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THURSDAY

FRIDAY

TUESDAY

WEDNESDAY

TODAY

Questions and Comments

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NEWS

RULINGS

VERDICTS

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## Bill to aid "revenge porn" victims advances in Legislature

By Malcolm Maclachlan and L.J. Williamson

SACRAMENTO — State legislators are meeting every day this week to make a Friday deadline to pass bills.

Among the bills to clear the Senate so far is SB 157 that would add privacy protections in civil proceedings for victims of "revenge porn."

The measure would build on a bill carried in 2014 by the same author, Sen. Bob Wieckowski, D-Fremont, when he was in the Assembly. AB 2643 created a private right of action for victims when their nude photos are posted online without consent, and allowed plaintiffs to use pseudonyms in court documents. That bill left gaps that could expose a plaintiff's identity, said Christina M. Gagnier, who leads the internet, intellectual property and technology practice at Gagnier Margossian LLP in San Francisco.

The photos themselves are generally used as evidence and become part of the public record of a case. SB 157 mandates pseudonyms be used across all related court documents and allows redactions to protect a victim's identity.

Gagnier represents revenge porn plaintiffs in civil cases.

As attorney general, Sen. Kamala D. Harris brought national attention to the issue and helped make California a national leader. In 2015, Harris created a Cyber Exploitation Task Force and prosecuted revenge porn website operator Kevin Bollaert, who is now serving an 18-year sentence.

The Legislature made it a misdemeanor to post such photos online when it passed SB 255 in 2013. That was the law former Playboy model Dani Mathers violated when she posted photos of a 70-year-old woman showering at a Los Angeles gym, along with disparaging comments. Mathers pleaded no contest last week.

"Unfortunately, this is an issue that impacts 12-year-olds and 72-year-olds," Gagnier said.

SB 33, the so-called "Wells Fargo bill," also passed the Senate.

The measure is a reaction to the 2 million or more fraudulent customer accounts opened by Wells Fargo & Co. employees. It would allow customers to void arbitration

Thursday, June 1, 2017

### Weekly Appellate Report Podcast

An *en banc* D.C. Circuit weighs the Consumer Financial Protection Bureau's constitutionality, explains Mike Calhoun (Center for Responsible Lending); Ben Davidson (Davidson Law Group) discusses how SCOTUS' re-endorsement of narrow patent venue rules shifts the IP litigation landscape in favor of defendants



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### Criminal

#### OC judge questions sheriff's lieutenant's truthfulness in open court

A superior court judge on Wednesday questioned the truthfulness of a uniformed sheriff's lieutenant who hours earlier was granted immunity for his testimony about jail informants in an evidence hearing that could lead to the dismissal of the death penalty against Orange County's deadliest murderer.

#### U.S. Court of Appeals for the 9th Circuit 9th Circuit cracks down on shackling of defendants

The 9th U.S. Circuit Court of Appeals ruled Wednesday that federal courts cannot have a blanket policy for shackling all defendants appearing

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### California Courts of Appeal

#### City worker must be reinstated despite harassment allegations, court rules

A Stockton city employee who posted a nude photo of a co-worker with a crude comment must be reinstated because a private arbitrator found that the city lacked cause to fire him, the 3rd District Court of Appeal ruled Monday.

### Government

#### Bill to aid "revenge porn" victims advances in Legislature

agreements in cases of fraud or identity theft.

The bill is sponsored by the Consumer Attorneys of California, which claims the fraudulent accounts would have come to light earlier if customers had been allowed to take their claims to civil court. The California Chamber of Commerce has said it might sue to block SB 33 if it becomes law, arguing it violates the Federal Arbitration Act.

The state Senate also passed two criminal justice bills. SB 10 would overhaul the cash bail system and replace it with a pretrial assessment based on the flight risk and public safety impact. It would require cash bail be set at "the least restrictive level necessary to assure" a defendant will appear in court.

SB 190, by Sen. Holly Mitchell, D-Los Angeles, would eliminate fees for electronic monitoring equipment, drug testing, in-custody transportation, and administrative costs to offenders who are under 21. Incarcerated minors or their families could still be ordered to reimburse costs of attorney services rendered to the minor, or the minor's guardian.

The Assembly passed AB 665, which would make retroactive a 2015 law allowing veterans with service-related mental health issues to petition for resentencing. It builds on 2014 legislation by the same author, Assemblyman Marc Levine, D-Marin County. AB 2098 enabled defendants to petition for a recall of sentence with post traumatic stress disorder, trauma, or brain injury considered as a mitigating factor.

Levine said in a statement that of the 2.6 million Americans returning from service in Iraq and Afghanistan, "as many as 20 percent have PTSD."

"As a state, we must do more to recognize the role these mental health problems can play in criminal activity," Levine said.

The California District Attorneys Association has said the bill fails to consider public safety and would give courts "unfettered discretion to determine who qualifies for resentencing."

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State legislators have been meeting every day this week as bills face a Friday deadline to pass.

### Education

#### **Bar issues latest bar pass rates for California law schools**

Santa Clara University School of Law tops list of first-time bar exam takers from February test.

### Ethics/Professional Responsibility

#### **OC judge admonished for sex-charged Facebook post**

Orange County Superior Court Judge Jeff Ferguson has been publicly admonished by the Commission on Judicial Performance after claiming on Facebook that Deputy District Attorney Karen Lee Schatzle had sex with a defense lawyer she prosecuted cases against.

### State Bar & Bar Associations

#### **SpaceX managers testify to problematic employee**

Managers at Space Exploration Technologies Corp. who supervised a technician who has sued the company for alleged whistleblower retaliation testified Tuesday that he was unstable, insubordinate, disruptive and that when they checked on the problems he reported they found nothing.

### Judges and Judiciary

#### **Have judges learned nothing?**

Here we go again. Earlier this month, Nolan Bruder pled guilty to drugging and raping his underage sister. The judge sentenced Bruder to a term of probation, meaning the admitted rapist will likely spend just a few months in jail, if that. By **Marc Lewis**

### Administrative/Regulatory

#### **Senate faces health care bill hurdles**

We know little about the extent of revisions the Senate intends to undertake or how influential the CBO's report will be. By **Michael C. Parme**

### Corporate

#### **Fiduciary vs contractual obligations**

A recent holding provides guidance to boards of directors weighing fiduciary obligations against contractual obligations. By **Marc Boiron and Morgan McCombe**

#### **Tips for startups to avoid running afoul of securities laws**

A roadmap for navigating the pitfalls of Rule 701, an important facet of federal securities laws which enables small and large start-up companies to provide crucial equity compensation. By **Ali Nardali and Aria Kashefi**

### Technology & Science

#### **CFTC launches initiative to promote**

**responsible FinTech innovation**

The Commodity Futures Trading Commission just launched an initiative which promises to improve the quality, resiliency and competitiveness of the futures and swaps markets. By **Julian Hammar and Stephanie Sharron**

**Criminal**

**OC judge questions sheriff's lieutenant's truthfulness in open court**

A superior court judge on Wednesday questioned the truthfulness of a uniformed sheriff's lieutenant who hours earlier was granted immunity for his testimony about jail informants in an evidence hearing that could lead to the dismissal of the death penalty against Orange County's deadliest murderer. "This witness has some credibility challenges that are obvious to anybody who's familiar with the facts and the history of this case," said Judge Thomas M. Goethals about Lt. David Johnson.

**Judicial Profile**

**Deborah Sanchez**  
Superior Court Judge  
Los Angeles County (Bellflower)

**Education**

**Study: Lower bar exam scores increase likelihood of attorney discipline**

Two Pepperdine University School of Law professors also concluded that lowering the passing score on the exam would likely increase the number of lawyers disciplined for misconduct by the State Bar.