

## **Lincoln Law Review Index**

This index contains a citation and synopsis for each of the articles in the Lincoln Law Review for volumes from 1965 through 2007. If you find an article you are interested in, would like a copy, and are willing to pay a \$15 fee, please send your request to [subscriptions@lincolnlawreview.org](mailto:subscriptions@lincolnlawreview.org).

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## 1 Lincoln L. Rev. No. 1 (1965 - 1966)

### Articles

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Hon. Stanley A. Weigel, *Some Reflections on Civil Disobedience, Riots and Law*, 1 Lincoln L. Rev. No. 1, 1, (1965).

This transcript of an address made by the author to a group of lawyers outlines the duties of lawyers and judges to stand firm on demands to water down the constitutional rights of those charged with a crime.

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Walter Dunbar, *Commitment and Rehabilitation of Criminal Offenders in the State of California*, 1 Lincoln L. Rev. No. 1, 8, (1965).

This transcript of a outlines objectives concerning the California Department of Correction's process of commitment and rehabilitation for those persons expected to be admitted into the states correctional facilities within the next year. Also explores the problems and challenges facing the department as well as the inmates.

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Hugh R. Manes, *The Meaning of Watts*, 1 Lincoln L. Rev. No. 1, 17, (1965).

This transcript explores the conditions in the Los Angeles community of Watts that led to the riots in the 1960's. The author also outlines steps the legal community can take to help overcome the underlying inequalities in our society that exist for African Americans.

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William B. Ball, *The Constitutional Question Respecting Birth Control and the Right of Privacy*, 1 Lincoln L. Rev. No. 1, 28, (1965).

This transcript of a presentation made to a Senate Subcommittee explores the issues presented by Senate Bill 1676, which called for study and research concerning population growth in the United States and abroad. The author interprets Senate Bill 1676 as "plainly and simply, a bill establishing a domestic and international birth control program, and also for creation of permanent federal governmental organs for carrying out of the same."

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Kenneth G. Nellis, *Retroactivity of the 1963 California Governmental Tort Law: A Legislative Triumph*, 1 Lincoln L. Rev. No. 1, 39, (1965).

This article traces the roots of procedural and substantive governmental immunity from tort liability. The author outlines the struggles between the Supreme Court and the Legislature to settle this issue.

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Erwin C. Nielsen and Nat Edward Hales, Jr., *Personal Injury Litigation in the Field of Pleasure Boating*, 1 Lincoln L. Rev. No. 1, 52, (1965).

This article outlines the problems an attorney handling a personal injury resulting from a boating accident may encounter. It includes discussions on jurisdiction, choice of law, and liability.

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Richard d. Totter, *Law Students-Practice of Law-New York State*, 1 Lincoln L. Rev. No. 1, 65, (1965).

Commentary on a New York statute passed in 1965 that allowed law students to practice law in their final year of study.

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Peter R. Stromer, *Jurimetrics: Computerized Legal Research*, 1 Lincoln L. Rev. No. 1, 73, (1965).

How the computer age will impact legal research, electronic data storage and retrieval, the law and how lawyers will use computers in their practice of law in the future.

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Ronald B. Northling, *Courts-Freedom of Belief-Extension of Judicial Authority Burdens Freedom of Belief When State Interest is Involved*, 1 Lincoln L. Rev. No. 1, 81, (1965).

This article discusses the court's imposition of judicial decisions when a patient refuses medical treatment.

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### **Book Reviews**

James F. Hewitt, *Defense of the Poor in Criminal Cases in American State Courts, Volumes 1, 2, and 3*, 1 Lincoln L. Rev. No. 1, 83, (1965). (reviewing Lee Silverstein, *Defense of the Poor in Criminal Cases in American State Courts, Volumes 1, 2, and 3*(1965)).

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Richard Werthimer, *Legal Aspects of the Civil Rights Movement*, 1 Lincoln L. Rev. No. 1, 84, (1965). (reviewing *Legal Aspects of the Civil Rights Movement*, (1965)).

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Harold E. Rowe, *Research in California Law*, 1 Lincoln L. Rev. No. 1, 85, (1965). (reviewing Myron Rink, *Research in California Law*, (1964)).

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## 1 Lincoln L. Rev. No. 2 (1965 - 1966)

### Articles

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Richard S. Goldsmith, *The Role and Jurisdiction of the United States Commissioner in the Federal Judicial Structure*, 1 Lincoln L. Rev. No. 2, 89, (1966).

This article explores the duties of the United States Commissioner in the Federal Judicial system and makes recommendations for expanding the jurisdiction of the Commissioner in order to relieve the District Courts of some of their case loads in minor matters.

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George T. Choppelas, *A Survey of the War Against Poverty in an Affluent Society*, 1 Lincoln L. Rev. No. 2, 142, (1966).

This article discusses the Economic Opportunity Act of 1964, as well as other programs designed to combat poverty in United States.

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Stanley J. Mosk, Associate Justice of the California State Supreme Court, *The Population Explosion and Due Process*, Address at the Conference on "The Biologic Crossroads," at the University of California School of Medicine, San Francisco, California, (Jan. 16, 1966), 1 Lincoln L. Rev. No. 2, 149, (1966).

This address discusses the issue of overpopulation, the approaches to control it and the legal implications, consequences, and impact of implementing them.

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William L. Wollitz, Jr., *A Look at the California Juvenile Court Past, Present and Future*, 1 Lincoln L. Rev. No. 2, 167, (1966).

This article explores the California Juvenile Court system. It includes an analysis of the role of the probation officer, as well as the role of the lawyer and a survey of important cases and their impact on the juvenile system. It also includes a look at where the system is headed in the future.

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### Book Reviews

George H. Link, *Vignettes of Legal History*, 1 Lincoln L. Rev. No. 2, 196, (1965). (reviewing Julius J. Marke, *Vignettes of Legal History*, (1966)).

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## 2 Lincoln L. Rev. No. 1 (1966-1967)

### Articles

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Orrin F. Finch, *Public Contracts-Stop Notices in California*, 2, Lincoln L. Rev. No. 1, 1, (1966).

This article explores the nature of the Stop Notice Lien, what it does, types of claims that are lienable under the Stop Notice, and recommendations for reforming the confusing code as it stands in California.

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Melvin M. Belli, *Abridged Excerpts from the Introduction to Belli's "100 Cases"*, 2, Lincoln L. Rev. No. 1, 23, (1966).

This article is an excerpt from Belli's book, *The Law Revolution-With Due Process-The '100 Cases,'* and focuses on the role of the lawyer in keeping the legal profession current and up to speed with the ever-changing world around it.

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Gerald N. Hill, *A Review of California Housing Authority Statutory and Case Law*, 2, Lincoln L. Rev. No. 1, 30, (1966).

This article provides a history and analysis of the California Housing Authority. It includes a survey of case law as well as commentary on such issues as the relationship of cities and counties to housing authorities, project site selection and eligibility of tenants.

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William G. Fallai, *Rendition: The Governor's Discretion*, 2, Lincoln L. Rev. No. 1, 48, (1966).

This article examines the state governor's power of discretion where extradition of a fugitive is involved. It explores the problems presented and proposes solutions to the issues that could arise should one governor refuse rendition to another state.

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John Cyrill smith, Jr., *Actions by Heirs at Law Under Wrongful Death Statute-A Study of Procedural Impracticality*, 2, Lincoln L. Rev. No. 1, 62, (1966).

This article deals with the problems a decedent's heirs face when forced to join the suit with the indispensable parties to the action, as preferred under the statute.

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Lorraine O. Legg, *Federal Rule of Criminal Procedure 32 (c) (2): Confidentiality or Constitutionality?*, 2, Lincoln L. Rev. No. 1, 66, (1966).

This article examines the the pre-sentencing report as outlined under Rule 32 (c) (2) of the Federal Rules of Criminal Procedure. It explores the divergent opinions regarding examination of the pre-sentencing report.

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Hugh F. Mullin, *The Perils of Being a Spectator*, 2, Lincoln L. Rev. No. 1, 75, (1966).

This article explores the status of the doctrine of "assumption of risk" as it applies to a spectator at a sporting event, the duties of the owners of ballparks and the like, and discusses its application and if it should be changed.

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## **Book Reviews**

Robert A. Martin, *How to Avoid Probate*, 2, Lincoln L. Rev. No. 1, 83, (1966) (reviewing Norman F. Dacey, *How to Avoid Probate* (1966)).

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## 2 Lincoln L. Rev. No. 2 (1966-1967)

### Articles

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Edward B. Howell, *Professional Dilemma: The Attorney's Prospective Insurability*, 2, Lincoln L. Rev. No. 2, 89, (1967).

This article analyzes professional responsibility within the legal profession, the increase in the number of malpractice suits against lawyers in the United States, and the rising rates of liability insurance. It also explores some possible solutions to help alleviate the anticipated crisis in this area.

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Hon. John B. Molinari, *The Presumption Takes on a New Look in California*, 2, Lincoln L. Rev. No. 2, 101, (1967).

This article examines the impact of the adoption of the Evidence Code in January of 1967 and the role it played in the demise of the "presumption-is-evidence" doctrine in California.

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Roland W. Wood, *The Civil Narcotics Program: A Five Year Progress Report*, 2, Lincoln L. Rev. No. 2, 116, (1967).

This article provides an overview of the Civil Commitment Program for Narcotics Addicts, established by the California Legislature in 1961. It details the various types and approaches to counseling, the programs' goals, what has been learned about dealing with addicts and goals for the future.

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Lawrence H. Bakken, *The Reverse Land Valuation Problem: Rezoning From Industrial to Residential in Alameda County*, 2, Lincoln L. Rev. No. 2, 139, (1967).

This article examines the various issues raised as a result of the Alameda County Board of Supervisor's decision to rezone several hundred acres in Alameda county from industrial use to residential use.

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John B. Dickson, *Insurance: The Meaning of the Contract in Light of the Insured's Reasonable Expectations*, 2, Lincoln L. Rev. No. 2, 157, (1967).

This article examines the implications of a court's shift in interpretation of an insurance contract from the terms of the policy and the language of the pleadings, to that of the insured's reasonable expectations. It proposes that the final and most lasting effect of the court decision will be the expanding duty of the insurance company to defend the insured.

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Phil E. Hernandez, *Trading Stamps: Conflict in Judicial Interpretation*, 2, Lincoln L. Rev. No. 2, 187, (1967).

This article examines various judicial conclusions regarding the constitutionality of trading stamps, how they should be classified, attempts by state legislatures to abolish or regulate them, and the consumer love affair with them.

### 3 Lincoln L. Rev. No. 1 (1967-1968)

#### Articles

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Phillip B. Ziegler, *Civil Disobedience and Opposition to War*, 3, Lincoln L. Rev. No. 1, 1, (1967).

This article explores the various methods public dissent against the war and the legal and illegal ramifications of each. It also outlines the moral and philosophical reasoning behind each method.

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Michael Smith, *The Foundations of Civil Disobedience*, 3, Lincoln L. Rev. No. 1, 20, (1967).

This article analyzes civil disobedience and its roots starting with positivist and naturalist law and the influences of the writings of historical philosophers such as Socrates and Aristotle to modern experts such as H.B.A. Hart and Lon L. Fuller. It also comments on American Legal Sociology and gives a commentary on legal functionalists and realists.

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Porter A. Towner, *Some Legal Aspects of Watershed Development*, 3 Lincoln L. Rev. No. 1, 35, (1967).

This article discusses water conservation via reducing water loss from seepage, percolation and evaporation. It also includes an overview of the history of California water law. It concludes by making recommendations for state legislation to accomplish appropriate water conservation for the future of California.

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William B. Boone, *Indemnity Agreements Protection Against One's Own Negligence*, 3 Lincoln L. Rev. No. 1, 49, (1967).

This article discusses indemnity agreements, indemnification against one's own negligence, passive vs. active negligence and how an indemnification agreement affects both.

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Trev Davis, *The Insurance Contract Settlement Negotiations: The Importance of Being Earnest-And Right*, 3 Lincoln L. Rev. No. 1, 57, (1967).

This article explores insurance contracts and discusses the case *Cisci v. Security Ins. Co.*, 66 A.C. 435, P.2d 173, 58 Cal.Rptr. 13 (1967), and the finding under certain circumstances, an insured can maintain an action against an insurer if the insurer refused to settle a claim when the settlement demand is within policy limits and discusses the ramifications on the insurance industry of such claims.

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Rod Wong, *Liability of California Municipalities for Damages Caused by Riots*, 3 Lincoln L. Rev. No. 1, 62, (1967).

This article poses the question of whether or not people injured in riots should be able to seek indemnification from the municipality in which it happened, and concludes that citizens should be able to expect remuneration from the municipalities in which they live.

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Ronald B. Northling, *Judgments Nunc Pro Tunc*, 3 Lincoln L. Rev. No. 1, 65, (1967).

This article looks at the power for a court to be able to correct its judgments, and explains that there

are two grounds available for doing so: to preserve the legitimacy of the litigation for the prevailing party and to correct a deficiency in the recording of a previous decision so as to express the true intent of the court as of the earlier date.

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### 3 Lincoln L. Rev. No. 2 (1967-1968)

#### Articles

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Warren L. Hanna, *California Workmen's Compensation 1918-1968: A Brief Review and Evaluation*, 3, Lincoln L. Rev. No. 2, 89, (1968).

Article provides an overview of California's worker's compensation and takes a look at the process of codification. It also looks at the pros and cons of the statute and how it compares to similar statutes in other states. It explores how the program has changed over the 50 years of its existence and how it has stood up over that time.

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Ralph L. Lupton, *Workmen's Injuries: Choice of Jurisdiction*, 3, Lincoln L. Rev. No. 2, 100, (1968).

This article provides an historical overview of cases that helped to refine the choice of jurisdictions for worker injury cases, particularly in the area of maritime work. It also looks at how the cases have helped lawyers to take the mystery out of in which jurisdiction to file cases.

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Charles Lawrence Swezey, *Emotional Disorders As Industrial Injury in California*, 3 Lincoln L. Rev. No. 2, 112, (1968).

California recognizes that psychological trauma is compensable even in the absence of a physical trauma. This article discusses the lawyer's responsibility towards his client with regard to emotional trauma caused by industrial injuries, the standard or evidence for such cases, and the legal effects of emotional disorders that arise from industrial injuries. The author concludes by discussing the lawyer's responsibility in balancing a desire for a favorable outcome for his client and the stress such litigation will cause to him.

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John A. Thompson, *Suicide: Compensability in California*, 3 Lincoln L. Rev. No. 2, 124, (1968).

Early cases in CA found, for the most part, that suicide, being a willful and volitional act, broke the chain of causation from an industrial injury. Later cases evolved to a standard of proof that without the injury, the person would not have committed suicide. This article explores the evolution of the standard of industrial injury related suicides.

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Gerald J. Tiernan, *Problems of Expert Proof in Cancer Cases*, 3 Lincoln L. Rev. No. 2, 130, (1968).

This article discusses industrial injuries that subsequently result in cancer and the issues involved with trying to prove that the cancer and the industrial injury are related.

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Stanford D. Herlick, *The Volunteer Exemption to the Workmen's Compensation Law*, 3 Lincoln L. Rev. No. 2, 137, (1968).

This article discusses the rights of unpaid volunteers when injured in employment situations and the criteria that the law will use to determine if such injuries are covered under worker's compensation.

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N. Michael Rucka, *New Offensive Weapon in the Applicant Attorney's Arsenal: Zeeb v. Workmen's Compensation Appeals Board*, 3 Lincoln L. Rev. No. 2, 144, (1968).

The Zeeb case allows all industrial related injuries to be heard separately. This allows the attorney to sculpt the lawsuits to address the big issues as well as the minor issues without the risk that the minor issues will obscure the major ones, and allowing the client to recover all expenses related to the injury.

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Hon. John F. McCarthy, *Witt vs. Jackson Re-Examined*, 3 Lincoln L. Rev. No.2, 147, (1968).

Witt established that negligent third parties could obtain contribution from concurrently negligent employers in industrial injuries under the CA Code of Civil Procedure Section 875-880. But, under Labor Code 3852, the employer who pays out benefits is entitled to recover those costs from third parties who are responsible for an employee's injuries. This article explores the pros and cons of the ruling and proposes solutions to the conundrum.

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David R. Nelson, *Compromise and Release Settlements*, 3 Lincoln L. Rev. No.2, 154, (1968).

A look at compromise and release settlements and an analysis of why an applicant would file such a settlement instead of the more traditional "Application for Adjudication of Claim."

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Clarence G. Johnson, *Principles for Improving the California Workmen's Compensation System*, 3 Lincoln L. Rev. No. 2, 158, (1968).

A look at the California Workmen's Compensation System as a living document. This article discusses and suggests several proposals to help the system improve.

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David A. Welsh, *Attacks on the Exclusive Remedy Rule in California*, 3 Lincoln L. Rev. No. 2, 167, (1968).

This article examines the remedies for employees injured on the job, which include suits against third party tortfeasors and suits brought by employees against their employers who are underinsured.

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Elizabeth G. Jennings, *Compensation (Practically) Unlimited: The Remedy of Maintenance and Cure*, 3 Lincoln L. Rev. No. 2, 177, (1968).

This article provides a history of maintenance and cure in admiralty law, and a discussion of the benefits afforded sailors who are injured while on duty on shipboard, as well as the remedies available to them.

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James D. Hollister, *The Defense of Diminished Capacity*, 3 Lincoln L. Rev. No. 2, 188, (1968).

The use of the diminished capacity defense in criminal cases in California, and how it has been liberally applied.

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## 4 Lincoln L. Rev. No. 1 (1968-1969)

### Articles

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William McKinley North and Benjamin D. James, Jr., *Urban Renewal and Redevelopment: Reuse Controls and Restrictions on Acquired and Non-Acquired Lands*, 4 Lincoln L. Rev. No. 1, 13 ((1968).

This article gives an overview of urban renewal caselaw in California and the issues with acquiring lands for the purpose of imposing plan controls and limitations.

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Thomas C. McGrath, Jr., *Housing and Urban Development Act of 1968: An Analysis and Interpretation*, 4 Lincoln L. Rev. No. 1, 31, (1968).

An overview of the Housing and Urban Development Act of 1968. This article highlights the significant new provisions in the Act, such as homeownership assistance, rental assistance and assistance to developers.

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Silas O. Payne, *Probable Consequences of Experimental Programs Under Section 207 of National Housing Act*, 4 Lincoln L. Rev. No. 1, 46, (1968).

This article examines an experimental governmental program for supplementing rental payments, payments on mortgage or other real property liens and payments of the down payments required on purchases of residential homes for low income families. It looks at the issues connected to these programs and how they apply to landlord-tenant and buyer-seller situations.

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Alfred C. Fabris, *The Obscenity Double Play--Klor to Flack to Noroff A Comment on the Late California Obscenity Cases*, 4 Lincoln L. Rev. No. 1, 52, (1968).

This article outlines the recent California caselaw in obscenity, highlights the issues arising from each and emphasizes the importance of allowing the People to voice their opinions on what should be done about the proliferation of obscenity.

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Z.B. Jackson, *America's Changing Immigration Policy*, 4 Lincoln L. Rev. No. 1, 72, (1968).

This article explores the origins of immigration laws, a general overview of the system and specifically, how aliens may apply for entry, the system for deportation and the rights of aliens. It also examines the inherent unfairness in the system as well as provisions that offset such inequities.

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Laurence P. Corbett, *The Old Look Affecting Non-Profit and Proprietary Hospitals Prior to November of 1967*, 4 Lincoln L. Rev. No. 1, 89, (1968).

The National Labor Relations Board asserted jurisdiction over proprietary hospitals in 1967. This article describes the impact of the 1967 decision on union activities with regard to the hospital personnel, as well as the impact it had on the employers themselves.

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Hugh Mullin, *The State Bar's Duty and Judicial Selection*, 4 Lincoln L. Rev. No. 1, 99, (1968).

This article examines the duty of the Bar to see to it that politics are kept out of judicial appointments

and elections. It looks at the evolution of the judicial appointment and elections processes and gives an overview of the State Bar Merit Plan proposed by Governor Ronald Reagan as a measure that would take the selection of judges permanently out of partisan politics.

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Marcia Lynn Graham, *Judges and Disqualification*, 4 Lincoln L. Rev. No. 1, 104, (1968).

This article discusses the grounds for disqualification of a judge and the effect of and the situations where a judge's ruling may be void due to prejudice or bias regarding the case he or she is hearing and ruling on.

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Gerald M. Dini, *California Durational Residency Requirements: Constitutional or Unconstitutional?*, 4 Lincoln L. Rev. No. 1, 114, (1968).

This article discusses a recent United States Supreme Court case regarding a challenge to the constitutionality of various provisions of the California Welfare and Institutions Code, and the question of whether or not residency requirements violate various constitutional rights. The writer concludes that the residency requirement is unconstitutional because it denies equal protection, violates the interstate commerce clause and violates due process under the Fourteenth Amendment.

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### **Book Reviews**

*Mental Illness, Due Process and the Criminal Defendant*, 4, Lincoln L. Rev. No. 1, 120, (1968) (reviewing Special Committee on the Study of Commitment Procedures and the Law Relating to Incompetents of the Association of the Bar of the City of New York in Cooperation with Fordham University School of Law, *Mental Illness, Due Process and the Criminal Defendant* (1968)).

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*Trial Courts in Urban Politics*, 4, Lincoln L. Rev. No. 1, 122, (1968) (reviewing Kenneth M. Dolbeare, *Trial Courts in Urban Politics*, (1967)).

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*Intention in Law and Society*, 4 Lincoln L. Rev. No. 1, 125, (1968) (reviewing James Marshall, *Intention in Law and Society*, (1967)).

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## 4 Lincoln L. Rev. No. 2 (1968-1969)

### Articles

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Linn K. Twinem, *The Influence of Consumer Credit on Bankruptcies*, 4, Lincoln L. Rev. No. 2, 129, (1969).

This article asserts that the Bankruptcy Act of 1898 is unable to deal with the issues that a growing consumer society has brought to the table. It gives an overview of the history of American consumer credit and the likelihood of debtors to declare bankruptcy as a result of such consumer debt. It also discusses the changes contemplated by the Consumer Bankruptcy Committee to re-vamp Chapter XIII of the Bankruptcy Code, as well as services such as Consumer Credit Counseling.

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Douglas J. Maloney, *Public Employees and Collective Bargaining California Comes of Age*, 4, Lincoln L. Rev. No. 2, 139, (1969).

This article gives an overview of how California evolved from a state that staunchly viewed public employees as having no right to strike to a state where government systems are routinely interrupted by strikes, boycotts and mass illnesses, and goes on to examine the means to resolve grievances.

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Michael L. Ohleyer, *San Francisco Property Tax Appeals Procedure*, 4, Lincoln L. Rev. No. 2, 147, (1969).

Due to the passage of the Knox-Petris Act, many single-unit homeowners found their property taxes reassessed from a previous assessment of ratios of 9-10% to ratios of approximately 25% of full cash value. As a result, many San Franciscans appealed these tax assessments. This article outlines the rules of appeal and the scope and power of the Hearing and Appeals Board.

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Robert A. Champlain, *Survey of the Legal Aspects of School Integration*, 4, Lincoln L. Rev. No. 2, 156, (1969).

A look at the current status of the law regarding racial integration in public schools under the equal protection clause. The article begins with a look at the evolution of separate but equal facilities and ends with the United States Supreme Court's holding for equal protection under the law. The author concludes that with only about 20% of the Southern states integrated, that American society shows room for improvement in the area of desegregation.

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Peter N. Swan, *Uniformity in Admiralty: Constitutional Mandate or Historical Shibboleth?*, 4, Lincoln L. Rev. No. 2, 175, (1969).

This article explores the "concepts and policies [that] have been used by the courts to define the elusive 'general maritime law.'" It provides an historical background, an overview of the issues, a review of pertinent caselaw and concludes with suggestions for a proper approach to the challenge of applying uniformity in admiralty law.

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Abraham Virdeh, *Housing inspections and the Fourth Amendment*, 4 Lincoln L. Rev. No. 2, 225, (1969).

This article deals with the evolution of housing inspection programs and how such state mandated inspections interfere with the rights of private individuals' rights under the Fourth, Fifth and Fourteenth Amendments. It also examines the Supreme Court's decisions regarding housing inspection cases over the last 100 years and concludes that the Court has successfully managed to strike a balance between the public interest in protecting Constitutional rights and protecting human non-economic rights.

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Michael E. Giusti, *The Need for Regulation of Deep Well Waste Water Disposal and Reclamation*, 4, Lincoln L. Rev. No. 2, 234 (1969).

This article describes the problems affecting California underground water supplies and recommends Deep Well Injection as a process that could provide a new and unique source for water.

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## 5 Lincoln L. Rev. No. 1 (1969 – 1970)

### Articles

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Hon. Warren E. Burger, *Court Administrators: Where Would We Find Them*, 5 Lincoln L. Rev. No. 1, 1 (1969).

Chief Justice Burger delivered an address to the American Bar Association Convention which received national new media coverage. The most frequently quoted portion of his address reads “The American people are nearing the end of their patience with their machinery of justice.” The address is printed in its entirety in this volume.

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Chauncey D. Leake, *The Strength of Sin Is The Law*, 5 Lincoln L. Rev. No. 1, 5 (1969).

Dr. Leake discusses the role and significance of ethics in law. The underlying premise is that, if law is to remain the one rational tool of mankind, standing between anarchy and total oppression, it must be responsive to the dominant ethic of its times.

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Paul Harris, *In-Law and Out-Laws: The Community Law Firm*, 5 Lincoln L. Rev. No. 1, 14 (1969).

America’s poor, its racial minorities, and its political dissenters have been cast out of the mainstream. They are frustrated with their position outside the country’s affluence and decision making. They are fed up with the legal system which offers them no relief. This article explores the ways in which the law affects their lives and their distrust of lawyers. The final part of this article puts forth alternative methods of legal practice – the community law firm.

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Hon. James A. Hayes, *An Ailing Public Respect for the Law*, 5 Lincoln L. Rev. No. 1, 27 (1969).

An ailing public respect for the law continues to be a major challenge. A phenomenon known as the “law explosion” is the result of the growing complexity of our society with Americans who are more educated and affluent and a result of mass communications that have increased the number of people who can be reached and moved by dissent. Caught in the middle of this law explosion are the legislators. One of the major tasks of the 1970s was to make government more responsive to the needs of the people. Thus the legislative branch of government must be structured so that more people and their interest groups are able to make substantial inputs into the legislative process.

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Jerrold E. Levitt, Victor T. Schaub, and Michael Yale, *Individual Freedom, Discipline, and the Law: A Continuing Dilemma of Our Educational System*, 5 Lincoln L. Rev. No. 1, 35 (1969).

This article examines individual freedom versus discipline in the schools. The first part examines substantive student regulations including compulsory attendance laws and truancy, dress and appearance, marriage and pregnancy, free speech, and conduct and discipline. The next part examines suspension and expulsion in California schools. The next part examines procedural due process including notice and hearing, right to counsel, and private schools. The next section examines corporal punishment. The next section examines crimes and misconduct investigation in the school including by the police, and by school authorities.

## **Notes and Comments**

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*What Has Happened to California Debt Collection Since the Supreme Court Decision in the Sniadach Case?*, 5 Lincoln L. Rev. No. 1, 56 (1969).

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*Detention and Search of the Motorist's Auto: Trend in California Law*, ?, 5 Lincoln L. Rev. No. 1, 64 (1969).

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## 5 Lincoln L. Rev. No. 2 (1969 – 1970)

### Articles

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J. W. Ehrlich, *The Lost Art of Cross Examination*, 5 Lincoln L. Rev. No. 2, 85 (1970).

The trial lawyer wins or loses on the strength of his in-fighting tactics, long range strategies, and his ability to cross examine. What a witness remembers, how long he remembers, and the conditions that cause him to recall what he remembers, all depend on his peculiar internal factors, his inherited abilities, and his life experience. On cross examination, opposing counsel challenges the witnesses memory. Jurors are witnesses of what occurs in the court room and interject their own perceptions and biases into the process. Most lawyers forget or do not know that the object of cross examination is to break down the direct examination. Most lawyers ask the same questions on cross examination that were asked on direct examination thus building up the direct examination rather than breaking it down. The remainder of the article gives suggestions for making cross examination much more effective than the norm.

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Alvin Baum, *Bay Area Conservation and Development Commission*, 5 Lincoln L. Rev. No. 2, 98 (1970).

The San Francisco Bay Conservation and Development Commission is a phenomenon of great interest to public groups on all sides of the environmental struggle. This articles first examines the history of the alliance of citizens, scientists, publicists, and politicians. The second part of the article examines the three step procedure of the study commission, the temporary commission (BCDC), and the permanent agency. The final section examines the regional government for the Bay Area.

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Joseph A. Forest, *Conservation and The Courts in California*, 5 Lincoln L. Rev. No. 2, 119 (1970).

The purpose of this article is to consider “conservation” in a narrower sense than is generally given that term. The legal power to regulate and control the extraction of our natural resources has long been available. It has only been used sporadically as a valid control measure until recent years. Now that the control of our environment has been adopted by public policy as a proper function of government, the courts will no doubt become a focal point for adjudicating the conflicting interests of the public and private sectors. Therefore, this article will examine the present position of the law with respect to environmental controls as they relate to the extraction of natural resources.

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### Student Notes

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*The Inservice Conscientious Objector: Applying for Discharge*, 5 Lincoln L. Rev. No. 2, 134 (1970).

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*Attorneys' Negligence*, 5 Lincoln L. Rev. No. 2, 154 (1970).

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*Marijuana and the Tax Law*, 5 Lincoln L. Rev. No. 2, 176 (1970).

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## **Book Reviews**

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Edward Alan Koplowitz, *The Fight for Quiet*, 5 Lincoln L. Rev. No. 2, 201 (1970).

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Ann Gray Miller, *Who Shall Live – Man’s Control Over Birth and Death*, 5 Lincoln L. Rev. No. 2, 204 (1970).

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## 6 Lincoln L. Rev. No. 1 (1970-1971)

### Articles

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David G. Knibb, *National Recreation Areas: Evolving Legislative Answer to Land Use Conflicts*, 6 Lincoln L. Rev. 1, 1 (1970).

Many areas used for recreation are neither sufficiently unusual for national park status nor sufficiently primitive for Wilderness designation under the Wilderness Act. The search for an alternative to park or wilderness classification has led to consideration of national recreation area status as a means of reconciling conflicting demands for preservation, recreation and resource extraction. This article provides a summary of the development of National Recreation Areas legislation, comparison of the provisions of the various statutes, and discussion of the appropriateness of the NRA classification as an answer to land use conflicts.

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Irving Like, *The National Environmental Policy Act and Technology Assessment*, 6 Lincoln L. Rev. No. 1, 23 (1970)

The National Environmental Policy Act (NEPA) is essentially a disclosure statute. NEPA requires that an environmental impact statement be filed in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the environment. This article presents an examination of the applicability of the National Environmental Policy Act as a legal weapon in implementing technology assessment, focusing on atomic energy technology and nuclear energy technology.

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Senator Clifford W. Krueger & Michael C. Quinn, *New Directions in Water Quality Management: A Proposal for Wisconsin*, 6 Lincoln L. Rev. No. 1, 51 (1970)

The growth of city populations and heavy concentrations of industry are making the maintenance of water quality an increasingly serious problem in the United States and other advanced countries. No state or section of the nation has escaped the ugly consequences of grossly polluted waterways. This article presents an examination of a proposed solution to water pollution for Wisconsin. Given that the states tend to copy the policies and programs of their neighbor, if one state were to adopt a new approach for managing water quality, others would probably follow suit.

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George A. Weinkauff, Jr., Notes and Comments, *The Conflict of Parens Patriae and Constitutional Concepts of Juvenile Justice*, 6 Lincoln L. Rev. No. 1, 65 (1970)

This note examines the basic structure, development and philosophy of juvenile law in both California and the federal system. It outlines the historical development of *Parens Patriae* and the Constitutionalists' approach, and the rights of juveniles during proceedings.

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## 6 Lincoln L. Rev. No. 2 (1970-1971)

### Articles

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Hon. William S. Mailliard, *A Golden Gate National Recreation Area*, 6 Lincoln L. Rev. No. 2, 91 (1971)

This article presents an overview of the legal requirements to establish a national recreation area, and of the factors involved in creating the Golden Gate National Recreation Area.

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Michael P. Mason, *A Brief Survey of Airport Noise and the Law*, 6 Lincoln L. Rev. No.2, 99 (1971)

The impending supersonic age has made everyone aware of airplane noise. Rather than having sufferers of airplane noise confined to the areas surrounding airports, the advent of the supersonic jet may cause everyone to be affected by noise because of sonic boom. This article presents a survey of the technology of airport noise, current and pending noise legislation, and case law remedies for the injured landowner, the airport and the community.

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Hon. Francis W. Hatch, Jr., *Massachusetts and Michigan: Two States With An Answer*, 6 Lincoln L. Rev. No.2, 119 (1971)

A number of states have made some environmental initiatives and are beginning to carve out means to control various types of pollution and natural resource problems, attempting to negate any repetition of the ways in which those problems were created. This article provides an examination of the legislation enacted in Massachusetts and Michigan to improve and regulate the environment.

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Vasilios B. Choulos, *Go Back – You Forgot To Say “May I!” or Standing in Environmental Litigation*, 6 Lincoln L. Rev. No.2, 127 (1971)

One of the most potent weapons in marshalling public opinion and challenging governmental agency and industrial pollution has been legal action by conservation groups throughout the United States. This article discusses the issues presented by the requirement of standing to bring legal action against the government and businesses for environmental pollution, and a review of some highly significant decisions that have most influenced the development of trends in “standing.”

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Beryl A. Bertucio, Notes and Comments, *Revocation of Consent in Adoption Proceedings*, 6 Lincoln L. Rev. No.2, 141 (1971)

What posture should a court take with litigants who are at the bar because one of the parties changed his mind? The issues involved have plagued most jurisdictions from time to time. The difficulty becomes most poignant when the litigation in question involves the adoption of a minor child. This note examines revocation of previously executed surrenders by natural parents, and provides an explanation of *People ex rel. Scarpetta c. Spence-Chapin Adoption Services* [28 N.Y. 2d 185 (1971)] under New York and California standards.

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## 7 Lincoln L. Rev. No.1 (1971-1972)

### Articles

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W. Reece Bader, *Public Entity and Employee Immunity for Misrepresentation: Reflection of Government Code Sections 818.8 and 822.2*, 7 Lincoln L. Rev. No. 1, 1 (1971)

The California Tort Claims Act of 1963 marked significant changes in the evolution of government tort liability law. As government increasingly pervades the lives of the governed, bringing with such growth the increasing risk of public injury, the doctrine that the King can do no wrong becomes more anachronistic than before. This article is directed at the sections which grant absolute and qualified immunity from liability to a public entity and a public employee for misrepresentations made by an employee acting within the scope of employment.

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William Simon, *Class Actions: Useful Tool or Engine of Destruction*, 7 Lincoln L. Rev. No. 1, 20 (1971)

This article presents a dissent to the enthusiasm being garnered for class actions and the recent amendments to the Federal Rules of Civil Procedure. It points to some of the dangers presented by indiscriminate certification of these classes, particularly in damage suits under Federal antitrust and securities laws.

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Robert B. Hutchinson, *Standing to Sue in Public Interest Litigation*, 7 Lincoln L. Rev. No. 1, 40 (1971)

The national conscience has begun to turn towards environmental quality, consumer protection and social justice. In order to effectively channel the expanding consciousness of the people towards matters of public concern, it is incumbent on the law and particularly the Court to readjust its thinking. This article deals with the all-important area of expanding access to our judicial institutions and supports the development of a broader basis for standing in matters involving the general public interest.

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Leslie C. Nichols, *Accusatory Pleadings Framed in Statutory Language—Requirement of Notice to Defendants*, 7 Lincoln L. Rev. No. 1, 64 (1971)

This article provides a brief review of the development of law leading up to the rule of permitting the framing of accusatory pleadings in statutory language, a rule followed in many states. There is a discussion of exceptions to the rule, and selected recent California cases are used to illustrate both the rule and its exceptions.

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Marvin Levine, *The Santa Barbara Saga—Pre- and Post-N.E.P.A.*, 7 Lincoln L. Rev. No. 1, 73 (1971)

The disastrous oil blowout in Santa Barbara focused attention on environmental litigation. Mr. Levine, Deputy County Counsel for the County of Santa Barbara, documents moments of inspiration and despair encountered while seeking judicial relief. The ultimate objective of the litigation was to halt any further drilling activities in the Santa Barbara channel and to have existing operations discontinued and the platforms removed.

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Julius Epstein, *Epstein v. Resor, or The Emasculation of the Freedom of Information Act*, 7 Lincoln L.

Rev. No. 1, 82 (1971)

Mr. Epstein sets for the myriad obstructions met when he attempted to obtain a document classified as "Top Secret." The Freedom of Information Act became effective in 1967, and permitted access to records by any person. Under the Act, if access to a document is denied, that person has the right to lodge a complaint in the district court. The district court has the power to force the agency to release information which, in the court's opinion, has been improperly withheld. The agency has the burden of proving that the maintenance of the classification is justified.

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Gladys Kajiwara, Comment, *Survey of American Law Applicable When Death Occurs on the High Seas in an Aircraft*, 7 Lincoln L. Rev. No. 1, 100 (1971)

This article examines the development of general admiralty and maritime principles applicable when death occurs on the high seas. It also discusses jurisdiction under the Federal Death on High Seas Act (DOHSA), and the applicability of the Jones Act, the Federal Rules of Civil Procedure, and the Warsaw Convention.

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## 7 Lincoln L. Rev. No. 2 (1971-1972)

### Articles

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Jon L. Heberling, *Judicial Review of the Guilty Plea*, 7 Lincoln L. Rev. No. 2, 137 (1972)

Defendants who enter a plea bargain with the state offers his consent to judgment in exchange for a substantially higher sentence than he would have received had he been convicted after trial. This article examines the practice of plea bargaining, the hazards, tactical considerations and the factors involved in judicial review of the plea bargain.

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John Wynne Herron, *Fight to Find Out*, 7 Lincoln L. Rev. No. 2, 210 (1972)

The plaintiff who has suffered person injuries from using an ethical drug has a case warranting and requiring the most intensive and diligent efforts of counsel. This article briefly describes recent significant decisions in drug manufacturer litigation and also discusses some of the practicalities of discovery. The author concludes that presenting the facts of resultant injuries on a mass basis can be an aid to this medical profession in improving and implementing testing techniques.

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Nathan E. Eli, Comment, *Confessions: The Problem and A Practical Solution: The Case for an Absolute Fifth Amendment*, 7 Lincoln L. Rev. No. 2, 225 (1972)

The author was an inmate awaiting execution on California's Death Row. This article , in another for, was originally a section of a writ of habeas corpus prepared by him and submitted to the Federal District Court in San Francisco. The author discusses and ultimately concludes that the Fifth Amendment guarantees are, in practice, mere meaningless words.

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## 8 Lincoln L. Rev. No. 1 (1973-1974)

### Articles

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Matthew O. Tobriner, *Social Challenge and the Courts' Response*, 8 Lincoln L. Rev. No.1, 13 (1973)

The author, Associate Justice of the California Supreme Court, points out in this article that to meet the moral, social and economic problems besieging today's society, the legislatures and the courts must look to the underlying substance instead of stating legal abstractions that merely obscure the particular problem.

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Ellen Chaitin & V. Roy Lefcourt, *Is Gay Suspect*, 8 Lincoln L. Rev. No.1, 24 (1973)

This article explores the concept of "suspect class" protection under the Fourteenth Amendment in a search for criteria for suspect classification of homosexuals. The authors examine both the school of thought that homosexuality is a voluntary choice, as well as the opposite concept that it is an incidence of birth, and conclude that emphasis should be on the fact that they are an oppressed out group, in need of suspect class protection.

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Charles L. Harrington, *Involuntary Commitment of Mentally Disordered Persons Under the Lanterman-Petris-Short Act*, 8 Lincoln L. Rev. No.1, 55 (1973)

This article presents a guide to the procedure to be followed in obtaining the commitment of a mentally disordered person in California under the Lanterman-Petris-Short Act ("LPS Act"), which became effective July 1, 1969. It also discusses the procedural safeguards under the Act which were provided to insure that only mentally disordered person can be committed involuntarily and that they will not be detained after recovery.

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Edwin M. Rams, *Judicial Valuation of Dissenting Shareholder Interests*, 8 Lincoln L. Rev. No.1, 74 (1973)

Statutes in most states provide appraisal rights entitling the shareholder who does not want to participate in a merger or other organic change in the corporate structure to cash out. However, there are generally only indefinite valuation basis. This article discusses the need for a uniform valuation basis, and examines the recent trend of the courts to recognize compensable interests in property that were considered peripheral and noncompensatory not too long ago. The author argues for judicial recognition of loss of investment opportunity as the loss of a compensable property interest.

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## 8 Lincoln L. Rev. No. 2 (1973-1974)

### Articles

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Elliot L. Richardson, *On Behalf of Obligations*, 8 Lincoln L. Rev. No.2, 109 (1973)

Our nation has been intensely preoccupied with enlarging the meaning and effective realization of its citizens' rights. But the expansion in rights has not been accomplished with any impressiveshow of gracefulness and good humor. There is no right without a corresponding obligation. The author discusses the need to meet obligations as well as rights.

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Robert G. Beloud, *The Growing Importance of Informed Consent*, 8 Lincoln L. Rev. No.2, 115 (1973)

The theory of informed consent as a basis for recovery by a patient is not unique to our generation. However, with the expansion of medical knowledge, services and discovery, and the departure by the profession from the time-honored concept of the Country family doctor, charges of lack of informed consent in cases against physicians have mushroomed. This article examines the legal aspects of the doctor-patient relationship, and informed consent as it applies to emergency situations and surgical procedures. The author suggests video-taping patient consent, where possible, to eliminate or mitigate the problems.

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Wesley Fastiff, *Equal Employment Laws—An Employer's Dilemma*, 8 Lincoln L. Rev. No.2, 125 (1973)

An employer's problems under the law are difficult ones. In the employer's attempts to balance the demands of survival in the marketplace and the demands of social policy, it is not easy to determine what will and will not constitute illegal discrimination. This article discusses the problems confronting employers under the 1964 Civil Rights Act. It presents a survey of the enforcement procedures of the equal employment opportunity laws and demonstrates that when an employer anticipates litigation arising from the enforcement of these laws, nothing is certain but the expense.

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Dr. Robert Fry, *Liability for Fetal and Newborn Injuries*, 8 Lincoln L. Rev. No.2, 142 (1973)

The scope of legal liability in fetal and newborn injuries will expand in direct proportion to the increasing success of medical research in establishing the facts of causation. It can also be assumed that prenatal injuries will raise new issues as to what constitutes negligent conduct and the extent of responsibility therefore. The author traces the history of fetal and newborn injuries with particular emphasis on those injuries sustained from irradiation, drugs and disease.

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Charles Anderton, Comment, *The Constitutional and Erie Implications for Federal Diversity Cases of the Privilege Provisions of the Proposed Federal Rules of Evidence*, 8 Lincoln L. Rev. No.2, 151 (1973)

This article discusses the weight to be given state evidentiary privilege rules in federal cases, and examines the potential privilege conflicts which may arise following passage of the Federal Rules of Evidence. The author concludes that Constitutional principles inherent in the Erie Doctrine are a mandate for Congress to give effect to state rules in federal diversity cases.

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## 9 Lincoln L. Rev. No. 1 (1974-1975)

### Articles

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David J. Langum, *Judicial Gloss and the California Evidence Code*, 9 Lincoln L. Rev. No. 1, 13 (1974)

This article discusses the development of the California Evidence Code since its enactment in 1967 through judicial construction. It discusses constitutional attacks on numerous sections, and examines in detail significant judicial gloss on Evidence Code §§ 621 (determination of legal father), 788 (attacking the credibility of a witness by showing a prior felony), 1070 (newsman's immunity from contempt), 1202 (impeachment of a hearsay declarant by other inconsistent hearsay), 1224 (evidence of statements made by declarants and their inapplication in respondeat superior situations), 822 (rules concerning the use of opinion testimony in eminent domain proceedings), and 1151 (evidence of subsequent repairs or alterations to prove negligence or culpable conduct allowed in strict liability cases).

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K. Michael Schmidt et al., *Piercing the Aluminum Overcast: A Case for Strict Liability for Commercial Air Carriers*, 9 Lincoln L. Rev. No. 1, 37 (1974)

This article examines the psychological effects of advertising in conditioning the public to overlook many of the dangers of flying. This conditioning induces people to cruise serenely through the sky encased in a frail vehicle propelled by several blow torches. The article presents several different approaches to litigation related to air travel.

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Seymour Ellison, *Current Concepts in the Second Collision—Enhanced Injury Cases*, 9 Lincoln L. Rev. No. 1, 72 (1974)

What would have been a survivable crash often becomes a fatal incident when a person's body comes into contact with any of the hard and penetrating objects in automobile interiors, or when the person is launched through a sprung door. This article discusses the present duty to improve automobile design to reduce collision-enhanced injuries by minimizing damage to occupants from contact with objects inside the vehicle during a collision.

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Kenneth Kraus, *The Effect of the Stull Bill on Teacher Dismissals*, 9 Lincoln L. Rev. No. 1, 90 (1974)

This article investigates the status of teachers' rights regarding dismissals, and the effect, if any that the Stull Bill, legislation designed to give more security to teachers, has had on those rights.

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Morgan, Cameron v. State: *Widening the Breach In Government Immunity*, 9 Lincoln L. Rev. No. 1, 107 (1974)

Public entities, public employees and property, and public operations have enjoyed a protective cloak which has been a barrier to damage suits, except upon terms stipulated by the public

governing bodies. This protective cloak has been a barrier which the courts have upon occasion pieced in the interest of justice, but it has been rebuilt by legislative bodies. The Cameron decision fits this pattern. This article reviews some to the development of the law relating to sovereign immunity and discusses the significance of the rulings handed down by the California Supreme Court in *Cameron v. State* in tort actions.

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Dean Stenberg & Ronald Miller, *Indemnity in California—A Developing Concept*, 9 Lincoln L. Rev. No. 1, 131 (1974)

The field of indemnity has been growing rapidly in recent years, both in legal scope and practical application. This article discusses implied indemnity which rests on tort principles rather than upon contract law, and offers a few suggestions for protecting a client.

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H. N. Papadakis, *Partnership: The I.R.S Versus the Judiciary*, 9 Lincoln L. Rev. No. 1, 142 (1974)

This article deals with the problems of federal taxation of partnerships, and outlines some of the differences in viewpoint between the Internal Revenue Service and the Courts relating to partnerships. In particular, it discusses the elements that establish the existence of a partnership for federal income tax purposes.

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## **9 Lincoln L. Rev. No. 2 (1974-1975)**

### **Articles**

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Michael G. Chatzky, "*How To Reform The Grand Jury*", 9 Lincoln L. Rev. No. 2, 175 (1974)

This article discusses history of the grand jury, the grand jury in the United States, the present grand jury system, problems and criticisms of the grand jury, the California grand jury, and proposed grand jury reforms.

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### **Notes and Commentaries**

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Honorable Abram S. Humphreys, *Charges of the Bar Association of the Hawaiian Islands: Report to the Attorney General*, 9 Lincoln L. Rev. No. 2, 207 (1974)

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Honorable Abram S. Humphreys, *Charges of the Bar Association of the Hawaiian Islands: Report to the President*, 9 Lincoln L. Rev. No. 2, 249 (1974)

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V.A. Barbata, *Sour Note on Sweet Charity: Is Attorney General's Control Effective?*, 9 Lincoln L. Rev. No. 2, 175 (1974)

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Leonard Schappert, *Note of Case of Li v. Yellow Cab Company of California?*, 9 Lincoln L. Rev. No. 2, 269 (1974)

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Dan Minutillo, *Substantial Performance A Legal Breach of Duty*, 9 Lincoln L. Rev. No. 2, 275 (1974)

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### **Book Reviews**

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Walter W. Bertram, *Leonard W. Levy, Against the Law—The Nixon Court and Criminal Justice*, 9 Lincoln L. Rev. No. 2, 281 (1974)

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Michael Mayron, *Ralph Warner, How to Legally Beat the Bill Collector*, 9 Lincoln L. Rev. No. 2, 287 (1974)

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## **10 Lincoln L. Rev. No. 1 (1977-1978)**

### **Articles**

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Robert E. Young, *The Law of Forceable Entry And Detainer In California*, 10 Lincoln L. Rev. No. 1, 1 (1977)

This article discusses historical development, acts constituting forceable entry and detainer, forcible detainer, defenses, and damages.

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L. F. Haeberle III, *Court Congestion And Delay—Use Of Speaker Telephones Or Picturesphones In Civil Cases When Witnesses Are Not Available-A Proposal*, 10 Lincoln L. Rev. No. 1, 49 (1977)

This article discusses opportunities for use of the speaker telephone or picture phone, use of speaker phone as condition for granting a continuance, testimony as hearsay or writing under California evidence code, personal testimony in court and telephone testimony under oath to be considered equally.

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### **Notes**

*Constitutional Law—Evidence—Unlawfully Obtained Statement Inadmissible For Impeachment: People v. Disbrow*, 10 Lincoln L. Rev. No. 1, 71 (1977)

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*Materiality As It Relates To Questionable And Illegal Payments to Officials*, 10 Lincoln L. Rev. No. 1, 85 (1977)

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### **Book Reviews**

B.R. Winslow, *Research Group, Inc. Basic Legal Research Techniques*, 10 Lincoln L. Rev. No. 1, 107 (1977)

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Sidney Shemel and M. William Krasilovsky, *This Businss of Music*, 10 Lincoln L. Rev. No. 1, 109 (1977) (reviewed by L. Bernad Buaer)

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Harrop A. Freeman and Henry Weihofen, *Clinical Law Training*, 10 Lincoln L. Rev. No. 1, 112 (1977) (reviewed by L. Bernad Buaer)

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## **10 Lincoln L. Rev. No. 2 (1977-1978)**

### **Articles**

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Carl Cohen, *Race and Equal Protection of The Laws*, 10 Lincoln L. Rev. No. 2, 117 (1977)

This article discusses who are equals, the case for racial preference, the case against racial preference, the reply in defense of racial preference, when is racial preference benign, the rejection of racial preference, dissent and rejoinder, and policy and principles.

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Peter Riga, *Informed Consent*, 10 Lincoln L. Rev. No. 2, 159 (1977)

This article discusses related cases, the concept of consent, consent as self determination, the therapeutic privilege, codes and regulations.

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### **Notes**

*The California Natural Death Act*, 10 Lincoln L. Rev. No. 2, 197 (1977)

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*Recovery Of Punitive Damages From Corporate Defendants For The Tortious Acts Of Employees*, 10 Lincoln L. Rev. No. 2, 207 (1977)

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### **Book Reviews**

Louis Lusky, *By What Right?*, 10 Lincoln L. Rev. No. 2, 215 (1977) (reviewed by Gary G. Campbell)

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Melvin Aron Eisenberg, *The Structure Of The Corporation, A Legal Analysis*, 10 Lincoln L. Rev. No. 2, 221 (1977) (reviewed by Jerald Friedman)

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## 11 Lincoln L. Rev. No. 1 (1979-1980)

### Articles

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Eugenia MacGowan, *De Facto Parenthood and the Parental Preference Doctrine in California*, 11 Lincoln L. Rev. No.1, 1, (1979).

This article examines decisions interpreting California Civil Code §4600 and concludes that “it eradicated the traditional absolute parental preference doctrine and substituted therefore a modified preference for biological parents which is superior to the preference it created for de facto parents, but subservient to considerations of the best interest of the child.”

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Peter J. Riga, *The Dawn of a New Day for the Unwed Father*, 11 Lincoln L. Rev. No.1, 27, (1979).

This article examines the historical status of the law as applied to illegitimate children and the rights of the unwed fathers of those children. The principle case examined is *Stanley v. Illinois* 405 U.S. 645 (1972) and suggestions are given for future litigation and the possible expansion of the unwed father’s rights.

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Charles R. Garry, *Cross-examination and Trial Tactics*, 11 Lincoln L. Rev. No.1, 77, (1979).

This article summarizes the rules and practices of cross-examination and trial tactics followed by the author, Charles Garry.

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## 11 Lincoln L. Rev. No. 2 (1979-1980)

### Articles

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Peter J. Riga, *Euthanasia, the Right to Die and Privacy: Observations on Some Recent Cases*, 11 Lincoln L. Rev. No.2, 109, (1980).

This article examines Euthanasia from the Common Law through modern cases, juxtaposing the arguments presented by the parties involved and concluding that the decisions must continue to “be determined on a case-by-case basis.”

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Andra Cassen, *Equal Protection – Equal Status: A summary of Sex Discrimination Cases Since Frontiero*, 11 Lincoln L. Rev. No.2, 167, (1980).

This article explores Supreme Court cases involving sex discrimination with an emphasis on Justice William Rehnquist’s opinions. The author concludes that the Court’s decisions have had the effect of forcing states to enact sexually neutral laws.

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### Notes

Richard M. Fisher, *FTC v. Funeral Industry: Round One*, 11 Lincoln L. Rev. No.2, 193, (1980).

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Dan Kaylor, *Orders that Wouldn’t Wash: Historical Background of Yick Wo v. Hopkins*, 11 Lincoln L. Rev. No.2, 205, (1980).

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## **12 Lincoln L. Rev. No. 1 (1981-1982)**

### **Articles**

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Eugene P. McAuliffe, *Salt Lake County's Home Detention Program: An Alternative to Detention*, 12 Lincoln L. Rev. No.1, 1, (1981).

This article evaluates the juvenile justice system and in particular the detention of youth with a variety of backgrounds and offenses. The author concludes that Utah's Home Detention Program has "helped the legal process produce consequences beneficial to the juvenile and society".

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### **Notes**

David J. Cannon, *Bryant v. Cal. Brewers Ass'n; A Lasting Cure for the Problem of Discriminatory Seniority Systems?*, 12 Lincoln L. Rev. No.1, 13, (1981).

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John Compatore, *The Good Faith Exception to the Exclusionary Rule and its Basis in Reason*, 12 Lincoln L. Rev. No.1, 31, (1981).

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### **Book Review**

Terence Faulkner, *JUSTINIAN – THE DIGEST OF ROMAN LAW: Theft, Rapine, Damage and Insult*, 12 Lincoln L. Rev. No.1, 41, (1981).

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## 12 Lincoln L. Rev. No. 2 (1981-1982)

### Articles

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Mary C. Dunlap, *Where the Person Ends, Does the Government Begin? An Exploration of Present Controversies Concerning "The Right to Privacy"*, 12 Lincoln L. Rev No.2, 47, (1981).

This article discusses issues of privacy while "mapping" the relevant issues. In conclusion the author suggests some conceptual alternatives to improve the "working model of privacy".

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James A. Gazell, *Chief Justice Rose Bird: The Second Scene of a Two Act Play?*, 12 Lincoln L. Rev. No.2, 77, (1981).

This article examines California state Supreme Court chief justice Rose Bird's stance towards individual liberty "in the face of rapid technological and social change". The article contains a breakdown of cases heard by chief justice Rose Bird for the years 1979 and 1980.

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Computer Law: A California Perspective, David W. Guthrie, 12 Lincoln L. Rev. No.2, 103, (1981).

This article evaluates the changes in legal concepts of privacy that have occurred since the widespread use of computer technology.

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### Book Reviews

Three Capsule Reviews, Mary C. Dunlap, 12 Lincoln L. Rev. No.2, 113, (1981).

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The Brethren, S. Derek Spencer, 12 Lincoln L. Rev. No.2, 115, (1981).

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## 13 Lincoln L. Rev. No. 1 (1982-1983)

### Articles

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James Castagnera-Cain, *Defamation and Invasion of Privacy Actions in Typical Employee Relations Situations*, 13 Lincoln L. Rev. No.1, 1, (1982).

The article discusses how the increase in electronic media has created an employee who is “ever more conscious of his legal rights”. The author urges managers to consult corporate counsel prior to acting within the sensitive areas of employee relations and to develop preventative programs and form corporate policies to prevent the rise of litigation.

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Ed Ottonello, *California’s Convenience-Oriented Approach to Personal Jurisdiction: A Critical Review*, 13 Lincoln L. Rev. No.1, 21, (1982).

This article explores the development of California’s convenience oriented approach to personal jurisdiction with emphasis on the large role factors of convenience play in determining jurisdiction over nonresidents.

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Hiram E. Smith and Fred Marr, *Poor People Without Lawyers Have No Enforceable Rights: The Future of Legal Services*, 13 Lincoln L. Rev. No.1, 39, (1982).

This article examines programs providing federally funded legal services to the poor and calls for a continuance of the “no strings attached” approach. The author concludes that, in order to remain independent from regional political influence, any governmental funding of legal services should give lawyers professional independence.

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## 13 Lincoln L. Rev. No. 2 (1982-1983)

### Articles

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Steven Alan Childress, *Warning Label for Lexis: The Hazards of Computer-Assisted Research to the Legal Profession*, 13 Lincoln L. Rev. No.2, 91, (1982).

This article evaluates the benefits and possible shortcomings of performing electronic legal research. The author concludes that “the legal profession must address the liabilities before they dominate the promise of the computer era”.

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William Drysdale, *Indecency and the First Amendment: Special Problems of the Broadcast Industry*, 13 Lincoln L. Rev. No.2, 101, (1982).

This article examines the broadcasting of indecent words from the perspective of the First Amendment. The author concludes that the broadcasting of indecent material will be confined to times when “children are not likely to be exposed to such broadcasts”.

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William F. Drischler, *Carl Schmitt’s Philosophy of Law, 1912 – 1932: Some Introductory Aspects*, 13 Lincoln L. Rev. No.2, 113, (1982).

This article explores the legal works of Carl Smith.

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## 14 Lincoln L. Rev. No. 1 (1983-1984)

### Articles

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Hamilton DeSaussure, *Toward A Law for Space Transport, The Maritime Analogy*, 14 Lincoln L. Rev. No.1, 1, (1983).

This article compares space travel to ocean going ships and concludes that it would be helpful to apply maritime law principles in space carriage contracts to “produce uniformity, practicality and certainty”.

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George Paul Sloup, *Determination of Applicable Law to Living and Working in Outer Space: The Municipal Law Connection and the NASA/Hastings Research Project*, 14 Lincoln L. Rev. No.1, 43, (1983).

This article explores what law might eventually be determined to apply to living and working in space. It is noted that particular attention should be given to the municipal law of the countries involved or affected when determining what law to apply to space activities.

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## **14 Lincoln L. Rev. No. 2 (1983-1984)**

### **Articles**

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Godfrey Lehman, *The Unconstitutionality of Voir Dire, Peremptory Challenges and Jury Books in Jury Selection*, 14 Lincoln L. Rev. No.2, 53, (1983).

This article examines jury duty in the United States and concludes that in order to attain judgment *per pais*, *voir dire* and *pre-voir dire* investigations of jurors must be eliminated.

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## 15 Lincoln L. Rev. No. 1 (1984-1985)

### Articles

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Warren H. Hyman, *Victory for Religious Organizations and the Free Exercise of Their Beliefs Under the First Amendment: A Review of Matter of Holy Spirit Association v. Tax Commission – Its Impact and Meaning for the Future*, 15 Lincoln L. Rev. No.1, 1, (1984).

This article takes a detailed look at how courts have defined religion and religious activities and then analyzes the possible impact of the court's decision in *Holy Spirit Association for the Unification of World Christianity*.

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George Steven Swan, *Article III, §2/14th Amendment, § 5 Roe Responses: Roe from Lincoln's Dred Scott Viewpoint*, 15 Lincoln L. Rev. No.1, 23, (1984).

This article juxtaposes Lincoln's response to the *Dread Scott* ruling and Congress's response to the *Roe v. Wade* decision. The author concludes that the constitutional amendments proposed by Congress are "far less disdainful of the Supreme Court's authority than was Lincoln's own response to *Dred Scott*".

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## **15 Lincoln L. Rev. No. 2 (1984-1985)**

### **Articles**

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Timothy M. Mulligan, *The Tax Ramifications of the Business Use Of A Home*, 15 Lincoln L. Rev. No.2, 87, (1984).

This article explores Section 280A of the Internal Revenue Code and advises that “before a taxpayer attempts to take advantage of these tax savings, he should be aware of the requirements of §280A, as well as some of its possible drawbacks”.

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## 16 Lincoln L. Rev. No. 1 (1985-1986)

### Articles

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Frank E. Hagie, Jr., *The Need For Objective Evaluation of the Facts Justifying Public Safety Detentions: In re Tony C. and People v. Bellomo Expose a Serious Flaw in California Criminal Law Regulating Police Detentions*, 16 Lincoln L. Rev. No. 1, 1 (1985)

This article discusses the case, *In re Tony C.*, Investigative detentions, and invoking constitutional protections based solely on the reasons given for the detention. This article also discusses the case, *People v. Bellomo* and exploitation of public safety stops consistent with the dictates of *In re Tony C.* This article also discusses a proposed objective test for evaluation of the reasons justifying a public safety stop. This article discusses serious problems in California criminal law regulating police detentions that would be solved by judicial adoption of the objective test proposed.

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James Wm. Johnson, *Unconscionability and the federal Chancellors: A Survey of U.C.C. Section 2-302 Interpretations in the Federal Circuits During the 1980's*, 16 Lincoln L. Rev. No. 1, 21 (1985)

This article discusses cases from each of the federal appellate court circuits. Finally, there is a commentary entitled, "From the Marble Chair to the Federal Chanceries."

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George S. Swan, *Article III. s.2/14th Amendment, s.5 Congressional Responses to Roe: Roe from Lincoln's Dred Scott Viewpoint*, 16 Lincoln L. Rev. No. 1, 63 (1985)

This article discusses the protracted preparation of *Dred Scott*, the protracted preparation of *Roe*, the scheduled release of *Dred Scott*, the scheduled release of *Roe*, the *Dred Scott* and *Roe* determinations, erroneous legal history of *Dred Scott* and *Roe*, and Lincolnian legislative replies to *Dred Scott* and *Roe*.

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### Book Review

Richard Neely, *The Divorce Decision*, 16 Lincoln L. Rev. No. 1, 91 (1985) (reviewed by Charles W. Powell)

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## **16 Lincoln L. Rev. No. 2 (1985-1986)**

### **Articles**

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Joseph H. Moless, Jr., *Fire Insurance Covenants in Deeds of Trust: Death of Contract?*, 16 Lincoln L. Rev. No. 2, 97 (1986)

This article discusses the death of a contract, the implied covenant of good faith, the implied covenant of good faith and the real property security agreement, the terms of the security contracts (the limitations imposed by mortgage law), the terms of the security contracts (the limitations imposed by contract law), and Schoolcraft, Kresehek and Freeman (mortgage, contract, and tort principles).

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Bob Clark, Jr., *Joint and Several Liability: The Battle in California Moves to the Courts*, 16 Lincoln L. Rev. No. 2, 121 (1986)

This article discusses the insurance crisis of the 1980's, criticism of the tort system, the campaign for adoption, the television commercials and billboards, the written debate, responsibilities and joint and several liability, the basis of and joint and several liability, the Smith accident, the fairness of and joint and several liability, the misunderstanding underlying adoption of the proposition, the relation between toxic wastes and joint and several liability, the problems now confronting the courts, interpretation of the Act, retroactivity of the Act, claims for contribution from unrepresented parties for noneconomic damages, concerted action tortfeasors and vicarious liability, divisible injuries, application of the mischief rule of statutory construction (the rule in Heyden's case), and the constitutionality of the Act.

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### **Comments**

Richard R. Terzian, *Local Government Antitrust Update*, 16 Lincoln L. Rev. No. 2, 179 (1986)

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Sharon L. Hightower, *Warrantless Aerial Surveillance: A New Dimension*, 16 Lincoln L. Rev. No. 2, 199 (1986)

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### **Book Reviews**

John Sexton and Nat Brandt, *How Free Are We: What The Constitution Says We Can and Cannot Do*, 16 Lincoln L. Rev. No. 2, 209 (1986) (reviewed by Bridgett E. Jones)

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Susan Jacoby, *Wild Justice: The Evolution of Revenge*, 16 Lincoln L. Rev. No. 2, 211, (1986) (reviewed by Kirsten Anderson)

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## **17 Lincoln L. Rev. No. 2 (1987-1988)**

### **Articles**

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Paul D. Gutierrez, *Commencement of Works of Improvement: This Could be the Start of Something Big*, 17 Lincoln L. Rev. No. 2, 215, (1987)

This article discusses the historical perspective, the first attempt to define “commencement”, and the application to a materialman.

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### **Comments**

Nancy K. Kubasek and Andrea M. Gaimpetro, *Affirmative Action Plans: Legal Hurdles Have Been Removed: Do Philosophical Hurdles Still Remain?*, 17 Lincoln L. Rev. No. 2, 233, (1987)

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Dr. Frank W. Andritzky and Dr. Joseph G. Andritzky, *Affirmative Action: The Original Meaning*, 17 Lincoln L. Rev. No. 2, 249, (1987)

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### **Book Reviews**

Martin Shapiro, *Courts: A Comparative And Political Analysis*, 17 Lincoln L. Rev. No. 2, 275, (1987) (reviewed by Robert Leith)

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F. Lee Bailey, *To Be a Trial Lawyer*, 17 Lincoln L. Rev. No. 2, 279, (1987) (reviewed by Kirsten Anderson)

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## **18 Lincoln L. Rev. No. 1 (1988-1989)**

### **Articles**

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Joseph P. Secola, *The Judicial Review of John Marshall and its Subsequent Development in American Jurisprudence*, 18 Lincoln L. Rev. No. 1, 1, (1988)

This article discusses the judicial function, John Marshall's Lockean jurisprudence, opposition to sociological jurisprudence, the Dred Scott decision, the Roe v. Wade abortion decision, and a hopeful sign.

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Francine R. Adkins Tone, *Vehicle Owner Imputed Liability: An Exception for Community Property Owners*, 18 Lincoln L. Rev. No. 1, 49, (1988)

This article discusses the Cox v. Kaufman case which is the basis of the exception, vehicle code section 17150, developments after the Cox v. Kaufman case, and Civil Code section 5125 (change in management and control),.

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### **Book Reviews**

William H. Rehnquist, *The Supreme Court: How It Was, How It Is*, 18 Lincoln L. Rev. No. 1, 63, (1988) (Reviewed by Edward F. Mills)

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Lincoln Caplan, *The Tenth Justice: The Solicitor General and the Rule of Law*, 18 Lincoln L. Rev. No. 1, 67, (1988) (Reviewed by Calvin A. Reed)

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## 18 Lincoln L. Rev. No. 2 (1988-1989)

### Articles

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R. R. Jespersen, *The Bhopal Decision: A Forum Non Conveniens Perspective*, 18 Lincoln L. Rev. No. 2, 73, (1988)

This article discusses the development of the Bhopal doctrine, a critique of the doctrine, and a proposal for a new forum non conveniens standard.

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### Essays

Pete Stuart Michaels, *Free Speech Denied: 1050's Anti-Communist Passport Laws and Paul Robeson*, 18 Lincoln L. Rev. No. 2, 127, (1988)

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Robert Peace, *The War Protestor Tax Penalty*, 18 Lincoln L. Rev. No. 2, 143, (1988)

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### Book Reviews

Tip O'Neill, *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill*, 18 Lincoln L. Rev. No. 2, 165, (1988) (Reviewed by Jeffrey P. Tone)

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Scott Thurow, *Presumed Innocent*, 18 Lincoln L. Rev. No. 2, 167, (1988) (Reviewed by Marilyn E. Paulsen)

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## **19 Lincoln L. Rev. No.1 (1990–1991)**

### **Articles**

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Thomas M. Moncure, Jr., *Who is the Militia – The Virginia Ratification Convention and the Right to Bear Arms*, 19 Lincoln L. Rev. No.1, 1, (1990).

Explores the relationship between the right to bear arms and the nature of the militia during the times when the constitution was being written, debated and ratified. Centers much of the analysis on the State of Virginia which literally split the states in two because of its size and location.

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Naomi Hirayasu, *The Hague Convention on the Taking of Evidence*, 19 Lincoln L. Rev. No.1, 27, (1990).

This article addresses the Hague Evidence Convention including and how the USSC has dealt with this body of law and its relationship to the Constitution. This went into effect on October 7, 1972. It addresses the difficulty of taking evidence in foreign countries. Central issue dealt with is the pretrial discovery requests which are often quite broad in scope in the US versus England and other nations.

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### **Comments**

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Christopher F. Emley, *The Challenge of Surrogate Parenting: Can California Law Meet It?*, 19 Lincoln L. No.1, Rev. 47, (1990).

California as of 1991 had outlawed surrogate parenting. States are criminalizing surrogacy. States are refusing to recognize surrogate adoptions. Article addresses

- What specific questions need legal answers.
  - Should surrogate's spouse, parents etc. have any rights to the child.
  - Should surrogate have right to terminate the pregnancy
  - Should adopting parents have right to terminate the pregnancy if testing shows defect are likely.
- And numerous other topics.
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Cynthia Spencer, *A New Health Care Product: Where to Begin*, 19 Lincoln L. Rev. No.1, 55, (1990).

Discusses the workings of FDA with regard to compliance and submission requirements for health care products such as drugs, medical devices, biological products. Five steps in the development of a health care product and submission requirements are also briefly discussed.

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### **Book Reviews**

David P. de Carion, *Title* 19 Lincoln L. Rev. No.1, 63, (1990) (Reviewing Sheldon M. Novick, *Honorable Justice: The Life of Oliver Wendell Holmes*).

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Francine R. Adkins Tone, *Title* 19 Lincoln L. Rev. No.1, 67, (1990) (Reviewing Marian Faux, Roe v. Wade: The Untold Story of the Landmark Supreme Court Decision that Made Abortion Legal.).

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Marilyn E. Paulsen, *Title* 19 Lincoln L. Rev. No.1, 71, (1990) (Reviewing James B. Stewart, The Prosecutors).

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Phillip O. Norton, *Title* 19 Lincoln L. Rev. No.1, 75, (1990) (Reviewing Mark H. McCormack, The Terrible Truth About Lawyers).

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## 19 Lincoln L. Rev. No. 2 (1990–1991)

### Articles

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Axelrod, *A Pragmatic Scrutiny of Liquidated Damages*, 19 Lincoln L. Rev. No.2, 79, (1991).

Examines the background and history of the relative laws of Liquidated Damages. Reviews recent case and legal reasoning to show how courts deal with and decide these issues.

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Robert W. McGee, *The Economic Thought of David Hume: a Pioneer in Law and Economics*, 19 Lincoln L. Rev. No.2, 97, (1991).

David Hume wrote *Essays, Moral, Political and Literary, Part II* in 1752. His views on economics have been relatively neglected. This article summarizes and clarifies Hume's views on economics including; Commerce and Trade, Monetary Theory, Interest Theory and their significance today.

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Marilyn E. Paulsen, *Child Abuse: Terminating Parental Rights*, 19 Lincoln L. Rev. No.2, 113, (1991).

Deals with the requirements for reporting child abuse in California, the procedures through which parental rights in California can be terminated, the reluctance of the court to permanently sever the family unit, the standard of proof required, and a recent United States Supreme Court case deciding the liability of the state when the abused child is not in state custody.

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### Comments

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Timothy J. Flynn, *The Parent-Child Testimonial Privilege: a Survey of its Acceptance by the Courts*, 19 Lincoln L. Rev. No.2, 123, (1991).

Body of this paper is a survey of decisional law where the parent-child privilege is at issue. Highlights the relationship between the parent-child privilege and existing evidentiary privileges and how the courts have addressed these issues.

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Sean Judge Geddes, *California's Drug Diversion Statute: Drug Defendants' Second Chance*, 19 Lincoln L. Rev. No.2, 135, (1991).

This commentary deals specifically with the "diversion statutes" applicable to defendants charged with drug offenses that will discuss the eligibility requirements, the courts use of the program and some suggestions to amend the statutes.

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Steven R. Pogue, *Attorney-Client Privilege Reinforced in California, Southern California Gas Co. v. Public Utilities Commission*, 19 Lincoln L. Rev. No.2, 145, (1991).

The attorney-client privilege in an administrative law setting was recently reviewed before the California Supreme Court. The unanimous opinion of the court showed strong support for the privilege and held that it is not lightly or casually waived.

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Pasquale V. Martire, *Procurement Integrity in the 1990's*, 19 Lincoln L. Rev. No.2, 149, (1991).

The Procurement Integrity Act was created with the intention to curb improper competitive practices and to implement integrity into the government procurement system. The act is described. Compliance programs are discussed.

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### **Book Review**

Steven R. Pogue, 19 Lincoln L. Rev. No.2, 157, (1991) (Reviewing Ivo Van Bael Jean-François Bellis, *Competition Law of the EEC*).

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Steven R. Pogue, 19 Lincoln L. Rev. No.2, 159, (1991) (Reviewing Annotations from the ALR System, *Critical Issues: Trademarks*).

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## 20 Lincoln L. Rev. No.1 (1991–1992)

### Articles

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Wayne C. Curtis, *A note on the Legal Aspects of Bank Capital Regulation with Emphasis on Risk-based Initiatives*, 20 Lincoln L. Rev. No.1, 1, (1991).

Examines the changing role of capital regulation in Banking industry. Reviews the various definitions of capital, the historical evolution of attempts to measure capitals adequacy, a detailed description of the risk-based guidelines, and some implication of new rules.

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Robert W. McGee, *The “Essence of the Transaction” Test for Computer Software Tangibility and Taxation*, 20 Lincoln L. Rev. No.1, 21, (1991).

Computer software that is classified as tangible personal property is subject to sales and use tax. Discusses the types of computer products bought and sold and when it is legally considered tangible and therefore taxable.

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Wm. Bradford Anderson, Mary Shiota and Shahin Shabahang, *The Small Inventor, an Endangered Species*, 20 Lincoln L. Rev. No.1, 33, (1991).

In 1982 Congress authorized Patent and Trademark Organization (PTO) to require small entities to pay only 50% of the standard patent filing fees. In an effort to make the PTO self supporting, fees were increased by 62% across the board effective in 1990. Article discusses this increase and alternatives.

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Barry W. Ponticello, *“Over” Due Process: The Saga of the NCAA, its Members and Their Representatives*, 20 Lincoln L. Rev. No.1, 43, (1991).

Examines whether Constitutional due process procedures should be adhered to by the NCAA. Discussed the Jerry Tarkanian case.

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Crad Baruch with Edward O. Cassidy, Jr., *Technical Foul: The Legality and Wisdom of NCAA Academic Requirements*, 20 Lincoln L. Rev. No.1, 71, (1991).

In 1983 NCAA passed proposition 48 requiring incoming athletes to possess 2.0 high school GPA's and a minimum 700 SAT score. Article discusses more recent NCAA reforms, assesses the constitutionality of these measures, and examines their impact upon athletes.

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### Comments

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Steven R. Pogue, *The Status of Transient Jurisdiction After Burnham v. Superior Court*, 20 Lincoln L. Rev. No.1, 87, (1991).

Supreme court rulings touching on question of is jurisdiction proper when a party is temporarily in a state and is personally served in a suit unrelated to to his current activities in that state. Supreme court unanimously validated jurisdiction but 4 separate opinions were written.

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## **Book Reviews**

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Caroline L. Dant, *Title* 20 Lincoln L. Rev. No.1, 103, (1991) (Reviewing Robert Bork, *The Tempting of America*, (1989)).

The temptation in the judiciary to make decisions based on personal moral considerations or “politically desirable results” rather than on the Constitution. Book is in three parts: (1) The Supreme Court and the Temptation of Politics; (2) The Theorists; (3) The Bloody Crossroads which discusses the point where politics and the law meet. The Bork nomination campaign is discussed.

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No.1, 109, (1991) (Reviewing Bernard Wolfman, James P. Holden and Kenneth L. Harris, *Standards of Tax Practice I and II* (19xx))

These volumes explore the ethical implications involved in tax practice. Also the distinction between the practice of the law and the CPA.

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No.1, 113, (1991) (reviewing Robert J. Fields *Understanding and Managing Sales and Use Tax* (19xx)).

Book is for tax practitioners needing familiarity with Sales and Use tax. Discusses various aspects such as forms, avoiding tax liability, audits, pre-transaction planning etc.

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## 20 Lincoln L. Rev. No. 2 (1992–1993)

### Articles

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John Ray, *The Declaration of Independence in the Original Understanding of the Equal Protection Clause of the 14th Amendment*, 20 Lincoln L. Rev. No.2, 115, (1992).

Argues that the reconstruction Amendments' debates show that the framers of the 14th Amendment meant for equal protection to be identical with racial equality before the law. Discussed John Locke theories as well. Concludes the "duty of the law-maker is to know no race".

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Robert W. McGee, *Corporate Officers and Director Liability for Hazardous Waste: Has the Law Gone Too Far?*, 20 Lincoln L. Rev. No.2, 137, (1992).

The CERCLA Comprehensive Environmental Response, Compensation, and Liability Act of 1980 also known as Superfund is critiqued. Sections include: (1) General criticism; (2) Officer and Director Liability Under Superfund; (3) Suggestions for change.

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Hae Young Lee and Alan Werb, *580b Anti-Deficiency: Time For a Reality Check*, 20 Lincoln L. Rev. No.2, 165, (1992).

Considers under what circumstances a "deficiency" judgment should be granted when an unsatisfied creditor brings an action. Discusses anti-deficiency policy rationale, as well as issues of physical and financial waste.

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### Book Reviews

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No.2, 195, (1992) (reviewing George B. Javaras, Todd F. Maynes and Kent F. Wisner *Start-Up Expenses* (19xx)).

Book covers in detail the IRS code 195 on Start-up Expenses.

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No.2, 197, (1992) (reviewing Thomas D. Crandall, Richard B. Hagedorn and Frank W. Smith *The Law of Debtors and Creditors* (1991??)).

Massive book split into 4 sections. (1) Validity of the debt (2) Collecting unsecured debt (3) Collecting secured debt (4) bankruptcy.

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No.2, 199, (1992) (reviewing Herman Schneider and Jack Crestol, *Tax Planning for Investors* (1985)).

Addresses how tax planning impacts timing and management of investments. Book for the serious knowledgeable investor.

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No.2, 201, (1992) (reviewing Marvin Hyman, *Basic Legal Forms with Commentary*, 2nd Edition (19xx)).

Book of Legal forms with clear commentary to help understand the form in clear English.

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Steven R. Pogue, *Title* 20 Lincoln L. Rev. No. 2, 203, (1992) (reviewing John D. Hegarty, *Financing the American Dream* (1992)).

Financial planning for the middle and upper class family.

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## 21 Lincoln L. Rev. No. 1 (1993–1994)

### Articles

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Randon H. Draper, *Running the Military Race On Equal Footing: A Constitutional Forecast of the Ripple Effect on Physical Fitness Standards and Testing Resulting From Women's Proposed Plunge Into Combat*, 21 Lincoln L. Rev. No. 1, 1 (1993).

There is an ongoing debate whether women service members should assume combat duty alongside their male counterparts. However, arguments on both sides fail to address or fully explore the legal realities and obligations which would impact women if fully integrated into combat. If barriers barring women from combat are removed, many or all the legal protections currently enjoyed by women in uniform would also be removed. This might result in increased participation of women in some combat positions and might actually result in decreased number of women serving overall in the armed forces.

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Paquale V. Martire, *In Defense of the Second Amendment: Constitutional and Historical Perspectives*, 21 Lincoln L. Rev. No. 1, 23 (1993).

Public debate regarding gun control has increased significantly in recent years. Proponents of restrictive firearm legislation, of which the American Civil Liberties Union is one, believe that limitations placed on the ownership of guns will be the decisive factor in curbing violent crimes. Opponents to such regulation, such as the National Rifle Association, contend that to constrict an individual's right to self-armament would abridge rights guaranteed by the Second Amendment. The debate stems from the polarization between those who follow an "exclusively state's right" interpretation and those who support an "individual right" theory.

This article examines the language of the Second Amendment, the intent of the drafters, and the limited Supreme Court decisions regarding the Second Amendment.

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### Book Reviews

Denise Bondelie and Ute Ferdig, *Title* 21 Lincoln L. Rev. No. 1, 39, (1993) (reviewing Carlyn S. McCaffrey, Esq., *Structuring the Tax Consequences of Divorce and Separation*, (19xx)).

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Hieu Duc Do, *Title* 21 Lincoln L. Rev. No. 1, 41, (1993) (reviewing CCH Business Law Editors, *1992 Social Security Explained*, (19xx)).

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Karen Hubbell, *Title* 21 Lincoln L. Rev. No. 1, 43, (1993) (reviewing Robert A. Esperti and Renno L. Peterson, *The Trust Revolution*, (19xx)).

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Olga Mandel, *Title* 21 Lincoln L. Rev. No. 1, 43, (1993) (reviewing Franklin E. Zimring and Gordon Hawkins, *Prison Population and Criminal Justice Policy In California*, (19xx)).

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David Yomtov, *Title* 21 Lincoln L. Rev. No. 1, 45, (1993) (reviewing David F. Windish, *Real Estate Taxation, A Practitioner's Guide*, (19xx)).

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Alan Werb, *Title 21* Lincoln L. Rev. No. 1, 47, (1993) (reviewing Jeffrey Toobin, *Opening Arguments: A Young Lawyer's First Case: U.S. v. Oliver North*, (19xx)).

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Alan Werb, *Title 21* Lincoln L. Rev. No. 1, 51, (1993) (reviewing Elliot Abrams, *Undue Process: A Sotry of How Political Differences Are Turned Into Crimes*, (19xx)).

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## 22 Lincoln L. Rev. No. 1 (1994–1995)

### Articles

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Anne D. ImObersteg, *Illegal Dredging and Filling Activities in San Francisco Bay: Criminal Prosecutions Under the 1899 River and Harbors Act and Section 404 of the Clean Water Act*, 22 Lincoln L. Rev. No. 1, 1 (1994).

Less than half of the sediment which flows into the San Francisco Bay is dredged in order to facilitate the movement of the large recreational and commercial vehicles that are vital to the economy of the Bay Area. This activity is performed at the expense of fisheries and general marine ecosystem in the Bay. The Impact of dredging revolves around three major types of problems:

- contamination of wildlife due to the resuspension of pollutants previously bound in the bottom sediments
- increase in the turbidity of the water by suspended sediments
- burial of organisms by the dredging hoppers' operations

This article examines federal regulation of dredging and filling activities as well as criminal prosecutions of these activities.

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Wayne C. Curtis, W. Jerome Bibbons, and Rizwan Meherally, *Application of the "Theory of the Firm" to Valuation of Closely Held Businesses: A Note*, 22 Lincoln L. Rev. No. 1, 15 (1994).

There are many situations in which the fair market value of a closely held business must be determined and is of crucial importance. Some examples of these situations are:

- buying and selling a company
- buying out a partner
- settling a divorce or property suit

This article describes how to value closely held businesses using a specific technique. This method is based on the discounted value of projected future earnings.

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J. Herbie DiFonzo, *Paradox of Change: The English Background to the California Divorce Revolution*, 22 Lincoln L. Rev. No. 1, 31 (1994).

In 1969, the California Legislature inaugurated the modern era of American divorce by passing the first exclusively no-fault divorce law in the United States. This article examines the paradox of apparently revolutionary change resulting in stalemate, leading to reform in a completely different direction. The California divorce revolution in 1969 followed the path of English reformers in proposing and ultimately rejecting an inquest-like procedure to starve the divorce rate. The California proposal eliminated all divorce grounds, but abandoned the inquest principle. Divorce on demand won the day.

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## **Book Reviews**

Brad Anderson, Esq., *Title* 22 Lincoln L. Rev. No. 1, 57, (1994) (reviewing Steven Fishman, Esq., *Software Development: A Legal Guide*, (19xx)).

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Frank S. Fannin, *Title* 22 Lincoln L. Rev. No. 1, 59, (1994) (reviewing Charles K. Plotnick, LL.B., Stephen R. Leimberg, J.D., and the Editors of Consumer Reports Books, *How to Settle an Estate: A Manual for Executors and Trustees*, (19xx)).

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Anita Vranjes, *Title* 22 Lincoln L. Rev. No. 1, 63, (1994) (reviewing Deloris R. Wright, Coopers & Lybrand, *Understanding the New: U.S. Transfer Pricing Rules*, (19xx)).

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Roseanne Jaski-McLean, *Title* 22 Lincoln L. Rev. No. 1, 67, (1994) (reviewing Commerce Clearing House, Inc., *Is There a Vat in Your Future? Pros and Cons of a Value Added Tax*, (1993)).

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## 23 Lincoln L. Rev. (1995–1996)

### Articles

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John S. Blackman, *Alternative Dispute Resolution and the Future of Lawyering*, 23 Lincoln L. Rev. 1 (1995-1996).

Trials have become too costly to continue to be an effective method of dispute resolution. There is a better method which has become known as ADR, alternative dispute resolution. The first section discusses reasons why parties don't even start to discuss settlement until the court forces them to with a mandatory settlement conference two weeks before trial begins. The next section discusses the fear of both the plaintiff and the plaintiff's attorney that settlement might result in a reduced fee than an impassioned jury might award. The final section discusses outdated case management strategies. The movement toward ADR is not merely a legal phenomenon. Rather it is a deeply rooted societal trend that is leading humanity on many levels to abandon the old dialectical paradigms of "us vs. them", right and wrong, left and right, winner and loser, in favor of a more pluralistic approach which not only acknowledges diversity, but embraces it.

The author, John S. Blackmun is a civil trial attorney and mediator. He has also served as Chair of the San Mateo County Bar Association's Alternative Dispute Resolution Committee since 1992.

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Anne D. ImObersteg, *Choosing Yucca Mountain as the National High-Level Waste Repository – NIMBY at Work*, 23 Lincoln L. Rev. 13 (1995-1996).

More than 20,000 metric tons of highly radioactive wastes are stored in facilities in more than 30 states. The general practice has been to initiate an onsite storage system which is regulated by the government. Congress recognized that this effort was not adequate and passed legislation to direct the disposal of the "high-level" radioactive waste. The Nuclear Waste Policy Act (NWPA) was enacted in 1982, and amended in 1987 and 1992. NWPA required the DOE to open a permanent waste repository by 1998, and to recommend a second alternative site. By 1986, the DOE had determined and narrowed down to 3 potential locations: Yucca Mountain, Nevada; Hanford, Washington; and Deaf Smith, Texas. The search was narrowed down to Nevada. Nevada complains that the decision was made because it is a politically weak state. The summary of this article asks why the national political process would single out one unconsenting state as an unwilling host to one of the most dangerous by-products when there is no need to force such responsibility in the first place.

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Erik G. Luna and Grant B. Luna, *The Governance of Morality: A Power Reserved to the Several States*, 23 Lincoln L. Rev. 27 (1995-1996).

This article questions the federal government's authority to govern morality through congressional legislation based on the Commerce Clause. The first section examines the scope of the federal government's power. The next section examines current legal scholarship regarding the Commerce Clause. The next section offers a counterproposal to evaluate congressional use of the Commerce Clause. The final section applies the counterproposal to historic and contemporary Commerce Clause decisions.

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Howard Gensler, *Transferable Pollution Credits: Theory and Practice*, 23 Lincoln L. Rev. 75 (1995-1996).

This article examines three pollution control regimes, pollution bans, pollution quotas, and transferable pollution credits. Pollution bans, where no pollution is tolerated, forces industry to spend substantial amounts of money for little or no actual benefit. Pollution quotas, where a little pollution is allowed to be emitted, ignores the fact that different polluters avoid pollution at different costs. A transferable pollution credit system captures the benefits of the pollution quotas system, but without the arbitrary financial burdens of pollution bans. This article examines the economic theory behind these three pollution control regimes and examines the performance of the transferable pollution credit program.

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## 24 Lincoln L. Rev. (1996 - 1997)

### Articles

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Alisha Othman, *Are Government Attempts to Prevent Lead Poisoning in Children Adequate?*, 24 Lincoln L. Rev. 1, (1997).

The article discusses the concerns regarding childhood lead exposure. It then goes on to discuss the effects and sources of lead poisoning. The article concludes with the preventative and remedial actions on the part of federal and state governments.

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Cory L. Wade Ph.D., M.A., *A Thorny Side of Copyright Law: Book Reviews, Plagiarism, and the Doctrine of Fair Use*, 24 Lincoln L. Rev. 21, (1997).

Reviews the evolution of copyright law and how courts have treated book reviewers' reproduction of copyrighted materials. The article discusses the development of and how the courts tend to apply the fair use doctrine.

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Nancy J. Brown, *Complying with ADA, FMLA and Workers' Comp Laws – A Three-Sided Hat for Employers*, 24 Lincoln L. Rev. 31, (1997).

Discusses the rights of injured employees under state workers' compensation laws, the Family Medical Leave Act, and the Americans with Disabilities Act. It focuses on the areas of overlap and conflict in the statutes, with the goal of being able to help employers formulate leave and return-to-work policies for injured employees that incorporate the requirements of all three laws.

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Howard Gensler Ph.D., J.D., M.S., *The Economics of Gun Control*, 24 Lincoln L. Rev. 59, (1997).

The article provides a theoretical analysis of the gun control problem. It discusses the underlying arguments and assumptions of both sides of the gun control debate, illustrating the points made in graphical form.

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**25 Lincoln L. Rev. (1997 – 1998)**

**26 Lincoln L. Rev. (1998 – 1999)**

**Articles**

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Douglas S. Goldring, *The Law and ACTG Protocol 076: Do the Slings and Arrows of Mandatory HIV Testing Penetrate a Woman's Right to Privacy?*, 25/26 Lincoln L. Rev. 1, (1997-1999).

Discusses privacy issues regarding mandatory HIV testing for pregnant women. It also discusses the issues of accessibility to counseling, Fourth Amendment Issues, confidentiality, and a pregnant woman's right of refusal.

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Cory I. Wade Ph.D., M.A., *"Writings" in a Cyber World: The Expansion of Copyright Subject Matter from Sonnet to Software*, 25/26 Lincoln Law Rev. 33, (1997-1999).

The article considers judicial rationale underlying the broadening scope of copyright as well as the consequences of the expansion, with a focus on technological literacy and computer writings. It also reviews the evolution of early copyright law origins and the matter eligible for copyright. This is done through an exploration of legislation and cases.

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Jennifer S. Holman J.D., *Environmental Cases in California's Courts: The Supreme Court's Depublication Practice Compromises the Integrity of the Judicial System in the Name of Efficiency*, 25/26 Lincoln L. Rev. 71, (1997-1999).

Discusses the impacts of depublication on the development of the published case law interpreting the California Environmental Quality Act and the Forest Practice Act. It also looks at how depublication has shaped the interpretation of these laws and what sort of guidance it has yielded for the lower courts.

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## 27 Lincoln L. Rev. (1999 – 2000)

### Articles

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Jack E. Karns J.D., LL.M., M.P.A., M.S., *The Perils of Tax Exempt Status: Is a Contract Fundraiser an “Insider” Within the “Private Inurement” Clause of Internal Revenue Code §501(c)(3)?*, 27 Lincoln L. Rev. 1, (2000).

The article reviews the *United Cancer Council, Inc. v. Commissioner* case and examines the rationale set forth by Judge Posner. The article is intended to raise awareness of the “private inurement” requirement for individuals who are unfamiliar with the Internal Revenue Service and its operating methods.

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Neil Evans, *Characterization of Stock Options in a California Dissolution Proceeding*, 27 Lincoln L. Rev. 13, (2000).

Discusses general principles of employer-granted stock options and California’s characterization of stock options. It also discusses the methods the court employs in valuing stock options. The article also reviews the Hug, Nelson and Harrison formulas for apportionment of the stock options upon dissolution.

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Glenn K. Miller, *McNally v. Butts: The Ninth Circuit Undermines Admission of Valuable Evidence by Abrogating Officer Immunity*, 27 Lincoln L. Rev. 27, (2000).

Explores the Ninth Circuit Courts opinion in *McNally v. Butts* where the court announced that police officers were no longer immune from liability if they obtained information from a suspect who had requested and been denied an attorney. It also discusses the Miranda origins of the Harris and Hass doctrine as well as the reliance of officers on training and training materials.

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## 28 Lincoln L. Rev. (2000 – 2001)

### Articles

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Anne ImObersteg J.D., M.S., *Scientific Issues Regarding the Use of Preliminary Alcohol Sensors (PAS) in California*, 28 Lincoln L. Rev. 1, (2000).

This article describes two different categories of PAS devices. It then discusses Scientific and Legal issues with the admissibility of PAS evidence in California courts. Ends with a discussion of Title 17 of the California code which sets forth the rules and regulations for forensic alcohol analysis.

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Deanna F. Lamb, *Timely Justice: The Balance Between Claims of Actual Innocence and Finality of Judgments*, 28 Lincoln L. Rev. 17, (2000).

Explores the Innocence project examples in California. At the time of writing of this article, California had only three exonerations which is a disproportionately small number compared to other states. Describes the Frederick Daye first case of exoneration through DNA evidence in California. Discusses Penal Code section 1405 which allows for postconviction DNA testing in California. This became effective in January 1, 2001. In California a state *habeas* petition must be timely filed. There are four ways to avoid an untimeliness procedural bar.

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Douglas D. Durward, *Bankruptcy and Family Law – A Guide for the Family Law Practitioner*, 28 Lincoln L. Rev. 29, (2000).

Discusses the Bankruptcy Reform Act of 1994 which evidences Congress' intention to lessen the impact of bankruptcy on the nondebtor spouse. The intended improvements may be illusory in practice. Begins with an explanation of bankruptcy basics, the automatic stay, and property settlement exceptions. Elaborates on support exceptions to discharge, lien avoidance, pre-divorce considerations, and pending litigation in this area. Ends with practical steps that should be taken by a Family Law Attorney when dealing with bankruptcy.

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David Roberson, *Contrary to California Business & Professions Code § 7164 An Oral Contract for Construction of Single-Family Dwelling is Not Necessarily Enforceable*, 28 Lincoln L. Rev. 51, (2000).

Case note of California appellate court decision, *Arya Group, Inc. v Cher* and how California Appeals Court carves out an equitable remedy for a contractor who violates California business and professional code § 7164. Cher in an Oral agreements consented to pay Arya \$4,217,529 to build a house on her beachfront Malibu property. The contract was memorialized in writing but never signed by Cher. The issue discussed in the case was whether a contractor's failure to obtain a signed, written contract precluded recovery on breach of contract theory as a matter of law. Code § 7164 is a consumer protection statute, the intended to protect public. It was not designed to protect contractors.

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## 29 Lincoln L. Rev. (2001 – 2002)

### Articles

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Tod I. Zuckerman, *Intellectual Property Insurance Coverage Disputes: A Primer and A State-By-State Survey of Cases*, 29 Lincoln L. Rev. 1, (2001-2002).

Article consists of (I) a very basic primer on intellectual property insurance coverage disputes, and (II) a state-by-state survey of intellectual property insurance coverage cases from 1999 to March 2001. The three main types of intellectual property (patents, copyrights, and trademarks) are reviewed. Discusses insurance coverage as a key factor in litigation plans for plaintiff and defendants. Reviews copyright infringement coverage, unfair competition coverage, trade secret misappropriation coverage, and common exclusions to coverage.

The article then reviews 18 California cases some of which are unpublished or deleted from publication. Next there are reviews of cases in 17 states. ( Connecticut, Georgia, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Wisconsin.)

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Eloise Rosenblatt, *The Judicial Philosophy of Justice Sandra Day O'Connor*, 29 Lincoln L. Rev. 131, (2001-2002).

In the book " The Rugged Feminism of Sandra Day O'Connor," three women professors of law analyzed whether or not her opinions reflect a genuine posture of advocacy for women in general. The conclusion is that Justice O'Connor's thinking seems to be equated with protecting core liberty interests, personal autonomy and favors plaintiffs who demonstrate both. There is a political analysis and critique of Justice O'Connors role on the court. Fourteen of her cases are briefly reviewed under the topic headings of Federalism; Equal Protection: Gender and Race; Balancing of Personal Rights versus State Interest; Protection for Religious Practice.

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## 30 Lincoln L. Rev. (2002 – 2003)

### Articles

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Jonathan J. Sweet, *Construction Subcontract Payment Condition Clauses and William R. Clarke Corp. v. Safeco Insurance Co. of America*, 30 Lincoln L. Rev. 1 (2002-2003).

In a construction project involving a prime contractor and subcontractors, the primary contractor wishes to avoid bearing the entire financial risk of nonpayment by the owner. The prime contractor may insert contractual language in the subcontracts which state that the prime contractor is not liable to pay subcontractors for their work until certain conditions are met. Two types of clauses are pay-if-paid clauses and pay-when-paid clauses.

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Craig Needham, *Public Entity Liability for Highway Design and The Implications of Pierce County, Washington v. Guillen*, 30 Lincoln L. Rev. 25 (2002-2003).

This article examines the public entity liability for highway design. This article discusses the ramifications of the recent case, *Pierce County, Washington v. Guillen*. This article also discusses California law, which includes statutes, California Jury Instructions, and case law. The purpose is to explain how the *Guillen* decision affects a plaintiff in a median barrier case.

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Susan T. Racine, *Casenote: Public Policy and Potter v. Firestone Tire & Rubber Co.*, 30 Lincoln L. Rev. 37 (2002-2003).

This casenote discusses the California Supreme Court's decision in *Potter v. Firestone Tire & Rubber Co.*, which formulated the more likely than not standard based on public policy in a claim for negligent infliction of emotional distress. The case involved plaintiff's discovery that toxic carcinogenic chemicals had leached from the Crazy Horse landfill dump in Salinas, California, into their drinking water wells. The defendant, Firestone, had admittedly dumped the chemicals.

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Lara M. Bliesner, *Should Cyber Protests be Constitutionally Protected?*, 30 Lincoln L. Rev. 75 (2002-2003).

The pervasive use of computers and the Internet have established new challenges to established norms of freedom of speech. This article examines how Title 18 U.S.C., section 1030, Fraud and Related Activity in Connection with Computers affects freedom of speech and expression in cyberspace using cyber protests, in particular, whether cyber protests are feasible.

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## 31 Lincoln L. Rev. (2003 – 2004)

### Articles

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Anthony J. Longo, *Can You Hear Me Now? Telephonic Testimony in Civil Proceedings*, 31 Lincoln L. Rev. 1 (2003-2004).

This article explores the use of telephones and videophones for witnesses to testify at trial as a substitute for the actual physical presence of the witness in the court room. The factfinder needs to be able the witness's demeanor. This author submits that the telephone qualifies as a permissible opportunity for the factfinder to judge a witness' demeanor. Federal case law is examined to determine if the Federal Rules of Civil Procedure allow for witness testimony via a telephone. The author does not advocate for telephone testimony to replace physical courthouse testimony. However, if a good cause is shown under Federal Rule of Civil Procedure 43(a), then the use of the telephone should not be barred.

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Michael Shawn Hudson, *U.S. Government Sanctioned Extraterritorial Abduction of Criminals: Permissible or Violations of International Law?*, 31 Lincoln L. Rev. 25 (2003-2004).

The United States has participated in numerous extraterritorial abductions including the well known case of Doctor Humberto Alvarez-Machain, a Mexican national abducted from Mexico by the United States Drug Enforcement Agency and brought to the United States to stand trial for murder. This article examines extraterritorial abduction and its legal status in light of extradition law and treaties, international law, the *Alvarez-Machain* decision, and legal developments since the September 11, 2001 terrorist attacks. The conclusion of the article is that the United States should lead by example, act within the boundaries of the law, and demonstrate loyalty to the treaties it signs. Hiring gunmen to kidnap a criminal suspect from his homeland so he can stand trial in the U.S. promotes lawlessness. Such actions demonstrate that a government may act outside international law and not respect the sovereignty of other nations. The Supreme Court had the opportunity to correct a wrong in the *Alvarez-Machain* case.

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Franklin E. Bondonno, *First Amendment Right and Sunday Closing Laws*, 31 Lincoln L. Rev. 51 (2003-2004).

During the first half of the 1960s, the Supreme Court squarely faced the issue of Sunday Closing Blue Laws. The purpose of this article is to:

- Briefly inquire into the historical background and importance of religion in United States history;
  - Discuss the three principal cases of *McGowan v. Maryland*, *Braunfield v. Brown*, and *Gallagher v. Crown Koshers Super Market*;
  - Examine the impact of the alter case of *Sherbert v. Verner* upon the Sunday closing cases;
  - Examine the effect of the most recent decisions of *Department of Human Resources of Oregon v. Smith* and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*; and
  - Consider difficulties raised by these decisions and alternative solutions.
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## 32 Lincoln L. Rev. (2004–2005)

### Articles

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Thomas Schneck, *Patenting Human Life, a Multidimensional Problem*, 32 Lincoln L. Rev. 1 (2004-2005).

Most of the time there is no collision between ethical considerations and established law, including patent law. However, in the area of granting patents on human life or reproductive cloning, there may be a collision. This article examines ethical considerations, present policy, Title 35 U.S.C. § 101, broad approach versus case by case approach, and international treatment of patents involving animals and human life. It appears that cloning human life will be banned under U.S. law in the near future. Patent law can operate synchronously with the new law.

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Kenneth L. MacRitchie, *General Partnership and Similar Interests as “Securities” under Federal and State Law*, 32 Lincoln L. Rev. 29 (2004-2005).

This article analyzes general partnership, joint venture, limited liability company, and limited liability partnership interests as “securities” under Federal and state law. It concludes that the *Williamson v. Tucker* presumption that such interests are “non-securities” creates a moral hazard, under which fraudulent schemes have been structured as general partnerships, joint ventures, limited liability companies, and limited liability partnerships, in an attempt to evade the securities law. This article recommends that the *Williamson v. Tucker* presumption should be set aside, but that the analytical framework of *Williamson v. Tucker* should be retained.

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### 33 Lincoln L. Rev. (2005 - 2006)

#### Articles

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Art Gemmell, *A French Prenup in a California Court*, 33 Lincoln L. Rev. 1 (2005-2006)

This transcript explores conflict of laws. It provides an in-depth analysis of one of three major areas regarding conflict of laws, mainly “choice of law”. The author goes further on the subject by providing and examining a hypothetical situation regarding a French couple in a determination of their French-construed prenuptial agreement when viewed in a California court.

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Hon. Christopher R. Inama, *Is State-Made Law Necessary and Sufficient for the “Great Society”?*, 33 Lincoln L. Rev. 19 (2005-2006)

This transcript provides an analysis of theoretical and philosophical approaches to the designation of our laws and legal ideals; it ultimately determines the impact of state-made laws and whether their influence has necessary or positive bearing on a currently unobtainable, but endlessly sought after “Great Society.”

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Donald E. J. Kilmer and Gary M. Harding, *The Intersection of the First and Second Amendments: Nordyke v. King*, 33 Lincoln L. Rev. 43 (2005-2006)

This transcript explores a unique ninth district court appellate case which raised direct issues under both the First and Second amendments to the United States Constitution. The authors give a thorough background on the Second amendment and its history and the authors dissect core issues by analyzing prior case holdings regarding the amendments interpretation.

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Bradley W. Scheer, *Extensibility of the Attorney-Client Privilege to Registered Patent Agents*, 33 Lincoln L. Rev. 75 (2005-2006)

This transcript examines patent agents in their capacity as binding to the courts for their clients. The author further discusses whether the attorney-client privilege should attach to this relationship between agent and patent author, which is seemingly indistinguishable when in representative capacity than that of a patent attorney to his client/author.

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James E. Towerey and Julia M. Hollenback, *Dividing Attorney Fees Among Successive Attorneys – Settled And Unsettled Areas of Law under Fracasse*, 33 Lincoln L. Rev. 105 (2005-2006)

This article outlines a common problem amongst personal injury attorneys who are forced to divide contingent fees among successive counsel. It examines settled areas of law relating to this dilemma, it focuses on a key case holding where an attorney was discharged and sought declaratory relief for breach of the contingent fee agreement. The article shows the impact the case has had on subsequent rulings based on the matter.

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## Case Notes

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Farzin Forooghi, *The Impact on Federal Sentencing Law and An Update on California Case*, *Blakely v. Washington*, 33 Lincoln L. Rev. 125 (2005-2006)

This case squib discusses one of the most influential cases in American Jurisprudence and Federal criminal law. It has been characterized by a certain Justice of the Supreme Court as having impact similar to that of a “No.10 earthquake or an attack of Godzilla over the city of Tokyo.” Federal sentencing law has never been the same since this ruling by the court.

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## 34 Lincoln L. Rev. (2006–2007)

### Articles

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Bradley W. Scheer, *Indemnification for Patent Infringement Under the Uniform Commercial Code*, 34 Lincoln L. Rev. 1 (2006–2007)

This article discusses the connection between federal patent law and state law under the UCC. The context is discussed in regards to buyers (assignee's) and sellers (assignor's) of patent rights. Best practices for protecting against subsequent purchasers in a securities interest (Article 9) situation is also discussed. Lastly the article discusses how to limit the seller's liability to patent infringement lawsuits brought by third parties.

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Christopher Mckie, *Corporate Communications & Regulation Fair Disclosure*, 34 Lincoln L. Rev. 21 (2006–2007)

A background of Regulation Fair Disclosure is discussed as a need to rectify the problems of the dot-com bubble and subsequent aftermath. The article examines the development, substantive legal questions, and enforceability of Regulation Fair Disclosure.

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### Case Notes

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Neda Shakoori, *Cunningham v. California, An Analysis of California's Determinate Sentencing Law and the Recently-Enacted Senate Bill 40*, 34 Lincoln L. Rev. 45 (2006–2007)

This case note discusses California's Determinate Sentencing Law and its compatibility, or lack there of, with the Constitutional right to a jury trial. Discretionary sentencing as provided by Senate Bill 40 is also examined as a possible "fix" to the Constitutional issues of the Determinate Sentencing Law's.

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