

September 4, 2014

Governor Edmund G. Brown, Jr.
c/o Brian Putler and June Clark

Re: AB 1327 – SUPPORT. Law enforcement should be required to obtain a warrant to use drones in California, except under exigent circumstances.

Dear Governor Brown:

The undersigned are 41 professors from throughout the United States who teach and write extensively about criminal law and procedure, information privacy law, and/or first amendment law. We write in support of AB 1327 (Gorell), which will establish clear standards for the use of unmanned aircraft systems (UAS), also known as drones, by public agencies and law enforcement.

Drones offer cheaper and more efficient aerial operations from law enforcement to environmental research to search and rescue. But drones pose privacy and freedom of expression concerns qualitatively different from those raised by traditional forms of aerial surveillance precisely because they allow inexpensive, sophisticated, and sometimes surreptitious monitoring that goes well beyond the capabilities of law enforcement today. Misuse of drones may chill First Amendment activity and lead to high-tech racial profiling. As local police agencies are poised for the broad adoption of this new technology, it is crucial that we enact protections for the privacy, free speech, and due process rights guaranteed by California law and the U.S. Constitution.

Central to AB 1327's protection is its requirement of a warrant for law enforcement use of drones. The warrant requirement is a time-honored, Constitutional principle, written into both the United States and California constitutions, and reflecting the simple principle that law enforcement should, absent genuine exigent circumstances, justify use of an invasive search to an independent judge.

Leaving the protections required for new technology solely to courts can mean years of uncertainty and ongoing constitutional violations. We have recently seen two such examples: For years, law enforcement took the position that GPS tracking devices could be installed on a suspect's vehicle without a warrant because the device would merely track the suspect moving about on public streets, before the U.S. Supreme Court in *United States v. Jones* (2012) made clear such searches violated the constitution. Similarly, law enforcement regularly searched cell phones incident to arrest without a warrant, over the strong objections of privacy advocates, until the U.S. Supreme Court again rejected those searches in *Riley v. California* (2014).

Drones allow for surveillance as pervasive and continuous as the GPS tracking at issue in *United States v. Jones*, and could obtain data just as sensitive as that available on the phones protected in *Riley v. California*. To avoid similar privacy invasions from drone use while constitutional law undergoes the often slow process of adapting to technological change, and to avoid the risk that courts will exclude drone-based evidence in a criminal trial, California should require a warrant for criminal investigative use of a drone.

Legislatures are well-positioned to fine-tune the law to new technologies. They can provide clarity with respect to complicated and rapidly changing circumstances, and fulfill our responsibility to adapt our laws to changing technology in order to defend against threats to rights and privacy. Existing jurisprudence under both the Fourth Amendment and the more protective provisions of Article 1, section 7 of the California constitution strongly suggests a warrant is constitutionally required for drone surveillance. AB 1327 establishes an easily administrable rule for law

enforcement officers and relieves them of the uncertainty of waiting for judicial review of the Fourth and First Amendment implications of drone surveillance.

AB 1327 is a sensible solution that will allow us to provide a safer community for all without sacrificing the privacy of innocent Californians. California should join Florida, Idaho, Illinois, Indiana, Iowa, Montana, Oregon, Tennessee, Utah, and Wisconsin in passing legislation to require a warrant for law enforcement use except under specific circumstances.

Signed,¹

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¹ All institutions are listed for identification purposes only and the signatories do not speak for or on behalf of their respective institutions.

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