The GDR was not a rogue state – Die DDR war kein Unrechtsstaat

It is Sunday. I am sitting on my couch and read German newspapers online. In the online edition of DIE ZEIT I am reading an article about coalition negotiations between the Green Party, the SPD and The Left Party. There was a state election last weekend in Thueringen/Germany. Because the people in Germany have no direct vote, the political parties in Germany are trying to figure out what they want to do with the peoples vote. Germany is an indirect democracy, which means that the peoples vote has no meaning at all. The separation of powers, which is the criterion of a rule of law and therefore democracy – has long become a farce in Germany, an illusion. All three branches of government – legislative, executive and judicial – are determined by the ruling parties. The respective coalition determines the laws, the executive branch is dominated by the ruling parties, the highest judicial positions are negotiated between the parties.

Now two of these parties, The Green and the SPD, are trying to force the Left Party to admit the GDR was a rogue state. In Germany there is no First Amendment Right of Freedom of Speech. Voicing your opinion for example about historical truths can be punishable by fines or prison, you have to agree with the main stream opinion or you will be **ostracized** and or **criminally prosecuted**.

Well, going back to the Left Party which must first agree that the GDR was a rogue state before the other two parties continue coalition talks with them. What is it about that everyone in Germany must bow to the main stream opinion that the GDR was a rogue state? Todays Germany is trying to present

itself as the country in which political and personal freedom is flourishing. This of course is non-sense. In order to do that it is the official mantra that all other “Germany’s” are bad. So, was the former GDR a rogue state?

I will answer this question first in German, later I will translate it. If you want a short answer: No, the GDR was not a rogue state (See saved you from learning German).

Gäbe es ein Unwort des Jahres in der Auseinandersetzung um die DDR, müsste es der Begriff „Unrechtsstaat“ sein. Bekanntlich sind Unwörter „Wörter und Formulierungen aus der öffentlichen Sprache, die sachlich grob unangemessen sind und möglicherweise sogar die Menschenwürde verletzen“.

Wenn Biografien von Millionen Menschen bis zur Unkenntlichkeit verfälscht werden, dann hat das natürlich mit Menschenwürde zu tun. Das alles ist nicht neu. Sofort mit der Vereinnahmung der DDR wurde dieser Begriff als zentraler Bestandteil der Delegitimierung der DDR angewandt. Bereits im Einigungsvertrag war die DDR im Artikel 17 – wenig abgewandelt – als „Urechts-Regime“ bezeichnet worden. Und der Alt-Bundespräsident und Jurist Roman Herzog erklärte 1996 vor der Enquete-Kommission: „Sie (die DDR) war ein Unrechtsstaat“. Im Auftrag der Herrschenden sollen Ministerien, Museen, Archive, Stiftungen, Zentralen für politische Bildung und die Birthler- und sonstige Behörden des Kalten Krieges, flankiert und potenziert von den angeblich unabhängigen Medien, mit Hilfe dieses Begriffs die politische, mehr noch, die persönliche Erinnerung an die DDR bis zur Unkenntlichkeit verzerren und positive Erinnerungen nach Möglichkeit tilgen.

Nun könnte man zu Recht erwidern, wissenschaftlich, insbesondere auch rechtswissenschaftlich, gibt es den Begriff „Unrechtsstaat“ nicht. Bekanntlich hat sogar der wissenschaftliche Dienst des Bundestages auf Anfrage der LINKEN-Politikerin Gesine Lötzsch erklärt: „Den Begriff Unrechtsstaat gibt es im Völkerrecht nicht“. Und weiter: „Eine

wissenschaftlich haltbare Definition des Begriffs Unrechtsstaat gibt es weder in der Rechtswissenschaft noch in den Sozial- und Geisteswissenschaften. … es geht zumeist darum, die politische Ordnung eines Staates, der als Unrechtsstaat gebrandmarkt wird, von einem rechtsstaatlich strukturierten System abzugrenzen und moralisch zu diskreditieren“. Selbst hier wird also bestätigt, was wir schon lange sagen: der Begriff ist ein Kampfbegriff, mit dem nachträglich die Abrechnung mit der DDR betrieben wird. Letztlich wird er als antikommunistisches Schlagwort im fortgesetzten Kalten Krieg innerhalb Deutschlands verwendet. Es soll der Eindruck erweckt werden, das Leben in der DDR habe sich gesamtgesellschaftlich und -staatlich gesehen nicht nach Regeln vollzogen, sondern es habe die reine Willkür, also Unrecht, geherrscht. Entweder es habe kein Recht bestanden, gesetztes Recht sei Unrecht gewesen oder die Rechtsanwendung sei willkürlich erfolgt. Mit dem Begriff „Unrechtsstaat“ soll vermittelt werden, dass die DDR von Anfang an und bis zu ihrem Ende „Unrecht“ war. Und weil diese Behauptung systematisch, permanent und flächendeckend verbreitet wird, können wir es nicht bei der fehlenden Definition bewenden lassen, sondern wir müssen uns damit offensiv auseinandersetzen.

Das Recht der DDR basierte auf der grundlegenden wissenschaftlichen Erkenntnis, dass es Mittel der Politik ist, die jeweils herrschende Klasse sich ihr dienende Gesetze gibt und sie dementsprechend anwendet (Das ist übrigens heute in der BRD nicht anders, nur – die Herrschenden sind andere, und die Tatsache des politischen Wesens des Rechts wird, im Gegensatz zur DDR, verschwiegen bzw. geleugnet).

Daraus allerdings den Schluss zu ziehen, der Bürger sei der Willkür des Staates, seiner Behörden ausgeliefert gewesen, ist falsch; es ist eine böswillige Behauptung. Immerhin gab es eine Reihe von Rechtsinstituten, die bekanntlich Verantwortung und weit reichende Vollmachten zur Wahrung der Gesetzlichkeit hatten: staatliche, gesellschaftliche und gewerkschaftliche

Kontrollorgane und -mechanismen, u.a. das Eingabengesetz, die Arbeiter- und Bauerninspektion, die Gesetzlichkeitsaufsicht der Staatsanwaltschaft. Soweit das politische Strafrecht die These vom Unrechtsstaat DDR stützen soll, so trifft dies weder vom Inhalt und vom Umfang das Wesen sozialistischer Rechtspflege noch berücksichtigt es, dass tatsächlich der Schutzcharakter des Rechts gegen feindliche Tätigkeit erforderlich war. An der Zahl von Verurteilungen von DDR-Bürgern und von Rehabilitierungen nach 1990 den Unrechtscharakter nachweisen zu wollen, geht schon deshalb fehl, weil diese Rechtshandlungen von der herrschenden Politik gefordert und von der Justiz der BRD willfährig – gegen Recht und Gesetz – umgesetzt wurden.
Und im Übrigen: Jeder Staat verfügt über politisches Strafrecht, das besonderen Regeln unterliegt. Das war und ist in der BRD nicht anders.

Die Gewaltenteilung, die immer wieder als herausragendes Kriterium eines Rechtsstaates ins Feld geführt wird – oft auch von linken Politikern -, ist in den westlichen Staaten, auch in der BRD, schon lange zu einer Farce, zu einer Illusion geworden. Alle drei Gewalten – Gesetzgebung, Exekutive und Jurisdiktion – werden von den herrschenden Parteien bestimmt. Die jeweilige Koalition bestimmt die Gesetze, die Exekutive wird von den herrschenden Parteien dominiert, die höchsten Richterämter werden unter den Parteien ausgehandelt.

Beim »Streit um die DDR« geht es nicht um die »Aufbereitung« historischer Fehler eines Gesellschaftssystems oder Staates geht, sondern um Revanche (für das »Unrecht«, die Macht des Kapitals für einige Jahrzehnte beschränkt zu haben) und Prävention (die Eindämmung des Risikos, dass die Erinnerung an die tatsächliche DDR als befreiender Impuls bei kommenden Kämpfen wirken könnte). Wer sich auch nur ansatzweise gegen die Verdammung der DDR als Unrechtsstaat stellt, wird sofort nieder geschrien,

Natürlich kann schon aus praktischen Gründen nicht alles als

Unrecht bezeichnet werden, wie Frau Merkel jüngst in ihrer DDR-Amnesie weise demonstrierte. Die DDR sei Unrechtsstaat gewesen. Dennoch, so Frau Merkel, seien Dinge wie der Ehevertrag legal gewesen. Deshalb habe auch nicht jeder neu heiraten müssen, als die Wiedervereinigung stattfand. Primitiver geht es nicht; Eheschließung und Ehevertrag waren auch in der DDR völlig verschiedene Sachen. Aber, so genau kommt es ja, was die DDR betrifft, sowieso nicht an.

Die Perversion dieser These vom Unrechtsstaat erleben wir in der mehrfach erhobenen Forderung, geleugnetes DDR-Unrecht, d.h. Aufklärung über historische Wahrheiten, unter Strafe zu stellen. Offenbar erweist sich die Diffamierung der DDR als unwirksam, wie bekanntlich Umfragen im Osten immer wieder zeigen. Da bleibt weiter nichts übrig, als mit den Geschützen des Strafrechts zu drohen.

Comments or questions are welcome.

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Petition Askes For White House To Declare Copblock And Others 'Domestic Terrorists'

In what I'm sure is a huge coincidence, a petition at We the People was submitted Sept. 19th asking for the government to label "Copblock.org" (and any variation) members as "domestic terrorists." [h/t Police State USA] This seems to follow news of Austin police officer Justin Berry's designation of these organizations as "domestic extremists" far too closely to be just some sort of random happening – more or less within five days of the information first being exposed.

Here's the stupidity in full:

> *CopBlock.Org and its affiliates on social media are often applauding and encouraging violence towards law enforcement officers and their families. At times, they are even directly causing said violence in their communities, and then supporting each other online or in person for their illegal activities. I believe that many people who are active in this organization are committing terroristic acts by inspiring, inciting, or taking parts in acts that are designed to take human lives in cold blood for political gain. The statements made by this organization and its affiliates should be taken very seriously by local, state, and federal law enforcement agencies, and proper action should be taken to combat this. I believe the US DHS and FBI should monitor and investigate this Organization.*

Last things first, the DHS/FBI probably *already* monitor groups like this to a certain extent. Both work closely with local law enforcement and if local officers are complaining about being filmed or otherwise "harassed" by civilians, chances are

certain reports have been kicked up the ladder to agencies with bigger budgets, more manpower and (especially in the case of the DHS) plenty of spare time to collect and collate information on Constitutionally-protected activities.

Next, there's the unfounded accusations that these organizations are "directly causing violence." As I've noted earlier, police accountability organizations draw more than their share of people who can't articulate their objections to law enforcement tactics beyond vague threats and misspelled swear words, but those running these organizations (along with a majority of their members) do *not* encourage violence towards law enforcement members. Holding someone accountable for their actions does not mean acting as judge, jury and executioner.

"…take human lives in cold blood for political gain." I can't even. Pushing for accountability through activism isn't a political sport. Law enforcement agencies aren't partisan entities. They don't check voter registrations before ordering people to stop filming or restraining someone into a coma/morgue. That's not how this works. At all.

The petition stills needs ~95,000 signatures before it can be officially ignored, but at the rate it's going, it will never get there, despite pushes from law enforcement advocacy groups. About all that can be done with this information is a bit of data mining to determine which state harbors the most resentment towards police accountability.

What this does definitely show is that there's a subset of law enforcement (and their supporters) that find the activities of these groups threatening, and are looking for any route at all to shut them down. The percentage of those seeking this is probably no larger than the subset of Copblock members who actively wish injury and death on law enforcement members. Just as Copblock shouldn't be judged by a vocal minority, neither should law enforcement advocates. To most, these groups are just another part of the job. Some handle the extra

attention better than others but there’s no concerted effort being made to shut them down.

Cops in hot water after videos catch them shooting, beating people

One officer shot an innocent motorist during traffic stop; another beat a homeless woman.

The South Carolina incident.

A South Carolina highway trooper was charged Wednesday over accusations of assault and battery in connection to the unprovoked shooting of a motorist pulled over for a seatbelt violation—an incident that was videotaped by the officer’s dashcam.

And on the same day South Carolina patrolman Sean Groubert, 31, was charged with wrongful shooting, California officials agreed to pay a woman $1.5 million after a motorist captured video with a mobile phone of a California highway patrolman

repeatedly punching a woman on the side of a Los Angeles freeway.

That officer, Daniel Andrew, agreed to resign and could still be charged in connection to the July pummeling of a homeless woman. The video of Andrew repeatedly punching Marlene Pinnock in the face invoked images of the Rodney King beating while garnering millions of hits on YouTube and elsewhere. An off-duty policeman helped subdue the officer.

“When this incident occurred, I promised that I would look into it and vowed a swift resolution,” California Highway Patrol Commissioner Joe Farrow said in a statement. “Today, we have worked constructively to reach a settlement agreement that is satisfactory to all parties involved.”

The California incident.

Pinnock was taped walking barefoot alongside the 10 Freeway by the La Brea exit. The CHP said its officer followed the woman to prevent her from walking into traffic.

The CHP has provided Los Angeles prosecutors with its investigation. No charges have been filed yet.

Back in South Carolina…

In the South Carolina case, the officer was fired from duty Friday, and bond was set at $75,000. At a Wednesday bond hearing, the authorities played the video of Groubert’s stop September 4 of motorist Levar Jones, 35.

The tape shows the trooper asking the motorist for his

driver’s license. The driver, who is at the gas station and had just exited his vehicle, reaches inside the car for his license. The officer yells for him to “get out of the car. Get out of the car.” He fires a handful of rounds at the unarmed Jones, who is holding his hands above his head.

The victim is struck once in the hip. “I can’t feel my leg,” the victim is heard saying.

After the shooting, the officer yells: “Put your hands behind your back. Put your hands behind your back.”

“What did I do, sir?” the victim asks. “Why did you shoot me?”

“Well, you dove head first back into your car.”

The victim was hospitalized and is now recuperating. The officer faces 20 years if convicted.

The officer’s case file shows that Groubert was handed the Medal of Valor Award last year following a shooting he was involved in outside a bank. The officer’s case file, obtained by local media, shows the trooper has been the subject of at least five citizen complaints.

The man’s attorney, Barney Geise, said his client is not guilty.

Comments or questions are welcome.

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Law Enforcement Freaks Out Over Apple & Google's Decision To Encrypt Phone Info By Default

Last week, we noted that it was good news to see both Apple and Google highlight plans to encrypt certain phone information by default on new versions of their mobile operating systems, making that information no longer obtainable by those companies and, by extension, governments and law enforcement showing up with warrants and court orders. Having giant tech companies competing on how well they protect your privacy? That's new… and awesome. Except, of course, if you're law enforcement. In those cases, these announcements are apparently cause for a general freakout about how we're all going to die. From the Wall Street Journal:

> *One Justice Department official said that if the new systems work as advertised, they will make it harder, if not impossible, to solve some cases. Another said the companies have promised customers "the equivalent of a house that can't be searched, or a car trunk that could never be opened."*
>
> *Andrew Weissmann, a former Federal Bureau of Investigation general counsel, called Apple's announcement outrageous, because even a judge's decision that there is probable cause to suspect a crime has been committed won't get Apple to help*

> *retrieve potential evidence. Apple is "announcing to criminals, 'use this,' " he said. "You could have people who are defrauded, threatened, or even at the extreme, terrorists using it."*
>
> *The level of privacy described by Apple and Google is "wonderful until it's your kid who is kidnapped and being abused, and because of the technology, we can't get to them," said Ronald Hosko, who left the FBI earlier this year as the head of its criminal-investigations division. "Who's going to get lost because of this, and we're not going to crack the case?"*

That Hosko guy apparently gets around. Here he is freaking out in the Washington Post as well:

> *Ronald T. Hosko, the former head of the FBI's criminal investigative division, called the move by Apple "problematic," saying it will contribute to the steady decrease of law enforcement's ability to collect key evidence — to solve crimes and prevent them. The agency long has publicly worried about the "going dark" problem, in which the rising use of encryption across a range of services has undermined government's ability to conduct surveillance, even when it is legally authorized.*
>
> *"Our ability to act on data that does exist . . . is critical to our success," Hosko said. He suggested that it would take a major event, such as a terrorist attack, to cause the pendulum to swing back toward giving authorities access to a broad range of digital information.*

Think of the children! And the children killed by terrorists! And just be afraid! Of course, this is the usual refrain any time there's more privacy added to products, or when laws are changed to better protect privacy. And it's almost always bogus. I'm reminded of all the fretting and worries by law

enforcement types about how “free WiFi” and Tor would mean that criminals could get away with all sorts of stuff. Except, as we’ve seen, good old fashioned police/detective work can still let them track down criminals. The information on the phone is not the only evidence, and criminals almost always leave other trails of information.

No one has any proactive obligation to make life easier for law enforcement.

Orin Kerr, who regularly writes on privacy, technology and “cybercrime” issues, announced that he was troubled by this move, though he later downgraded his concerns to “more information needed.” His initial argument was that since the *only* thing these moves appeared to do was keep out law enforcement, he couldn’t see how it was helpful:

> *If I understand how it works, the only time the new design matters is when the government has a search warrant, signed by a judge, based on a finding of probable cause. Under the old operating system, Apple could execute a lawful warrant and give law enforcement the data on the phone. Under the new operating system, that warrant is a nullity. It’s just a nice piece of paper with a judge’s signature. Because Apple demands a warrant to decrypt a phone when it is capable of doing so, the only time Apple’s inability to do that makes a difference is when the government has a valid warrant. The policy switch doesn’t stop hackers, trespassers, or rogue agents. It only stops lawful investigations with lawful warrants.*
>
> *Apple’s design change one it is legally authorized to make, to be clear. Apple can’t intentionally obstruct justice in a specific case, but it is generally up to Apple to design its operating system as it pleases. So it’s lawful on Apple’s part. But here’s the question to consider: How is the public interest served by a policy that only thwarts lawful search warrants?*

His “downgraded” concern comes after many people pointed out that by leaving backdoors in its technology, Apple (and others) are also leaving open security vulnerabilities for others to exploit. He says he was under the impression that the backdoors required physical access to the phones in question, but if there were remote capabilities, perhaps Apple’s move is more reasonable.

Perhaps the best response (which covers everything I was going to say before I spotted this) comes from Mark Draughn, who details “the dangerous thinking” by those like Kerr who are concerned about this. He covers the issue above about how any vulnerability left by Apple or Google is a vulnerability open to being exploited, but then makes a further (and more important) point: this isn’t about them, it’s about us and protecting *our* privacy:

> *You know what? I don’t give a damn what Apple thinks. Or their general counsel. The data stored on my phone isn’t encrypted because Apple wants it encrypted. It’s encrypted because I want it encrypted. I chose this phone, and I chose to use an operating system that encrypts my data. The reason Apple can’t decrypt my data is because I installed an operating system that doesn’t allow them to.*
>
> *I’m writing this post on a couple of my computers that run versions of Microsoft Windows. Unsurprisingly, Apple can’t decrypt the data on these computers either. That this operating system software is from Microsoft rather than Apple is beside the point. The fact is that Apple can’t decrypt the data on these computers is because I’ve chosen to use software that doesn’t allow them to. The same would be true if I was posting from my iPhone. That Apple wrote the software doesn’t change my decision to encrypt.*

Furthermore, he notes that nothing Apple and Google are doing now on phones is any different than tons of software for

desktop/laptop computers:

> *I've been using the encryption features in Microsoft Windows for years, and Microsoft makes it very clear that if I lose the pass code for my data, not even Microsoft can recover it. I created the encryption key, which is only stored on my computer, and I created the password that protects the key, which is only stored in my brain. Anyone that needs data on my computer has to go through me. (Actually, the practical implementation of this system has a few cracks, so it's not quite that secure, but I don't think that affects my argument. Neither does the possibility that the NSA has secretly compromised the algorithm.)*
>
> *Microsoft is not the only player in Windows encryption. Symantec offers various encryption products, and there are off-brand tools like DiskCryptor and TrueCrypt (if it ever really comes back to life). You could also switch to Linux, which has several distributions that include whole-disk encryption. You can also find software to encrypt individual documents and databases.*

In short, he points out, the choice of encrypting our data is *ours* to make. Apple or Google offering us yet another set of tools to do that sort of encryption is them offering a service that many users value. And shouldn't that be the primary reason why they're doing stuff, rather than benefiting the desires of FUD-spewing law enforcement folks?

Comments or questions are welcome.

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“Anchor Babies” in the News: The Pregnancy Path to U.S. Citizenship

Every law seems to have unintended consequences. The original intent of granting citizenship to every baby born on U.S. soil (done within the 14th Amendment to the U.S. Constitution) was to avoid creating an underclass, particularly among people who were brought to the U.S. as slaves.

(Congress was responding to the infamous *Dred Scott* decision of 1857, in which the U.S. Supreme Court denied citizenship rights to freed slaves.)

Now, however, a cottage industry has seemingly developed to assist people from outside the U.S. – particularly from Asia – to come here on temporary visas in order to give birth to new little U.S. citizens.

The price tag for such “maternity hotel” services tends toward the tens of thousands of dollars. The fee covers travel and visa arrangements, medical care, and more. (See, for instance, “Giving birth in U.S. to get babies citizenship draws suspicion” and “In suburbs of L.A., a cottage industry of birth tourism” and “Chinese birth tourism booms in Southern

California.”)

One such service reportedly advertises, “We guarantee that each baby can obtain a U.S. passport and related documents.” That’s not a hard guarantee to make, given the Constitutional backing!

Some of the reasons expectant parents give for wanting to give birth in the U.S. have immediate or short-term utility. For example, interviewees from China mentioned goals such as as circumventing that country’s one-child restrictions, or wanting to ensure that their child will be able to study in the U.S. or have the protection of the U.S. government in times of difficulty.

Other reasons, however, are remarkably long-term in scope. The families are creating an “anchor” for future U.S. immigration – and it’s one that can’t help them until the child turns 21.

To be clear, having a child who is a U.S. citizen does NOT provide any immediate rights to live or gain status in the United States. Only a U.S. citizen who is age 21 or over can petition his or her parents for U.S. lawful permanent residence (a green card). That application process alone will likely take at least a year.

What’s more, if the little citizens’ parents were to take a chance and attempt to remain in the U.S. illegally for the requisite 21 years, they’d become “inadmissible” – that is, ineligible for a green card – based on their history of unlawful presence here. (In fact, the “birth tourism” agencies likely warn the parents of this, since reports have it that they fly home soon after the births.)

There’s nothing in U.S. immigration law that expressly forbids birth tourism. Arguments could be made that the parents are committing visa fraud by claiming to enter as “tourists.” Still, even if the immigration enforcement authorities push this point, a finding that the parents’ committed visa fraud

won’t negate the children’s status as citizens. (It will, however, make the parents inadmissible and unable to receive any U.S. visa or green card in the future.)

Whatever one might think of the practice of birth tourism, we’ve got to admire that level of long-term planning!

Comments or questions are welcome.

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Why Give Birth in the U.S. When a Surrogate Can Do It For You?!

It was only a matter of time, really. First, there was “birth tourism,” in which people from around the world who are interested in gaining a foothold in the U.S. arrange to enter as tourists and have a child here – their own little U.S. citizen “anchor baby.”

Now, some parents are avoiding that nerve-wracking plane ride while pregnant, and simply arranging to have surrogate women in the U.S. give birth and cede their parental rights to them. For real. You can read about it in *California Lawyer* magazine.

This strategy doesn't work in every U.S. state (because many state legislatures have made surrogacy contracts illegal or unenforceable), but it works in California, which is plenty convenient for the many Asian couples going this route.

I do need to take issue with one statement in the article on "Having a Citizen Baby," however. It says that, "At $100,000 to $200,000—which includes legal fees, insurance, medical care, and $30,000 to $45,000 for the surrogate—hiring a surrogate is still much cheaper than taking another fast track to legal residency: paying $500,000 or more for an entrepreneur visa."

The surrogacy route is no "fast track" to legal residency, other than for the baby, who wasn't exactly worried about immigrating to the U.S. in the first place. Mom and dad still must wait 21 years outside the U.S. before gaining any rights here (also described in my earlier blog post). The entrepreneur or investor visa, by contrast, allows parents and children to enter the U.S. right away.

But the surrogacy route offers certainty for at least one member of the family, and doesn't carry the risk that the business upon which the investor visa was based will fail within the first two years – in which case green card eligibility is lost.

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When Lawyers for the Other Side Reveal Your Immigration Status

Lawyers tend to take very seriously their duty to keep their own client's confidential information – otherwise known as secrets – to themselves.

But guess what: They get a little fuzzier on the question of whether that duty extends to the clients on the other side of a case, for example in a divorce or other civil case, or in a criminal case.

And in a particularly ugly example of how this can play out, the State of Washington's Latino/a Bar Association (LBAW) has been investigating cases of "immigration retaliation" – in which an attorney "harasses, coerces, or intimidates another person using that person's actual or perceived immigration status."

This comes from an article called, "The Unethical Use of Immigration Status in Civil Matters," by M. Lorena Gonzales and Daniel Ford, in the March, 2014 issue of *NYLawyer*.

Put in starker terms, immigration retaliation encompasses actions like notifying immigration enforcement authorities that an undocumented person is expected to arrive at a certain courthouse on a certain date; or that a woman participating in the prosecution of a domestic violence case may have no legal status. ("May" being the operative term here – the article discusses cases where the U.S. authorities, after being "tipped off," wrongly detain the immigrant.)

Thankfully for immigrants in the State of Washington, the state bar association issued a formal ethics opinion several years ago prohibiting lawyers from threatening to report someone to the immigration authorities in order to "gain an advantage in a civil matter."

A fat lot of good that opinion seems to have done since then, but to drive the point home, the LBAW got the Washington State Supreme Court to issue a formal comment in 2013. That comment prohibits lawyers from making inquiries into or assertions about someone's immigration status for purposes of intimidation, coercion, or obstruction of justice.

I wonder what's going on in the other 49 states?

In the meantime, this is a good opportunity to remind immigrants and their counsel of the availability of the U-Visa, which can provide temporary lawful immigration status to non-citizens assisting law enforcement.

Comments or questions are welcome.

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Want to Know Who's Actually Getting DACA Approval?

U.S. Citizenship and Immigration Services (USCIS) just published its first-ever report summarizing the "Characteristics of Individuals Requesting and Approved for Deferred Action for Childhood Arrivals (DACA)."

Download (PDF, Unknown)

The report supplies demographic information about people who requested DACA between August 2012 to September 2013 and were approved by January 2014, in these categories:

- age range
- gender
- country of birth
- marital status
- state of residence

Citizens of Mexico are, to no one's surprise, the largest pool of applicants by far, followed by El Salvador, Honduras, and Guatemala. But plenty of other countries' citizens applied, as well. Even the bottom four countries on the list Poland, Nicaragua, Nigeria, and Guyana, had over 1,000 applicants each.

As for age, the majority are 19 and under, followed closely by the 20 to 24 age group. This isn't too surprising either, given the age-related requirements for DACA. There was no clear winner between number of male and female applicants and DACA recipients.

And you get no points for guessing which state most applicants applied from: California, of course! Texas a close second.

Comments or questions are welcome.

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Need to Find a Relative Arrested by Immigration? See Online Detainee Locator

Sometimes what's going in in the headlines becomes all too personal. That's what happened for me recently, when a friend called to say that her cleaning woman from El Salvador was in a panic, having received word that her sisters had been

arrested by immigration authorities after crossing the border into Texas. They're apparently part of the flood of young people fleeing countries beset by violence, attempting to cross the Mexican border into the United States.

The first question then becomes, "Where are they?"

Back in the day, this question could take days of calling detention centers and desperately begging information out of disinterested guards and officials. But now there's an "Online Detainee Locator" provided by Immigration and Customs Enforcement (ICE).

Would it work?

At first, no. (Probably not too surprising – data entry may not be the first thing on the to-do list after an immigrant is arrested.) But within about 15 hours, voila – we entered a name and birth date and received the name of the detention facility where one sister was being held, as well as a phone number for reaching that facility. The U.S.-based sister was able to call the facility and get more information about the status of her sister's case.

Whether the online system is always this workable, I can't say. It's easy to imagine situations where the name might be misspelled, or a birth date taken down inaccurately, leading to a complete info void.

And an even more difficult aspect of the system is that it's mostly in English. Yes, you can choose other languages from a dropdown menu when you first perform the search, but as far as I could tell, this doesn't lead to any different screens when it's time for the results.

Still, it was immensely satisfying to see the name pop up and know that, as alarming as the news of the arrest was, the sister hadn't just disappeared into the system. Now, if Congress would only come up with an intelligent and humane way

to deal with this influx.

Comments or questions are welcome.

* indicates required field

Name:*

Email:*

Subject:*

Message:*

Submit

Los Angeles Attorney Faces Suspension For Fake Photoshops With Dozens Of Celebrities

This is part of my “Why Attorneys are Scumbags” series

Los Angeles attorney has been recommended

for a six-month suspension for posting digitally doctored photos to her official website.

The case concerns Svitlana Sangary, who for two years featured dozens of realistic images of her posing at parties with the likes of President Obama, the Clintons, vice president Joe Biden, former California governor Arnold Schwarzenegger, and Nick Lachey on her site. (The link to the page has since been removed, but is still accessible here.)

The photos show Sangary hobnobbing with George Clooney, Donald Trump, Woody Allen and Alec Baldwin, among other boldface names. The thumbnail-sized images show her wearing different outfits, smiles and poses that resemble the celebrity she appears to be with.

Sangary has been charged with four counts of misconduct. In the decision, State Bar Court judge Donald Miles writes that she "willfully violated" the rules of professional conduct by engaging in "deceptive advertising."

According to the State Bar Court's decision, since the images belonged to an "advertisement and solicitation for future work," they fall under the definition of "false and deceptive" advertising. The Bar launched an investigation in January on the false photos.

Indeed, it's a strange case made stranger by the fact that, on January 27, 2014, when the charges were brought before her, Sangary responded with a "16-page soliloquy with little to no rational connection to the charges at hand," writes Miles. You can read the snippets of Sangary's response for yourself here (PDF):

Download (PDF, Unknown)

Among the references are a comparison to Natalie Portman's controversial final performance in the film *Black Swan*, and a mention that President Obama once emailed Sangary to "chip in $3 or more."

The Photoshops are rather convincing, too, and I thought they were real at first blush. ("At first!".) The State Bar Court's recommendation for a six-month suspensions is currently pending approval by the California Supreme Court.

According to the State Bar of California, Sangary graduated from Pepperdine University's School of Law. She was admitted to the State Bar in 2004. On Yelp and legal forum, Avvo, she has received poor reviews with users calling her "scum," an "unethical crook" and "incompetent" – mostly for excessive billing and failure to file responses and motions on time. Sangary has not publicly commented on the allegations.

See all of the Photoshoped pictures below:

Exhibit A | Click to expand