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SJSU Students Struggling With Homelessness

By Kirby Nguyen
Staff Writer

San Jose State University's Student Homeless Alliance (SHA) met with its university's president and vice president last month demanding solutions to the school's homeless problem. The group asked for three things. First, they wanted 10 parking spots in the 7th Street parking garage to serve as a safe place for students to sleep. Second, they wanted at least 12 beds in the dorms for homeless students to stay up to 60 days. Finally, SHA asked for $2,500 in emergency grants for students who can not afford rent. All of their demands were rejected during the closed-door meeting.

A study by the California State Chancellor's Office found that 10.9 percent of CSU students faced homelessness in 2018. SJSU, however, reportedly had a percentage of 13.2. This translates to more than 4,300 students at the university. Students have reportedly resorted to sleeping in cars, the student union room, and the library.

SHA was originally formed in the 1990s by Pastor Scott Wagers, who was then focused on addressing the larger homeless crisis in San Jose.

"In the Spring of 2018, SHA was revived," SHA member Alejandro Mayorga said. "But it wasn't until Fall 2018 when we saw the chancellor's basic needs study that we shifted our focus towards student homelessness."

The students have been urging San Jose State to provide help to homeless students over the last two years. In November and December of 2018, SHA held a press conference, a protest, and a "Poverty Under the Stars" event to draw attention to the homeless crisis San Jose State's students are facing.

SHA was told at the meeting that their proposals were not sustainable for each and every student. "The safe parking is not 'safe' and they don't want to invest money in something that can be invested in a better solution... They want to 'house' students, but provided no clear plan of what that is," Mayra Bernabe, President of SHA explained. "For the beds, they can't increase the number of beds because they might remove

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A Right to Know? CA's Secret List of Criminal Cops

By Robert Sisco
Staff Writer

The Attorney General of California, Xavier Becerra, and reporters for the Investigative Reporting Program at University of California, Berkeley are clashing over the reporters' right to disseminate information given to them by a State Commission regarding records of police officers.

In 2018, California's legislature passed Senate Bill 1421, which went into effect on January 1, 2019, with the purpose of advancing police transparency. SB 1421 amended the Public Records Act by adding three additional categories of police misconduct records that can be released to the public: serious use of force, sexual assault, and dishonesty related to an investigation.

Pursuant to SB 1421, reporters from the Investigative Reporting Program at UC Berkeley and its production arm, Investigative Studios, requested information under the Public Records Act for the names of California law enforcement officers and applicants for police jobs who have been convicted of a crime in the past 10 years.

The California Commission on Peace Officer Standards and Training (POST) complied, and provided 12,000 names of police officers, former police officers, and applicants.

While reviewing these records, the Investigative Program received a letter from AG Becerra claiming: (1) the release was inadvertent; (2) that obtaining the records was illegal because it came from a confidential law enforcement database; and (3) that the records must be destroyed or returned and not be disseminated.

In response to the claim that the release was inadvertent, John Temple, Director of the Investigative Reporting Program, said it "seemed ridiculous as they had spent more than a month working on the report and had gone back and forth multiple times."

David Snyder, Executive Director of First Amendment Coalition, joined Temple at a recent panel discussion at Santa Clara University School of Law to respond to Becerra's claim of illegality. The "Penal Code the Attorney General cites specifically carves out an exception for journalists. Journalists cannot be prosecuted under that section," Snyder said.

Becerra's letter cites Cal. Penal Code Section 11143, which does list reporters as being exempt from being guilty of a misdemeanor. His

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current students housing and then they become homeless."

"The City, including the mayor, downtown Councilmember Raul Peralez and the City's Housing Department, have met with SJSU to offer assistance," Ragan Henninger, City of San Jose Housing Deputy Director said.

While the SJSU administration says it remains committed to housing every student, it has not been clear as to how exactly that will get done. The administration has referred students to SJSU Cares, a university run program, to assist in the event of an unforeseen economic crisis.

The majority of SJSU Cares' programs address food insecurity. It runs the Just In Time Mobile Food Pantry once-a-month program, where it offers fresh produce and dairy items to eligible students. SJSU Cares also planned to open a food pantry, but this project was delayed by approval from the County Fire Marshal and County Health Department.

SJSU Cares has also been providing $500 emergency grants for students in general financial need. It asks that students utilize all financial aid offered to them and consider the emergency grants as a last resort. According to Marko Mohlenhoff, the Student Affairs Case Manager for SJSU Cares, the university has encouraged the campus community to continue sending students to SJSU Cares, so that it may start to understand the issue's order of magnitude.

SJSU is not the only educational institution affected by the Bay Area housing crisis. Santa Clara University, Bellarmine College Preparatory, and Cristo Rey Jesuit High School have proposed to the city of San Jose mixed-use housing developments. Santa Clara University owns the land on Campbell Avenue where it proposed a 290-unit apartment complex to house faculty and staff. At least 15 percent of the units would qualify as affordable housing under the city's rules, and the rest would be priced as low as possible. San Jose, however, is considering declining the proposal.

The Mayor of San Jose, Sam Liccardo, released a budget proposal in March publicly acknowledging his support of SJSU's SHA. Vice Mayor Chappie Jones (D-1) and Councilmembers Raul Peralez (D-3), Magdalena Carrasco (D-5), and Maya Esparza (D-7) have also pledged their commitment, in a letter released on March 21, to working with SJSU President Mary Papazian to find housing solutions.

SHA is continuing to meet with other lawmakers and has several upcoming meetings with senators, assembly members, and possibly District 19 Congresswoman Zoe Lofgren, to address housing insecurity and homelessness. SHA has not stated what proposals it plans to put before the university next.

"[We] can all play a role in helping out. First, continue to be informed, engaged, and spread awareness...If anyone has an extra room at a cheap price around campus, we'd love to know so that our students won't have to sleep in their car, in the library, or couch surf..." Bernabe said. "We need the whole community's support, our city leaders, and business community to come together and collaborate to come up with viable yet immediate solutions."

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citing of a statute that specifically exempts reporters means one of two things, according to Snyder.

"Either Attorney General doesn't know what the law says or the Attorney General knows and doesn't care," Snyder said. He added that the Investigative Reporting Program received the records "in a completely lawful manner" and that "they cannot be punished."

In elaborating on whether the AG's office could successfully request an injunction to have the records returned, Snyder acknowledged that the case law the AG's Office cites makes it plausible, but distinguished the current situation by pointing out none of the past cases involved journalists.

Snyder said it is highly doubtful that the case law would apply to journalists, but admits he does not know the answer. Snyder summarizes the letter as "a disturbing threat, but one that cannot be carried through in important ways."

In a request for an interview, the AG's Office provided a statement that read, "We always strive to balance the public's right to know, the need to be transparent, and an individual's right to privacy. In this case, information from a database that's required by law to be confidential was released erroneously, jeopardizing personal data of individuals across our state. No one wants to shield criminal behavior; we're subject to the rule of law."

"The confidential data of Californians that the UC Berkeley Investigative Reporting Program obtained were part of a report compiled for POST from the Automated Criminal History System (ACHS) database," the AG's Office statement continued. "California law grants the POST access to the ACHS data for the purpose of assessing whether peace officer applicants, or individuals employed as peace officers, meet the minimum standards for service at a California law enforcement agency. The report included data for Californians who applied for peace officer positions, regardless of whether they were selected for the position. State law protects the records of all Californians contained in this database by prohibiting the possession and use of this information by anyone not identified by statute. The UC Berkeley Investigative Reporting Program was inadvertently provided with this confidential data."

"Balancing those rights and threatening a journalist with prosecution for a mistake that the Attorney General made are two separate things. I don't contest that the Attorney General has an obligation to balance transparency and privacy," said Snyder. "I take issue with the Attorney General pretty clearly threatening in their letter to bring criminal charges to journalists for something that both the statute and the First Amendment make clear a journalist can't be prosecuted for."

When asked about the Investigative Reporting Program's next steps in addressing the AG's letter, Temple said "We're not planning on returning anything to the Attorney General or destroy anything."

Electric Scooters: The Future of Local Transportation?

By Jenna Anderson
Staff Writer

Two years ago, the word scooter brought back nostalgic memories of ripping around on a Razor scooter in elementary school. Today, the word has an entirely new meaning. In the last year, several electric scooter companies have dumped their shared scooters on every corner in major cities. All you need to hop on one of these scooters is a phone app and a driver's license.

Bird is one of the four scooter companies dominating the industry and has scooters around nearly every corner in San Jose. Bird's vision is to make cities more livable by replacing the 40 percent of car trips that are under three miles with e-scooter trips, explained Mackenzie Long, Government Communications and Public Relations for Bird. Half of all car trips are three miles or less and privately-owned vehicles account for 60 percent of trips of one mile or less, according to the National Household Travel Survey.

"Our transportation option offers a way for cities to advance their goals of getting cars off the road to reduce traffic and carbon emissions — and improve the health and safety of their communities," Long said.

But not everyone agrees. People are setting them on fire, throwing them off cliffs into the ocean, and stealing them. Scooter critics complain that they pose safety risks and create eyesores for the community. While San Jose is receptive to the scooters, some cities, like San Francisco, have not been. Colin Heyne, Public Information Manager at the City of San Jose, Department of Transportation explained that unlike in San Jose, the problem was evident in San Francisco. He said the sidewalks are crowded, and the scooters were a real burden on the pedestrians.

There was an initial ruffling of feathers when these scooters mysteriously arrived, Heyne said. The department wondered what they were and why no one asked for permission to dump them on every corner in San Jose.

"We heard from residents and businesses on both sides of the opinion spectrum. There are people that love them. That is why there is an issue, because residents, people we serve as a city, are using them all the time," Heyne said. "We didn't want to boot out this innovation that seemed like it was providing a mobility solution. We just wanted to figure out a smarter and safer way to do it."

The San Jose City Council, in its decision to not ban the scooters last spring, tasked the Department of Transportation with creating regulations to reel in the companies operating them. The department spent the summer and fall doing public outreach, researching what few best practices there were at the time, and talking to other cities all across the country.

The department also spoke with scooter companies and have developed lines of communication with the four biggest players in the field: Lime, Bird, Wind, and Skip. These companies have played an active role in discussions for realistic future expectations and regulations. In December 2018, San Jose passed an ordinance requiring these companies to satisfy certain regulations which will allow them to obtain a permit for scooter deployment in San Jose.

The permit program requires that each scooter have a unique identifying number and must conform to the California Vehicle Code's equipment, lighting, and safety standards.

"We have language that says the Director of the Department of Transportation can set a maximum speed limit in areas," Heyne said. "We start off with a maximum speed limit of 12 MPH in our downtown core."

Scooter companies are also looking into geofencing technology, a way to automatically slow scooters to a certain speed when they go on the sidewalk.

The law requires electric scooters to be ridden in bike lanes, but on streets where there are no bike lanes, scooter riders take to the sidewalks.

Heyne said that in order for scooter companies to comply with the new permit program, they have until July to present technology that solves the dangers for pedestrians when scooters are ridden on the sidewalk.

The city is also taking active measures to build out bike lane infrastructure to improve safety.

"We want to encourage innovation. We are the capital of Silicon Valley, and we want to give people ways to get around town other than driving in a car by themselves," Heyne said. "If we can make these things work safely, then it sounds like a good means to that end."

Is the light electric vehicle a revolution for transportation?

"In the last six to eight months, the narrative in the U.S. has become distorted by the scooter share mania," Jeff Russakow, Chief Executive Officer at Boosted Inc. said.

Boosted is known for its electric skateboards, but it recently announced an electric scooter model.

Russakow explained that venture capitalists have poured a large amount of money into scooter share, but he said that currently these scooters are "toy-grade" products that are extremely unsafe.

"The good news is, someone is spending millions to put a demo of a new vehicle type on every street corner on the planet," Russakow said. "This is exposing people to a real alternative to driving."

While ridesharing has been touted as the future of transportation, Boosted anticipates the market to move to more than 90 percent ownership of light electric vehicles. Rideshare is great for ad hoc travel, but it is unreliable and expensive for purposes of commuting, Russakow explained.

Russakow anticipates that light electric vehicles and electric scooters and skateboards will disrupt the transportation market, similarly to how cell phones disrupted the communication market. He explained that rather than being stuck in one place waiting for a call, the cell phone enabled people to save time by taking the call on the go.

Boosted foresees light electric vehicles saving commuters time and money. Russakow is adamant that, "the light electric vehicle is the iPhone of transportation."

California Consumer Privacy Act: The Future of Consumer Data Protection?

By Sarah Gregory
Staff Writer

Controversial public information leaks, like the Facebook-Cambridge Analytica scandal that took place early last year, inspired Alastair Mactaggart, Board Chair of Californians for Consumer Privacy, to draft Assembly Bill 375—which was passed late last year and will go into effect on January 1, 2020 following a lengthy revision process. The bill, commonly known as the California Consumer Privacy Act (CCPA), is a set of compliance standards that companies are required to abide by in order for consumers to have greater control over their personal information.

The bill started as a ballot initiative that garnered 629,000 signatures, almost double the required signatures necessary to appear on the November 2018 California ballot. In May 2018, Senator Robert Hertzberg and Assemblyman Ed Chau asked Mactaggart if he would withdraw the initiative if the legislature passed a law addressing the same privacy concerns. Mactaggart agreed to withdraw if all of the components in the initiative were replicated in the proposed law.

Senator Hertzberg and Assemblyman Chau's offices could not reach a solution with Mactaggart. Instead, both the California Senate and Assembly passed AB 375 unanimously, and Governor Jerry Brown signed it into law shortly after. MacTaggert then withdrew his initiative from the November 2018 ballot.

The concern for the state of consumers' personal information has been steadily growing over the past two years, MacTaggert explained.

"The truth is, it started as a simple conversation among friends at a social outing when I asked an engineer working for Google whether we should be worried about the subject—wasn't 'privacy' just a bunch of hype, I asked. His reply was chilling: 'If people just understood how much we knew about them, they'd be really worried.' That stuck with me. And boy was he ever right – the more knowledgeable I became on the subject the more I realized this was a problem that was getting much, much worse. I also found out that under current law, consumers were powerless to do anything about it," MacTaggert said.

Californians for Consumer Privacy, the consumer rights foundation that started the initiative, says the CCPA is based on three main principles.

"Transparency: we should be able to know what personal information companies collect about us, our children, and our devices, and who they are selling it to. Control: consumers should be able to tell companies not to sell their personal information, and companies shouldn't be able to retaliate against consumers who exercise this choice. Accountability: after all the massive data breaches in the last few years, whether at Facebook, Target, Equifax or Yahoo, it became glaringly apparent that many of these big companies don't care enough about your data security. We drafted the initiative to hold them more accountable if they fail to take good care of your personal information," MacTaggert explained.

Meanwhile, critics of the bill, like Eric Goldman, a leading privacy expert and professor at Santa Clara University School of Law, advocate for a preemptive federal privacy law. Goldman says the CCPA is a bad start in the furtherment of privacy legislation and has so many problems that the only solution is for Congress to pass an all-encompassing federal privacy law.

Goldman identified three main ways in which the legislature could improve the CCPA.

"One, is the definition of 'consumer.' Who is a consumer under the law? And excluding people who aren't consumers, like employees who are defined as consumers, even though they are not. Two, is the definition of what businesses are covered. And raising the bar substantially. Making sure we are talking about larger businesses and not small or medium sized businesses. And the third, is to fix the definition of 'personal information,' which basically does not do anything meaningful to distinguish between sensitive information and virtually anonymized information," Goldman said. "It promotes both as the same type of information and that makes it untenable for companies to provide the kind of transparency and control that consumers actually want."

When asked if he thinks any of the issues can be fixed before the enactment date, he said "no."

"Because it would take the legislature all of their legislative capacity for the entire year, just to start making a dent. And they got other stuff to do, and that is not where their head is at," Goldman said. "So that is why I see the only winning outcome is a federal pre-emptive law, because California can't fix the problem it created for itself. So the only solution is going to be to start again and clean out the California law."

The CCPA has been amended once by SB 1121. The bill amends several existing aspects of the CCPA. SB 1121 clarifies the role of the California Attorney General's enforcement abilities, exemptions for data already regulated under other privacy acts, the limitations of private rights of action, the extent the CCPA interacts with the First Amendment, and local laws that may conflict with the CCPA.

Before AB 375 passed, consumers had no way of knowing what personal information was being collected about them through their online endeavors or purchases. The CCPA is being hailed as a landmark piece of legislation, as it is the first piece of consumer privacy legislation in the nation. Although complex privacy laws have reached the nation's door in the form of the General Data Protection Regulation, the GDPR, like the CCPA, operates with the goal of guaranteeing strong protection for individuals regarding their personal data and applies to businesses that collect, use, or share consumer data, whether the information was obtained online or offline.

Others are concerned with the ability to effectively enforce the CCPA. For example, the Electronic Frontier Foundation is currently promoting a bill they argue will strengthen the CCPA.

"One of the things we want to change to make the CCPA stronger is to create a broader 'private right of action.' One of the issues of the current version is that it is primarily enforced by the California Attorney General's office," Lee Tien, a Senior Staff Attorney for the EFF said. "We would like it to be enforceable by more public officials. The Attorney General has actually got his own bill, SB 561, and that bill contains a number of measures about the enforcement of the CCPA. Both AB 1760 and SB 561 will make it possible for ordinary individuals to sue for violations of the CCPA."

This is important because of the 30-day cure period provision within the CCPA. This provision aims to give businesses a 30-day period in which they can correct their actions concerning a CCPA violation.

Tien explained that the problem is that this gives businesses an opportunity to correct their mistakes and thus, evade punishment for their violation. Furthermore, he said it creates a disadvantage for consumers.

"Consumers are unable to hire lawyers to enforce their rights in case of a violation," Tien said. "Most of the enforcement right now is through the AG, we think that is just not enough to make companies take people seriously."

The call for consumers to have more control over their personal data is paralleled by consumer rights foundations throughout California.

"The reason we need strong consumer privacy legislation is because privacy is a fundamental right," Tien said. "To me, it is like free speech. It is a right. You would not ask me to pay for a right, would you?"

On March 25, Assemblymember Chau introduced Assembly Bill 25 to the California Legislature. AB 25 proposes to amend the current definition of "consumer" in the CCPA to exclude employees of the companies that are affected by the CCPA's provisions. There are countless other proposed amendments advocated by privacy foundations, including Californians for Consumer Privacy.

In response to the possibility that the CCPA will be able to effectively implement its intended goal by January 1, 2020, Tien said, "We don't know if that will happen. It all depends on what the companies do, right? One of the things that is important to recognize is that since this law isn't yet in effect, it therefore can be changed. In this session right now, just as we are pushing AB 1760, that would make the privacy protection stronger, there are others that want to make the provisions of the CCPA weaker. That is really a matter of politics. I can't tell you if this will happen, because I don't know what the law will look like in a year's time. But certainly, the intent of the law, of Alistair Mactaggart, the intent was good. But if we can make the law stronger, that is what we are trying to do."

Competing Bills Now Working Together to Reduce Use of Force by Police

By Emily Branan
Staff Writer

Two California bills designed to compete with each other are now working together to reduce instances of use of force by police in the state.

AB 392, co-sponsored by Assemblymembers Shirley Weber (D-San Diego) and Kevin McCarty (D-Sacramento), would raise the standard for police use of force from "reasonable" to "necessary" to prevent death or serious bodily harm to an officer.

SB 230, authored by Senator Anna Caballero (D-Salinas), originally kept the standard at "reasonable," but that language has since been removed.

Before the revisions, the bills were seen as conflicting. SB 230 was heavily supported by police unions, while AB 392 was supported by groups such as the American Civil Liberties Union.

The two bills are now working together to solve the issue of use of force in California. If both pass, AB 392 would raise the standard for use of force, and SB 230 would provide the education and training guidelines officers would need to meet the new standard.

AB 392 is currently being considered by the Committee on Rules. SB 230 passed the Committee on Public Safety and is headed to the Committee on Appropriations.

AB 392 - Raising the Standard

Joe Kocurek, Communications Director for Assemblymember Weber, said AB 392 was partly inspired by the fatal shooting of Stephon Clark in Sacramento in 2018. The District Attorney recently decided not to pursue charges against the police officer who shot and killed Clark in his backyard.

"I think it was at that point, we knew there was enough political will that change was possible," Kocurek said. "[That] incident, because it was up here in Sacramento, basically galvanized a lot of sentiment in this building around the need to make this change."

Kocurek said AB 392 would apply what is seen as an industry "best practice." He said the "necessary standard" has been adopted by several cities, such as Dallas, Seattle, and San Francisco, and it was recommended by the Department of Justice under the Obama Administration.

AB 392 will not only provide a more objective standard when analyzing use of force issues, but it will also make interactions with police safer for people across California, Kocurek explained.

"We're interested in the front end, we want to prevent use of force," Kocurek said. "We want to prevent deaths, we want to save lives, and we don't want to increase risks to officers."

Kocurek said AB 392 limits the circumstances in which police can use force to only the situations in which there is an imminent threat to the officer's safety.

"There's demonstrated evidence that officers can adjust a threat assessment enough and also manipulate their circumstances to reduce the amount of risk so that the use of force is not necessary," Kocurek said. "We're not saying that all circumstances are like that. If you've got a gun in your face or if somebody's coming at you with a hatchet, you have to shoot - we get that."

Santa Clara University School of Law Associate Professor W. David Ball said he thinks an important part of AB 392 is that it would analyze the situation as a whole.

"If an officer goads someone into trying to attack them, and then says it was necessary at that point, that's one way of looking at it," Ball said. The other way is to say if the officer goaded this person, that's not OK."

SB 230 - Requiring Specific Training

Delphert Smith, Communications Director for Senator Caballero, said SB 230 has undergone "major amendments" and is focused on preventing future shootings.

SB 230 would require every California law enforcement officer to undergo a new training and education program, specifically focused on reducing use of force and set policy requirements on de-escalation, tactical methods and interpersonal communication. This training program would be funded by the state.

"The loss of life is always tragic, and an officer's use of deadly force should always be a last option," Smith said.

SB 230 also details how incidents involving use of force would need to be reported when they happen in the community. Smith said, under this bill, use of force policies and training would be considered in legal proceedings. These use of force policies would also be accessible by the public.

"Unfortunately, our society has many dangerous threats, and just as our peace officers cannot anticipate what they will encounter on any given day, our legal standards governing their engagement must account for the split-second and dangerous scenarios we see confronting law enforcement too often," Smith said.

This bill would also require officers to undergo training in topics such as implicit and explicit bias and cultural competency.

Along with the training, Smith said SB 230 would also give police officers several extra duties, including rendering medical aid, intervening in incidents of excessive force, and reporting those incidents. Supervisors would then be tasked with investigating instances of use of force.

Ball said one thing he believes the bills left out was a provision to account for the fact that if an officer has a stressful encounter one day, he or she is more likely to use force the next day.

"You might be concerned with staffing somebody who may have had a trauma that makes them evaluate threats, or sees threats in otherwise innocuous behavior more readily than someone else does," Ball said.

Let's Get the Vaxx Straight

By Evan Gordon
Staff Writer

For 30 years, the state of Oregon had not experienced a single case of tetanus infection, typically traced to bacteria found in soil and manure. But the state was caught off-guard in 2017 when a six-year-old boy was medevacked to a Portland hospital following a minor incident that occurred a week prior. After receiving a gash on his forehead while playing on his family farm, the boy's cut was promptly cleaned and stitched at home. But within a week, he began suffering crippling muscle spasms, difficulty breathing, and could barely keep his mouth open. His condition was so critical that he ended up receiving two months of intensive medical care.

While according to the Department of Health and Human Services the introduction of the tetanus vaccine has reduced deaths from tetanus in the United States by 99 percent since 1947, a growing number of Americans are ignoring the science and becoming "anti-vaccine."

The Oregonian boy, who had gone his entire first six years of life without receiving any vaccines, was provided with an emergency dose of the tetanus vaccine at the hospital. Over the course of the next two months, he breathed through a ventilator and required near-complete darkness and earplugs in order to avoid triggering spasms, and received care from a team of nearly 100 doctors and nurses. Upon his miraculous recovery, the boy's family refused a subsequent secondary round of the tetanus vaccine, as well as any other routine vaccinations.

Excluding the exorbitant price of the helicopter transport, rehabilitation therapy, and various follow-ups, the hospital bill alone amounted to roughly $812,000. Somewhat unsurprisingly, the cost of obtaining the requisite vaccines for preventing tetanus are far less financially burdensome–ranging anywhere between $20 and $30 per dose, according the Center for Disease Control and Prevention's most recently updated CDC Vaccine Price List.

Rise of the Anti-Vaxxers

Much of the momentum behind vaccine hesitation and the so-called 'anti-vaxxer' movement can be traced back to a since-discredited study authored by former doctor Andrew Wakefield published in *The Lancet* in 1998, Dr. George Han, a Deputy Health Officer with the Santa Clara County Public Health Department explained. The study alleged a nexus between autism and the MMR vaccine, which provides immunization against measles, mumps, and rubella. A subsequent journalist investigation found Wakefield had numerous undisclosed conflicts of interest, manipulated evidence, and even broke ethical codes. Wakefield was subsequently struck from the United Kingdom's medical register and his study was retracted by *The Lancet*.

There have been numerous studies and publications following Wakefield's 1998 *Lancet* publication that have conclusively found no link between the MMR vaccine and autism. A March 2019 publication in the *Annals of Internal Medicine* released the findings from one of the most extensive studies on potential connections between the MMR vaccine and autism, concluding that the vaccination did not lead to an increased risk for autism.

Nonetheless, the damage from Wakefield's study was already done. The concerns raised, even though discredited, have led to increasing numbers of parents opting not to give their children vaccines, Dr. Han explained.

"We know that there have been increases in the number of children who are unvaccinated, for whatever reason, and we believe those increases are due to parental choice rather than a lack of access to vaccines," Dr. Han said.

In a late-April media statement, the CDC attributed the dissemination of misinformation about the safety of vaccines as a substantial factor causing recent ongoing outbreaks in New York, Washington, California, and other states. As per CDC data, 2019 is well on its way to surpass 2014 as having the highest number of reported cases of the measles virus since it was declared eliminated in the U.S. in 2000 by public health officials.

Recent outbreaks have even caught the attention of President Donald Trump, who despite having shared vaccine-skeptic views in the past, appeared to voice his support of vaccines during a recent interview.

"They have to get the shots. The vaccinations are so important. This is really going around now. They have to get their shots," Trump said.

According to the CDC, 90 percent of recent measles cases in the U.S. originate from international travellers. While 97 percent effective, Dr. Han added that the MMR vaccine still leaves a small number of vaccinated individuals, and those who are unable to be vaccinated due to health complication exemptions, at risk of contracting the highly contagious virus after coming within close vicinity of an infected individual.

As the proportion of parents opting out of vaccines continues to increase, the public's "herd immunity" status is also at risk of being compromised. Herd immunity requires that a community maintain a vaccination rate of approximately 95 percent to prevent circulation of infectious diseases, according to the World Health Organization.

The threat posed by a reduction of herd immunity, compounded with the contagious composition of a virus, could lead to the formation of a powder-keg epidemic that would require government intervention.

Combatting Vaccine Hesitation

The state of California responded to measles outbreaks by passing Senate Bill 277 in June 2015. SB 277 removed personal belief exemptions to vaccination requirements for entry to public or private schools. Although the bill has been instrumental in encouraging parents to vaccinate their children, outbreaks continue to occur throughout the state, with an outbreak occurring in Santa Clara County this spring, according to the Santa Clara Public Health Department.

Earlier this month, measles outbreaks prompted multiple universities in Southern California to implement quarantines affecting nearly 1,000 students at risk of contracting the virus. In response to growing concerns over outbreaks, Senator Dr. Richard Pan, a primary architect of SB 277, recently introduced SB 276.

SB 276 would enforce stricter guidelines and procedures for obtaining medical exemptions to evade immunizations by requiring further state government oversight. Such proposed oversight would entail utilizing a standardized medical exemption request form created by the State Department of Public Health, as well as a database of approved medical exemption requests that would be accessible to local health officers.

While some states are grappling with how to address this alarming trend, New York City Mayor Bill de Blasio imposed a mandatory vaccine order requiring residents of certain zip codes to obtain vaccinations or face severe fines. There are, however, certain circumstances that could give rise to the possibility of intervention on a federal level, explained Bradley Joondeph, a Professor of Constitutional Law at the Santa Clara University School of Law.

"If we had a situation where a substantial outbreak was having a significant impact on commerce, then you could say that requiring everyone to get vaccines was a part of Congress' regulation of interstate commerce," Joondeph said. "Short of that, Congress could certainly make your ability to participate in all sorts of federal programs [such as Social Security benefits, Medicare, or Medicaid] contingent on vaccination. So, even if it couldn't directly mandate it, it would probably have a lot of ways of effectively coercing participation,"

A study published in the *American Journal of Public Health* in September 2018 highlighted that misinformation regarding vaccines was being promulgated by Twitter bots and Russian trolls on a wide scale as a way to disseminate anti-vaccine content and promote discord. The prevalence of such content across social media platforms has in turn lent credence to the anti-vaccine debate, one that many public health officials argue should not be subject to debate in the first place.

Teenager Ethan Lindenberger of Ohio recently attracted national attention when he decided to go against the wishes of his parents and vaccinate himself upon turning 18. Lindenberger, who recently testified before a Senate Committee, recounted how his mother obtained much of her misinformation concerning vaccines from Facebook.

In response to increased pressure from health officials and lawmakers, Facebook and Instagram recently announced that they would take steps to crack down on anti-vaccine content by preventing the promotion of anti-vaccine ads and reducing search result recommendations.

Although some parents may choose not to vaccinate their children out of concern for their health, Dr. Han noted that even if children overcome the measles, there are a substantial number who develop severe complications that require hospitalization, and in some cases, can lead to permanent effects like brain damage, or even death.

"Why would you take the risk of something like that happening to your child when you could have a vaccine and prevent it completely?" Dr. Han said.

Additional information regarding education, training, information, and other resources provided by the Santa Clara County Public Health Department Immunization Program can be found online at: www.sccizedu.org.

Opinion: You Have the Right to Counsel at Pre-Trial Government Appeals

By Yosef Ratner
Staff Writer

Disclaimer: All opinions expressed by the author below are solely his/her opinions amd do not reflect the opinions of The Advocate.

It is black letter law in criminal procedure that an indigent defendant has a right to appointed counsel at all "critical stages" of a criminal prosecution, as well as on first appeals from a conviction. The Sixth Amendment to the United States Constitution provides the right-to-counsel provision and the Fourteenth Amendment's Due Process Clause respectively ensures the right.

But is there also a constitutional right to appointed counsel on the prosecution's appeal from a pretrial suppression order?

That's exactly what the California Supreme Court held last month, and the United States Supreme Court should follow suit.

Whether you analyze the issue under the Sixth Amendment or the Due Process Clause, the situation clearly presents either a "critical stage" of the criminal proceeding or a fundamentally unfair setting to deprive an indigent defendant of the right to appointed counsel.

For instance, imagine that you are a defendant in a misdemeanor DUI case that turns on crucial evidence, and that—with the help of appointed counsel—you prevail on a motion to suppress that evidence resulting from the illegal arrest. This basically kills the prosecution's case, and the court dismisses the action against you "in the interest of justice." But then the prosecution appeals the suppression order...

The potential consequences are clear: if the court of appeal affirms the lower court's decision, the case is over; if it reverses the decision, you are again haled back into court to face the charges against you.

So, should you have the assistance of a lawyer?

The California Supreme Court recently said yes. In *Gardner v. Superior Court*, the Court was confronted with the question of whether Ruth Lopez, the defendant in the trial court, was entitled to appointed counsel on the prosecution's interlocutory appeal of the order suppressing evidence. That evidence was obtained during a police officer's illegal traffic stop of Lopez, ultimately leading to DUI charges.

The Court of Appeal held that Lopez had no right to appointed counsel on the prosecution's appeal, but the California Supreme Court reversed, holding that a pretrial prosecution appeal of a suppression order "also qualifies as a critical stage of the prosecution at which the defendant has a right to appointed counsel as a matter of state constitutional law."

This result seems just. Lopez was, after all, entitled to the help of appointed counsel on the motion to suppress at the trial court level. If the prosecution can get a second crack at the issue without a real adversary on appeal, then why go through the charade of appointing counsel at the trial court level if the defense is circumvented by the happenstance of a government appeal?

The prosecution could essentially take advantage of a constitutional loophole in the right-to-appointed-counsel jurisprudence: if the government loses at the trial court level, it can automatically get a do over on appeal—but this time unchecked by the legitimate defense accorded to every defendant under the Sixth Amendment.

That is troubling.

That result would undermine our confidence in a "just result." It is a central premise in our adversarial system that justice should only be dispensed after the conclusion of genuine adversarial proceedings. It is the antagonistic character of a legal proceeding on which we hang our confidence that all the relevant facts will be fully developed, and all legal theories will be zealously advocated for. This is a principal reason the United States Supreme Court recognized the right to appointed counsel and consistently expanded this right ever since.

The interesting question going forward is whether the California Supreme Court's decision might be followed with a similar analysis under the United States Constitution. The Court in *Gardner* explicitly limited its holding to its interpretation of the California Constitution. But can we expect the United States Supreme Court to consider the issue as well, and find the same protections under either the Sixth Amendment's right to counsel or the Fourteenth Amendment's Due Process Clause?

The opposing argument—and the California Court of Appeal's argument—to application of this right under the Sixth Amendment technically posits that the right-to-counsel provision is inapplicable on appeal; the Supreme Court has, after all, previously stated that the Sixth Amendment "does not include any right to appeal." Therefore, a pretrial appeal from Lopez's favorable suppression order cannot be a critical stage under the Sixth Amendment.

But this is a misapplication of the Supreme Court's analysis of appeals in different contexts. In holding that the Sixth Amendment does not include any right to appeal, the Court said that the amendment's protections otherwise extend to stages in "preparation for trial and at the trial itself."

The Court's statement that the Sixth Amendment does not apply to appeals clearly assumes an appeal from a conviction, and by the defendant. Here, Lopez's appeal comes before a conviction in "preparation for trial and the trial itself"—and by the government. It is part and parcel of the very same criminal prosecution that the Sixth Amendment protects; it is accordingly unconscionable to rob an indigent defendant like Lopez of its protections upon the coincidence of an appellate tribunal's untimely interdiction halfway into the fray.

This fundamental difference between a pretrial and post-conviction appeal is what separates the two stages to divergent analyses. And Supreme Court precedent indisputably recognizes this distinction.

Take the Court's decision in *Ross v. Moffitt*. In rejecting an extension of the right to appointed counsel on discretionary appeals following convictions, the Court stressed that there are "significant differences between the trial and appellate stages" of a criminal proceeding.

"The purpose of the trial stage from the State's point of view is to convert a criminal defendant from a person presumed innocent to one found guilty beyond a reasonable doubt." But at the appellate level, it is "ordinarily the defendant, rather than the State, who initiates the appellate process, seeking not to fend off the efforts of the State's prosecutor, but rather to overturn a finding of guilt made" at the trial court level.

The significance of the Supreme Court explicitly extending the right to appointed counsel to pretrial prosecution appeals is potentially significant. At the very least, it closes one remaining loophole in the right-to-counsel jurisprudence. In *Gardner*, California's Supreme Court correctly distinguished the dramatically different contexts which inhere at the trial and appellate stages, and accordingly tailored its decision to reflect those divergent circumstances.

Charney Hall Hot Takes

By Lubna Hakim
Staff Writer

The Advocate asked Santa Clara Law students: "Do 1Ls need a summer internship?"

Marili Iturbe Guadarrama (2L)

"I think that internships during your 1L summer are important, but at the same time, if you decided to travel abroad and do an abroad program, that can also be an amazing experience that you won't be able to get here... I also know the abroad program does internships as well and it would be a very good idea, if you want to go that route, to try to actually get an internship as well. Having a wide variety of internships can help you decide exactly what you want to do and what you don't want to do. Or you can see how an office deals with cases and then see how a different office deals with their kind of cases, and if you are set on specific type of law, you can apply a little of each office method you like if you go to private practice."

Kelsey Hickman (3L)

"I think of the question in two different ways. In terms of needing it for academic growth, I think absolutely. One, just because it helps you understand what field you want to go into. For me, personally, that's what it did. I had an internship at the court house in the family law division and now I just signed an offer at a family law firm because I liked it so much. Also, for the general learning experience in terms of getting experience in a legal field at all. But if you phrase the question as if there is a lack of internships out there for 1L to find, I also think that might be true, especially paid ones, and you kind have to bite the bullet sometimes and not get paid, which is what I did, which is fine, and it turned out fine. But I know a lot of people want to get paid, but there is kind of a small pool that get chosen for that kind of work."

Samantha Sales (3L)

"Yes, I totally think so because depending on if you know for sure what field you want to go into, I think you should definitely try it in that summer. Like for me, I thought I wanted to do family law, I was always interested in it. And so I did an externship at the Family Law Courthouse in Santa Clara, and that is when I realized I didn't want to do it. But at the same time, I was still able to develop soft skills like working with different people, other attorneys, and being familiar doing paperwork with the court. It helps you add to your narrative later on in law school when you finally figure out what you want to do, like now I want to do corporate. But I've always gone back to my experience at the court house and talked about how that weaves into why I'm qualified for this and that."

Peiyao Zhang (3L)

"Based on my experience, I would say yes because it would make finding a job your 2L summer a little bit easier because you have more relevant experiences you can talk about in an interview. But I have friends that did not have jobs over 1L summer and it hadn't impacted their future job prospects. I think it really depends on what you want to do. If you don't have job, you can go find other means to kind of create similar experiences like taking a clinic over the summer or something that you have more things to talk about and more things that are relevant to the job experience you want to get is looking for."

OCM's Sarah E. Tesconi

"Yes, we feel it is very important for a 1L to work during their first summer. When we meet with 1Ls, we emphasize the benefit to obtaining summer employment and we stress that it doesn't necessarily matter where you work your first summer, just that you do work somewhere to gain the legal skills you need to move yourself forward in your career."