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## Self-driving cars chauffeur a load of legal issues

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The future of driving is around the corner. Nearly all of the major auto manufacturers have announced plans to develop self-driving, or "autonomous," vehicles within the next five years. Some of these vehicles already are being tested on the roads in California.

Autonomous cars are not

necessarily the same as driverless cars; rather, there is a spectrum that ranges from some automation on one end, to fully autonomous on the other end. Nearly all cars on the road today have some automation - adaptive cruise control and dynamic brake support are two easy examples. Semi-autonomous vehicles will be capable of operating themselves but will require a human to be physically present in the vehicle to assume control if necessary. Fully autonomous vehicles will operate themselves without requiring a human to be present in the vehicle. The "driver" (i.e., the person instructing the vehicle where and when to go) could be anywhere, including in another state or country.

Not only is this emerging technology exciting, it has the ability to drastically reduce the number of auto-related accidents and will offer new opportunities for employment in the various industries that develop, manufacture and maintain the vehicles. As with any new technology, however, proper regulation of these cars and their "drivers" is critical. Regulation in this area is complex and ultimately will come from many sources. Recently, however, both the National Highway Traffic Safety Administration (NHTSA) and the state Legislature weighed in on the issue.

### NHTSA

As the primary federal agency responsible for keeping our roads safe, NHTSA will be instrumental in regulating autonomous vehicles. On May 30, the agency released its preliminary statement of policy on automated vehicle development. The policy confirms that NHTSA's focus over the next few years will be on researching semi-autonomous vehicles. NHTSA acknowledges in the policy that vehicles likely will be fully autonomous in the near future but specifically refrains from commenting on how those vehicles should be regulated.

With respect to its research on semi-autonomous vehicles, NHTSA will focus on three areas. First, NHTSA will research what it refers to as "human factors research," which generally means studying the allocation of vehicle control functions between the driver and vehicle, as well as the way in which the driver and vehicle interact when switching between automated and nonautomated driving. From this research, NHTSA expects to establish regulations for safe driver-vehicle interfaces in semi-autonomous vehicles.

Second, NHTSA will research "electronic control system safety." This effort will

### Administrative/Regulatory

**Governor strikes at debt collection abuse**  
Gov. Jerry Brown late last week signed into law a measure to protect consumers against the abusive debt-collection practices of debt buyers, such as "robo-signing" reviews of debts.

### California Supreme Court

#### State Supreme Court's clerk has long ties to the justices

Few people are as familiar with the inner workings of the state Supreme Court and its justices as Frank McGuire. As the court's clerk, he is its administrative, behind-the-scenes leader, overseeing a \$42 million budget.

### Litigation

#### Plaintiffs' firms pursuing lawsuits that claim price-fixing by vehicle shipping companies

Lawsuits have started piling up over allegations that shipping companies conspired to fix and stabilize prices to transport vehicles across the ocean.

### Law Practice

#### Former Department of Labor representative joins Stroz Friedberg

Alicia Villarreal, who left her position in June as the western region representative to outgoing Department of Labor Secretary Hilda Solis, said the move to the firm felt like a return to her time in the U.S. attorney's office.

### On the Move

Rimon PC opened a San Diego office in June by acquiring Cross Border Law Group PC. Partner Juan E. Zuniga, founder of the firm, continues to serve as managing partner of the office. Associate Angela Gonzales joined him in the move.

### Judges and Judiciary

#### Governor appoints 11 to superior courts across the state

Gov. Jerry Brown on Friday named Rupa S. Goswami to the bench in Los Angeles County. She will be the first female South Asian American to serve as a judge in the state.

### Criminal

#### DOJ sues state prison system for sex discrimination

Filed in the Central District, the suit requests declaratory and injunctive relief to force the

focus on, among other things, appropriate fail-safe mechanisms, which are the systems in place to control the vehicle in the event of a failure in the vehicle's automation. This effort also will focus on vehicle cybersecurity concerns and the ability of autonomous vehicles to resist cyber-attacks. From this research, NHTSA expects to develop safety and reliability requirements for electronic control systems in semi-autonomous vehicles.

Finally, NHTSA will research and develop system performance requirements for semi-autonomous and fully autonomous vehicles. Essentially, these are basic safety requirements that eventually will be implemented and adopted as standards applicable to any autonomous vehicle sold to the public at any time. As part of this research, NHTSA will develop and conduct safety and control-related tests, analyze relevant data, and otherwise ensure that autonomous vehicles are safe for the road.

While NHTSA is working on developing federal standards and regulations for autonomous vehicles, many states already have enacted or proposed legislation to regulate the testing and driving of autonomous vehicles on their roads. The policy sets forth NHTSA's recommendations for these emerging state laws, which include the following among others: (1) requiring a separate licensing requirement for drivers of autonomous vehicles; (2) requiring autonomous vehicle manufacturers to communicate with the state and provide a plan that describes where the vehicles will be tested and how safety will be ensured; (3) requiring autonomous vehicle manufacturers to provide data to the state that identifies crashes, near crashes and instances where the driver was prompted by the vehicle to take over operation; and (4) requiring that the autonomous vehicles being tested have certain basic safety features.

## California

The state Legislature did not have the benefit of NHTSA's recommendations when it enacted Section 38750 of the California Vehicle Code in September 2012. Section 38750 is titled "Autonomous Vehicles" and regulates both the testing and eventual driving of semi-autonomous and fully autonomous vehicles on California roads.

Section 38750 defines an autonomous vehicle as one that is equipped with autonomous technology, which is further defined as "technology that has the capability to drive a vehicle without the active physical control or monitoring by a human operator." The "operator," however, need not be in the vehicle at all; rather, Section 38750 defines the operator of an autonomous vehicle as the person who is sitting in the driver's seat "or if there is no person in the driver's seat, [the person who] causes the autonomous technology to engage."

Section 38750 imposes three requirements that must be satisfied before an autonomous vehicle manufacturer is allowed to test its vehicles in California. First, the vehicle must be driven by someone specifically designated by the manufacturer of the autonomous technology being tested. Second, the driver must be seated in the driver's seat so that he or she is able to take over control of the vehicle if necessary. Finally, before testing an autonomous vehicle, the manufacturer performing the testing must provide the DMV with proof of at least \$5 million in insurance.

For now, autonomous vehicles are not permitted on California roads except for testing purposes. That may change soon. Section 38750 states that autonomous vehicles may be driven for any purpose after the DMV receives and approves an application from the vehicle manufacturer. Although the DMV has not yet created that application, it must do so on or before Jan. 1, 2015. Interestingly, Section 38750 states that the application must require autonomous vehicle manufacturers to certify, among other things, that their vehicles have an event data recorder, or what is commonly known as a "black box," to capture and store data that recreates what happened for at least 30 seconds before a collision involving an autonomous vehicle. This data must be preserved for at least three years following the collision.

Although black boxes are common in new vehicles, they currently are not required. The fact that Section 38750 requires them in autonomous vehicles raises privacy-related issues, particularly because there are no laws in place that prohibit how law enforcement agencies, vehicle manufacturers, insurance companies or others may use the data recorded by these devices. On the other hand, black boxes will be critical to determine fault in the event of a collision involving an autonomous vehicle, particularly when one or both of the "drivers" involved were not in the vehicle at the time of the collision.

CDCR to create new policies to prevent sexual harassment.

## California Supreme Court

### State high court to rule on challenges to same-sex marriage implementation

In a legal challenge over the resumption of same-sex marriages in the state, the California Supreme Court issued a compressed briefing schedule Friday afternoon.

## Intellectual Property

### Latham, Kasowitz win patent trial in language translation company case

A little more than two months after officially joining the Menlo Park office of Latham & Watkins LLP, Douglas E. Lumish scored a victory in a patent infringement trial victory.

## Litigation

### Suit blames helicopter manufacturer for crash deaths

Torrance-based Robinson Helicopter Company Inc., the largest maker of civilian helicopters in the world, may be liable for the deaths of two men who died when a new Robinson model crashed in 2011, according to a recent lawsuit.

## Perspective

### To tell or not to tell, that is the question

Despite best efforts, you hire a paralegal or lateral who, as it turns out, worked on the other side of a litigation matter in which your firm is involved.

Must you tell the other side? By **Diana DiGennaro**

## Family

### Want to pay your ex's attorney fees? Ignore discovery requests

You're not entitled to appeal an order to pay attorney fees when you choose not to disclose evidence of your financial circumstances. By **Navid Moshtael**

## Technology & Science

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As with any new technology, proper regulation of these cars and their "drivers" is critical. By **Dylan Ruga**

## Alternative Dispute Resolution

### What's to become of mediation in Southern California?

Will the courts' dockets become so crowded with unresolved matters that trial dates extend past the 5-year mandatory date as they did in the 80s? By **Wendy Kramer**

## Judges and Judiciary

### Summer school

Sometimes interns come to learn, sometimes to

On the topic of collisions, who will be responsible when an autonomous vehicle is involved in an accident? The "driver," who presumably is relying on the car's technology, should not be to blame unless there was an opportunity to avoid the collision. That might be possible if the driver is in the vehicle and able to respond to visual warnings or otherwise override the vehicle's automation, but who is to blame when the driver is not in the vehicle, as Section 38750 allows? The issue of how to determine fault in these circumstances is just one of the many questions that will have to be answered as this new technology develops.

For now, vehicle manufacturers and other interested parties should be prepared to work with NHTSA, state legislatures, and other regulatory agencies to develop consistent standards that apply to all semi-autonomous and fully autonomous vehicles that will be manufactured in the coming years. Driverless cars are the future but there is still a long road to go, and many questions to be answered, before your vehicle drives you to the office.

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teach. By **Lynn Duryee and Joshua A. Gonzalez**

**Perspective**  
**Higher bar for anti-SLAPP in malpractice suits**

Attorneys defending malpractice actions must meet the higher bar of demonstrating that the claim against them "arises from" the protected activity. By **J. Randolph Evans, Shari Klevens and Suzanne Y. Badawi**

**Government**  
**Brown signs in new tax incentives**

Gov. Jerry Brown persuaded the Legislature to eliminate the state's geographically targeted economic development areas and replace them with several new tax incentives. By **Chris Micheli**

**Letter to the Editor**  
**Regarding the efforts to quell DUI-related crimes**

Re: "Concerted effort to quell DUI-related crimes sees success, but criticism remains," July 2. By **Lee E. Cooper**

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**Corporate**  
**Institutional investors pave the way for solar panel leases**  
Spurred on by lucrative federal tax credits, institutional investors are pouring billions of dollars into solar energy companies that have found a way to make solar panels accessible to a wider range of consumers.