

BAR BULLETIN

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THE
Breaking Free Issue

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New Agency Takes Shape to Investigate Fatal Police Encounters

**By Roger Rogoff, Director,
Washington State Office of
Independent Investigations**

Washington is poised to be a national leader in police reform, initiating the first truly independent statewide agency to conduct civilian-led investigations of police use of deadly force in the country — an agency unconnected to any police department or prosecutor's office. It is both an honor and a privilege that Governor Jay Inslee appointed me as the first director to lead this new agency. The role is one that I accept with humility, where I

acknowledge that a daunting journey is ahead. I am beyond excited to take this responsibility.

Nationwide, the message has been clear that change is needed, prompted by the tragic deaths of George Floyd, Manual Ellis, Breonna Taylor and many others. In 2021, Governor Inslee signed into law a bill creating the Washington State Office of Independent Investigations (OII). The office, unconnected to any existing law enforcement agency, is a critically important piece in establishing trust between police, impacted communities, and the justice system.

As the first director of OII, I intend to lead an office of dedicated, experienced professionals who know how to thoughtfully and effectively conduct investigations into police use of deadly force. If these investigations are done competently, transparently, and without police agency involvement, it will improve accountability for law enforcement officers and help rebuild trust and confidence in the officers who serve our communities.

Following the enactment of OII, the Governor's office created a small transition team from different agencies

and subject matter experts. The team has been busy pulling together the nuts and bolts of building OII from scratch, everything from locating office space in Olympia for a headquarters to drafting the dozens of administrative and investigative policies needed to manage the agency's work.

This past November, Governor Inslee appointed 11 members to the OII Advisory Board. The Advisory Board includes a diverse array of community

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Breaking Free with Bike Commuting

By Bob Anderton

The theme of this month's issue is Breaking Free. One positive aspect of the global pandemic, at least some people, was working from home and "breaking free" of office environments. If you've recently returned to your office, perhaps you've noticed how much of your day is spent stuck in your car while commuting.

Wouldn't you like to break free of *that*? Especially in Seattle, nevermind the inherent environmental destruction of driving . . . traffic is terrible, parking is expensive, and gas and vehicle maintenance costs come out of your own pocket.

Buses and trains are a great way to multi-task while you get to where

you need to go, but fewer people have been using these options since the pandemic. Plus, at best, these operate on a schedule. What if your own schedule varies? What if you don't live or work near an efficient public transit option? Does that mean you need to drive? Car and truck advertisements almost always extoll freedom, but the reality is that if everyone drives, no one moves.

You've probably heard the saying, "if you aren't the lead dog, the view is always the same." Perhaps it's time to BREAK FREE of the traffic jams and move to the head of the pack by becoming a bike commuter? *This is your invitation to join me in commuting to work.*

I've been a daily bike commuter for more than two decades. I live in West

Seattle and work in Pioneer Square. I can't imagine driving to work. On a bike I can leave when I am ready to go, the ride is refreshing, and parking is always free. The West Seattle Bridge has been closed since March of 2020 but my commute along the physically separated bike path over the West Seattle low bridge has not changed a bit, except that I now see more people riding on it.

Let's consider the main reasons people say they don't commute by bike and see if they hold up.

Hills

Yes, we have hills here, but that shouldn't stop anyone from riding. Hills are great to ride down, though they are admittedly harder to ride up. Bikes with

multiple gears are a necessity here for all but the most fit. And if fitness isn't your thing (or even if it is) an ebike can greatly reduce or even eliminate the extra effort of hill climbing.

Cost

The personal cost to buy, fuel, maintain, and park almost any car is many times higher than that for a bike. Much of the true costs of car use are externalized.¹ While driving imposes costs on society, riding a bike conveys benefits to society.²

Let's focus on personal costs. Ebikes cost anywhere from under \$1,000 to

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over \$10,000. Geared bikes can be found new for under \$100, but a quality human-powered bike will likely cost at least \$500. Used bikes can be found for less, but there has been a shortage of bikes since the pandemic and used bike prices have gone up considerably. It's difficult now to find a decent used bike for under \$300.

Get a good bike. You won't regret it. If you are really replacing car trips with a bike, your personal savings can quickly pay for a better bike.

Kids and Errands

What if you need to transport children or pick up groceries or other big items? Family Bikes, or what are more often called Cargo Bikes, can transport more than you might think.

They come in two main forms: longtails, which are stretched with more room for cargo or passengers in the rear; and bakfiets (Dutch for "box bikes"), which have a low section in the middle behind the front wheel, often with custom boxes for people or cargo.

While these bikes can be fully-human-powered, they are heavy and our hills almost mandate an e-assist. Family ebikes can be found new for about \$2,000 and up. While that may sound like a lot to pay for a toy, these bikes are not toys. Cargo bikes can replace many trips that would otherwise be done by car and can quickly pay for themselves.

Rain

This is more of an issue at other times of the year, but rain doesn't need to prevent you from riding. Bikes with disc brakes stop far better in the rain than those with rim brakes. So, if you are going to be an everyday commuter and your bike doesn't have disc brakes, consider getting a new bike. Fenders are nice too.



Some people wear bike-specific clothes and don't care if they get wet, they just change at their destinations. Personally, I prefer wearing a raincoat over my regular clothes, plus bike-specific rain pants and booties.

You can get rain pants that are tight, but there are also looser ones that fit over most any pants. All bike rain pants seem to direct water into your shoes, regardless of whether they are waterproof. It was years before I realized that booties for bike shoes can be worn over regular shoes and work great. Others swear by ponchos or rain capes that mostly cover your legs.

Invest in the rainwear that works for you and don't worry about rain.

Darkness

Again, this is more of a winter issue for commuting, unless you are riding at night. Washington law only requires a front light and a rear reflector,³ but it's prudent to have lights that can be seen from every direction, and which allow you to see in the direction you are riding.

In the winter, in addition to my bike lights, I switch helmets and use one with front and rear lights. This not only al-

lows me to see better by lighting where I look but also helps drivers see me. In fact, I can usually see if drivers see me as my helmet light illuminates their faces (which are too often staring down at their phones until they "see the light").

Drivers

Speaking of drivers, inattentive drivers have been an increasing menace as cell phones became ubiquitous, and we've seen more aggressive driving since the beginning of the pandemic, particularly speeding. Unfortunately, there is not much a bike commuter can do about dangerous drivers. I occasionally try to speak with drivers who have almost run me down, but rarely does this result in a teachable moment.

Probably the best advice I've heard on how to stay safe came from a bike messenger who simply assumed that drivers never saw them and even claimed that they did not want to be seen. While I don't agree with the last part, I do think it's prudent to assume that drivers are not paying attention and will not follow the rules of the road.

Once you are a regular bike commuter you will start to know where the

most dangerous spots on your commute are. For instance, there is a 4-way stop on my commute at the peak of a steep hill where no one can see anyone else approaching and yet I know that drivers rarely stop there. I use the sidewalk there to avoid this intersection altogether.

In Seattle it is legal to ride bikes on sidewalks so long as you yield to pedestrians and provide an audible signal when approaching from the rear.⁴ Many riders say, "on your left," but in my experience this phrase can be confusing, and people sometimes react by abruptly moving left. I prefer simply using a bell as I approach and saying "excuse me" or "good morning" when I pass.

Infrastructure and Law

Infrastructure should be designed to keep people safe. Ideally, we would have connected and protected infrastructure that would make bicycling feel safe for all ages and abilities so that more people would see how great it is to get around by bike.

Vision Zero is an international movement that began in Sweden in 1997 that is intended to change the assumption in transportation planning that serious injuries and deaths from traffic violence are inevitable to the belief that serious injuries and deaths are preventable.

Under Vision Zero, the transportation system should be designed to prevent serious injuries and deaths for all users. "Vision Zero recognizes that people will sometimes make mistakes, so the road system and related policies should be designed to ensure those inevitable mistakes do not result in severe injuries or fatalities. This means that system designers and policymakers are expected to improve the roadway environment, policies (such as speed management), and other related systems to

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lessen the severity of crashes.”⁵

Washington became the first state in the U.S. to adopt a Vision Zero Policy in 2000, calling it Target Zero. King County established a Target Zero Task Force in 1998. Seattle adopted a Vision Zero Plan in 2015. All these jurisdictions share the goal of ending traffic deaths and serious injuries by 2030.

Unfortunately, despite this target and vision, not only have deaths among people walking or rolling on our local roads not been eliminated, they’ve actually gone up.⁶ Allison Schwartz, the Vision Zero coordinator for the Seattle Department of Transportation admitted earlier this year, “Fatalities are headed in the wrong direction — not toward zero; so it’s not going as good as we would like it to.”⁷

Washington is currently ranked the third best state by the League of American Bicyclists — which sounds pretty good unless you know it was ranked number one from 2008 through 2019.⁸

Seattle is our state’s top-rated community, with a Gold rating from the League.⁹ According to its 2016 rating report card, “Seattle has a less extensive bicycle network than peer communities . . . There are some great efforts to address this through the proposed downtown bicycle network and continued improvements to neighborhood greenways.”¹⁰ The report card said that Seattle should “Work to quickly implement connected networks of these higher quality bicycle facilities in order to provide a functional, safe, and comfortable network.”¹¹ Unfortunately, six years later Seattle has still not completed its downtown network plan.

Seattle City Councilmember Tammy Morales recently noted, “We have to fundamentally change how we think about transportation in this city if we want to meet our Vision Zero goals.”¹² We need to build safer infrastructure

for moving people, not just cars, and we need to build enough of it to connect to where people need to go. Improved bicycle infrastructure would increase people riding and decrease people driving, which would then benefit those still driving since fewer cars would be stuck in traffic.

Until then, if you are bike commuting among cars, keep an eye out for the three main causes of crashes: left hooks, where an oncoming car turns in front of you; right hooks, where a car passes you then turns right and cuts you off, and doorings, where a car door opens and causes a crash.

Another way to increase safety for people rolling or walking would be to legislate a presumption of civil liability against drivers who collide with people outside of cars, since drivers have the most ability to prevent such crashes.¹³

Strict liability, which I wrote about in the *Bar Bulletin* more than a decade ago, is the norm in countries where bicycling and walking are safer.¹⁴ Presumed liability is less absolute but would still protect people. Unlike strict liability, presumed liability could allow drivers (and practically speaking, their insurers) to prove a crash was caused by a person outside a car. In the United States we have a de facto presumption of non-liability. Police reports typically repeat what drivers say at the scene, which is almost always the same: “the bicyclist came out of nowhere.”

While there is much more to be done legally and physically, one positive sign is that more people are riding bikes in Seattle¹⁵ and across the country.¹⁶ Multiple studies suggest that more people riding bikes results in safer roads.¹⁷ This makes sense in that, as drivers expect to see more people riding, they pay better attention and avoid crashes. However, a more recent study found that the key factor for safety is not the number of people on bikes, but the number of bike facilities such as protected bike lanes.¹⁸ We need to

build more protected and connected places to ride.

In the movie “Field of Dreams” a farmer hears voices telling him, “If you build it, they will come” and builds a baseball field in a cornfield. Not only did that work in the movie, it works in reality. “Studies from cities across North America show that adding protected bike lanes significantly increases bike ridership on those streets, with rates ranging from 21% to 171%.”¹⁹

Concern for safe routes remains the biggest barrier for most would-be commuters.²⁰ Nevertheless, Seattle has failed to build sufficient protected and connected bike infrastructure. Even if leaders like Tammy Morales have the will to build the infrastructure Vision Zero requires, these improvements will take time. This is why Washington Bike Law continues to advocate for legal changes that can make our roads safer as soon as they are enacted.

Meanwhile, if you want to build your confidence before committing to regular bike commuting, Cascade Bicycle Club offers multiple riding classes for adults²¹ and groups like Seattle Neighborhood Greenways²² and Seattle Bike Train²³ can help you find the safest routes for your commute. ■

Bob Anderton is the founding attorney at Washington Bike Law and was the Bar Bulletin editor from 2001 to 2005. Bob also serves on the board of Seattle Neighborhood Greenways. Washington Bike Law has a Platinum Bike Friendly Business rating from the League of American Bicyclists.

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