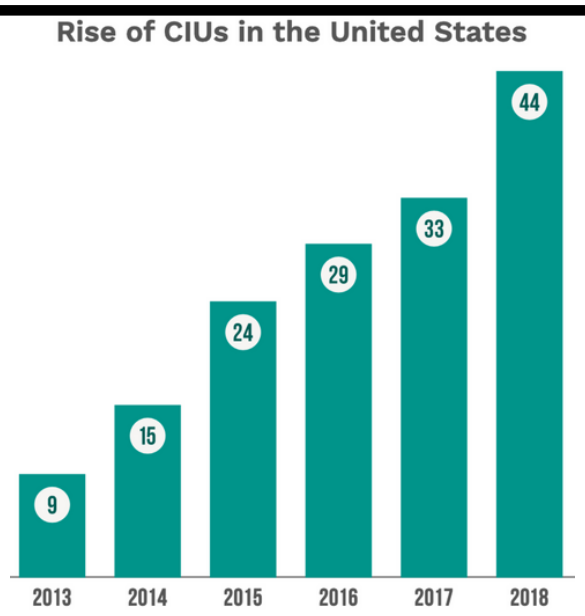
SANTA CLARA UNIVERSITY SCHOOL OF LAW // VOLUME 50 // ISSUE 1 // OCT2019

THE ADVOCATE



Stats from National Registry of Exonerations.

Report Shows Record Number of Exonerations Due to Official Misconduct

BY: PATRICIO MUÑOZ-HERNANDEZ

In 1991, Glenn Payne was convicted of kidnapping and sexual assault, which were bolstered by faulty forensic science and false testimony. In 2018, the criminalist who originally testified at Payne's trial repudiated his testimony, resulting in the court vacating his conviction.

Payne's story is not unique. In 2018, there were a record number of exonerations stemming from official misconduct.

Out of the 151 exonerations that occurred in 2018, at least 105 involved some degree of official misconduct, the majority of which pertained to homicide and drug-related offenses, according to a report by the National Registry of Exonerations.

According to the report, a common example of misconduct involves police or prosecutors concealing evidence that might prove a defendant was not guilty. In such cases, misconduct may include police officers threatening witnesses, forensic analysts falsifying test results, and child welfare workers pressuring children to claim sexual abuse where none occurred.

Nonetheless, David Angel, Assistant District Attorney of Santa Clara County, says the report's findings are not as alarming as they may seem.

"I don't think it's fair to conclude on that number that there is an increasing likelihood of official misconduct," Angel said. "I think what's correct to conclude is that there's a greater sensitivity to it" and "more resources are being allocated to looking for exonerations."

Angel specifically points to the inclusion of Conviction Integrity Units (CIUs), explaining that a CIU is responsible for assuring that the District Attorney's Office utilizes the most professional and ethical practices possible to reduce the chance of a future wrongful conviction. CIUs are also charged with evaluating and investigating past cases of potential misconduct. Angel emphasized the impact CIUs have had on the number of exonerations in the U.S. and specifically in Santa Clara County.

Angel explains that this type of unit did not really exist prior to the appointment of District Attorney Jeff Rosen in 2011. There are 44 CIUs in the United States as of 2018, which is more than three times the number in 2013, according to the National Registry of Exonerations report. The report shows that CIUs were involved in 58 exonerations in 2018.

Angel noted how the term 'misconduct' can be misunderstood. "We don't want to jump to the conclusion that because there was misconduct, that means it was intentional . . .

Continued on page 7

IN THIS ISSUE

CA Presidential Tax Return Law Unenforceable, Pending Appeal

BY: WILLIAM K. BLISS

California federal district court ordered an injunction earlier this month on a new California law that requires presidential candidates to publicly disclose their tax returns.Shortly after the Presidential Tax Transparency and Accountability Act (SB 27) was signed into law, the Trump campaign, the Republican National Committee, and three individual voters filed suit in federal court. They alleged violations of the First and Fourteenth Amendments, the Qualifications Clause, and that the law is preempted by the Ethics in Government Act (EIGA).

U.S. District Judge Morrison C. England Jr. of the Eastern District of California wrote in his 24-page opinion that the plaintiffs are likely to succeed on the merits of their case because the law likely violates the Constitution and the laws of the United States. Judge England wrote, "At base, the Act seeks to punish a class of candidates who elect not to comply with disclosing their tax returns by handicapping their access to the electoral process. This is plainly impermissible."Jay Sekulow, an attorney for President Trump, praised the ruling. He argued that the law adds an additional qualification to run for President in California. "This is the ongoing pattern and practice of trying to basically shred the Constitution," Sekulow said in an interview with Sean Hannity.

Two years ago, Gov. Jerry Brown vetoed a nearly identical bill over fears that it was unconstitutional and that it would set a "slippery slope" precedent for States that may wish to regulate the presidential election in other ways.

"[W]hat would be next? Five years of health records? A certified birth certificate? High school report cards? I hesitate to start down a road that might lead to an ever escalating set of differing state requirements for presidential candidates," he wrote in his veto of SB 149.

When Gov. Gavin Newsom signed SB 27 into law this July, he wrote the state has a strong interest in ensuring that its voters make informed and educated choices at the voting booth. Voter education is cited in the opinion as one of California's interests in passing this law.

The court, however, views the state's interest in voter education as "somewhat specious" because it does not extend to all candidates in all elections. The law only applies to party-affiliated candidates in the primaries, rather than the general election.

The law would require . . .

Continued on page 6

STAFF LIST

EDITORS NOTE:

This is our 50th Anniversary. We are shifting gears from a traditional campus newspaper into a law newspaper. Our staff is made-up of unpaid, full-time Santa Clara Law students who are dedicated to bringing you law-related news that is well-researched and of a professional quality. We hold ourselves to the highest standards in journalism and abide by the Society of Professional Journalists' Code of Ethics. All quotes were obtained from interviews conducted by our staff writers, unless otherwise noted. Thank you for your support. We hope you enjoy our first issue. Look out for issue two in mid-December.

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PragerU Turns to 9th Circuit for Relief Against YouTube

BY: Sami Elamad

"How Conservatives Weaponized the First Amendment," read a headline in the New York Times last year. The article reported on U.S. Supreme Court Justice Kagan's dissent in a case where, among other things, she proclaimed that conservatives were "weaponizing the First Amendment." The tenor attending the responses in conservative circles suggests that Justice Kagan's assertion may be increasingly prescient. Indeed, the debate about the First Amendment continues to rage in cyberspace, Congress, college campuses and recently, the courts.

Last month, Prager University (PragerU) took to a federal appeals court for relief in response to YouTube's decision to remove their videos from its site.

The case, Prager v. Google, LLC., concerns YouTube's decision to place about 20 percent of Prager's videos in "Restricted Mode." According to YouTube, it is "an optional setting … to help screen out potentially mature content that [a user] may prefer not to see."

Known for their bite-size videos featuring prominent conservative speakers such as Ben Shapiro and Jordan Peterson, PragerU has gained popularity in recent years for discussing a variety of topics from a right-wing perspective. Some of its more popular video titles include, "Make Men Masculine Again," "Who Will Google Silence Next?," "War on Boys," and "There Is No Gender Wage Gap." However, PragerU is neither a university nor does it provide diplomas of any kind. Rather, it is a non-profit organization.

PragerU's attorneys presented oral arguments on August 27 before a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit after the lower court ruled against them in March 2018. PragerU asked the appeals court to determine whether YouTube's content moderation decisions are subject to regulation under the First Amendment. YouTube's self-proclaimed "viewpoint neutrality" is also in question. Moreover, PragerU contends, YouTube "cannot have it both ways" and therefore, "induce the public" to enter and speak in a public forum, i.e., its website.

Notably, last year, the U.S. Supreme Court handed down a 5-4 vote in Manhattan Community Access Corp. v. Halleck where the Court addressed whether a private company is obligated to respect an individual's First Amendment rights.

"[W]hen a private entity provides a forum for speech, the private entity is not ordinarily constrained by the First Amendment because the private entity is not a state actor," the Court found. "In short, merely hosting speech by others does not alone transform private entities into state actors subject to First Amendment constraints."

During oral arguments in the Ninth Circuit, Peter Obstler, lead counsel for PragerU, argued that YouTube is a "public forum for freedom of expression," which its leadership even "repeated to Congress under oath." However, Judge Bybee's questions suggested that the court was not persuaded by this assertion, inquiring "[i]f YouTube had come forward and said, 'We've agreed to bind ourselves by the First Amendment,' [your argument suggests] that would somehow … have some consequence that this court would be responsible for enforcing outside of a contract."

Eric Goldman, an Internet law professor at Santa Clara University School of Law, was not convinced by PragerU's arguments.

"The fact that YouTube controls such a large percentage of the video hosting industry might sound disconcerting," he said, "but media consolidation is a well-known phenomenon in all aspects of the media ecology."

When a consumer selects a specific media publisher, Goldman said, "[they] are buying into their editorial policies." By virtue of accessing and using a given media publisher, users inherently support its editorial decision-making, he reasoned. Yet, YouTube does not keep its end of the bargain, Obstler said. YouTube initially invites users to enter and freely post on its site, but later curbs their freedom to do so.

"They're not applying [their policies] equally to everyone—that's what this lawsuit is about. We're not saying you can't regulate the internet," Obstler said. "They control 95% of the video communications in the world. They put more content on their site in one day than the networks put on in twenty years combined."

During oral arguments before the Ninth Circuit, Brian Willen, lead counsel for YouTube and Google, said Prager's claims are "based on an entirely artificial premise." He added, "YouTube is not discriminating against [PragerU]," eliciting mild surprise from Judge Bybee. "Whoa, now, I mean, if that's your opening line, you're inviting us to make that judgment." Judge McKeown added, "Then, put [PragerU] back on." Willen declined an interview request, and neither Google nor YouTube provided response to requests for comment.

"If a private entity is providing the forum, in almost all cases, it is not [a public forum]," Willen posited in oral argument. In turn, it begs the question as to whether or not other remedies exist, should a given user disagree with YouTube's editorial decisions. Willen's oral argument suggests that there may not be any other remedy available. "In this case," Willen said, "they don't [have a remedy]" related to YouTube's decisions, and the alternative is to perhaps use another platform.

Writing for the Knight First Amendment Institute at Columbia University about Halleck, Mary Anne Franks concluded, "Social media companies are no more obliged to uphold the First Amendment rights of their users than nightclubs are to protect their patrons' Second Amendment rights or parents are to respect their children's Fourth Amendment rights."Additionally, Goldman said, political bias and viewpoint neutrality does not even need to be part of the argument. "Bias isn't bad—it is unavoidable. It's endemic in the entire nature of being a media publishing company," said Goldman.

YouTube has made numerous statements, some of which are not necessarily consistent, Goldman said. Instead, he proposed, "I would start with the premise: 'I would have never believed [YouTube was] viewpoint neutral.' That claim was never tenable." "Most experts don't foresee a First Amendment shake-up," the Wall Street Journal reported about the PragerU lawsuit. "Private censorship today is sometimes just as dangerous as government censorship," Clay Calvert of the First Amendment Project at the University of Florida told the Journal. "But that doesn't invoke the First Amendment."

Alternative Legal Service Providers are Changing the Legal Market

BY: Kirby Nguyen

Technological advances and changes in state laws have opened the legal market to alternative legal service providers (ALSPs). By integrating automation and technology, ALSPs and software developers are giving traditional law practice a run for their money.

The ALSP market has grown from $8.4 billion in 2015 to approximately $10.7 billion in 2017, according to the Thomson Reuters Legal Executive Institute's ALSP Report for 2019. ALSPs are utilizing new technology to handle tasks traditionally done by law firms, including providing litigation and investigation support, legal research, document review, eDiscovery, and regulatory risk and compliance.

Self-litigants have been harnessing the aid of online legal technology to create an array of legal documents. LegalZoom, Nolo, and Rocket Lawyer are helping customers create wills, copyright registrations, and trademark applications.

California courts have determined that practicing law includes performing services in litigation, providing legal advice and counsel, and preparing legal instruments and contracts that secure legal rights, even if matters do not have anything to do with lawsuits.

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ICE Using License Plate Database to Track Undocumented Immigrants

BY: Emily Chen

The American Civil Liberties Union of Northern California (ACLU NorCal) is raising privacy concerns after it recently obtained records confirming Immigration and Customs Enforcement's (ICE) use of a license plate database.

This is a result of a Freedom of Information Act (FOIA) lawsuit by the ACLU NorCal demanding records of ICE's access to information about drivers through Automated License Plate Reader (APLR) databases.

APLR technology provides scans of each license plate that passes through an automated camera along with the date, time, and exact location the scan was recorded. APLR databases allow access to extremely sensitive information about an individual's whereabouts, commonly visited locations, and place of residence, threatening the core rights and liberties to privacy protected by the Constitution, according to the ACLU NorCal.

The ACLU NorCal obtained records via the FOIA lawsuit that confirmed ICE's use of an APLR license database maintained by Vigilant

Solutions, a private company specializing in surveillance technology that aids police departments with criminal investigations.

According to the records obtained by the ACLU NorCal, since 2018, ICE has gained access to Vigilant Solutions' database under a $6.1 million contract, providing over 9,000 ICE officers with license plate information collected by private businesses, such as insurance companies and paid parking lots. Reportedly, ICE uses this database solely for the purpose of tracking undocumented immigrants.

"Like most other law enforcement agencies, ICE uses information obtained from license plate readers as one tool in support of its investigations," said Dani Bennett, spokesperson for ICE in an official statement. "ICE is not seeking to build a license plate reader database and will not collect nor contribute any data to a national public or private database through this contract."

. . . continues on page 5

New Independent Contractor Guidelines in CA Could Affect "Gig" Companies like Uber

BY: Brooke Barranti

A new law recently signed by California Governor Gavin Newsom will provide clearer guidelines on how to determine whether a worker should be classified as an independent contractor or employee.

AB 5 codifies the California Supreme Court's decision in Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County, which lays out an "ABC test" to determine if a worker should be classified as an independent contractor rather than an employee.

The signing into law of AB 5 means that over one million Californian workers will no longer be classified as independent contractors. The bill is more controversial than it appears, as the new law stands to impact "gig"-companies throughout California, like Uber and DoorDash, and it is likely that more states will follow suit. AB 5 has further fueled gig-companies' fears that they will soon be required to reclassify workers as employees rather than independent contractors. Both independent contractors and the businesses that contract them, are concerned about what this means going forward and whether they will be impacted.

. . . continues on page 8

Big Tech's Impending Antitrust Battle

BY: Erik Perez

The Federal Trade Commission (FTC) and Department of Justice (DOJ) Antitrust Division announced a major investigation into Amazon, Google, Facebook and Apple in July for anti-competitive, monopolistic behavior.

The FTC and DOJ use antitrust laws to ensure fair competition by regulating big companies when they engage in predatory business practices. Antitrust lawsuits are mostly based in the Sherman Act, which outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize."

The initial question in the traditional approach to antitrust investigations is whether consumers have a competitive product they can switch to if the firm increases price and decreases quality.

This traditional approach will be challenging, as many Big Tech companies offer free services. An antitrust lawsuit is "going to be hard for the government," said Donald Polden, Professor of antitrust law at the Santa Clara University School of Law. "Not many people complain about their free Google and Facebook."

"There are harms, [like] the collection of data, that the government is worried about," said Polden. The government is worried about the "tremendous amount of data being acquired for free and manipulated and sold. Cambridge Analytica, for example, was a wakeup call for a lot of people," he said.

Cambridge Analytica was a British political consulting firm that obtained third-party data without the explicit consent of millions of Facebook users. The company acquired data from an external researcher who told Facebook it was collected for academic purposes. However, the data was also being used for political marketing campaigns.

"A lot of the problems that you see with the social network market resemble the problems we saw in the telephone market," said Dina Srinivasan, author of a Berkeley Business Law Journal article, "The Antitrust Case Against Facebook."

In the 1980s, AT&T was mandated to relinquish control of the Bell Company. This split up AT&T's dominance of the local and long distance phone market. The way people communicated in the 20th century was on the phone and the way that people communicate in the 21st century is by social media," Srinivasan said.

> "Antitrust analysis will likely shift focus to competitors because consumers are using their services essentially for free."

Previously, "with AT&T you were only allowed to text people who were AT&T customers. It would make it so people would funnel into one network so they could dominate the entire market," Srinivasan said. "Facebook used to be open. You could send messages across platforms, but after they gained power in the market, they closed it down."

Antitrust analysis will likely shift focus to competitors because consumers are using their services essentially for free. "Pressure coming from competitors is a major contributor" to the investigation, said Polden. "Google has acquired about 200 companies since its creation." This has amounted to about one acquisition per month.

"The antitrust concern [is] that if they had been permitted to grow to fruition, as a functioning profitable company, they would have been a competitor to Google," said Polden. "These early stage acquisitions will need new theories and new thinking about the potential competition doctrine in antitrust cases."

"Government enforcement is probably what is most troubling for these major tech companies because the government has the resources" to take on a large antitrust lawsuit, Polden said.

Berin Szoka, President of TechFreedom, a non-profit think tank, says we are in need of new standards to address the antitrust concerns surrounding these companies.

"More rules and regulations are not needed" and the court system is fully equipped to deal with the coming issues, Szoka said. "A case-by-case analysis should be done" so harms to the industry do not occur, and the "courts are equipped to do that case-by-case analysis."

Rules and regulations do not have the same flexibility as new standards. Standards are uniform guidelines established by consensus that provide common and repeated practices for companies to follow. "Narrow regulations are a lot harder to capture problems because you have to apply the same law across multiple industries," said Szoka.

With technology moving so fast, rules and regulations can be insufficient for solving certain issues, says Szoka. "It was hard enough to think about these issues when we were talking about new versions of Internet Explorer every few years, but we are now talking about companies and services that are constantly being changed," said Szoka.

But the idea of breaking up Big Tech wouldn't solve the problem, says Szoka. "You will just wind up with the same problem no matter how you try to break up the company." Szoka explains that we "are always going to have these large networks because that's the whole point of a social network. We want to use [social media] that other people are using."

Federal Court to Rehear EPA's Decision to Not Ban Chlorpyrifos

BY: Shyam Rajan

An environmental non-profit organization is planning to take the Environmental Protection Agency (EPA) back to court after the agency refused to ban the pesticide chlorpyrifos.

Earlier this year, the U.S. Court of Appeals for the Ninth Circuit allowed the EPA 90 days to decide the chemical's future after the League of United Latin American Citizens (LULAC) brought a suit seeking the pesticide's ban. Earthjustice, which is representing LULAC, is looking to challenge that decision.

"The EPA has never said that it has found this pesticide safe. It wants to keep studying the science and wait to take any action until some undetermined future date when it has done that study and that is not allowed under the law because when it makes a finding, it can leave the pesticide in our food only if they find it safe," said Patti Goldman, lead attorney at Earthjustice.

The Ninth Circuit agreed to rehear the case. Earthjustice's opening brief is due at the end of October.

Allison Crittenden, Director of Congressional Relations at the American Farm Bureau Federation, said that despite the criticism of the pesticide, it serves an important purpose. "We are not supportive of the effort to ban it," said Crittenden. The Federation says they do not take a position on the pesticide's specific toxicity.

"It's just responsible use, following the instructions on the label, making sure you are using the proper protection when you are using pesticides," said Crittenden. "A lot of it is common sense but there are guidelines in place and standards in place that use of pesticides must meet in order to use them."

Although consensus is lacking as to its neurotoxic properties, chlorpyrifos is a near-invisible pesticide sprayed on most fruits and vegetables families eat daily. It has been marketed since the mid-1960s for commercial use in the United States.

"You can measure the levels in the blood and after a certain point people are at risk of acute poisoning. That happens often, every year, that happens to people often just from pesticide drifting from where it's applied and getting into where other people are, whether its workers in the field or kids at school or people in their yard," Goldman said.

From a family of about two dozen pesticides known as organophosphates, chlorpyrifos is one of many still active on the American market. The Centers for Disease Control and Prevention liken the effects of exposure to organophosphates by inhalation to contact with nerve agents used in chemical warfare.

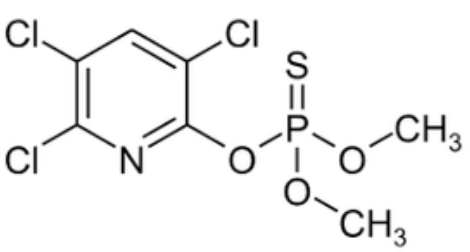
Diane Perez, Washington State Director for the LULAC, said the EPA's decision may have been a result of shifting politics, as Republican leaders took control from Democratic officials in Washington, D.C. a few years ago.

"It might have just been pressure from the agriculture industry, or just the fact that there was a change in administration, so everything was going to be paused and reassessed and reevaluated for other purposes. I want to believe that everybody in all levels of government really have the people's health as a priority," Perez said.

According to EPA estimates, about 5-8 million pounds of chlorpyrifos are used nationwide per year.

Art from Van Ness Avenue, San Francisco, CA, 15 August 2006

"Over half of all the apples and broccoli in the US are sprayed with chlorpyrifos. We have the right to ask what pesticides are being used on these crops," Perez said. However, Crittenden said there is good reason for its widespread use. "There are some pests where chlorpyrifos is the only option. If we start to ban all of these different pesticides and leave farmers with limited options, we risk [pests] developing resistance to these chemicals and then they no longer become as effective," Crittenden said. According to Earthjustice and the Pesticide Action Network, chlorpyrifos suppresses an enzyme regulating nerve impulses. Exposure can manifest itself more prominently in children, especially in doses far below those which cause acute



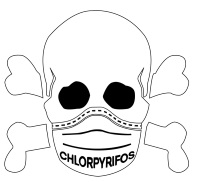
Molecular Structure of Chlorpyrifos
Image from commons.wikimedia.org

poisoning. An article published by the National Center for Biotechnology Information indicates that exposure can begin in utero, causing brain damage, changes in physical and mental development, and attention deficit disorders. Perez believes more could be done while waiting for the court's decision. "Who knows how long it will take at the federal level?" asked Perez. "So at least what we could do is take a state strategy approach as well. I don't know how often folks are aware, so education about these specifics is going to be very important."

Goldman said alternatives have been discussed at least since the early nineties, but the conversation became more complex after realizing alternatives must be considered on a pest-by-pest, or even crop-by-crop, basis. Crittenden said limiting which pesticides farmers can use will increase the cost of purchasing food.

"Farmers need to have all the crop protection tools available to them. We are being asked to produce more food with fewer resources. Without allowing farmers to have access to a broad array of technologies we would not be able to effectively do that," Crittenden said. Regardless, Goldman said she has hope that she will be successful in her challenge of the pesticide.

"It's pretty clear this class of pesticides is archaic, outdated, and is on its way out. Hopefully, then, we will be looking at kind of a different paradigm of how decisions are made, particularly those that are affecting our children and [causing] society so much harm unnecessarily."



Perez agrees. "The agriculture industry wants to have all [the] tools available. I think what we need to start doing is looking at [the] lower risk tools we have out there and putting the people's health as our priority over the almighty dollar," Perez said. California recently banned the use of chlorpyrifos in the state, following similar actions by New York and Hawaii.

**The EPA declined to provide comments.*

CA Changes Standards for Law Enforcement's Use of Deadly Force

BY: Pedro Naveiras

A new California law is changing the standard for the use of deadly force by law enforcement officers.

Previously, the legal standard allowed officers to use deadly force when they had a reasonable belief that they or another person were in imminent danger. The new bill, AB 392, was signed into law by Governor Gavin Newsom in August 2019 and changed the existing standards to provide that deadly force may only be used when necessary.

"The bottom line is that deadly force should only be used when absolutely necessary," said Gov. Newsom in an official statement on the day it was signed. AB 392 goes into effect on January 1, 2020.

Within Santa Clara County, the District Attorney's Office makes the decision whether an officer will be held criminally liable after an officer-involved shooting. Also, it produces detailed public reports, available on its website, on every fatal shooting in its jurisdiction.

Among other data, these reports include a factual summary, officer and civilian statements, summaries of different video recordings and information on the forensic examinations. The Santa Clara office also includes a determination of whether the officer may be subject to criminal liability based on the available evidence.

Deadly force is justified in two circumstances. First, "to defend against an imminent threat of death or serious bodily injury to the officer or to another person." Second, "to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to the officer or to another person." Second, "to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended." The bill, however, outlines that "where feasible," the officer should make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, "unless the officer has objectively reasonable grounds to believe the person is aware of those facts."

The bill stipulates that the decision to use force shall be "evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force."

Assistant District Attorney Brian Welch of the Santa Clara County District Attorney's Office said the new law would not change their investigations and reports as they already included most, if not all, of the standards the new law seeks to revise. However, Welch said when they write reports from any incident going forward, they will incorporate the new language. Welch said that his approach is "to understand why didn't the officer believe that other force options were available."

W. David Ball, Professor of criminal law at Santa Clara University School of Law, supports the new law, saying, "public safety should include the right to feel safe when [they] call the police."

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Image from PixaBay.com

Alt. Legal Service Providers

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Narrower definitions of law practice have allowed business entrepreneurs to enter online dispute resolution (ODR). ODR operates in the realm of potential litigation, sometimes touching the blurry line of legal issues that might involve attorneys.

Most would not think of eBay as a legal service provider, "but they sort of built their whole ODR system to meet the same need to keep them out of the courts," said Colin Rule, Vice President of Online Dispute Resolution for Tyler Technologies.

ODR systems created by e-commerce sites like eBay efficiently manage high volume transactions and e-commerce cases. They also help consumers resolve cases in the comfort of their own home with one click of a "redress" button.

"[It's] kind of weakening the legal monopoly and allowing other players to come in and provide services … I think technology is opening the door to that as well," said Rule.

ALSPs see technology as the key to increasing value to clients. Thomson Reuters Legal Executive Institute's ALSP 2019 report found that "about one-quarter of the 35 ALSPs interviewed … say they are currently using AI in their offerings. [A third is] actively evaluating AI's potential use for their purposes."

The Big Four accounting firms, Deloitte, Ernst & Young, KPMG, and PricewaterhouseCoopers are among the largest and fastest growing ALSPs competing directly with large law firms. Often, they provide regulatory risk and compliance services, according to the Reuters 2019 report.

In the same report, 20% of large law firms reported they have competed against one of the Big Four in the past year, and 21% of mid-size law firms shared that they lost business to one of the Big Four. Each of the Big Four accounting firms have AI initiatives and some have invested heavily into innovation labs, embracing automation and augmentation.

Meanwhile, legal research companies, like Ross Intelligence, Judicata, and Casetext are using AI to analyze briefs and identify missing cases or stronger arguments.

Some large law firms are responding to legal market changes through research into innovation. Bryan Cave Leighton Paisner (BCLP) started off with small innovation groups.

"A lot of what we were doing in client technologies was using some of the cutting-edge platforms that were available broadly in the market … automation tools and client collaboration portals," said Christian Zust, Regional Innovation Solutions Director at BCLP.

He also leads the development of technology-augmented solutions that help deliver improved, cost-effective services to clients. According to Zust, BCLP "[has] a pretty significant proprietary development team."

BCLP has restructured its firm to center around innovation. This past June it announced the release of BCLP Cubed, a legal service that integrates complex legal advice with high-volume legal services and legal operations.

Kristi Smith works alongside Zust as Senior Manager of Expert Systems and U.S. Automation at BCLP. She improves the efficiency and effectiveness of legal services delivered for BCLP's lawyers and clients through automation, intelligent workflows and collaboration portals.

Some challenges are constant regardless of tech-integration or type of business model. Smith said, "It's dependent on what the clients' needs are. Innovation [is really] more of stitching things together to provide an end-to-end solution, a one-stop-shop for our clients."

Not every player is competing against ALSPs or leveraging them in the same way as firms. Code 42 is a small- to mid-sized software company whose in-house counsel created a contracts management and workflow process.

"We're kind of at a stage where we have a lot of technology on the radar but we're not quite at the size yet, nor [have we] seen the volume of work where it makes sense for us to actually invest in the technology," said Paul Shoning, Assistant General Counsel at Code 42.

"Half of what I do is not actually legal advice but understanding process and operations and helping people think through what they want to achieve and … the different ways that they can achieve that," said Shoning.

Business and corporate clients are also demanding that junior associates be more versed in legal technology.

"The traditional model of hiring entry level associates, training them and making money off the process of training has been receiving a lot of pushback from corporate clients," said William Henderson. "Step number one is don't pay for overpriced junior talent. The entry level salary of a graduate in lead firms is $190,000. That's too high of a wage to train people."

Due to cost pressures, "clients and firms have looked for ways to avoid the least attractive part of the cost structure, which are entry level associates," said Henderson.

Henderson teaches a class about law firms as business organizations at Indiana University Maurer School of Law. "The migration toward legal work being [done by ALSPs] is corporate oriented and business oriented," said Henderson.

Henderson is a self-proclaimed legal rebel, taking on legal academia in the hopes of closing the gap between traditional education and industry demands.

"Specialization is a huge portion of where the legal industry was for most of the twentieth century," said Henderson. "Now we're entering this period where allied disciplines need to be added into the mix, so general lawyers, specialized lawyers [and] now allied professionals combined with lawyers is the area that we are entering now."

ICE Using License Plate Database

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Nevertheless, the ease of access ICE has to such information raises issues of privacy. Resistance against APLR technology has started in the Bay Area as cities begin rejecting contracts with Vigilant Solutions. In 2018, the City of Alameda rejected a proposed $500,000 contract to purchase Vigilant Solutions' APLR readers for use, reported the ACLU NorCal. After city residents expressed their concern with the proposed contract, Alameda City Council members ultimately decided they did not want to work with a company that sells its products to ICE.

Instead, the council adopted strict safeguards regarding future use of tracking technology, reported the Alameda City Council.

> "There will always be people who dislike surveillance, but in a way it's necessary."

On the other hand, some cities that have contracted with Vigilant Solutions strictly limit use of the technology to criminal investigations. The Union City Police Department revealed that while they have signed a contract with Vigilant Solutions, they very rarely use the APLR databases, and when they do, it is only for assisting in criminal investigations.

"We are very transparent with our use of this technology," said Travis Souza, Captain of the Union City Police Department. "There are many policies and procedures in place to prevent any misuse," he said. "There will always be people who dislike surveillance but in a way it's necessary."

The problem of "misuse," however, raises the question of what exactly constitutes a misuse of this technology. According to W. David Ball, Professor of criminal law at Santa Clara University School of Law, any private information that is exposed to the public cannot be expected to be kept private under the Fourth Amendment. This provision includes the location of privately owned vehicles the moment they are viewed in public places. Ball said that this idea is consistent with the search and seizure doctrine.

"Nothing is a search if there is no subjective expectation of privacy that the court recognizes as reasonable," he said. "If you walk outside and hold up a sign incriminating yourself, the police don't have to look the other way. It's more or less the same about a car's location on the road — you're on the street so you're in public," said Ball.

However, there is a difference between public exposure of a private vehicle at a certain instant and the continual tracking of said vehicle's location through APLR scans. Vigilant Solutions is a privately owned company offering contracts to its database, which differs drastically from public information that the police have used in the past.

In 2015, California passed Senate Bill 54, which prohibits selling APLR data to an agency that is not a law enforcement agency or an individual that is not a law enforcement officer. Furthermore, the bill requires that APLR data cannot be kept for more than 60 days unless the data is being used as evidence or for the investigation of a felony. This bill offers comfort to individuals who are concerned with their privacy, at least until September 2020 when Vigilant Solutions' contract with ICE ends. In the meantime, the ACLU NorCal is encouraging localities to pass ordinances requiring transparency and oversight whenever a police department purchases surveillance technology.

**Vigilant Solutions declined to comment.*

Artificial Intelligence is Seeping into the Legal Field

BY: Emily Ashley

Yavar Bathaee, a partner at a law firm that heavily leverages Artificial Intelligence (AI) capabilities, wants to replicate the judgment of a seasoned trial lawyer who has been practicing for 30 years. His firm, Pierce Bainbridge, is experimenting with AI in a variety of ways, such as determining whether a Federal Rules of Civil Procedure 12(b)(6) motion to dismiss will survive a challenge.

AI is subtly seeping into every aspect of our lives and the legal field is no exception.

When we talk about legal AI, "often, it's not even AI — it's automation of routine tasks that otherwise would be carried out by a person with lots of experience," said Colleen Chien, Professor of tech law at Santa Clara University School of Law and advisor to ClearAccessIP, an AI-driven patent analytics and enterprise software firm.

Lawyers are already leveraging automation to perform tedious work, such as document review or completing paperwork, said Chien. But AI goes deeper than automation, it involves machines that are actually trying to mimic human intelligence and behavior. The seemingly limitless capabilities make it hard to predict how these tools will fit into the legal landscape, said Chien.

"When the [tool] is learning from data and it's fully-trained, it can arrive at decision boundaries that no one ever intended," said Bathaee.

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Trump Tax Returns

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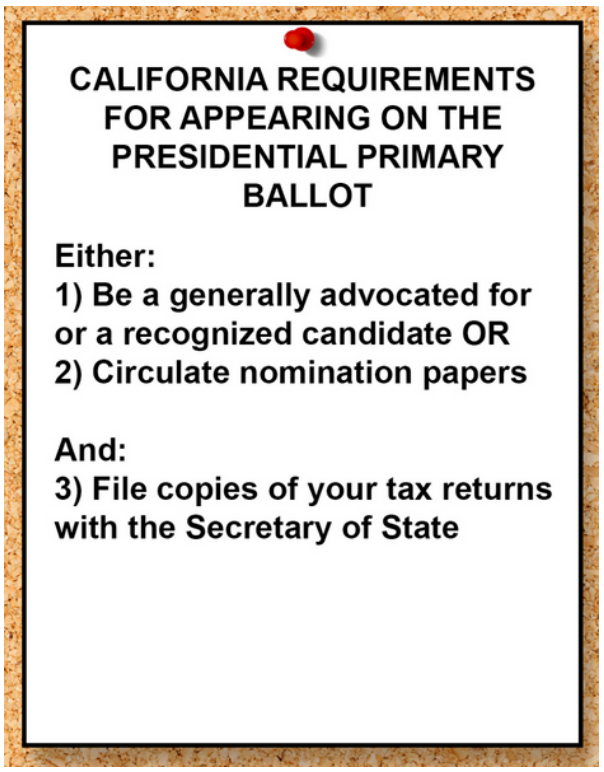
all candidates for the presidency or governorship submit their tax returns to the Secretary of State, who then publishes a redacted version on the official Secretary of State's website until the official canvass for the presidential primary election is completed.

Bradley Joondeph, Professor of constitutional law at Santa Clara University School of Law, says that the Supreme Court has been clear that there are limits of the government's ability to dictate rules on how a party selects its own nominee.

In 2000, he explained, both the Republican and Democrat parties in California brought suit against a law requiring them to hold open primaries. The U.S. Supreme Court declared the law unconstitutional because it interfered with their First Amendment right to choose who their members and nominees.



"More neutral rules like getting signatures and filing fees would be fine, but something like this is a bit different because there is some ideological bent to this requirement. Had this been brought up fifteen years ago, it might be thought of in different terms. We can sort the world into facts and law or opinion, but ultimately different facts have different meanings when they arise in different political contexts." Joondeph said.

Although the law only regulates the primaries, Joondeph explains that regulation of the general election would be similarly impermissible because it would be a state imposing requirements on a federal office and the federal government.

"What we're worried about from a structural perspective is a state, without the blessing of the federal government, doing things to dictate what the national rule is. Within a federal system, as long as the federal government is acting within its sphere, it should dictate what national policy is, and states should dictate policy within their borders," Joondeph said.

Assemblymember Marc Berman (D-Palo Alto) says he and a number of constitutional law scholars think it is constitutional. Mr. Berman disavows the notion that the law is a partisan measure. "The law applies to both Democrats and Republicans. Historically, candidates from both parties released this information. There is nothing partisan about it at all," said Berman.

The returns have been a major focus of political controversy for the President since his refusal to disclose them in the 2016 campaign. Two separate subpoenas for the President's tax returns have survived challenge in federal courts —one from House Democrats on the Oversight and Reform Committee and another ates from Manhattan prosecutors to Mazars USA LLP. Assembly member Berman expressed solidarity with those who are disappointed with the news of the injunction. "I, too, am disappointed, and it's a shame that all candid running for President don't voluntarily release their tax returns. As we have seen numerous times with President Trump, there is a real fear that any President could abuse the office for personal financial gain.Californians have a right to know what a presidential candidate's financial interests are, and how that might influence the way they govern," Berman said.

California Secretary of State Alex Padilla said in a news conference that he is going to appeal the order. The law will remain unenforceable pending appeal.

New Force Bill

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The new law was drafted in response to the 2018 killing of Stephon Clark in Sacramento, where a young African-American man was shot seven times by police officers in his grandmotherbackyard while holding a phone.

Between 2005 and 2016, out of the nearly 1,200 police killings that occurred during an arrest, only two were deemed unjustified, according to California Department of Justice data. This year, so far, out of 709 people who have been shot and killed by police in the U.S., 100 of those deaths occurred in California and 49 involved an individual carrying a gun at the time of the shooting, according to the Washington Post's Fatal Force tracker.

"I think that [police officers] should have to think twice before [they] kill somebody. There are too many tragedies. Policing is dangerous, but it's not in the top 10 most dangerous jobs in the United States," Ball said.

SB 230, which was contingent on the passage of AB 392, will require law enforcement agencies to create "guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things."

"[They're] well trained and have other tools at [their] disposal. There are ways of neutralizing that threat that don't involve taking somebody's life," Ball said.

The American Civil Liberties Union of Northern California agrees with Ball, writing on their website, "research shows that officers at agencies with stricter use-of-force policies kill fewer people and are less likely to be killed or seriously injured themselves."

The American Civil Liberties Union of Northern California agrees with Ball, writing on their website, "research shows that officers at agencies with stricter use-of-force policies kill fewer people and are less likely to be killed or seriously injured themselves."

"After Seattle implemented a new use-of-force policy that contains some of the same key elements as AB 392, a study by a federal court monitor showed that the policy significantly reduced mid-level and serious uses of force without any increase in injuries to officers or the crime rate," wrote Lizzie Buchen, Legislative Advocate for ACLU NorCal.

Sarah Purdick, an attorney who represents law enforcement officers in civil matters, is concerned about how this new law will affect current police officers. "Officers are pre-conditioned [by] their training," said Purdick. "[Incidents] happen in a few seconds and an officer is considering their [use of] force options in those seconds," said Purdick. Now, there are other options the police must consider in that short span of time.

Purdick also said courts will have to decide how to interpret the word "necessary" in the coming years. "We don't really know how that's going to be interpreted yet," said Purdick. "I don't know what will come first. Will the legislature further codify it and edit or [will] case law will be generated that will interpret it?"

**The Santa Clara County Sheriff's Office respectfully declined to be interviewed and the San Jose Police Department did not respond to our requests for comment.*

DMVs Selling Personal Data, But Not in CA

BY: Casey Yang

A recent investigative report found that while certain State Department of Motor Vehicles (DMV) across the country are selling drivers' personal data, California does not. Still, privacy experts say more can be done to protect personal data in the state.

Vice News reported that certain DMVs profit by selling personal data collected from drivers licenses and vehicle registrations. Under its privacy policy, the California DMV does not sell driver's license information to private investigators, even though it is permitted by the Driver's Privacy Protection Act (DPPA).

California's DMV Privacy Policy states that "the [DMV] is committed to promoting and protecting the privacy rights of individuals."

Depending on the policy of other states, DMVs may contract with credit reporting companies, bail bonds firms, bounty hunters, and various other third-party entities in addition to private investigators.

Vice News reported revenue amounting to millions of dollars every year for DMVs in states such as Wisconsin and Florida. "Documents explicitly note that the purpose of selling this data is to bring in revenue," the report states.

The DPPA is a federal statute that permits DMVs to sell certain driver's license information to licensed private investigators. DMVs are also governed by state statutes that could limit what personal information it may collect and how that information may be used.

Generally, the data collected includes a citizen's name and address, but can also include their ZIP code, date of birth, phone number and email address.

California's DMVs are governed by the DPPA and the Information Practices Act of 1977, among other state and federal statutes. The purposes of the policy are to limit the collection of personal information and provide safeguards to protect that information. The policy lists the specific types of information the DMV collects such as medical information and fingerprints, as well as the information listed in the Vice News report.

Disclosure of this information is generally limited and only authorized to government institutions, legal officers and law enforcement officials.

The Department strives to inform people what its purpose is for collecting their personal information including the authority of the request, the principal uses of the information, and the DMV's disclosure obligations.

"[The] DMV uses personal information only for the specified purposes ... unless [the] DMV gets the consent of the subject of the information, or unless authorized by law or regulation," the Privacy Policy states. California DMV officials declined to comment.

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Exonerations in 2018

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it may have just been an error," since doing so would misrepresent the actual number of instances in which intentional misconduct took place, he said.

Another factor that contributed to the increased number of exonerations was a change in the law in 2017 that loosened the legal standard on newly discovered evidence, said Melissa O'Connell, staff attorney for the Northern California Innocence Project, a non-profit dedicated to exonerating the wrongfully convicted and reforming criminal justice policy.

Describing the significance of changing the law and its impact on exonerations, O'Connell says "they couldn't meet this astronomically high standard and now they can because we changed the law." Additionally, she says that the change in the law came after years of unsuccessful attempts to meet the high burden of proof described by the law, pointing to California Penal Code § 1473(b)(3).

"We had the highest burden of proof in the entire nation," making it "virtually impossible in all of our cases" to satisfy the burden of producing evidence, she said. The change to the law lowers the burden of proof, providing that "[n]ew evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial," and that new evidence "means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence," according to Cal. Penal Code § 1473(b)(3).

> "Put simply, O'Connell says there are too many bad actors and that 'it takes good actors to right that wrong.'"

Put simply, O'Connell says there are too many bad actors and that "it takes good actors to right that wrong."

O'Connell cited Sergeant Ronald Watts as one of those bad actors. According to the National Registry of Exonerations, "thirty-one defendants who had been framed by police on drug and weapons charges were exonerated in the wake of a scandal involving corrupt Chicago police officers led by Sergeant Ronald Watts in 2018." According to the Watts case, this was the largest contributing factor in 2018's record number of exonerations.

As for an example of a good actor, O'Connell identified Craig Watkins, the former District Attorney for Dallas County, Texas.

When Watkins took office in 2007, he created the nation's first CIU, "resulting in 49 exonerations", though she admitted that this isn't always the case and sometimes requires initiative. "If everyone in the criminal justice system is doing their job, then we can reduce the risk that we wrongfully convict people, because that only magnifies the idea that we have problems with our system."

When looking at misconduct more in depth, we see that there are some issues with how evidence is managed, explains W. David Ball, Professor of criminal law at Santa Clara University School of Law.

"Under Brady v. Maryland, what the prosecution is supposed o do is to disclose any evidence that is favorable to the defendant" says Ball. However, Ball notes how ome attorneys do the exact opposite, prioritizing conviction at the expense of justice, thinking either "they really did it and I would hate to see them walk free" or "the people want to see that justice was served and nobody would know about it but me."

Ball says that "obviously not all prosecutors think like this but when it comes to actual misconduct, this is likely how it happens," suggesting that misconduct is not as straightforward and direct as many may think.

Instead, the underlying source of misconduct might be fundamental and systematic. "When one side has resources and information they aren't providing and the other side is an overburdened public defender without the same resources, those are the issues that result in the wrong person going away for a long time," said Ball.

Jeff Rosen, District Attorney of Santa Clara County, helped introduce CIUs.

AI in the Legal Field

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A number of AI tools are already in use. ROSS Intelligence, a legal research platform used by firms across the country, is using AI to expedite legal research. ROSS provides a platform that uses natural language processing capabilities to reduce the time and effort it takes to refine search queries. They also offer a document analyzer where users can upload memos or briefs to determine if their citations are still good law. ROSS is working towards running searches that will reflect how individual judges have historically ruled on various issues. Bathaee envisions a future where lawyers and judges are using AI to keep judgments consistent with precedent.

"The question then becomes predicting the judgment of the person making the decision more directly from what they've done and what drives them, than playing this jurisprudence game where I read a case and I distinguish the case's facts — that's going to become less important than saying, 'Ok, Judge X usually has the following outcome on the following issue,'" Bathaee said. "You're looking at what judges actually do and not what they're supposed to do."

Additionally, AI can help lawyers work more efficiently under attorney-client privilege, said Bathaee.

"AI is a great way to preserve privilege," Bathaee said. "AI can look through privileged documents, make privileged calls, or even look through opposing counsel's privileged documents and make determinations without a human being breaking the privilege."

Workforce Evolution

Many wonder how AI will impact the legal job market. Joanna Goodman, AI researcher and author of Robots in Law: How Artificial Intelligence is Transforming Legal Services, is not concerned. "In Silicon Valley, you're client-facing. [AI] will actually allow junior lawyers to see more how the client works rather than sifting through documents."

Bathaee said that "the tools have gotten so powerful that they can leverage themselves, so they essentially have the benefit of having an entire staff of junior lawyers. There's two sides to this coin. On one hand, you probably won't find that easy job [at a firm] doing grunt work, but on the other hand, you can compete directly with them without having a giant leveraged staff. The idea is that if you're younger and you're less experienced, you can actually acquire that experience without the barriers of entry we normally encountered 10-20 years ago."

Goodman warned that when it comes to AI, "law is not special, law is late to the game." She encouraged innovation, pointing out that "process is a barrier to progress … I don't think the legal tech sector realizes that by saying, 'Oh, we don't want to do this, we want to go back to boring and look at the data,' they don't realize that someone else will get in first because tech is fast-moving."

To complicate this risk, the Task Force on Access through Innovation of Legal Services, a committee appointed by CA State Bar Board of Trustees, met this past summer and recommended that the state allow non-lawyers and technology-driven legal systems to deliver legal advice and services.

If the door opens for non-lawyers and AI to act as lawyers, the Big Four accounting firms — Pricewaterhouse Coopers, Ernst & Young, KPMG, and Deloitte — are primed to enter the fray as they have started investing in legal tech and purchasing products, such as AI contract review platforms, to begin providing those services to their clients. Google is also entering the fold, offering a product called Document AI that analyzes legal documents.

Embracing the Change

With an evolution on the horizon, adaptability is a natural concern. "Those who are open to its possibilities and how it can actually improve and make the legal system work better for everybody are going to be in much better shape," Chien said. "Lawyers also need to be aware that people are unhappy with the legal system. They find that it's broken. The more resistance there is in the legal industry to change, the faster the disrupters who are unhappy with it will try to change the system fundamentally. I think it's in everybody's interest to embrace change and try to make the system work better for everybody, not just for lawyers and making more money. Those who are concerned about the future of the industry should try to think about how we can add value."

Lawyers do not necessarily need to master programming to embrace AI, but familiarity will help. Athena Fan, legal technologist and founder of the start-up Bite Size Legal, agreed. "You need to know enough about engineering or programming to at least talk to the people who are programming the software. Once you understand the process it takes to code, it empowers you to talk to your programmers," she said. Bite Size Legal is a legal chatbot meant to resolve legal rental issues and is currently in early Beta Testing.

"Being able to write very basic computer programs, build models, being literate in data science will give you a huge edge," Bathaee said. He is optimistic: "In a few years, people will have the baseline ability to write a Python script that reads some data and builds a neural network that's trained on it and makes decisions," he said.

Chien agreed that coding is becoming a norm and points out that "more and more of my students have that background coming to law school. I feel pretty confident that for the next generation, that's not going to be a real differentiator."

DMV Selling Personal Data

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Dorothy Glancy, a Santa Clara University School of Law Professor, who has expertise in privacy and transportation law, says that while the CA DMV is "one of the best and tightest DMVs around the country, that doesn't mean that information doesn't leak out."

The tightened restrictions dissuaded at least one local private investigator, Edward Albanoski, Jr., President of Veteran Officer Security and Investigative Solutions, Inc., from contracting with the DMV. "I don't like to deal with the California DMV because it's not worth the money and the time and trouble it takes to get the information," Albanoski said.

The State of California also implemented stricter licensing regulations for private investigators. Investigators must be insured with the State, and the insurance and bonding companies must agree to notify the State if investigator payments lapse, which can result in license suspension.

Frequent background checks and audits of licensed private investigators are conducted to safeguard people's information. Audit requirements include firewalls on computers, locked files, safes, and alarm systems. Albanoski said he has no issue with the state's thorough procedures.

"Privacy of information is of the utmost importance," Albanoski said.

Mike Shapiro, Chief Privacy Officer for the County of Santa Clara, also believes in privacy and protecting people's personal information.

"I'm certainly someone who believes that the privacy of the individual should be protected and that there's certainly a concern for abuse [of statutory interpretation] whether it's from authorized exemptions or otherwise," Shapiro said.

Glancy and Albanoski echo Shapiro's concerns as it pertains to private investigators.

"Private investigators can and sometimes do get the information whether legally or illegally," Glancy said.

Albanoski has heard of other investigators that are more lenient and will do what they have to do to make money.

"Integrity is questionable in this industry. I think there's over 10,000 private investigators in California that are licensed, but a lot of them aren't. There are a lot of people running around calling themselves private investigators that aren't licensed. And they'll pay to get the information from a licensed private investigator," Albanoski said. "The privacy of individuals is only as good as the integrity of the person looking for it."

New Independent Contractor Guidelines

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Under Dynamex's ABC test, to establish a worker is an independent contractor, the hiring entity must establish three factors. A) "that the worker is free from the control and direction of the hiring entity." Put differently, the worker's performance is not controlled by the employer. B) "the worker performs work that is outside the usual course of the hiring entity's business." In other words, the work must be doing work that is different from that of the employees. Finally, C) "the worker is customarily engaged in an independently established . . . occupation, or business."

Most gig-workers do not satisfy all of these requirements and, under the new law, are incorrectly classified as independent contractors. This classification means that independent contractors are not afforded certain rights such as minimum wage, workers compensation, state disability benefits, or unemployment benefits, that they would otherwise receive if they were classified as employees, all to the financial benefit of the companies that employ them. Further, the independent contractors cannot seek redress at government agencies such as the Labor Commission and the Equal Employment Opportunity Commission.

"By misclassifying workers as independent contractors, employers exploit workers by denying them state benefits and the opportunity to unionize, that are afforded to other workers," said Ruth Silver Taube, employment law attorney and Santa Clara School of Law professor.

AB 5 will likely protect low income workers who are unable to otherwise advocate for themselves, she said.

Businesses that have been misclassifying workers as independent contractors will soon have to pay into worker's compensation and unemployment insurance. They will also have to provide paid sick leave. In response to AB 5, gig-companies like Uber and Lyft have claimed that they are not in the ride-share business, but rather are technology companies that provide platforms for drivers to meet passengers and thus should be exempt from the new law.

"Unless there's a new law, Uber and Lyft won't be exempt" from AB 5, said Tim Broderick, employment law attorney at Broderick Saleen Law.

"Uber's argument that it is a platform and not a transportation company defies logic and common sense, and it has been rejected by the Labor Commission" said Silver Taube. While there are several exemptions, Silver Taube explains that "the professionals that are exempt from AB 5 can advocate for themselves; they have more bargaining power than these low-wage workers who are paid at or below minimum wage." Many independent contractors, however, are worried that AB 5 will take away their flexible work structure. "I am very new in the country and I have a family to take care of, so I have to drive on the weekends," says Mahmood, an Uber driver in San Francisco who doesn't have another job. It seems Mahmood is not in the minority. "I couldn't drive full-time because it wouldn't pay enough money," says Joseph, a Lyft driver, who also works two other jobs in order to afford the cost of living in the Bay Area.

Mahmood and Joseph are like the thousands of independent contractors working jobs that offer them flexibility and require little work experience so that they can make additional income. Both said they would choose to forego protections, such as minimum wage, if it meant they could continue to pick their own schedules.

"It's a red herring that employees will not have flexibility," explains Silver Taube, "an employer can give you flexibility whether you're an employee or an independent contractor."

A major concern for most gig-companies is the added costs that AB 5 will create once the law goes into effect.

"The larger question, beyond all of the legal questions, is whether these companies can survive financially under their current business models," said Broderick. Companies "like Uber and Lyft are not profitable and the added burden of having to treat drivers as employees is likely to render them unprofitable for a long time or even put them out of business."

"There will be costs, but it's my belief that if your business model shifts risk from the company to the worker and strips away worker protections, then maybe you shouldn't be in business," Silver Taube said.

Opinion: Rising Insulin Costs: We're Just Living to Die

BY: Dustin Weber

It feels like the U.S. health-care industry is conspiring to kill us. Numerous reports are finally breaking into the mainstream discussion that detail how young adults are dying from being unable to afford insulin. These stories, both heartbreaking and infuriating, have illuminated the moral bankruptcy of our health care system. With a supposed bounty of wealth and resources, the U.S. nonetheless remains the only country in the post-industrialized world with a for-profit health-care system. Without legislation that caps costs, fully funded regulators and limitations on the ability to continually patent life-saving medications, the pharmaceutical industry and its federal accomplices will be culpable in the deaths of thousands more diabetics.

I am afflicted with Type-1 diabetes. Access to insulin is very literally a life and death issue for me. The unnecessarily convoluted U.S. health-care system has long made access to insulin expensive and frustrating. The Health Care Cost Institute estimates that the average Type-1 diabetic spent approximately $5,700 on insulin in 2016. According to the Journal of the American Medical Association, out of pocket costs for insulin's consumers, who are helplessly and permanently captured, have more than doubled in the past decade.

I have been insured every year of my life with diabetes, however, my total out-of-pocket costs for diabetes-related health care from my eighteenth birthday through this year exceeds $100,000. Currently, while a full-time student in law school, I spend a significant number of hours working for my father throughout the year so I am able to comfortably afford the $250-$300 I spend monthly on life-sustaining medication.

The fear and anxiety wrapped around unceasing thoughts of a relatively sudden death forces us to endure the myriad burdens associated with this inhumane system. The disease, itself, is unrelenting and punishing. Bouts of hyperglycemia are exhausting. Without proper treatment and management, one becomes lethargic, dehydrated, subject to mood swings and declining mental acuity. As the body uses toxic acids for energy, the person is left slowly suffocating before going into a coma. Absent emergency treatment, these comas are fatal.

The causes undergirding this crisis are layered and systemic. One solution is allowing more generic medications to hit the market, but since there is no requirement that manufacturers of generic drugs competitively price its products the prices for generic drugs have crept closer to the prices set by the patent-holding manufacturers. Every insulin manufacturer this decade has dramatically and simultaneously increased its prices. This is not evidence of a healthy and competitive free market. This is collusion.

Yet, even suggesting the pharmaceutical industry actually is subject to market pressures ranks as so laughably absurd one would be forgiven for thinking the assertion came from the President's Twitter account. By law, Medicare cannot negotiate lower drug prices with pharmaceutical companies. This was a gift given by Congress to Big Pharma, which spends more on lobbying Congress than any other industry, during the controversial passage of the Medicare Modernization Act in 2003.

Furthermore, the industry does not set prices based on traditional market factors. Gilead, a pharmaceutical company, recently developed heat maps and statistical models to determine the probability of public outcry at different price points for a new drug. Once the model determined the highest price it could charge without a strong likelihood of public outcry, Gilead set the drug at that price.

Industry arguments for these killer cost increases are as devoid of empirical support as they are of humanity. Another industry gem is that products get better, so the costs of developing the supposedly more efficacious insulins are built in to the price increases. Yet, as Dr. Jing Luo, a Professor at Harvard Medical School, noted in a study published in The Lancet, "the cost of innovation" argument does not explain why the costs of older insulins are rising at a significantly higher rate than inflation.

Another argument suggests that high prices are needed to fund research and development. The nonsensical idea advanced here is that if the U.S. puts more regulatory controls on the pharmaceutical industry, it will do less research and thus fewer lifesaving drugs will make it to market. Again, the emptiness of this claim, one cleverly designed by the industry's public relations professionals, is belied by empirical data.

Peter Bach, a researcher at Memorial Sloan Kettering, which is the world's largest private cancer center, recently found that the difference between U.S. and global prices of the pharmaceutical industry's top twenty selling drugs worldwide pays for all of the industry's research and development costs, with billions to spare. Thus, every sale of every other drug goes to profit and an industry favorite pastime — marketing its wares. These nauseating advertisements really should conclude by stating to ask your doctor if bankruptcy is right for you.

The perverse incentive structure of the U.S. health-care system produces cruel and demeaning outcomes. Money is not made by curing diseases. Rather, month after grueling month for insulin's consumers, profits are maximized by extracting the most money from patients, while minimizing the amount of medication provided. Unsurprisingly, this approach contributes to further health issues.

Type-1 diabetics are four times more likely to experience depression and more than twice as likely to experience anxiety relative to the general population. I experience some of the former but thankfully less of the latter. A Type-1 diabetic born between the ages of 0-10, the age range in which I was diagnosed, will have fourteen years cut off his or her life expectancy. Evidence not only buttresses the assertion that the U.S. health-care industry is trying to kill us, but rather supports a far more alarming conclusion — it is succeeding.

RUMOR MILL

BY: SUSAN ERWIN - Senior Assistant Dean for Student Services

Dear Rumor Mill, I am sitting in Charney 101 slowly watching my battery die. Why don't we have power outlets in the classrooms? I know there are battery packs in the back of room, but I refuse to swipe my credit card just to get power.

DEAN ERWIN:

I know it's frustrating. We are having a heck of a time figuring out how to schedule exams without power outlets in so many rooms. As I understand it, the decision was made because (a) they thought it more important to have the ability to reconfigure classrooms for multiple uses, (b) they felt that available options for floor outlets were less than ideal and (c) most laptops have batteries that can last through a lecture. I hear that all of the new buildings on campus will have seminar rooms without power outlets.Regarding the battery packs in the back of the room, they are free to use. The reason that you have to swipe a credit card is to strongly motivate you to return the battery packs. Each of those puppies costs about $350 and we can't just keep replacing them if folks accidentally take them home. If you check out a battery pack, it won't charge you until after 24 hours and every 24 hours after that until the battery is paid for or returned. We will be ordering more of them for the other rooms. There is a four month waiting period to get them. I understand they are the latest thing . . .

Dear Rumor Mill,I read in the Grapevine that we get to register next week. As a first year, this will be the first time that I am registering and I am so excited to take some electives! Can you tell me how to register?

DEAN ERWIN:

Actually, as a first year you don't get to register for classes. Law Student Services will be registering you for classes again in spring. Full time students will continue with Legal Research and Writing, Contracts and Civil Procedure class. To that we will add, a four unit Property class and a one unit Critical Lawyer Skills seminar. Part time students will continue Contracts (for 2 units) and Legal Research and Writing. To that we will add a three unit Criminal Law class and a four unit Property class. The first time you will register will be for Summer 2020 in April. Before that happens, we will have a whole week of Academic Advising to give you all the information that you need to know.

Dear Rumor Mill,I overheard a conversation in the hall between a couple of students. One of them was talking about not being able to afford groceries this week. Can you help?

DEAN ERWIN:

Yes! Our very own student-founded and student-run organization – SCU Eats – provides food for students in the lounge four days a week AND stocks a food pantry cabinet in the lounge. It is in the lower cabinets to the left of the sink. Students in need should feel free to help themselves to any of those options. Also, my office can help. Please direct any students to make an appointment with me and we will figure out some options. To make an appointment, they can just go to law.scu.edu/current and click on "Make an Appointment".