug. 15.

One can only hope some professionalism and leadership returns to the city in early June with the hire of **Dirk Brazil** as interim city manager. Well, that is assuming the council hires him at today's meeting and that he is good as he looks on paper.

Opinion: Housing 'reform' would deepen poverty

By Alex Schwartz, The Conversation

The Trump administration recently proposed fundamental changes to how the federal government helps low-income families pay for housing.

Housing and Urban Development Secretary Ben Carson claims his “welfare reform,” which would jack up rents on the poorest Americans and impose stricter work requirements, would promote self-sufficiency and make federal housing assistance fiscally sustainable.

As someone who has studied, taught and written about housing policy for more than 25 years, I believe the proposal would do nothing of the kind.

Housing welfare, by the numbers

About 4.8 million of the nation’s lowest-income households currently receive housing assistance from the federal government, a figure that hasn’t changed much over the past decade.

About 1 million households live in public housing, 2.5 million receive housing choice vouchers that subsidize the rents charged by private landlords and 1.3 million live in apartment buildings that are themselves directly supported by the government.

These households earn very little income. The average income of a housing choice voucher recipient, for example, is \$14,454, while only 23 percent earn more than \$20,000.

For decades, federal rental assistance ensured that recipients paid no more than 30 percent of their adjusted household income on rent. If income goes down, they pay less. If it goes up, they pay more. The cap is based on the notion, long shared by policymakers and the real estate industry, that housing is “affordable” when it costs no more than 30 percent of a household’s income.

The measure for income housing authorities have used has traditionally been adjusted for child care, medical expenses and other deductions.

Housing 'reform'

The administration's proposal would greatly raise the rents that virtually all housing subsidy recipients must pay – in three ways.

The rents for subsidy recipients who are not elderly or disabled would increase from 30 to 35 percent of their income. The government would no longer take child care and medical expenses into account in determining rents. And the minimum rent recipients must pay would triple from \$50 to \$150 a month.

About 423,000 subsidy recipients currently earn less than \$2,000 a year and pay the minimum rent of \$50. Their rent would triple to \$150 a month, which would consume a whole year of income for a household earning \$1,800.

Families with higher incomes would also see sharp increases as well. A single-parent family earning \$25,000 but with \$5,000 in child care expenses would see its rent jump 46 percent from about \$500 to \$729.

While the plan would keep elderly and disabled people at a 30 percent cap, their incomes would no longer be adjusted for medical expenses and child care. Moreover, in order to qualify for the exemption, every adult in the household must be elderly or disabled.

A history of 'reform'

Most fundamentally, the Trump administration proposal would finally apply the controversial welfare "reforms" that began in the 1990s to federal housing assistance.

Welfare reform began under the Clinton administration, which in 1996 replaced a decades-old entitlement program that provided aid to poor families with kids with a new one that included work requirements and time constraints. As a result,

the number of families on welfare plunged from 4.5 million in 1996 to 1.1 million last year.

The Trump administration has been pushing to extend work requirements and sometimes time limits to other safety net programs, such as Medicaid and food stamps. And now, with the latest proposal, the administration hopes to apply them to housing assistance.

Although the details are yet to be worked out, the administration's bill would authorize public housing authorities and private owners of subsidized housing to impose work requirements and time limits – and even increase some rents above 35 percent of income.

Wider ramifications

While some policy analysts have previously advocated that Washington apply time limits and work requirements to housing assistance, these ideas have generally not taken hold. There are good reasons for this.

The United States confronts a housing affordability crisis of epic proportions. By the standard 30 percent of income measure, nearly half of all renters cannot afford their housing, and one-quarter spend at least half of their income on rent.

The problem is far worse among very low-income renters, with 83 percent spending more than 30 more percent of their income on rent and 56 percent spending 50 percent or more. With cost burdens like these, people often struggle to pay for food, transportation, health care and other essentials. They are at high risk of eviction and homelessness.

Employment is often of little help. About half of the 8 million very low-income renters who spend 50 percent or more of their income on rent do in fact work. In only 12 of the nation's 3,142 counties can a full-time worker earning the

minimum wage afford a one-bedroom home at the local fair market rent – the rent that the Housing and Urban Development department deems suitable for a modest but adequate unit.

And average full-time earnings in numerous occupations are also well below the income necessary to afford the fair market rent. For example, a child care worker in the U.S. earns an average of \$30,679, compared with the \$35,680 necessary under the 30 percent standard to afford the national average fair market rent on a one-bedroom unit.

Another reason welfare reform's emphasis on employment makes little sense for housing assistance is that most subsidy recipients who could work already do. Overall, 28 percent of all housing assistance recipients in 2017 worked. Two-thirds are either elderly or disabled. And most of the rest are single mothers, many of whom already work – and those who don't often have young children.

Moreover, the cost of implementing work requirements would be substantial. Housing authorities would need to create new data systems and devote staff time to determine which subsidy recipients would be subject to the work requirements, to monitor compliance with the requirements and impose sanctions when the requirements are not satisfied.

In short, the proposed changes in federal housing policy would neither foster economic self-sufficiency nor meaningful fiscal savings. They would deepen poverty and worsen the housing affordability crisis.

Alex Schwartz is a professor of urban policy at The New School.

Letter: Questioning Secret Witness' constitutionality

To the community,

I read about a man that Washoe County law enforcement officers are interested in speaking too. This is regarding a case that might be developing into some kind of child abuse case of some kind. There are two points that I want to bring to the public's attention about what I have read about this case that may or may not amount to anything.

First I think it is time that I go public about how the Secret Witness program is being used unconstitutionally. I know that many of you reading this will disagree with me, but what I have to say about the Secret Witness program needs to be said. In our nation's Sixth Amendment there is a clause which is supposed to guarantee us a right to confront all witnesses used against us in a criminal proceeding. Secret Witness is a program run by the local governments that is designed to step around our right to confront a witness against us. It is a clever way that the local governments are violating our right as I describe here.

In the news story I've read, the man sought is not under any criminal charge. Also there has been a statement by the law enforcement authorities that there is not sufficient evidence to charge this man. Yet, the law enforcement authorities are issuing a statement saying, "He should turn himself in."

I believe the facts stated in the news story are clearly describing a case that has not developed sufficiently, or will not at all. In this case, the subject person is being subjected to a clever method of defamation. He is being injured publicly by nothing more than suspicion. But more

importantly, if anyone comes forward saying anything injurious toward this man, that person's identity will not be disclosed. This is where we all should recognize the Sixth Amendment violation where we all have the right to confront our accusers.

As I said, I know that many of you will disagree with me. If you do disagree, let's agree to disagree, and go forward.

I once sat in on a case where Dick Gammick, the Washoe County district attorney at the time, was accused of slandering a former employee named Renee Botello. What had happened was that Mr. Botello objected to the way Dick Gammick had prepped young children prior to prosecutions according to sex cases. A witness on behalf of Mr. Botello testified that the children were shown pornographic magazines and asked suggestive questions regarding body parts. This was done so that the children's testimony would move right in the direction Mr. Gammick wanted. Gammick was leading the children right where he wanted. When Mr. Botello objected, he quit his job, and went looking for other employment. Subsequently, Dick Gammick provided Renee Botello very bad references. Renee Botello sued according to defamation law. Dick Gammick escaped the prosecution through claiming immunity.

That's right, immunity. This case can be looked up. There is no honor among prosecutors. I personally sat in the courtroom and heard some of the testimony.

If you are still paying attention to me, then you will want to know more about immunity for prosecutors. In the late 70s and early 80s criminal prosecutors gained what is called prosecutorial immunity. Sometimes this is referred to as absolute immunity. When a prosecutor is now acting in a capacity of the job, the prosecutor is protected by absolute immunity. This immunity is only denied to a prosecutor when the prosecutor has acted outside of what constitutes their job duties. Even when a prosecutor has acted with malice toward a

person known to be innocent, that still falls within the guidelines of the immunity statute. There was a case where a prosecutor demanded that a person go to church and confess. That did not fall within the guidelines of job duties, and in that case the prosecutor was denied immunity protection.

I've noticed that most people have faith that prosecutors will act with honor. This is not wise to believe. Nor is it wise to believe that secret witness is being used honorably.

Daniel Harvey, South Lake Tahoe

Opinion: Harassment can lead to illegal discrimination

By Elizabeth C. Tippet, The Conversation

Nike's having its #MeToo moment – and it illustrates plainly what's still missing from our discussion of sexual harassment in the workplace.

Women at Nike, fed up with the status quo, recently undertook a covert survey asking about sexual harassment and gender discrimination, which eventually reached the CEO of the world's largest sports brand. Six top executives have resigned or announced their departure.

Nike employees interviewed by the *New York Times* described being marginalized and passed over for promotion. One recounted a supervisor that called her "stupid bitch." Another reported an email from a manager about an employee's breasts. There was the manager who bragged about condoms in his bag and racy magazines on his desk. Oh, and of course there were trips

to strip clubs, tacked on to the end of staff outings.

This happened over a period of years. All the while, human resources sat on its hands. The managers kept their jobs. The complaints piled on.

In some ways, it's the familiar story of how companies have long turned a blind eye to harassment. But it also illustrates, perhaps better than any other example from the #MeToo era, how harassment can be a symptom – and precursor – of workplace discrimination.

And, as I explain in a forthcoming article in the *Minnesota Law Review*, understanding that link is critical for companies hoping to improve upon past mistakes.

Easy vs. hard

The #MeToo movement has rightly brought attention to questions of sexual harassment and assault. The types of cases that result could be divided into two buckets – what in law school we would label “easy cases” and “hard cases.”

One of the first thing students learn in law school is that “easy cases” refer to those in which the facts are really extreme – where a rule clearly applies or it doesn't. Here, that would mean egregious examples of sexual harassment, such as allegations of Matt Lauer's lewd and aggressive behavior toward subordinates.

“Hard cases” refer to situations where it's harder to figure out whether the parties involved have violated the rule. There might be arguments on both sides, and it might be hard to predict how a court would rule. Or – a favored trap on the bar exam – the conduct might seem really bad as a matter of common sense but doesn't meet the technical requirements of the legal rule.

The stories coming out of Nike are the hard cases. They do not

clearly meet the legal standard for workplace harassment.

The problem of not-quite harassment

The law governing workplace harassment is quite unforgiving. The offensive conduct must be so severe or frequent that it creates an abusive working environment. The conduct must also be motivated by the victim's membership in a protected category, like their gender or race.

Some legal scholars have argued courts have been too unforgiving in applying this test and that it should be brought closer to commonsense understandings of harassment.

Lawyers and human resources experts have long known that the legal standard for harassment is incredibly high. So companies worked around it by defining harassment very broadly in their policies. This gave companies the power (but not the obligation) to punish employees for violations of the policy. But pre-#MeToo, it seemed companies chose not to act, even when they had the power to do so.

As we now know, this just-do-nothing ethos was a terrible judgment from a moral and public relations standpoint. And while companies may have been correct that a claim may not have been harassment, legally speaking, they completely overlooked their potential liability for future discrimination claims.

Here's why. A supervisor's derogatory comments about an employee's gender, race or religion may not amount to a harassment claim. But they are a smoking gun in a later discrimination claim.

The discrimination blind spot

Discrimination claims are all about the supervisor's frame of mind when he or she made a decision about an employee promotion, compensation or firing. But since we can't read

someone's mind, the only thing we have to go on is their comments and behavior.

If a supervisor makes objectifying comments about a woman's body and then later denies her a promotion, those comments may later be used to show his decision was biased.

The Nike story offers a great illustration of this principle. A manager who views women primarily in terms of condom consumption is probably not also thinking of them as a potential vice president candidate. Nevertheless, it is unsurprising to me that Nike's human resources department seemingly failed to identify the problem as discrimination when employees complained.

And that's because, in all likelihood, the discrimination had not yet happened. When the woman complained, it probably wasn't yet about a lost promotion, unfair compensation or a termination. It was "just" a comment.

Of course, to the employee, it was never just a comment. She would have been keenly aware that her career was in her supervisor's hands. And that he could no longer be trusted.

This is not really a rare occurrence for women in the U.S. In representative samples, around 25 percent to 40 percent of women report having experienced unwanted sexually based behaviors at work, and 60 percent said they encountered hostile behaviors or comments based on their gender.

It's as though the employee can see the gun and anticipates the bullet to come. But all human resources sees is a weak harassment complaint unworthy of intervention.

A better way

The #MeToo movement has generated discussion around "zero tolerance" harassment policies, containing perhaps the implied threat that even minor transgressions of the policy will be

met with strong punishment.

But because harassment policies already cover the waterfront, they don't really provide meaningful behavioral guidance. A Pew Research study published in March found that half of all adults surveyed thought that #MeToo made it harder for "men to know how to interact with women in the workplace."

I actually think a more sustainable approach – which actually better aligns with a company's true legal risks – would be to beef up anti-discrimination policies.

These policies would explain that supervisors are placed in a special position of trust regarding their subordinates' careers and that supervisors act as the company's proxy in carrying out the employer's duty to provide equal employment opportunities.

When a supervisor engages in low-level harassing behaviors or makes derogatory comments based on an employee's gender, race or religion, it is a breach of that trust.

And it is the company's duty to make it right.

Elizabeth C. Tippet is an associate professor at the school of law, University of Oregon.

Opinion: Inexplicable war on trees

By **Patt Morrison**, Los Angeles Times

Do we ever really pause to think of a tree as its own self? Not as a picturesque forest backdrop to our vacation selfies,

not as lumber for a deck, nor as the makings of a campfire – but a tree as a living thing with billions more of its kind, that, all together, undergird our human existence, and, in fact, make it possible?

No, it's not likely that we do. We treat thousand-year-old groves as if they were last season's growth of Christmas trees. We guard our money, we put alarms on our cars, but for the forests that clean the air and enrich the soil, we just mow them down like so much field corn. We post no guards on old-growth woods, and so timber cartels simply hack down and steal trees that are older than the printed word, cut them up and sell them for millions of dollars on a black market for rare wood, like illegal weapons or poached ivory.

Richard Powers lived among the trees for his new novel, "The Overstory." It sets the scale of human life against the magnificence of our arboreal heritage, with characters who come to think "arborescently" about trees as fellow creatures who can be the saving of humanity; but first, we have to save them.

Read the whole story

Opinion: Calif. democracy is like a Wendy's in Colton

By Joe Mathews

One recent Sunday night, I stopped by a Wendy's in Colton, a gritty San Bernardino County city. I wasn't there to grab a square hamburger and a Frosty, but rather to glimpse the struggles of California's peculiar system of democracy.

California's governance might seem to emanate from the marble halls of Sacramento. But if you want to see how our state really treats democracy—as fast food, with laws and amendments being rapidly cooked, distributed, and fed to us—then you should get to Wendy's.



Joe Mathews

The people there were professional petition circulators, who have been gathering signatures to qualify initiatives for California's November ballot. They are important because of California's democratic laziness. Our state could address its biggest problems through painstaking collaboration and negotiation in the state legislature. But we Californians prefer the speed of direct democracy, with rich people paying circulators to put measures to voters who cast judgment with little thought.

Because we lean so heavily on direct democracy, we end up leaning too heavily on circulators like the folks at Wendy's. Yes, initiatives are dreamed up, and campaigns plotted, by powerful people in beautiful California places, like billionaire Tom Steyer's ranch on the San Mateo County coast.

But the people who do the work of turning our overlords' dreamiest notions into reality work the streets, and retreat to Wendy's for its air conditioning, free Wi-Fi, and cheap eats. Twice a week, the regional petition coordinator does a fast-food tour to meet circulators, hitting Wendy's, Lake Elsinore's Starbucks, Menifee's Jack In the Box, and the Corona Carl's Jr.

Paid petition circulators have been part of the initiative process for more than a century. But recently, the system has shown new strains that could further weaken our democracy.

First blame Gov. Jerry Brown and the Democrats for requiring all initiatives to appear only on November ballots, when Democratic turnout is high. Previously, initiatives were spread out over different elections; now all the initiatives circulate at the same time.

This creates greater demand for circulators even as the aging workforce shrinks. California's cost of living has pushed younger circulators to cheaper states with direct democracy, like Colorado and Washington.

Worse, the number of places where circulators can work is shrinking. Longstanding legal precedents give petitioners the right to work in malls and outside stores, but many groceries and retailers ban circulators anyway and dare circulators to sue, knowing they can't afford to pursue cases in the state's clogged courts.

Circulators must be inventive. Some play cat-and-mouse games with the stores and the cops. Others work door-to-door. A few are trying gas stations, where drivers are more likely to be registered voters.

But in fact, no place is really safe for petitions anymore. Californians are so angry about politics that fewer will stop and sign. Voter behavior is worst in our richest places ("I only send circulators to Beverly Hills as punishment," one coordinator says), so circulators increasingly work poor places, where people are less rude.

"I'm in Chowchilla," Arenza Thigpen Jr., president of an international association of signature gatherers, told me by phone from the Madera County town. "They have an amazing group of people here, and it's pretty much untouched territory."

These trends in time, labor, and space have sent the price of a signature soaring, further restricting access to the ballot to the very richest. A decade ago, it might cost \$1 million to qualify a measure statewide; today, the price tag approaches \$5 million.

There are ways to make the process less costly and more democratic. The state could establish a citizens' commission to study regular people's suggested initiatives and put the best ones on the ballot, instead of requiring costly petitions. Or the state could give proponents much more time to gather signatures—two years, for example, instead of the current six months. But state officials refuse to entertain such ideas, because they threaten the power of the wealthy people and interests who control ballot access.

On the Sunday night I visited, the circulators signed up on a list scrawled on the back of a Wendy's receipt, waiting to submit signatures and get paid. Since there's not enough time to verify all the signatures at the restaurant, the circulators receive an advance based on the coordinators' best estimates of how many of their signatures are valid. If the validity ultimately proves to be too low when petition companies check, circulators can be forced to give back some of the advance. These refunds are called "chargebacks," and they are dreaded.

The circulators spend 40 minutes checking petitions to make sure everything is filled in (some counties void even valid signatures because of minor technical mistakes with petitions). They also gossip about a circulator having her labor induced the day after the final turn-in.

So ends another trying season of California democracy.

Joe Mathews writes the Connecting California column for Zócalo Public Square.