THE ADVOCATE

Santa Clara University School of Law

School of Law Newspaper Since 1970 | Saturday, November 11, 2017 | Volume 48 Issue 2

Will the Equifax Breach Prompt Nationwide Notification Legislation?

By Gerald Jones
For The Advocate

The recent 2017 Equifax breach occurred in May, was discovered in July, but not made public until September. The breach exposed the data of 143 million Americans. Over 40 days passed between Equifax's purported knowledge of the breach and its notification to the public. But why the delay? Some speculated that upper-management was too busy dumping company stock or crafting a public relations campaign to "control the narrative." Less cynical believed the company was working toward understanding the magnitude of the breach and undertaking precautions to guard against future attacks. Whatever the reason, Equifax was at liberty to notify the public at its own discretion, because there is no federal law requiring Equifax to notify the public of a breach."

Equifax headquarters in Atlanta, Georgia

Currently, there are only state statutes and sectoral standards for breach notification. These statutes provide institutions engaging in data collection with obligations regulating the "who, what, when, where, why, and how" to notify the public after a breach occurs. In fact, 48 states have varying breach notification statutes. Thus, a company like Equifax would have to tailor its breach notification message to the forum in which it does business. On the other hand, some institutions are bound to sectoral notification obligations. For example, educational institutions are bound by FERPA law protections. The inconsistency in the varying state statutes has led to frequent calls for a national standard. Yet, there remains no national standard.

The cry for national legislation following a massive breach is not a unique proposal. In fact, it happens quite often and is a non-partisan issue (after all, everyone may be vulnerable to having their information compromised). In an email exchange with Lisa Sotto, partner at Hunton & Williams LLP in New York and widely heralded as the nation's top privacy lawyer, she stated, "there have been many attempts to enact federal, preemptive data breach notification law, [they] have consistently failed, year after year." Sotto cites that the "states are intent on retaining their authority in this area, and the variations in state law are important to state attorney generals in holding companies' feet to the fire with respect to their state residents."

Professor Dorothy Glancy of Santa Clara Law, who specializes in privacy and transportation work, stated that the "only introduced legislation in this congress seems to be the Personal Data

See Page 2 **"Equifax Breach Notification Legislation"**

Leveling the Playing Field for Part-Time Students

By Kevin Lee
SBA Vice-President of Part-Time Students
For The Advocate

Imagine you and your friend go to your favorite steak house. You each decide to order the same rib eye steak for $30. But your money gets you the steak and the steak only, and your friend's money gets them the steak with two sides and a desert. This disparity in what students get for their tuition impacts many of the evening students, especially when it comes to getting access to the law school organizations.

The evening students come from all walks of life. Most of them have a full-time job before they come to school every day. It is also not uncommon to see many evening students holding a second job or raising their own family. But one thing evening students have in common with day time students is that they are going to law school to further their career.

A common myth that needs to be debunked is that most of the evening students are engineers/patent agents and therefore probably have a job lined up. While there are plenty of patent agents, there are just as many people with completely opposite professions. Even if a student were a patent agent, there is no guarantee they are staying where they are. For example, a 3L this year was working at a firm as a patent agent for quite some time. But he discovered that if he wanted to do litigation work, he had to work in their Texas office. So this year, he participated in OCI's and was able to secure a new job. Therefore, in reality, engineering major or not, evening students are doing as much job hunting as day students.

While career services is one way of helping evening students, LSO participation is another rich opportunity that can be just as helpful. LSOs play a significant role at SCU Law. They provide students access to valuable career advice by inviting alumni and other practicing attorneys. They also help students get through the grind of law school by providing something as simple as outline banks to help students with their classes. However, getting access to these materials has been extremely difficult for evening students even though they have just as much right to such material because their tuition dollars, via the SBA, support the LSOs. Even if an LSO isn't using SBA funds, it is using the law school as its forum and therefore can't pick and choose who they wish to represent.

However, rather than just voicing the concerns of the evening students regarding the LSOs, new steps are being taken in hopes of leveling the playing field. The SBA has asked LSOs to start taking questions on behalf of evening students that can't attend. So far, a good number of LSOs have encouraged evening students to ask questions if they can't attend. For example, Black Law Student Association and Jewish Law Student Association recently held a panel that discussed what happened in Charlottesville. In their email, they encouraged evening students who can't attend the event to submit questions that will be asked by the LSO on the writer's behalf. The journals have also made great strides in including evening students in their emails. The goal for next semester is to build upon this semester's progress and have LSOs start recording the events, and if that is not possible, have LSOs provide a thorough report of the event.

Progress is not made overnight, but hopefully in the years to come, LSOs will continue to find creative ways to include evening students. By leveling the playing field, the only thing that will separate evening students from day students is the time of day they attend class.

Equifax Breach Notification Legislation

Notification and Protection Act of 2017, HR 3806." The Legislation was introduced by Jim Lagnevin (D-RI). Glancy calls the resolution, "the same legislation that failed to be enacted by last congress." Sotto says it is "possible that the [Equifax] breach may prompt agreement on a federal standard," but echoes "other cataclysmic data breaches that have not had this effect" such as the 2006 Veterans Affairs breach which affected over 26 million veterans.

However, the United States may be content with waiting to see how such a standard plays out in the European Union. Beginning in May 2018, the EU's General Data Protection Regulation (GDPR) takes effect. According to Sotto, the GDPR will include "a uniform breach notification standard that will require notice to the relevant supervisory authority within 72 hours of becoming aware of the breach." The GDPR may serve as a model for the U.S.; further, it may allow insight into tough questions, such as whether immediate notification mitigates harm to affected consumers. Still, immediate notification could cause more harm to the company or entity disclosing the breach. "Requiring quick notification at the expense of a thorough investigation is highly problematic. Companies are now incentivized to push out notification quickly, without regard to the accuracy of the communication. Often resulting in multiple rounds of communications, to the detriment of consumers who end up suffering through multiple rounds of anxiety [relating] to a single breach," says Sotto.

Though hastily disseminating messages regarding the breach may do damage, Eric Goldman, professor at Santa Clara Law and Co-director of the law school's High Tech Law Institute, questions the cost-benefit of data breach laws. Goldman states that consumers have little redress once they are notified: "As a result, the data breach notification laws communicate unsettling information to consumers, but they can't really take many steps to redress those concerns." Glancy added, "that eventual notification is better for consumers than never knowing about it. But given the speed that exposed personal information is apparently picked up by actors, it may be difficult for a company to notify customers before the personal information gets into the wrong hands." In fact, the Federal Trade Commission, the agency bearing most responsibility for enforcing the nation's privacy laws, reported in May that it takes about nine minutes for hackers who obtain access to data to start using such data for illicit purposes.

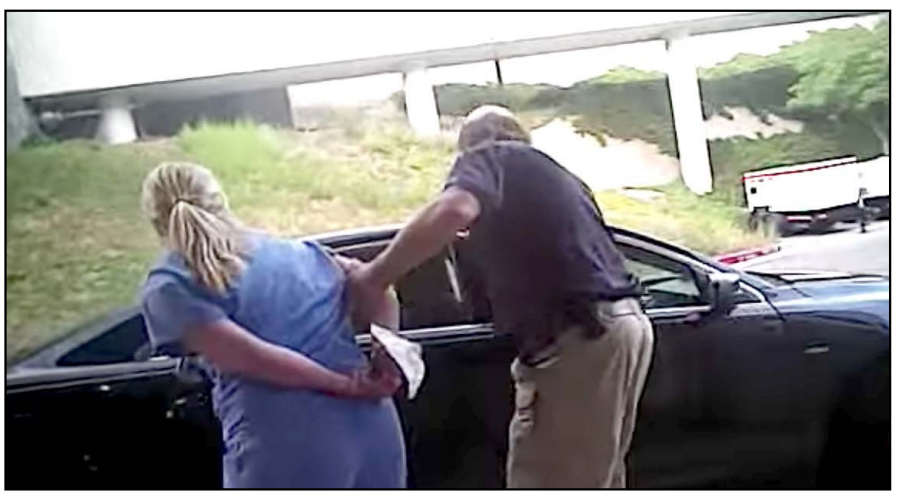
Whether the Equifax breach is a catalyst for enacting national legislation remains to be seen. The GDPR may provide guidance, but one thing is inevitable—the occurrence of data breaches. As mass scale data breaches become more prevalent, the country may have to reconsider the entire idea of big data and collection, and how we conduct online transactions. If political action is slow, we may look to emerging technologies to solve these problems. For now, we the consumers, are left with a patch-worked notification framework with very little redress (and grave personal consequences).

Nurse Wubbels and the Relationship Between Patient and Healthcare Provider

By Kerry Duncan
Senior Editor

On July 26, 2017, nurse Alex Wubbels was arrested and dragged out of a hospital by Detective Jeff Payne in Utah. This altercation occurred when the nurse refused to draw blood (citing hospital policy) for a blood alcohol test on an unconscious accident patient. The patient was brought in unconscious after being injured in a car crash. He had been driving a semi truck and was hit head on by a suspect fleeing the police. Frustrated by the nurse's response, Detective Jeff Payne dragged Alex Wubbels out of the hospital, placed her in handcuffs, and seated her in the back of an unmarked police vehicle. After the news broke on this story, Jeff Payne was fired from his part time paramedic job as well as from the Salt Lake City Utah Police Department. And his superior, James Tracy, was demoted two ranks from lieutenant to police officer for ordering the arrest of Wubbels.

The media storm that followed this altercation speaks to the complicated relationship between healthcare and the law. The relationship with doctor, nurse, and patient is protective, which is readily apparent from doctor patient confidentiality. Doctors cannot be forced to give out information about their patients without a warrant, and a similar rule exists for nurses and other hospital personnel under the Health Insurance Portability and Accountability Act (HIPAA), which mandates that health information be protected. These guarantees of privacy are important to ensure that patients will share information with their care team that can be vital in determining diagnosis and proper treatment. These safeguards are there to help patients feel protected so that they will seek healthcare when it is needed instead of being afraid that they will get in trouble or be publicly embarrassed when they come in for medical attention. The fact that this relationship was strained by a police officer when he tried to insert himself into the relationship is one of the reasons this story took off.


Nurse Alex Wubbels placed under arrest by Utah Detective Jeff Payne

Another striking factor was that Alex Wubbels' polite refusal to draw blood was not only required by hospital policy, but also by the law. If she had deferred to the officer's judgement and drawn blood to test for alcohol content, the nurse and hospital would have committed a medical battery and the officer would have violated the patient's constitutional rights. Without gaining the consent of the unconscious patient (who was not under arrest) for a non emergency related test, they would have committed a battery. While this might seem trivial, for surely the hospital had drawn blood to determine his condition or provided other treatment during the patient's unconscious state, there is a difference. Those procedures and treatment were done in an emergency to stabilize and treat the patient. There is an assumption that when you are unable to provide consent, if you had been awake you would have consented to life saving measures. The request for a blood draw to determine blood alcohol content does not go toward saving the patient in an emergency, and would require consent. The need to obtain consent protects all patients. If you are going under anesthesia for a surgery, you want to understand what will be done to you and be assured that nothing will happen to you that you don't want while you are unconscious. In this situation, the patient was unconscious and police could not obtain consent without a court order or the patient's arrest. So, the officer would have violated the patient's fourth amendment rights by drawing his blood without permission.

The legal protections that are in place to safeguard patients in healthcare facilities are important. They guarantee that patients feel comfortable and safe when they are most vulnerable. Hopefully, the outcry that followed the arrest of Nurse Wubbels will encourage law enforcement agencies to respect the relationship between healthcare providers and patients.

Gun Control: The Right and Left Find Middle Ground

By Katie McCallum
Staff Writer

Five months ago, my coworker was shot. Just before 8:00 a.m. on June 15, I received this text: "Everyone is ok. Zack was shot in the leg but is fine." Shortly thereafter, I learned that my coworker and boss were injured by a shooting at a congressional baseball practice. I had previously been aware of the heightened frequency of mass shootings in the U.S., but our staff of 9 was quickly exposed to the resounding shock that only a tragedy of this sort could produce. On that day, like October 1 in Las Vegas, the shooter did not survive. In the wake of the shooter's absence, the victims, their families, and their friends are left to suffer the aftermath. While the gravity of the situation sets in, questions concerning the laws and regulations of guns in our country come flowing in.

Of the innumerable questions raised, the majority often boil down to, "as a country, what should we do?" Historically, Democrats have insisted that gun ownership be restricted. Across the aisle, Republicans have firmly stood their ground, asserting that the right to bear arms is a tradition older than the United States itself. In the face of reformative Democrats, the Republican party contends that the legality of gun possession is a non-negotiable right. Most recently, however, there has been an agreement of sorts. Senate Majority Whip John Cornyn (R-TX) has agreed that it is time to hold hearings regarding some new issues. The Republicans and Democrats have reached possible common ground on one component of their long-standing gun control feud — the technology the allows semi-automatic weapons to function more like automatic weapons.

In 2010, Slide Fire pitched an idea to help individuals with disabilities "bump fire." Seven years later, these Slide Fire devices came into the spotlight after hundreds were injured at the hands of Stephen Paddock and his 12 assisting bump stocks. That tragedy proved that bump stocks, Slide Fire, and other similar inventions can be used to carry out mass killings more easily and on a larger scale than previously seen. These devices are inexpensive and accessible since they are still legal in most states, although banned in California. They remained legal after a 2010 determination letter from the Bureau of Alcohol, Tobacco, Firearms and Explosives deemed the device to fall outside the scope of the federal ban on machine guns. Bump stocks do not actually alter the firearm but rather allow the shooter to pull the trigger faster as the gun "bumps" against their shoulder. Because of this new technology, the federal laws meant to limit the use of machine guns are less applicable.

Senator Dianne Feinstein proposes legislation to prohibit bump fire stocks
Photo by Chip Somodevilla/Getty Images

There is currently no federal legislation regarding bump stocks specifically. Senator Dianne Feinstein (D-CA) has recently introduced legislation, The Automatic Gunfire Prevention Act, that could restrict the manufacture of such accessories. The Act may ban any "accessory that is designed or functions to accelerate the rate of fire of a semiautomatic rifle but not convert the semiautomatic rifle into a machine gun." Both the National Rifle Association and The White House have admitted that the idea of banning such accessories must be examined. To date, there is no formal Republican support on the bill because some are concerned the bill will create a slippery gun control slope. But several Republican representatives have expressed an open mind regarding bump stock legislation; these members include House Speaker Paul Ryan (R-Wisc.), Rep. Bill Flores (R-TX), Senator Marco Rubio (R-FL), and several others.

If the parties can come together on this issue, the future of mass shootings is likely to change. The hope is that with the ban of bump stocks, mass shootings such as the one in Las Vegas, will not happen again. Regardless of whether legislation does or does not arise from this debate, one thing is for sure: the addition of "bump stocks" in the political conversation has inspired a new debate about an old dispute.

Perseverance to Achieve Justice

By Jessie Reeves
Senior Staff Writer

The prospect of serving decades in prison can convince even the most righteous person to take a plea bargain. This is the impossible decision that one California man was forced to make in 1993. Ed Easley was arrested after his girlfriend's seven-year old niece, Nichole, told police that he molested her. After hearing the niece's testimony at the preliminary hearing, counsel for Mr. Easley advised him that he was facing 35 years in prison if he was convicted. Knowing that the odds of being acquitted were against him, Easley decided to take a 10-year plea bargain.

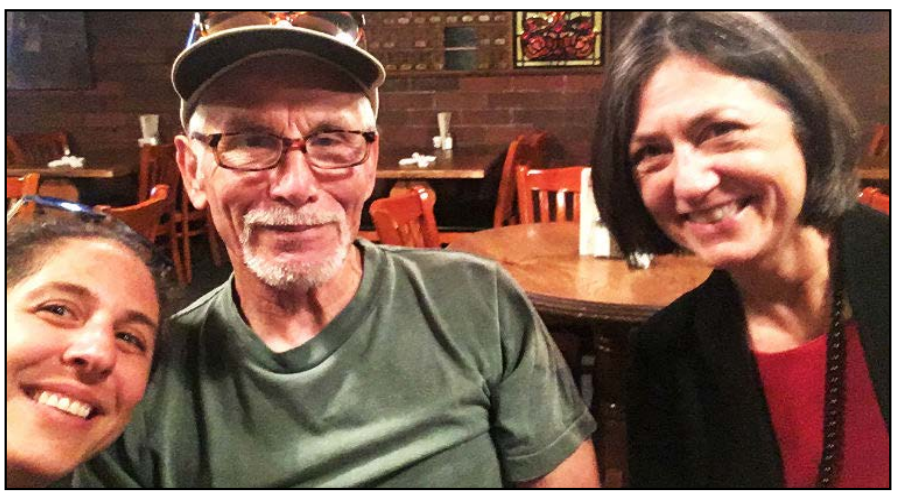
After serving 5 years, he was released on parole. Despite being unable to obtain a job or find housing due to his status as a sex offender, he attempted to move on with his life. While on parole, Easley found out that Nichole had recanted her accusation in 1996 and was adamant that he should be exonerated. It was at this time that he sought help from the Northern California Innocence Project. NCIP filed writs of habeas corpus on behalf of Mr. Easley, eventually reaching the California Supreme Court. While the petition was denied because Easley was no longer in custody, and therefore did not have legal standing to file such a petition, this ruling did not deter NCIP from fighting to obtain justice on Mr. Easley's behalf.

In the fall of 2016, NCIP supported two bills that went before the California Legislature. The first allowed people who are no longer in custody to challenge wrongful convictions, and the second urged the legislature to change the standard of evidence that was required to present a claim of actual innocence. The original standard was that the evidence had to "point unerringly to innocence," which is virtually impossible to overcome. The proposed standard was that the evidence would "more likely than not have impacted the outcome of the trial." Both bills were enacted by the California Legislature on January 1, 2017.

Then, for the sixth time in seven years, NCIP petitioned the court to overturn Mr. Easley's conviction. After a new hearing, the conviction was vacated. The attorneys and students who worked on the case were overcome with relief. NCIP co-counsel Paige Kaneb said "It took 24 years, but the truth finally came out." One student said that after she received word that Mr. Easley was finally exonerated, she was "ecstatic." Like many of the attorneys and students who worked on this case, she worried it would be long and drawn out. "It is great to hear, even after I have finished law school, that the work I did helped at least one wrongfully convicted person, and that Mr. Easley can now truly move forward with his life."

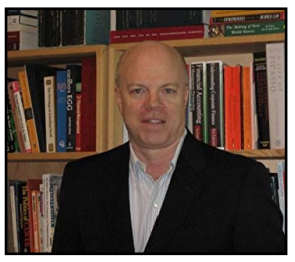
Perseverance is critical in the clinical work that is performed at Santa Clara Law. While the wheels of justice may turn slowly at times, it is the unwavering determination and work of attorneys and students that make outcomes like this possible.

Never confuse a single defeat with a final defeat.
– F. Scott Fitzgerald



Ed Easley, center, pictured with the Northern California Innocence Project (NCIP) lawyers

Office Hours Unwound



Stephen F. Diamond
Associate Professor of Law

Education:
J.D., Yale Law School, Symposium Editor, Yale Law Journal

Ph.D., Political Science, University of London (Birkbeck College), MacArthur Fellow in International Peace and Security

B.A., Development Studies, University of California, Berkeley, Phi Beta Kappa

Currently Teaching:
Securities Regulation
Corporate Finance

1.What is your top source (news / journal / legal blog / other) for keeping current with the law?
The Business Law section of the California Bar sends out a daily email called Newsstand with news links on key developments in a range of areas. You can program it to send you materials you are interested in. It's a great way to stay up to date on corporate law, securities law and other fields.

2. What do you consider to be the most important development in your field or the legal profession in general over the last 5 years?
Probably the JOBS Act which, sadly, weakened our securities laws and has opened the door to further weakening of protections for investors.

3. If you could go back in time, what advice would you give to yourself in law school?
Take advantage of the opportunities offered by building closer relationships with faculty and fellow students. It is surprising how those can benefit your career and your life generally over a long period of time.

4. Who is someone you admire, and why?
Thich Nhat Hanh, the Zen Buddhist monk, is a hero of mine. He turned 91 this past week. He was a leader of the independent Buddhist movement that opposed both the North Vietnamese invasion of the south and American intervention in Vietnam. Martin Luther King nominated him for the Nobel Peace Prize in 1967. A new documentary about his form of "engaged Buddhism" is now out called Walk With Me. My wife and I hosted its south bay premiere recently. It was an incredibly moving experience.

5. Do you have any book recommendations?
I re-read *Mariners, Renegades and Castaways* by C.L.R. James this past summer. It's an older book, written in the 1950s at the height of the McCarthy era by a leading black leftist who was interned on Ellis Island prior to being deported from the US. James re-examines Herman Melville's *Moby Dick* as a tribute to diversity and inclusion in American life. It is a remarkable work and amazingly relevant to the issues facing the country today.

6. What was a memorable experience in your legal career?
Although I am trained as a transactional lawyer by far my most moving experience was representing a survivor of the Golden Venture tragedy. The GV was a ship carrying refugees fleeing political persecution in China. The ship was operated by a violent gang and a fight broke out among the crew in the open ocean after it had carried hundreds of people from China all the way to the coast off New York city. The ship washed aground a hundred yards off shore in New York. Ten people drowned trying to make it to shore in the middle of the night. As a summer associate I worked with a team of lawyers from Latham & Watkins to represent one of the survivors who was interned in an INS (now ICE) jail. When I came back to the firm as a first year associate I worked on the appellate arguments to the Second Circuit. The narrow issue I worked on was argued at the court (not by me) but my position was rejected in the opinion. We then turned to a political solution and after three years our client, along with many other survivors, was released from jail and granted political asylum in the US.

7. What is your favorite restaurant in the bay area?
Chez TJ in Mountain View is one of our favorites! We got married there and it's a great place for a celebratory dinner. Unfortunately it is likely to shut down soon after many years of turning out great chefs and meals.

8. What do you enjoy most about being a law school professor?
As challenging as the legal environment has been over the last few years it remains a wonderful experience to interact with students in the classroom and office hours. I suppose that's a cliche but there is nothing more exciting or rewarding than having that kind of intellectual exchange.

9. What is a subject (legal or non-legal) you would like to learn more about?
Strangely, I have become very interested recently in the American Civil War. I grew up in Illinois with a multi-volume biography of Lincoln by Carl Sandburg alongside a bust of Lincoln on our bookshelves so you would think I would already understand that event. But it is far more complex and compelling than it first appears and it remains critical to understanding our modern evolution as a country. It also had, in obvious and not so obvious ways, a very significant impact on our legal institutions.

10. How do you unwind?
Running and yoga are great but hanging out with my son who is hilarious and maddening at the same time makes those things we all take too seriously seem much less worrisome. I highly recommend parenthood.

---

1. What is your top source (news / journal / legal blog / other) for keeping current with the law?
I work in the realm of Family law and in particular, Domestic Violence law, and I'm part of a multidisciplinary community here in Santa Clara County. To me, keeping current means learning as much as I can about the issues this community experiences. Through attending interdisciplinary conferences or trainings, or collaborative meetings with colleagues including law enforcement, mental health, community-based organizations and court personnel, I tune into the legal topics my community is facing. Issues include access to justice, lethality assessment, implicit bias, firearms relinquishment, strangulation, expanding definitions of DV from social science and how that affects law, and many others. This field is evolving constantly so working within it exposes the areas where I need to learn more, and for that I look to legal research, social science research and best practices from other jurisdictions.

2. What do you consider to be the most important development in your field or the legal profession in general over the last 5 years?
Without a doubt, the work of the Family Violence Appellate Project (www.fvaplaw.org) has changed the landscape for civil domestic violence practitioners. This nonprofit began as the brainchild of Berkeley law students working with their teacher, Nancy K.D. Lemon. Their goal was to increase the body of precedential law related to DV and child custody. Without sufficient precedent, protective statutes like the Domestic Violence Prevention Act (Family Code sec. 6200 et. seq.) would be construed by judges statewide using statutory interpretation only. But because DV is a pretty nuanced area, courts benefit from having a wide range of published cases to help them make determinations about what is and what is not DV, and what a finding of DV means for the other orders you may make for a family. FVAP finds pro bono counsel to bring DV appeals forward, with a stunning 71% success rate (the California average for appeals is only 20%). They also urge publication of important DV decisions. These two parallel tracks have made a huge difference for DV practitioner statewide.

3. If you could go back in time, what advice would you give to yourself in law school?
I'm a 2002 SCU Law alumna, and have taught here as a lecturer since 2006, so my law school experience is still fresh in my memory. The advice I would give myself is what I give students today - take classes that help build practical skills. Trial techniques, ADR and mediation, client counseling, law practice management – don't assume your first job out of law school will be the only way you ever practice law.

4. Who is someone you admire, and why?
My teaching partner is Judge Eugene Hyman. I was a rookie lawyer when he asked me to co-teach with him, and for more than ten years we have partnered to bring the Domestic Violence Seminar to SCU Law. I admire Judge Hyman's commitment to victims and children; his desire to increase safety and fairness in the administration of justice in DV matters; and his courageous voice. We benefit from judicial leaders who use their deep knowledge of a subject to improve the legal system.

5. Do you have any book recommendations?
Being Mortal: Medicine and What Matters in the End by Dr. Atul Gawande is the most thought-provoking book I've read in a long time. Every one of us have parents for whom end of life issues loom large, not to mention what we would like for ourselves at that stage in life.

Julie Saffren
Lecturer in Law

Education:
J.D., Santa Clara University School of Law
B.S., Rochester Institute of Technology

Currently Teaching:
Family Law

6. What was a memorable experience in your legal career?
I tend to remember my errors more readily than my successes in law, starting from the day I was sworn in as a lawyer and in my nervousness, went to the wrong courthouse. (One of my first acts as a lawyer was apologizing on the record for being late). But testifying before the California legislature in support of a change to DV law was a "government in action" experience that I'll always remember with awe and great pride.

7. What is your favorite restaurant in the bay area?
Fuki Sushi is a Palo Alto institution we have been enjoying for years. Authentic, super fresh and a great dining environment.

8. What do you enjoy most about being a law school lecturer?
It's tremendously gratifying to see former Family Law or Domestic Violence students join my legal community. They open solo practices or they take jobs as associates for lawyers or firms I have worked with. When I see them suited up in court or speaking to their clients or attending a bar meeting, it's just a thrill.

9. What is a subject (legal or non-legal) you would like to learn more about?
I am interested in learning about land use! Specifically ADUs (accessory dwelling units) and whether or not my husband and I get to build a cottage in our backyard. Housing in the Bay Area is ridiculously constrained so being able to maximize what you have is sensible. State government is encouraging ADUs but it comes down to city ordinance**s.**

10. How do you unwind?
Hiking, reading, movies and cooking are a few of the methods that work for me. If we are doing full disclosure, I'm a pretty good mixologist and I like creating specialty cocktails. I'm going through a ginger beer phase right now.

Rumor Mill - Changes to the Bar and Charney Hall

By Susan Erwin
Senior Assistant Dean

Dear Rumor Mill,

I saw a recent email talking about the "bar cut score". What is it and why should I care? Is that a typo? Should it say "cute"?

Sincerely,
Cute Bar Supporter

Dear Bar Support,

The email from Professor Flynn was talking about the California Bar Exam. The "cut score" is the cut off score to pass the bar exam. This score is different from state to state and California has the second highest required score. The CA Supreme Court was considering a proposal to lower it, but decided that there wasn't enough evidence to support making a change. It would have been awesome if they had, so that more people would pass. BUT, it stays the same.

So our advice stays the same – take the bar courses, take ALW:Bar Exam, go to the BRICS sessions, listen to the very smart people in the Office of Academic and Bar Success and go out there and pass that exam!

Dear Rumor Mill,

I think I heard someone talking about the administration raising the disqualification rate again. You just raised it last year. What is going on??

Signed,
Half listening but fully angry

Dear Half There,

We are not talking about raising the required GPA to continue in law school. Actually, a few members of the faculty have started a discussion with their faculty colleagues about law school disqualification rules. Specifically, the Academic Affairs Committee is talking about rethinking how we count the LARAW grade in the GPA at the end of first year and reviewing the effects of last year's increase in the required GPA. Professor Kreitzberg reached out to a few students to gather more opinions, which resulted in the recent students-only meeting and survey. Even though we pretty much know what you would prefer, we are always interested in hearing your opinions. These issues will be discussed in the November Faculty Meeting and probably again in December. Discussions are good first steps.

Dear Rumor Mill,

I heard that some classes might move over to Charney Hall in spring, but they are all scheduled in Bannan again. Will we be able to take classes over there before we graduate? Where will we go to study for the bar exam if the law library is gone? Will the new building be ready? Will it still be -12 degrees?

Signed,
Bannan Bombe Glacée

Dear Bombe,

We hope to have you unfrozen before summer! By the time you come back from spring break, most of the faculty and staff will be relocated to the new building. As classrooms are completed, we will start moving classes over there – with a priority to the classes with the most 3Ls enrolled. The many private conference rooms and cozy corners will be ready and available for you all very soon! The Café won't be ready until closer to fall semester, but you can see Starbucks from the front windows!

A Global Classroom is Just a Flight Away

By Grace Harriett
Staff Writer

Movenpick, a Swiss ice cream confectionary, has 36 flavors. This past summer, my fellow SCU Law Abroad classmates and I made it our mission to sample as many flavors as possible after learning about Movenpick from Professor Francisco Rivera. Throughout the four weeks we spent in Geneva, Switzerland for our study abroad program, we spent a lot of our non-class time sampling 27 of those flavors from Movenpick's carts and storefront. This was only a small taste of the life-changing and amazing experience we had as part of the SCU Law Abroad summer program.

It has become increasingly important to have a global lens, not only to understand the complexities of legal issues, but also to know how to navigate them in a professional context. The legal profession has become more globalized with the ability to use broad, worldwide communication systems. The Summer Law Study Abroad program with the Center for Global Law and Policy here at Santa Clara offers law students the opportunity to gain experience in an international setting while advancing their legal education. This opportunity affords law students the ability to work, learn, live, and enjoy summer in another country, not only with peers from SCU, but also with other students from all over the U.S. and Canada. The global environments that these programs are offered in allows students to not only take relevant classes from professionals who are leading in their fields, but also to go to various historical locations that are important to the legal profession and that area of practice.

The ability for students to mix and match programs around the globe during a summer semester makes SCU Law's abroad opportunities highly appealing. For example, students completing the Sydney program may then participate in the Oxford program; other students completing the Vienna or Hague programs may then head to the Geneva program. The programs offer students the opportunities to grow as individuals in their personal experiences by learning to budget program costs, including food, transportation, and housing; the programs cost $1,125/unit (a discount!) and financial aid is available for SCU students, so students learn to budget for everything else.

Because everyone has different budgets or family situations (i.e. Geneva is a family-friendly program, so spouses and children are welcome), housing is not included for Geneva in particular, however, some programs do have on-campus housing opportunities that may be an affordable option for students. For example, students in the Oxford program live on-campus in Magdalen College. Students in these types of situations are able to quickly bond with each other by learning how to get to classes in unfamiliar places or venturing to food markets together.

While the traditional classroom portion is certainly a major part of the program, SCU Law Abroad also offers students the ability to apply for a summer externship position. Externships are a fantastic way to get professional experience in 30+ countries around the world. There are available externships in a wide variety practices, like refugee law, intellectual property law, business law, human rights law, and environmental law. Depending on which program and placement the externship is with, it can run 4-10 weeks in length; some require other language skills, however, many placements are in English. Externship students will receive credit upon their completion, but no grade. There has never been a problem in the past with placing interested students in an externship.

Applications for study abroad programs and externships abroad will be available in early November. The IACHR Externship application deadline is on January 12, 2018, with all others due on February 23, 2018. Study abroad program applications are due by March 23, but be aware that programs can fill by this date so it is recommended to apply earlier.

Further questions about a specific program can be directed to program directors found here: http://law.scu.edu/international/summer-abroad/. General study abroad questions can be directed to: cglp@scu.edu.

The summer abroad program offered here at Santa Clara Law is an experience that is truly unique and enriching. It is my sincerest hope that every law student considers studying abroad during at least one of their summers.

And if you do go with the Geneva summer program, feel free to try some of my classmates' and my personal favorites at Movenpick: Strawberry, Pistachio, Chocolate, and Raspberry Sorbet.

Natural Disasters Highlight Need for New Federal Policies

By Christina Faliero
Senior Editor

While September 2017 was declared the Department of Homeland Security's (DHS) "National Preparedness Month (NPM)," the United States was struck with a seemingly endless onslaught of natural disasters. Safety graphics and public service announcements for homes and businesses cover the NPM website for preventative assistance, but it is even more necessary for our federal government to have appropriate policies, budgets, and infrastructure in place to mitigate, or at least ease, the degree of damage to affected communities.

In September, Reuters pointed out that the estimated damages from Hurricane Harvey could cost $150-$180 billion, after displacing over 1 million Texas residents and damaging 200,000 homes. On September 8, 2017 the President signed H.R. 601 into law, a House disaster relief bill that allocated $15.25 billion toward recovery efforts in places devastated by Harvey and Irma. Unfortunately, in order to achieve this, Congress's debt limit had to be temporarily increased.

Hurricane Irma struck the East Coast shortly after Harvey dissipated, leaving about 7 million Floridians without power and causing damage all the way up the coast to Charleston, South Carolina. Irma also made Puerto Rico and other Caribbean Islands more vulnerable to damage from Hurricane Maria, which followed Irma. Maria added to the destruction in Puerto Rico, leaving much of the island still without power or clean drinking water. Hurricanes Harvey and Irma are expected to cost between $150 to $200 billion in damage and lost productivity, and Hurricane Maria's impact only adds to that projected range.

To make matters worse, here on the West Coast the Tubbs, Atlas, and Nuns fires in Northern California have burned more than 182,000 acres in Sonoma in Napa counties. As of October 16, 2017, 5,700 buildings and homes had been destroyed or damaged due to the fires.

What all of these disasters have in common, aside from their tragic breadth, is federal disagreement over dollar signs and paper. While it is expected that any form of funding needs to be carefully analyzed for proper applicability to a tangible need, it seems that federal investment policies should be reprioritized. California is struggling with the broken federal system for funding firefighting, lessening the state's ability to prevent fires at the outset of a potential breakout. Also, requests for relief for forest fires must go through the U.S. Forest Service, instead of FEMA, to tap emergency funds.

Although the President has been sympathetic toward Hurricane relief needs in Texas and

Florida, Trump has been threatening to pull disaster relief efforts from Puerto Rico. He tweeted on October 12, 2017, "Electric and all infrastructure was a disaster before hurricanes." This was interpreted by many as an excuse to stop funding the U.S. territory in the wake of a humanitarian crisis. The comment also seems to ignore the fact that the U.S. mainland has its own significant electric and infrastructure problems.

The American Society of Civil Engineers (ASCE) publishes a report card every four years evaluating America's infrastructure. Its latest publication in April gave the United States a D+ average, and the energy sector received its own measly D+. The Energy Report provides that in 2015, Americans reported 3,571 total power outages with a 49-minute average duration. Additionally, most parts of the power grid, including critical transmission and distribution lines, were constructed in the 1950s and 1960s. On top of the obvious issues with weathering infrastructure in terms of volatility during natural disasters, between 2003 and 2012, weather-related outages specifically due to aged infrastructure cost the U.S. economy an average of $18 to $33 billion (adjusting for inflation). Most strikingly, the electricity investment gap between 2016 and 2025 is estimated to be $177 billion; and this statistic is for energy alone, not accounting any other type of critical infrastructure (such as aviation, bridges, dams, drinking water, flood control, roads, and wastewater, among others). Trump has included a $1 trillion request in the national budget for the following fiscal year for infrastructure, but to date has not revealed any details for that plan regarding which sector will receive aid, and about $2 billion is purportedly going to border security.

It is always more difficult to create policies that don't yield immediate results, but these recent disasters are evidence that when there is a lack of diligent planning, catastrophes become more damaging. Most importantly, these issues directly impact people, and it should never take the destruction of our people to encourage the federal government to act.

Tip from the author: Our federal government needs to develop policies for: (1) long-term development assistance programs so we aren't struggling to stretch debt-ceilings in the middle of a crisis, (2) providing a tangible infrastructure plan for both maintenance and new construction of transmission and distribution lines for the power grid, and (3) providing tangible infrastructure plans for all other critical sectors that can be prioritized by DHS.

Brexit may invalidate 1 in 4 BCRs ... what to do?

By Olivia Manning
For The Advocate

Brexit has the potential to invalidate UK lead-authorized BCRs (UK BCRs). BCRs are sets of European data protection standards which enable private multinational companies to legally export European Economic Area (EEA) data. Disrupting BCRs would disable operations of multi-billion dollar businesses, which would affect markets on a global scale.

Accordingly, if the UK is not in the EEA (comprised of the European Union (EU) and the European Free Trade Association (EFTA), minus Switzerland), the European Commission has indicated it cannot be a BCR lead authority. If the UK cannot be a BCR lead authority, all UK BCRs will likely be invalidated. Therefore, businesses that currently rely on UK BCRs will be prevented from exporting EEA personal data from any mutual recognition countries which relied on these UK BCRs.

This issue of whether or not BCRs will be invalidated in the wake of Brexit has been largely overlooked, despite its potential to affect global markets. While conclusions can only be speculated with the limited information available, the time to unpack and consider these theoretical conclusions is now.

What We Know

We know that BCRs are crucial adequacy mechanisms for exporting European Data, and the authorization of them is implicated in the Brexit fallout. While no guidance has been provided regarding exactly how the EU will handle this newly presented issue, there is no doubt that the issue exists and involves multi-billion dollar global companies.

In order for a business to possess formally adequate BCRs, EEA Data Protection Authorities (DPAs) must sign off on them, including one lead authority. Once the lead authority determines its BCRs meet Article 29 Working Party criteria, all DPAs with mutual recognition will also authorize the business to export its country's personal data. Other adequacy mechanisms exist to enable these types of data transfers, but many business engagements rely solely on BCRs, which is why this issue is so crucial.

Currently 21 out of 88 BCRs found to meet the Article 29 criteria are UK BCRs. This works out to roughly 24% of all BCR compliant companies. Among these corporate giants are CitiGroup (worth $164.3 billion), BP (worth $144.70 billion), American Express (worth $70.1 billion), Ernst and Young (worth 29.6 billion), and Motorola (worth $11.9 billion). If their BCRs are invalidated, they will likely lose mutual recognition status and be forced to halt any business that involves exporting EEA citizens' data to be processed in any way. Also, notice is required to leave the EEA, and the UK has not provided explicit notice to do so beyond its Article 50 Brexit letter.

What We Don't Know

We do not know how the EU, the EEA, or the UK will respond to this predicament. Even the threshold issue of whether BCRs with multiple DPA signatories could remain legitimate without their UK lead authority has not been publicly contemplated by any party.

It is also unclear what the UK's policy is regarding the future of its data protection regime. Since the March 27, 2017 Article 50 Brexit letter was sent, UK authorities have offered conflicting guidance on their next moves. On one hand, the UK Information Commissioner Elizabeth Denham has stated, "I don't think Brexit should mean Brexit when it comes to standards of data protection...In order for British businesses to share information and provide services for EU consumers, the law has to be equivalent." This indicates that the UK will attempt to remain in the EEA and a BCR lead authority.

On the other hand, Prime Minister Theresa May has been adamant about respecting the June 23, 2016 Brexit vote to the fullest extent, stating, "We are going to be a fully independent, sovereign country - a country that is no longer part of a political union with supranational institutions that can override national parliaments and courts." This indicates that the UK will leave the EEA, and lose status as a BCR lead authority. Moreoever, we do not know whether the UK's Article 50 Brexit letter serves as implicit notice to quit the EEA agreement, despite being devoid of any reference to the EEA.

It is also unknown exactly how much the world economy would be affected by invalidated BCRs. This depends on each business's reliance on exporting EEA personal data for their operations, and whether they have disaster management strategies in place to avoid such a compromising scenario.

To kick-start the international discussion on this issue, here are four possible post-Brexit BCR fallout scenarios to consider:

Scenario 1: Nothing changes. The UK continues business as usual as a BCR signatory and the EU amends its rules to accommodate this situation. For example, the EU could amend the Article 29 Working Paper's BCR criteria to allow the UK as an exception to the 'only EEA member states can be signatories' rule. This would be the best case scenario for businesses with UK BCRs.

Scenario 2: The EEA decides the UK's Article 50 Brexit letter also provided implicit notice to leave the EEA, resulting in the UK's ultimate displacement from the EEA. UK may then decide to appeal to join the EFTA or join the EEA as an independent nation. At this point, whether it would do that, whether it would be allowed, or how long that would take is all up for speculation.

Scenario 3: The EEA decides the UK's Article 50 Brexit letter did not provide implicit notice to also leave the EEA. From here, the UK could decide it does want to file notice, if it believes remaining within the EEA would be inconsistent with its Brexit policy. If it does file notice and leaves the EEA, the UK could still appeal to join the EFTA. Again, it's anyone's guess whether it would do that, whether it would be allowed, or how long that would take.

Scenario 4: The EU simply decides it's impossible for the UK to support a BCR post-Brexit, rendering any UK BCR invalid. This would be the worst case scenario for businesses relying on UK BCRs.

What Can Be Done

The lack of clarity on this issue begs for risk-mitigating measures to be taken, not a wait-and-see approach. Starting today, global businesses must grant this issue serious consideration and adopt their response plans accordingly.

The best remediation plan for businesses with UK BCRs would be to apply for a new BCR lead authority as soon as possible. This strategy avoids compromising any business operations, no matter what scenario plays out. Potential operational and financial problems, which are consequently raised by this Brexit BCR issue, would be effectively avoided.

To begin the process of designating a new authority, a company should go through the same process they did designating the UK in the first place. Visit the EU website for further guidance and consider Article 56 of the upcoming General Data Protection Regime, which establishes the competence of lead authorities. Every business should consider their partner's and third party vendor's data protection regimes to determine whether this Brexit shift will tangentially affect their business operations.

The Fight for Medical Cannabis and How Fear and Misinformation Can Destroy Freedom

By Joseph Ewald
For The Advocate

Tuesday night in San Francisco, dusk. As I stepped up the aging, cracked stone steps of City Hall after climbing over piles of heroin addicted homeless people littering the streets, I made it to a crowd of screaming protesters who were more than willing to ask me to return from whence I came. The outrage flavor of the week was medical cannabis in the Sunset District of San Francisco. My role in this story is as an ill-tempered cynic and law student who came to speak out on behalf of how cannabis can help Veterans, the sick, and the drug-addicted in the Bay Area.

As I proceeded inside City Hall and passed the bronze busts of prominent city figures like Dianne Feinstein and Harvey Milk, I was filled with a sense of exhilaration. A free sense that in these halls, truth, reason, logic, and compassion for humanity would always prevail. I couldn't have been more wrong. Today would be a harsh lesson for me about the ease of which large amounts of people can be manipulated. Today I would see, thanks to the San Francisco Board of Supervisors, how legal cannabis can be rolled back due to fear, misinformation, and cowardice.

The issue on the docket was a conditional use authorization permit for a medical cannabis dispensary known as the Apothecarium, owned by a man named Ryan Hudson. Now before the Apothecarium, when I thought of a dispensary, the pictures that came to my mind were of a rusted iron door, a giant hulking man clad in black demanding to see my ID, and a seedy neighborhood. Nothing could be further from the truth. But then again, I had never seen the inside of a dispensary until this point. Hudson established this dispensary to form a place where senior citizens and veterans with illnesses could seek alternative treatments.

Apothecarium in San Francisco

Hudson had been operating this dispensary after receiving approval from the San Francisco Planning Commission in an overwhelming victory vote. This victory was not easily gained. An organization known as the Pacific Justice Institute (PJI) fought him tooth and nail. It didn't help that the PJI brought with them about 1200 protesters from Chinese communities in the Sunset District and other surrounding areas. It is important to note that PJI has been formally designated an anti-LGBT hate group by the South Poverty law center. But as any banker will tell you, diversity is the key to success and the PJI is no exception in the thriving business of hate.

As the gavel slammed into the President of the Board's table, the next six hours would begin some of the wildest reefer madness-esque claims that I have ever heard in my life, such as:

"Dispensaries are going to sell pot cookies to children"

"The entire neighborhood will be filled with marijuana smoke if a dispensary is opened."

"This dispensary is a state sanctioned crack den."

"Feed your kids a bowl of marijuana every day and see if they are healthy."

"Cannabis is the same as opium and will destroy the community."

"Cannabis use syndrome will erupt as a mass pandemic."—This last statement was from someone claiming to be an actual psychologist.

These and many more distortions, outright lies, and practiced manipulations were levied for several hours with several clearly planned outbursts by protesters throughout the hearing. But this was only the tip of the iceberg, emerging like an angry cherub from the crowd of elderly Chinese protesters, was an attorney for PJI known as Mr. Hacke.

Mr. Hacke accused the entire board of supervisors of being in league with criminals. Hacke claimed that if the San Francisco Board of Supervisors approved any medical cannabis dispensary for any reason, that they would be guilty of violating the RICO Act. As many of you may know, the RICO act is commonly used to prosecute mafia families or other notions of organized crime. An attorney who was certified to be of "moral character" by the CalBar accused one of the highest governmental boards in San Francisco and organization dedicated to healing the sick, of being identical in nature to the Gambino crime syndicate, or a Yakuza chapter. Surely, after hearing madness such as this, the spirits of the enlightened San Francisco leaders that came before us would fill the minds of the Board members and compel them to act with conviction in the face of unmasked fear and hatred?

The San Francisco Board of Supervisors took the time to speak one by one about how it was okay to bend in the face of hate, as long as you acknowledge that you do not like hate. Representatives such as Katy Tang (District 4 Supervisor) went far out of their way to denounce the hatred and fear created by PJI. They went even further to warn any future petitioners that if they showed up with PJI, that their motions would be denied. Then, like Pontius Pilate condemning Jesus, they sided with the hate group members and allowed what the board noted as a "model example of a dispensary" to perish on appeal.

The Apothecarium had hundreds of supporters with real measurable illnesses: a Veterans support group dedicated to treating combat-related illness, hundreds of letters of support, an almost unnoticeable presence in the Sunset District, and an owner with a real mission to heal the sick. A State voted legal right to treatment was destroyed in the Sunset District by a handful of lies, a bamboozled community, and one motivated hate organization. If we as attorneys do not stand with conviction against this kind of conduct, these types of hate groups will grow and take away more of the rights that we in the Bay Area hold dear.

Crowds of people line up outside of the Board of Supervisor Chamber ahead of the appeal hearing.
Photo: Jessica Christian - SFWeekly.com

Let me be clear, if cannabis is ever going to be legalized federally, we as Californians have to stand up for that right. If we don't stand up for legal cannabis, these hate groups will petition the Department of Justice or other Federal law enforcement organizations and take away the right for good. Over the last decade, we as a society have been riding an incredible wave of success in the fight for legal cannabis. But it can all roll back if we let it.