We welcome the class of 2017 and congratulate all returning students on their continued success. For forty-four years Lincoln Law School of Sacramento has stayed true to its mission of offering an excellent legal education at an affordable cost to qualified students and we look forward to our current students adding to that legacy.

At a time when enrollment at many prominent California law schools has dropped by as much as 35%, Lincoln’s current student body is at a very healthy 261 students. Our incoming class of 92 students is an increase of almost 6% over last year and our graduating class of 2014 is our largest since 1997. These successes are due to many factors: an experienced, talented and dedicated faculty; Legal Writing readers who support, educate and encourage our first year students; a very supportive administration, Board of Directors and Board of Trustees; tuition that is among the lowest of all ABA and California accredited schools; an excellent bar pass rate, and hard-working students who through their dedication, desire and determination succeed in balancing their family and work lives while tackling our demanding evening law school curriculum.

Clearly the life blood of Lincoln Law School is its faculty and I will match ours with that of any law school. Our faculty is comprised of private practitioners and public attorneys with expertise in the areas that they teach who have dedicated themselves to Lincoln’s students and who support the School’s Mission through the quality of the instruction they provide. Thanks to each and every faculty member for their continued dedication to Lincoln and its students.

This year we added another extremely qualified instructor to our faculty. Real Property Professor Heather Kenny graduated cum laude from Chapman University Law School in 2005. At Chapman, she specialized in the area of Environmental, Land Use and Real Estate Law. In addition, as a Deputy City Attorney for Suisun City and in private practice she handled issues specifically related to real property including redevelopment, planning, zoning, and land use. Professor Kenny also has extensive experience in election law and she taught a one-unit Election Law course here at Lincoln this past academic year. Please join me in welcoming Professor Kenny.

The Committee of Bar Examiners is in the process of addressing several major issues pertaining to legal education. The one change that has been finalized is the addition of Civil Procedure to the MBE subjects tested on the bar examination starting with the July 2015 exam. Serious consideration is also being given to shortening the bar examination from three days to two. The Committee of Bar Examiners has also proposed that students be required to take a minimum of fifteen units of practical skills training prior to graduation. This same proposal also includes fifty hours of pro bono/law bono hours while in law school or within the first year of licensure and an additional ten hours of practical skills Continuing Legal Education also within the first year of licensure. The impetus for these changes and the emphasis on practical skills and experience arises from the mission of the Committee of Bar Examiners to protect the consuming public. The reasoning is that more graduates are going into solo practice than in recent years and the more practical experience they have, the better the public will be served.

I recently attended the Committee of Bar Examiners Law School Assembly Meeting with the deans of State Bar Accredited, American Bar Association accredited and unaccredited California law schools. All of the proposals were discussed at this meeting and an Implementation Committee for Admissions Regulation Reform is being formed to determine how to best implement these changes. We have been assured that if any changes are made they will be prospective only and that the changes will not impact currently enrolled students. Rest assured we will do our best to present arguments which best benefit Lincoln Law School and other California Accredited Law Schools.

By the time this article is published the results of the July, 2013 Bar Examination will be released. We are very hopeful that the passage rate will continue the upward trend we have seen in recent years. In this regard, it is noteworthy that the Committee of Bar Examiners recently amended the Guidelines for Accredited Law School Rules to include a minimum pass rate of at least 40% of all students who have graduated and taken the Bar Examination in the last five years. I am very pleased to report that Lincoln’s pass rate over this period is 74.8%, well-exceeding the State Bar minimum for continued accreditation.

Thanks to our students who enhance the Lincoln Law School learning environment. The Student Bar Association, Delta Theta Phi and the Black Law Students Association devote time and effort to educational, social and philanthropic endeavors all of which benefit the quality of education and enjoyment of school life. A special thanks also goes to the editors and contributors to the Voir Dire. Through this quality publication, students learn about interesting legal topics, study tips, changes in law school education, a student view of Lincoln’s professors and administrators, and other informational matters relevant to student life.

By all accounts the reputation of Lincoln within the legal community is growing with each graduating class and we are continually looking for means by which we can improve the quality of your educational experience. I have an open-door policy and should you have ideas or suggestions for how we can improve our program, or comments about what we are doing that is right, please share them with me in person, by phone or email.

Sincerely,

James M. Schiavenza
Over the last two years, I have had quite an education. Not only have I been learning the ins and outs of Lincoln Law School, but I’ve also been learning about higher education in general. Moving into the position of director within our family-owned school, I felt an obligation to all involved to gain as much knowledge as I could within this field. To accomplish this, I chose to return to college to attain an M.A. in Education Leadership and Policy in Higher Education at California State University, Sacramento.

I am nearing the end of my studies there and am now focusing on my final project for graduation. I chose a topic to research that I believed to be of great interest to the viability of our school: the future of online education. What is happening with online education as it relates to law schools? Everywhere one looks, online education is there. It’s continually reported on and studied extensively. But how does this ever-increasing mode of learning affect us here at Lincoln? That is what I ventured to examine.

At Lincoln Law School of Sacramento, we have continually strived to improve the learning experience for our students. With that goal in mind, would implementing some form of online education enhance our curriculum? Currently, we are at the very preliminary stages of exploring this new frontier in legal education. Several possibilities that members of the Board of Directors, along with the dean and faculty, have come up with are as follows: (1) videotaping live courses with the intent of uploading them for later viewing, to allow for additional study review; (2) "flipping" the classroom, which entails uploading of the professor’s lecture ahead of the class time for viewing by students prior to class. Then, once in class, faculty and students are better able to utilize their time together with more interaction and discussion of the previously viewed lecture; (3) offering fully online elective courses. We would not offer any core classes in this format. These are just a few ideas that have been discussed.

Ultimately, this decision of incorporating an online element into our traditional law program would require extensive thought and study. There are many factors involved in taking on such a change in the mode of educating law students. State Bar accreditation standards are to be strictly adhered to. In this regard, the Committee of Bar Examiners of the State Bar of California allows 12 units of online education to be applied toward a J.D. degree.

Therefore, I would love to hear from you, the student whom this would most affect. Have you had online courses before? Did you enjoy them or find them lacking? How would you feel about being offered some form of online coursework at Lincoln? Your input would be of great value to us while we’re examining this topic.

I, along with all those involved with the administration at Lincoln, are dedicated to our school’s mission of offering the highest quality legal education at a reasonable cost to all our dedicated students that persevere through four years of an evening law program. Your interests are truly at the heart of all our decisions.
Dear Readers,

We are honored to be your 2013-2014 Voir Dire editors. It has been an enjoyable experience thus far and we hope you find the articles to be both interesting and timely. Thank you to the authors for finding time in your already busy schedule to contribute to this edition of the Voir Dire. A special thank you to Janine Baker for proofreading all of the articles. Your participation was crucial in compiling this issue.

Welcome to Lincoln Law School, class of 2017! We hope you’ve enjoyed your first year at Lincoln so far. "Enjoyed" might be a strong word to use at this point, but we assure you all of your hard work is worth it. You have embarked on a life-changing journey; no one said it would be an easy one. If you find yourself needing help reach out to your classmates or to those of us that have been where you are. Everyone is rooting for you to succeed.

To the class of 2015 and 2016, congratulations and welcome back! Your hard work and dedication has paid off. Keep up the hard work because graduation is right around the corner. We know that we will be leaving this school in the most capable of hands. Best of luck this year!

Finally, welcome back to our class, the class of 2014! In 2010 this seemed so far away. Now with one semester to go until graduation we are so close to taking that enormous sigh of relief - and then seven months away from the real sigh of relief, but let’s take this one step at a time. We have been through a lot as a class over these past three and a half years. Sometimes it seems like we see each other more than we see our actual families. The end is finally in sight.

If you are contemplating applying to Lincoln, it is not a decision that should be made lightly. Law school is a huge commitment, not only for you, but also for your family, friends, and significant others. That’s not to say you shouldn’t do it. Just be prepared to work hard. Four years is a big commitment. In making the decision to attend law school, a good friend once said, the next four years are going to pass anyway; you might as well have your law degree at the end of them. It has truly been a great experience. The sense of community that is formed among your class during your time here is something that you will simply not find at other law schools. We have never once regretted our decision to attend Lincoln and we are confident that you feel the same.

To the alumni of Lincoln Law School, we are delighted to join your rank in just a few short months. Thank you for giving us such impressive footsteps to follow in. One thing we have learned during our time at Lincoln is that our school has a stellar reputation within the Sacramento legal community and we all have you to thank for that.

Sincerely,

Samantha Cypret and Rebecca Deane-Alviso

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After being an active member of the Student Bar Association (SBA) for the last couple years, I am excited to address you now, as the new President of the SBA. The SBA is Lincoln Law School’s student government, whose goal continues to be helping our fellow classmates have fun and enjoy the law school experience to its fullest! We do this by hosting weekend events where we encourage the participation of family and friends, and with weekday socials filled with coffee and snacks to help us get through our evening classes.

This year, the other SBA officers and I did our best to introduce ourselves to each and every one of you during our "Welcome Week." We tried to "prepare" you for the semester with the Lincoln Law School pens, highlighters and bottle openers that were handed out. If you need to restock on supplies, don’t hesitate to ask, and we’ll make sure to take care of you!

As the semester moved forward we hosted our annual Welcome Back Picnic at the beautiful McKinley Park. We had an outstanding turnout from all the classes, faculty, staff, and alumni. It was great to see our families interact and get to know each other, and it was even better seeing everyone participate in three-legged race, obstacle course, and volleyball games.

After our October midterms, the SBA wanted to help everyone celebrate, so we hosted a mixer at Vanguard. This is one of Sacramento’s newest and trendiest nightclubs and we arranged for VIP treatment, which included exclusive use for two hours prior to the venue opening, filled with appetizers and drinks for us to enjoy with our friends, faculty, and alumni. It was a great way to refresh ourselves for the next round of exams.

November continued to be a busy month as we helped facilitate a healthy competition among the classes while serving the community with our battle between the classes canned food drive. We were truly overwhelmed by everyone’s participation. In total, we were able to collect over 5,500 items! Congratulations to the Class of 2016 for winning the class competition by collecting 3,300 cans! As the month came to an end it was great to see students represent Lincoln Law School in Run to Feed the Hungry. I had fun that morning spending time with everyone. What a perfect way to start the holiday season!

Finally, I want to thank our SBA officers, Vice President Lucy Sarkysian, Secretary Gabe Lieberman, and Treasurer Jackie Jaynes-Creel, and the SBA class representatives. Without their hard work and dedication, none of the events would be possible. I would also like to thank our amazing front office team for assisting and facilitating in communication. It’s because of this team that our flyers are e-mailed out to you. Last but not least, thank you to everyone who participated in our fall activities. Without you, our first semester for the 2013-2014 school year would not have been the success that it was.

Happy studying and I am looking forward to our Spring semester!
Delta Theta Phi is a professional legal fraternal organization committed to providing a spirit of cooperation by offering an opportunity for lawyers and law students to promote their personal, professional, and intellectual growth through networking, leadership training, scholarship, guidance, and a collective responsibility to the fraternity and the future of the legal profession. Delta Theta Phi is the only law fraternity that publishes its own authoritatively recognized law review, *The Aldelphia*.

Delta Theta Phi has an extensive international membership with some very prestigious alumni. Some prominent members of Delta Theta Phi include: Lynden B. Johnson, Calvin Coolidge, J. Edgar Hoover, Dan Rather, John Grisham, Oliver Wendall Holmes, and Sandra Day O’Conner. The Earl Warren Senate at Lincoln Law School continues to grow and expand. We now boast a membership of over 60 members. Our growth has allowed our Senate to expand our programs and host additional events.

One of the big events for the Earl Warren Senate took place over the summer. The national Delta Theta Phi Biennial Convention which took place in Minneapolis, Minnesota, from July 31 to August 4, 2013. This year’s convention was especially important as it was in celebration of the 100th year anniversary of the amalgamation of Delta Theta Phi. The Earl Warren Senate was fortunate in that it had the resources to send two members this year, Ryan Davis, our Vice Dean, and Carly Stockman, Delta Theta Phi Class Representative and President of the Student Bar Association at Lincoln Law School.

There were a number of committee meetings that addressed many of the goals of Delta Theta Phi as an international organization. Additionally, there were speaker events where our representatives were able to learn from prominent lawyers from many parts of the country. Ryan participated in an oral advocacy competition where he had the opportunity to present information about our Senate’s programs and activities. Our representatives had the opportunity to network and were pleased to find that there are a number of active chapters of Delta Theta Phi throughout California and around the United States.

Finally, the Earl Warren Senate was proud to bring home the award for "Most Outstanding Professor of the Fraternity in the Region" to honor Dean James Schiavenza, who has done a wonderful job supporting the Earl Warren Senate as it expands as a new fraternity at Lincoln Law School.

We kicked off the school year with our third annual poker tournament at Limelight Card room. The tournament was again a sell-out and a huge success. Professor Davis and Dean Schiavenza joined us for a fun, and slightly competitive, afternoon of poker and our winners walked away with some excellent prizes donated by local businesses.

In November, we were honored to host Judge Cynthia Gomez for our Fall Speaker Event. Judge Gomez is Governor Brown’s Tribal Advisor and Executive Secretary for the Native American Heritage Commission. As Tribal Advisor, Judge Gomez serves as a direct link between the Governor’s Office and tribal governments on matters including legislation, policy and regulation. In addition to her appointment, Judge Gomez has been the Chief Justice for the Shingle Springs Band of Miwok Indians Tribal Court since 2010. Judge Gomez spoke regarding the constantly evolving area of tribal law, specifically many of the issues regarding jurisdiction.

The Earl Warren Senate also expanded its review session schedule to host midterm sessions for the 1L, 2L, and 3L classes this year. We would like to give a special thank you to James Arrasmith, Mitch Miller, and Jamil Ghannam for leading the sessions and sharing their extensive expertise with the other classes.

As we move forward to the spring semester, we are excited for our annual Bowling Tournament and our Spring Speaker Event. The goal of Delta Theta Phi is to help members succeed both in law school and after graduation. While success in the classroom is very important, it does not always equate to success in the legal world. The contacts and friends we make now will catapult us later into the dream we are all striving for.

Should you have any questions about our upcoming events and programs or if you would like to request an application, please email LincolnDTP@gmail.com. If you are interested in joining Delta Theta Phi, please fill out an application and submit it with your $80 initiation fee. This fee covers your time in law school and 2 years after graduation.
On March 3, 2013, the National Black Law Students Association (NBLSA) was chartered at Lincoln Law School to endorse greater retention amongst students on campus. The promotion of the organization was the drive of the Lincoln Law School NBLSA President, Kaliah Kirkland, in an effort to provide educational resources to address the retention rate of African-American students in law school.

Founded in 1968 by Algernon Johnson while a law student at New York Law School, the first Black American Law Students Association (BALSA) was formed to stimulate retention amongst the black students within the New York Law School. As time progressed and BALSA at the New Law School gained national attention, BALSA became known as NBLSA to encompass all ethnic variations of those identified as black who may not be of American decent.

Since the conception of NBLSA, annual conventions are held to unify members from across the nation. NBLSA has chapters at nearly every national and state accredited law school. Today NBLSA is the largest student run organization with over 6,300 students and has even expanded to Canada, forming the Black Law Students Association of Canada (BLSAC).

At the heart of chartering NBLSA at Lincoln was the drive to give back not only academically, but financially as well. By partnering with the Wiley E. Manuel Bar Association of Sacramento County, a local organization of African-American attorneys who reside and practice within the Sacramento legal community, Lincoln’s BLSA members, Jody Johnson and Christina Berry-Lighter were awarded academic scholarships worth over $1,000!

Annually, Lincoln’s BLSA holds many events that are inclusive to all students from congenial networking events, to events catered towards academic assist. The BLSA at Lincoln has exposed students to networking opportunities from the Wiley E. Manuel Legal Fusion Event to BLSA’s 1st Annual Job Fair.

With a constant focus on retention while in law school with pre-exam review sessions, adaptable retention skills necessary when preparing to take the State Bar are vital to BLSA as well. As national partners of Themis and Kaplan, nationally recognized Bar preparation courses, NBLSA offers its members both prep courses at discounted rates, in addition to different discounts available from NBLSA for travel, books, etc. BLSA at Lincoln has extensive connections within the legal community and has managed to offer BLSA members internship opportunities at the State Assembly and Federal Public Defenders Office.

During the holiday season, BLSA participated in a Holiday Toy Drive benefitting the kids of the Oak Park community and provided toiletries to the homeless living around Lincoln.

We would also like to thank our Faculty Advisor, Professor Rouse, for his continual support and for opening his home for BLSA’s 1st Annual End-Of-The-Year BBQ. A special thanks to Linda Smolich and to Dean Schiavenza for your presence at our events and for mentoring BSLA.

To Eugene Willis, 4th year BLSA member, congratulations and good luck with the Bar!

For more information about BLSA, please add BLSA on TWEN, or feel free to email us at nblsalls@gmail.com.
On October 17, 2013 representatives from the Student Bar Association, Delta Theta Phi, and the Black Law Student Association along with Dean Schiavenza attended this year’s Unity Bar Gala Dinner. The Unity Bar is an association of South Asian Bar Association of Sacramento, Wiley W. Manuel Bar Association, La Raza Lawyers Association of Sacramento, Leonard M. Friedman Bar Association, Sacramento Lawyers for the Equality of Gays and Lesbians, Asian/Pacific Bar Association of Sacramento, and Women Lawyers of Sacramento.

Lincoln Student Jody Johnson was the recipient of a scholarship from the Wiley W. Manuel Bar Association, who had the following to say about him:

Jody completed his undergraduate studies at California State University Sacramento where he obtained two Bachelor’s degrees, one in Government and one in Philosophy. At Sacramento State, Jody was a track star who lost and then regained his own athletic scholarship. He then mentored other student athletes and at-risk upper classmen to assist them to matriculate college. After graduation, Jody has continued his work with Sacramento State students, where he currently serves as a Special Consultant to the school’s athletic department.

Jody’s commitment to mentorship inspired him to create his own mentorship organization, RoccSolid Advisement, assists inner city youth in developing essential life skills to increase their probability of success.

In his current capacity as a 3L at Lincoln, Jody is a Council on Legal Education Opportunity Scholar and treasurer of the Black Law Students Association. In addition to his mentoring work, Jody, who is a single father, is also a Legal Intern at the Office of the Federal Public Defender for the Eastern District of California. He previously worked as an Investigator Intern in that same office.

In addition, Lincoln’s own Lucy Sarkisyan received a scholarship from the Women Lawyers of Sacramento. They shared the following about Lucy:

Lucy is a 2L at Lincoln Law School, and her achievements are consistent with the Women Lawyers’ goals of advancing the position of women in law and society.

Lucy recently proposed to the administration of Lincoln Law School the creation of a women’s student association called "Women’s Justice Society." She noted that many women at Lincoln are juggling family, job, and school obligations, and thus they often have a difficult time being successful in law school.

By conducting some research, she learned that many people, particularly women, achieve greater success in accomplishing goals when they have support from friends and colleagues. The purpose of "Women’s Justice Society" will be to provide a source of encouragement, motivation, and support to the women students at Lincoln Law School. Planned activities include a mentoring program, networking events, guest speakers, and academic support.

-- Photos courtesy of Christina Cortino Photography
"The times they are a-changin’" said Bob Dylan in the 1960s. Indeed the world in which we live is again undergoing great change, and that includes the California State Bar. The folks at the State Bar have observed a number of unique challenges recent bar admittees face and, in response, have decided to make some changes. One of the following is a confirmed change that will go into effect beginning February 2015, and others are merely proposals that have a good chance of being adopted in coming years.

First I’ll begin with the confirmed change. Beginning with the February 2015 Bar Examination, the Multistate portion will include testing on Civil Procedure. This portion of the Examination consists of 200 multiple choice questions, 190 of which are scored with the remaining ten being unscored experimental questions. The following subjects will be given approximately 27 questions each: Contracts, Torts, Real Property, Criminal Law/Procedure, Constitutional Law, Evidence, and now Civil Procedure.

Now to the unconfirmed proposals under consideration. First, the State Bar is considering changing the Bar Examination from 3 days, as it is now, to 2 full days. If the proposals were to go into effect, our future Examination would look like this:
- Day 1 AM - 3 one-hour essays
- Day 1 PM - 2 one-hour essays and 1-90 minute Performance Test
- Day 2 AM - 100 MBE questions
- Day 2 PM - 100 MBE questions

Secondly, the State Bar is considering a proposal to add several pre-admission practical skills training requirements. There are several reasons for this, but the two most prominent are: 1) the decline of traditional post-law school formal training opportunities, and 2) the increased number of inexperienced self-employed new lawyers. The specific practical skills training requirements being considered are:

A) Fifteen units after the first year of school are to be dedicated to developing practical skills and serving clients. This requirement includes, but is not limited to, training on Oral Advocacy, Advanced Legal Research and Writing, Negotiations and Alternative Dispute Resolution, Client Counseling, Witness Interviewing and Investigative Techniques, Law Practice Management, Practical Writing (pleadings, contracts, etc.), Trial Preparation and e-Discovery, Basics of the Justice System, and Professional Ethics. Alternatively, the State Bar is willing to allow Bar-approved clerkships lasting six months or more as a substitute for the 15 unit requirement.

B) Fifty hours of pro bono or low bono legal services, which may be satisfied after the first year of law school but no later than one year after passing the Bar.

C) After passing the Bar, ten additional hours of Mandatory Continuing Legal Education (MCLE) coursework specifically on a practical skills topic. These hours are in addition to the normal MCLE requirement if you are a new lawyer.

Alternatively, participation in a Bar-approved mentorship program may be used as a substitute for this requirement.

With regards to the 15 unit practical skills requirement, Lincoln Law School currently offers the following courses that may already satisfy some of the requirement: Moot Court -2 units, Trial Advocacy -3 units, Legal Research and Writing -2 units, Advanced Professional Responsibility -2 units, and Legal Analysis -2 units. Additionally, Lincoln offers the following electives that may also satisfy the requirement: Alternative Dispute Resolution/Negotiations -1 or 2 units, and Legal Internship -1 to 4 units. Nevertheless, it is obvious that if the proposals are adopted there will be significant changes made to the curriculum here at Lincoln.

As to the timing of when we could expect these changes to go into effect, the State Bar wants to gradually phase the changes in. They are considering implementation of the first post-admission MCLE/mentoring requirements as soon as 2015, then the 50 hour pre/post-admission pro bono/low bono requirements in 2016, and finally the classroom requirements possibly as early as 2017.

Although the above proposals have not yet been adopted, the Bar is giving serious consideration to them and we all should be alert and ready to comply so there are no hindrances to our future careers. Dean Schiavenza informed me that he and other law school deans are keeping tabs on the development as it unfolds and will release new information as it becomes available.
Law School: a To-Do List

By Samantha Cypret

The first time I walked through the door of Lincoln Law School in 2010, a graduation date of May 2014 felt like it was an eternity away. At that time, I thought that all I needed to do to become an attorney is pass my classes. Make no mistake about it - earning solid grades is the most important piece. Preparing for a successful legal career, however, involves a lot more than attending class three nights a week. After surveying a number of students, professors, and young attorneys, I compiled some goals for each year of law school. This is, by no means, an exhaustive list of everything you can do while in law school nor should you attempt everything on this list.

Pre-First Year
If possible, take pre-first year classes. These classes really help ease you in to law school. Additionally, they tend to be much smaller classes than the first year class giving you the opportunity to get to know your classmates and begin building friendships. Most importantly, they count towards your ten elective units that are necessary to graduate.

1st Year
It is required that you register as a First Year Law Student with the California State Bar within 90 days of starting law school. The cost of registering is currently $108.

The challenge for most first-year students is getting used to law school. For most students, law school requires a different type of studying than during undergrad. It is very difficult, if not impossible, to "cram" in law school and be successful. You must start studying early. There is absolutely no short cut you can take. With that said, use your first year to experiment with different study methods, e.g. study groups and study aids. There is no right answer for everyone, so don’t be afraid to admit that one group or method might not be the right fit for you.

Next, spend the time to get a solid grasp on the fundamentals of legal writing. Most people have never heard of the "IRAC" method prior to starting law school. Learning how to write properly is a huge component to your success in law school. It does not come naturally so spend time getting comfortable with IRAC. The easiest way to become comfortable is by writing practice exams. Most professors encourage practice exams and will give you helpful feedback.

You should also start researching the various Bar review courses which are available to you. The Bar may seem far away now, but it is right around the corner. The courses can get expensive, but there are some creative way to control the costs. Some courses offer the option to place a small deposit in order to lock-in your rate for the course; this is an excellent idea as prices increase every year. You may also start making payments toward the total cost of the course. Doing this will help pay down the balance so you will not have to come up with such a large amount of money during your fourth year. Finally, consider becoming a representative for the company; you will save money on your own class.

Should you decide to take the Multistate Professional Responsibility Exam (MPRE) following first-year, each of the Bar review courses offers, generally, a free MPRE course. This is an excellent opportunity to try-out different courses without fully committing to that company for your Bar review course. Make sure to register for the MPRE as early as possible. The nearby locations tend to fill-up quickly and you don’t want your first choice to become unavailable. The cost of the MPRE is currently $80.

Finally, take the time to learn more about the organizations, both at Lincoln and in the legal community available to you as a law student. Lincoln has three student organizations: the Student Bar Association (SBA), Delta Theta Phi Law
Continued - Law School: a To-Do List

Fraternity (DTP), and the Black Law Students Association (BLSA). There are several legal organizations outside of Lincoln for nearly every specialty and group. Find what interests you and start researching the available organizations. The Sacramento County Bar Association has a number of different sections for different areas of law. Nearly every section has a monthly lunchtime meeting at a local restaurant and typically each meeting has a keynote speaker. Meetings are open to law students and they even offer a reduced rate for your meal. Organizations like these are great way to network with other students and attorneys.

2nd Year
First and foremost, celebrate! You made it! However, make sure that you aren’t celebrating so much that you forget about your classes. Many students find the material in second year to be more difficult than the first. Do not take anything for granted this year.

Begin (or continue) working on your elective units, either during summer school or the Saturday elective classes. You need ten elective units to graduate and you should not wait until third year to start completing them.

If you have chosen to become a member of any organizations, think about taking a leadership role. Getting involved is a great opportunity to network and it also looks great on a resume. Speaking of a resume, take the time to update your resume and cover letter. This is will be very helpful as you begin looking for internships.

Finally, begin to reach out to local attorneys who practice in the type(s) of law that you are interested in. Many attorneys will be happy to sit down with you to share their knowledge and experience. This is a great opportunity to learn from experts in your field.

3rd Year
During third year, you will begin to see the light at the end of the tunnel. You are getting close to graduation so now is the time to start looking for internships. Internships are such an amazing opportunity to gain practical experience and you may complete up to four elective units through Lincoln’s internship program.

Additionally, on your first day of Evidence, you can become a Certified Law Student. As a Certified Law Student, you can operate under a practicing attorney’s bar number which will allow you a broader range of opportunities in your internship. You must apply through the State Bar and the cost to register is $55.

Next, if you haven’t done so already, begin to make your plan for how to finance your Bar preparation time. Many people do not work while studying for the Bar so make sure to account for that in your plan.

Finally, begin to gather the information for your Moral Character Application. The application requires an extensive amount of information including your complete work and residence history. Depending on the length of your history, this may take quite a long time. The Application takes at least six months for the Bar to process so begin early. The cost of the application is $500.

4th Year
Submit your Moral Character Application early in your fourth year. Additionally, you must also be fingerprinted. Your fingerprints must be recent so make sure to not complete your fingerprinting too early.

If you have not completed the MPRE yet, register and complete your exam. Lincoln offers the opportunity to take the AdaptiBar course for a reduced fee of $147.50. AdaptiBar is a bank of multiple choice questions to prepare for the second day of the Bar exam.

Finally, if you are planning to take the Bar after graduation in July, registration will open in March. The cost of the Bar Exam is $614 plus $139 if you plan to use your laptop.

This all may seem very overwhelming and that is because it is. Law school is not an easy proposition. However, with enough planning and foresight, you will be very well-prepared to enter the legal profession following graduation. Best of luck!
Law School Check List

1st Year
1. Register as a 1st Year Law Student with the State Bar of California within 90 days of starting law school ($108).
2. Learn to IRAC.
3. Research organizations that interest you in the legal field.
4. Learn about all the bar review courses available to you.
5. Take the Multistate Professional Responsibility Exam ($80).
   *After Professional Responsibility

2nd Year
1. Celebrate! You made it!
2. Start working on your elective units.
   *Must complete 10 elective units to graduate
3. Get involved with legal organizations that interest you.

4th Year
1. Submit the Moral Character Application ($500 + fingerprinting).
   *Takes 6 months to process
2. Register for Adaptibar ($148).
3. Register and pay for your chosen Bar Prep Course ($0–$4300).
4. Pass the Multistate Professional Responsibility Exam ($80).
5. Register for the Bar Exam ($614+$139 laptop fee)
   *Register in March for the July exam.

3rd Year
1. Find an internship.
   *If applicable, Register as a Certified Law Student with the State Bar ($55).
2. Gather info for Moral Character Application.
   *Residence and employment history
3. Make a financial plan for your Bar Preparation time.
I had the fortunate opportunity to sit down with Lincoln Law School’s new Real Property professor, Heather Kenny. Below was our get-to-know you conversation.

Where did you grow up?
I grew up in Orange County, CA and did my undergrad work at California State University, Fullerton.

Where did you attend Law School?
I went to Chapman University in Orange, CA.

What are your personal hobbies?
Not quite as many as I had since before I went to Law School. My husband and I like to spend time in San Francisco. I’m an Angels fan so we go to baseball games. We also like the theater and I read a lot. I never had hobbies while in law school and sort of regret it.

What was your first law position out of law school?
I worked for Best, Best & Krieger in Southern California, which is a state-wide firm with six offices. They are the largest municipal law firm in California. Then, when I moved up here six years ago, I began to work for myself. I work for clients doing consulting and legal work in independent practice. I mostly do elections and land use issues.

Is this your first teaching position?
Yes, for a law school but I have done weekend seminars and legal workshops for city officials and pre-law types interested in going to law school.

Why did you want to teach at Lincoln?
I wanted to work with part-time students. I, myself, was a part-time student and worked full-time and it’s a different feel in the class and I love working with part-time students.

What is your best advice you can give a law student?
Probably a couple of things. First, whatever practical experience you can gain whether that be clinics, interning, filing in a law office, even if it’s just for a few hours a week, you will experience things that you cannot pick up in class. The second is not to get caught up in the minutia of law school. Like the stress of studying. Take a step back and look at the big picture. It’s what I am trying to do with this class [Real Property]. I don’t want them to focus too hard on one specific area of the law but to look at why we are doing certain things. You know, to think critically. None of this is about really teaching you the law but to teach you how to think and analyze so when you are out in practice you know that when a client comes to ask you for advice or with questions, you’re not always going to know the answer. The question is: Do you know where and how to find the answer?

The third thing is not to rely too heavily on a computer; like assisted research like Westlaw and Lexis. Learn how to use the library and find cases in the book. You aren’t going to have everything you need all the time and sometimes the books will be invaluable resources and sometimes you will find important info in a book that you cannot find on Westlaw or Lexis.

What would be your best advice for the bar exam?
Again, two things. First, any way you can take a prep course. And take the time solely on taking the bar. Do it! It’s absolutely worth it. Do everything you can to study and study hard. I did Barbri, PMBR and MBEs, I sat solid for two weeks and did essays and outlined myself and did MBE questions. The best way to learn a class is to sit down and outline for yourself. You should not rely totally on commercial outlines. It seems like a pain but you get an overview of the class that you don’t necessarily get when you’re in it. I attribute passing the bar the first time to Barbri’s structure and time management. If you can take a course, do whatever you have to do to pass it the first time because you don’t want to have to do it all over again. Make the investment. It will be worth it.

Last and most important question. What is your favorite and best food dish you can make?
Oh I’m not a very good cook. I just started cooking like three years ago. I had to call my mom to ask how to cook a hard boiled egg but I make an awesome enchilada chicken now!
A longstanding tradition in the legal profession is the grooming of new lawyers through apprenticeship and mentoring by those more experienced in the occupation. In respecting this institution, Lincoln Law School’s academic elite have prepared advice for those following in their path. As successful attorneys have shared their tips and tricks of the trade, some of the techniques of current learned students have been compiled as a guide for the next generation.

From the Class of 2014

Jamil Ghannam: Third year wasn’t necessarily any harder, just different. At first you think Evidence is so overwhelming and the same with Constitutional Law, but once you get down to it and outline and memorize it is no different than any other course. Of all the courses thus far, the 3rd year courses to me seemed to be the most interesting subject matter. Towards the end of the year I did spend a bit more time memorizing for Evidence. At the tail end of the 2nd semester there is quite a bit of material and rules to memorize, but also the class was incredibly interesting and the application of the rules fun (for me, I’m a dork).

Outline as you go and put in small chunks of time to memorize your rules. You will not be able to memorize all of Evidence or Constitutional Caw or Business Organizations in one day, and that is the absolute worst thing you can try to do. You simply need to space things out, put in an hour or two, and come back the next day and go over it all again for an hour or two and so on. Repetition is key. Structure, routine and consistency are how I would best describe my study methods. As a law student who also works full time you, this is the only way I can get it all done and do as well as I have. Although everyone is different, I really feel that a standard routine on how to approach reading the textbooks, putting in time for outlining/memorizing and prepping for exams is necessary to do well.

The key is really sticking to the routine and writing practice exams. Your first exam will be complete, absolute garbage. It’s not until the 3rd, 4th, 5th, practice exam you’ve written where you’ll really be able to feel confident in your knowledge and application of the rules. At least for me that’s how it is. And I find time to write at least the last 4-5 years prior exams for each subject. Again, making it all work in my schedule of only 2-3 hours a day, max. During regular school I’d only study on those days I have class. As exams approach it can nearly become 5-7 days a week, but again, I only would work for a few hours of that day, NEVER for the entire day.

Kyle Jones: My study methods were certainly different from first or second year, I did my best to prioritize learning the concepts behind the law and not worry about memorizing rules verbatim. Rather than write out tests my study partner and I would issue spot then practice writing out the rules which we would use for the fact pattern. This method of learning the rules seemed to help me bypass a bit of time that I would have spent going over my flash cards. It also gave me a clear indication of whether or not I actually knew what the rule meant. The analysis part of the practice test was more of a discussion between the group.

I feel like I limited my study time a bit more than others, if I pushed myself and studied...
for more than six or eight hours, the return was not worth it. A good night’s sleep helped me retain more information and get ready for the next day of study.

From the Class of 2015

Jennifer Brown: I usually start with an outline that was prepared by another student (a predecessor) and then modify it to produce my own final outline. I work with my study partner to produce our own template approaches—usually, we look at the professor’s sample answers of previous exams to develop our approaches (of course, being mindful of changes in the law from previous years).

What I found really helpful was to listen to the audio Fleming lectures throughout the year. If I had the foresight, I would listen to the subject (of the particular course) before the class session in which that subject area was being taught. That way it reinforced the concept when the professor began teaching the subject in class. I have a terrible memory, so I had to work really hard to memorize the black letter law—so I recorded myself doing flashcards and would then listen to myself and repeat the rules out loud on the way to/from class.

Cory Irish: I have found that reading about these concepts in hornbooks, commercial outlines or (my preference) Lincoln student outlines before the topic is covered in class helps me to better understand the concept once it is covered. Additionally, I highly recommend downloading and reviewing old exams and student answers as early in the semester as possible.

I try to read and write as many exams as possible. Actually writing the exams is always preferable; however, if I am running out of time, I have found reading more exams and outlining my answers to be more helpful than reading fewer exams and writing full answers. Writing or outlining exam answers will cement the rules of law into your brain and will help accustom you to each Professor’s writing style.

Mitch Miller: The most beneficial is, during the normal course of the school year, to understand the rules from the cases (or that the professor provides) and outline them properly. Professor Gevercer specifically reviewed at the beginning of every class and it was important to have a properly structured outline with accurate rules and important cases, because there was no final review class. During the school year, this outlining helps in understanding the concepts as the year progresses. Understanding concepts early makes the memorization later much easier. It also makes understanding how the concepts fit together easier, which affects how accurate of a template you make.

From the Class of 2016

James Arrasmith: I did not participate in any formal study groups, but I did very frequently get together with my classmates to go over outlines and previous examination questions together. We would read a past examination and then orally IRAC it to come up with the best method to handle a similar fact pattern.

I found it very helpful to consult with commercial outlines and hornbooks in order to better understand the material. I neither produced my own outlines nor changed the outlines that were handed out by my professors. I used the commercial outlines and hornbooks to gain an understanding of the material, and used the outlines handed out by my professors to use on the exam.

Good luck. The most important thing to remember is that, when it comes down to it, the grade you receive on an examination is just a number on a piece of paper. A good friend of mine received a “D” on his criminal law midterm. He needed to get a “B+” or higher on the final to pass the class and move on to second year. Undeterred, he studied like a maniac and pulled it off—getting an “A” on the final and a “B+” overall in the class.
What made me want to go to law school was my upbringing. I grew up in the mid-1960s in a time in American history that was extremely influential, specifically for African Americans. There were the Voting Rights Act, Brown v. Board of Education and other desegregation cases, people were trying to earn the right to sit at the front of the bus, trying to earn the right to make a living wage, and meanwhile the Vietnam War was going on. While growing up, I was expected to achieve despite the fact that I came from humble beginnings and grew up very poor in the projects. However, I wasn’t so concerned about being rich or making a salary as much as I was concerned with making a difference and trying to make an impact on some of the things we were going through as a community and as a nation. As a child I always wanted to do something to give back. I grew up in San Francisco in a place called Hunter’s Point, and I remember at a very young age telling my mom I wanted to be a lawyer. My mother was very active in the community and involved in many of the big issues of the time; she impressed upon us that we should give back, and do something to make a difference. I thought that the law was a great way to address and redress some of the things that were happening in society and this made me want to go to law school and become a lawyer.

When I started thinking about being a lawyer, and it became clearer in my mind that is what I wanted to do, I started thinking that I wanted to be a judge. My mom was a probation officer, so I was fortunate that I was around the courthouse in San Francisco, and I got the chance to talk to a number of judges, and would often tell them I wanted to be a judge. It was really neat because a lot of the judges that I spoke to were very encouraging. They told me that I could be a judge and things that I needed to do in terms of law school and to keep on the right path. That was fairly early on.

I went to high school at Christian Brothers Sacred Heart high school in San Francisco. I had good experiences with Christian Brothers in high school. They put me in a position of leadership and allowed me to grow. When I went to college, I decided that I would go to Stanford or Saint Mary’s. I was interested in going to Saint Mary’s College in Moraga because of my positive experiences at a Catholic high school.

I was not accepted into Stanford, but I was able to go to Saint Mary’s. I had great experiences there - I was parliamentarian of the student senate, president of the Black Student’s Association, involved with the radio station, and a manager on the men’s basketball team. I also worked as a tutor for minority students and was a resident advisor in the dorms. I had an English major and Economics minor in undergrad as I thought this would be a perfect combination for law school.

When it came time to go to law school, there were two schools I wanted to go to - Davis and Hastings; I was fortunate in that I was able to go to Hastings; I wanted to be back in the city, as I had missed being in San Francisco for a while.

When I entered law school I had the notion that I did not want to do transactional work - I felt that I would like trial work, and I found that to be the case. I went to work in the San Francisco District Attorney’s Office as a law clerk while I was in law school.

Upon graduating from Hastings and passing the bar, I was able to get a job in the District Attorney’s Office in Alameda County as a prosecutor and had a very positive
experience. After about five years, I was approached to put my name in as a judge. At that time, there was a municipal and superior court. The municipal courts have since been abolished, but it used to be the case that if you had five years of experience as an attorney, you could submit your name to become a municipal court judge, and if you had ten years of experience you could become a superior court judge.

When I was approached regarding the municipal court judgeship, I was asked to change political parties; in addition to not wanting to change parties, there were certain types of cases that I wanted to experience as an attorney prior to taking a judgeship, so I declined the position. Around my tenth year working as an attorney I decided to apply for a state superior court judgeship. The appointment process for a superior court judge requires that one submit an application, you are then vetted by the Commission on Judicial Nominees Evaluation, and you may or may not get called into the Governor’s office. After my approval as a superior court judge, I worked there for twelve years.

The federal appointment process is much more extensive because you are being evaluated by the federal government with more resources at its disposal than the state government to find things out about you.

Generally speaking, the appointment process for an Article III judgeship requires that the local federal judiciary committee publicizes that there is a judgeship available. Once it becomes available, you can put your name in for it, and they evaluate you and see if they will bring you in for interviews. You are interviewed by the FBI and the American Bar Association; once you are selected, if you have done everything according to the given standards, then you get to the point where you are seriously considered. Once you get an interview, the committee will choose which candidate that they are going to submit to a senator. The senators from each state are responsible for filling the judgeships within their respective states and they take turns submitting candidates. Once your name has been selected, the senator will make it clear who they have chosen. Your name is then sent to the White House, and the White House does its vetting, and they bring you in for their own interview. All the while, the FBI is still interviewing you. It can be quite involved.

I got through the initial procedure, and was then vetted by the Senate Judiciary Committee. During the process you try to let them know how you would be as a judge – whether you have the proper judicial temperament and demeanor. I wanted them to know my qualifications for the job and how important it was to me.

The President nominated me in June of 2012 and I was subsequently confirmed unanimously by the Senate Judiciary Committee. However, it was pretty clear that due to the election, I probably was not going to get confirmed by the full Senate. I felt certain that if President Obama was reelected, then there was a good chance that I would be re-nominated. If Mitt Romney was elected, he would presumably have made his own selections.

Because I was not confirmed by the full Senate quickly enough, I was re-nominated. What happened legally was my appointment lapsed. So I had to be re-nominated by the president, and that happened in the latter part of January 2013. Thereafter, I either had to go back in front of the Senate Judiciary Committee, or answer questions for the record. In my case, we had two new Senators join the Senate Judiciary Committee – Senator Rubio and Senator Cruz. They sent questions in and I had to respond to those questions, but I did not have to return for a hearing. Then it was just a matter of getting confirmed in February 2013 by the Senate Judiciary Committee, and after that I was finally confirmed by the full Senate in March of 2013.

I was appointed by the President the following week on March 26, 2013. It was a rigorous process, but I understand why it is, and it needs to be. The process needs to be something meaningful because being an Article III judge is not something that should be taken lightly. It needs to be a process that is fair but rigorous as the appointment is for life.

Final Thoughts and Advice

If I had to give a young attorney advice on starting their career, I would recommend apprenticing for an attorney and gaining some experience. You can go to court and see how other attorneys do certain things, and receive guidance from them. Alternatively, you can hang out your own shingle if you wish; your learning curve may be a bit steep, but some graduates do it. Be patient, know your cases, know the law, and have a passion for the law and what you do. Passion for the occupation translates quite well into how you represent your client and go about your duties, and happy clients will make your business easier by bringing in other business and other clients.

Some mistakes that I see young lawyers make in the courtroom include being unprepared, not knowing the proper procedure, and getting nervous to the point of being unable to fully represent their client’s interests. However, that is to be expected and that happens to most every attorney who goes into court for the first time.

Finally, I love teaching. Teaching supplements the job of a judge very well. Part of that is having practical information you learn and learning how you can apply it when you are dealing with actual cases. Many of the issues I deal with in my Business Associations class are issues I deal with in court. It really helps me be a better teacher and do a better job explaining the law to the students. I love teaching in addition to my job as a judge.
Self-defense is a phrase that comes up often in the high profile criminal cases that we read about in the news. Oftentimes when a murder trial is spotlighted by the media, anyone and everyone seems to be an expert on self-defense. But what exactly is self-defense, and what are some common misconceptions about that term? We asked a real expert on this topic, Professor Robert Gold, Lincoln Law School’s instructor on Criminal Law and a Deputy District Attorney in the Sacramento County District Attorney’s Office.

Broadly speaking, what is self-defense?

In California, the right to defend yourself is recognized as a complete defense to criminal responsibility if you have a reasonable belief in the immediate need to defend yourself against an imminent danger and use no more force than is reasonably necessary to defend against that danger. In the area of self-defense, it is important to distinguish between when you can use deadly versus non-deadly force and what force is reasonable or unreasonable. California Penal Code sections 197 and 198.5 codify when deadly force will result in a justifiable homicide, while section 198 imposes a limitation on the use of deadly force. In addition, CALCRIM jury instructions 505-511 state the applicable law of self-defense in homicide cases, while CALCRIMs 3470-3477 address non-homicide scenarios.

What is reasonable force?

Whether force is reasonable or unreasonable will depend upon the totality of the circumstances. Generally speaking, a person is only entitled to use that amount of force that a "reasonable person would believe is necessary in the same situation." See CALCRIM 505, 3470. The evaluation of what degree of force is reasonable is an "objective" standard and will vary depending upon the situation. A person with a reasonable belief of imminent danger of being killed or suffering great bodily injury or of being raped, robbed or becoming the victim of a recognized "forcible and atrocious" crime (see People v. Ceballos (1974) 12 Cal.3d 470, 477-479) may lawfully use all force reasonably necessary to defend against the present danger, including deadly force. In addition, a jury may consider if the deceased threatened or harmed the accused or others in the past, particularly if the accused was aware of those threats or harm, because the law recognizes that someone who has been threatened or harmed by the deceased in the past is justified in acting more quickly or taking greater measures against that person. Only non-deadly force can be used when the present threat involves an imminent danger.
of harm less than death or great bodily injury. Great bodily injury under California law means "significant or substantial physical injury" that is "greater than minor or moderate harm." See CALCRIM 505.

What is reasonable fear of harm?

As with the use of force, whether fear of harm is reasonable or not is determined by an objective "reasonable person" standard and is dependent upon the unique facts of each individual case. In order to be a complete defense justifying an acquittal, a person’s belief in the need to defend must be both subjectively "actual" and "objectively reasonable." People v. Humphrey (1996) 13 Cal.4th 1073, 1082. CALCRIM 505 and 3470 provide that "when deciding whether the defendant’s beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed." A belief in future harm is insufficient, no matter how great or likely the harm is believed to be, however danger does not actually have to exist in order for a person’s belief to be reasonable. If a peril appears immediate and present so that, from appearances, a reasonable person would believe it must be instantly dealt with it may be considered reasonable. Penal Code section 198.5 establishes a presumption that a person "held a reasonable fear of imminent peril of death or great bodily injury" when force is used within their residence against a non-family or non-household individual who unlawfully and forcibly entered that residence and the person using force knew or had reason to believe that such entry was unlawful and forcible.

What is imperfect self-defense?

"Imperfect" self-defense is when either a person’s actual belief in imminent danger of being killed or suffering great bodily injury or his actual belief that the immediate use of deadly force was necessary to defend against the danger was unreasonable. See CALCRIM 571; People v. Flannel (1979) 25 Cal.3d 668, 674. The distinction between "perfect" and "imperfect" self-defense depends on whether the person’s belief in the need to use deadly force was reasonable. A determination of "imperfect" self-defense may lawfully mitigate a murder to voluntary manslaughter.

Does the law of self-defense differ significantly from state-to-state?

Because I have only practiced in California, I am unable to provide an informed opinion regarding differences in the law of self-defense in other jurisdictions. I can say that it varies from state to state which party has the burden of establishing self-defense. In California, it is the prosecution’s burden of proving beyond a reasonable doubt that the killing or other charged offense was not justified. Juries are instructed that if the prosecution does not meet this burden, they must find the accused not guilty of the charged offense.

Do you see any common myths or misconceptions regarding a self-defense claim?

There may be some misconceptions as to when a person is entitled to defend oneself. There is no right to self-defense if a person provokes a fight or quarrel with the intent to create an excuse to use force (see CALCRIM 3472). Also, a person who engages in mutual combat or is the initial aggressor may not assert self-defense unless he or she 1) actually and in good faith tries to stop fighting and 2) indicates, by word or conduct, to his or her opponent in a way a reasonable person would understand that he or she wants to stop fighting and has stopped fighting. In cases of mutual combat, in addition to the above two requirements, he or she must also give the opponent a chance to stop fighting.

What is the process of asserting a claim of self-defense?

There is no formal method to assert self-defense, such as by plea or motion. However, in order to be entitled to instructions on the law of self-defense for the trier of fact to consider as a defense, defense counsel must request such instructions and sufficient evidence during the trial or proceeding must be presented to support them. In some cases, the court has a sua sponte (on its own without request) duty to instruct on self-defense when "it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant’s theory of the case." See People v. Breverman (1998) 19 Cal.4th 142, 157.
When Friendly Skies Become Turbulent

By Ken Dell

INTRODUCTION
As the aviation travel industry grew in the 1920s, it faced problems of law and liability. (see Lowenfeld & Mendelsohn, The United States and the Warsaw Convention (1967) 80 Harv. L.Rev. 497, 499 (hereafter Lowenfeld).) Liability laws varied by jurisdiction, and most courts applied to accident cases the traditional rule of lex loci delicti: the law of the place of injury governs. (Kilberg v. Northeast Airlines, Inc. (1961) 9 N.Y.2d 34, 49 [172 N.E.2d 526, 534].) Thus the applicable law depended on where the aircraft happened to crash. (Id. at p. 39, 528.) Fear of a crash involving loss of life, in a place which allowed a liberal wrongful death cause of action, inhibited capital investment to the industry. (Lowenfeld, p. 499.)

Plaintiffs in airline accidents had their own problems of proving negligence. An airplane crash in a remote place may present difficulty to plaintiffs to discover the cause of the crash. (Lowenfeld, p. 500.) The burden of producing evidence of liability fell on the plaintiff because the doctrine of res ipsa loquitur was not routinely applied to air travel accidents. (Harper, Res Ipsa Loquitur in Air Law ((1930) 1 Air L.Rev. 478.) I discuss in this paper the international effort to address the airlines liability for injury during travel by air. Also, I compare the burden on the parties to a lawsuit for injury under international rules with that under California law for domestic flights.

RES IPSA LOQUITUR
Res ipsa loquitur raises a double presumption of negligence and that the defendant’s negligence was the legal cause of the injury. (Harper, at 479.) The presumption is one of evidence; the plaintiff still bears the burden of proof, but may submit a question to the jury on a showing of injury. (Roberts v. Trans World Airlines (1964) 225 Cal. App.2d 344, 352 [37 Cal.Rptr. 291, 296].) The defendant has the obligation to introduce evidence that the accident resulted from some other cause than his negligence, or that he exercised due care in all possible respects wherein he might have been negligent. (Newing v. Cheatham (1975) 15 Cal.3d 351, 364 [540 P.2d 33, 43].) The elements of the doctrine are 1) the accident is one which ordinarily does not occur in the absence of someone’s negligence; 2) the agency or instrumentality is within the exclusive control of the defendant; and 3) the injurious condition or occurrence was not due to any voluntary action or contribution on the part of the plaintiff. (Widmyer v. Southeast Skyways, Inc. (1978) 584 P.2d 1, 11.)

In California, a common air carrier has always been held to the same degree of care as those operating on land. (Smith v. O’Donnell (1932) 215 Cal. 714, 723 [12 P.2d 933].) Res ipsa loquitur was applied to an air company carrying passengers for hire because "if there were no negligence, the defendant can most conveniently prove it..." (Ibid.) There is an inference of negligence since the plane is under the exclusive control of the airline. It does not crash if proper care is taken and the passengers have no contributory negligence. But for most courts in the early 20th century, the customs and practices of air transport companies were not a part of common knowledge from which courts could apply res ipsa loquitur. (Wilson v. Colonial Air Transport (1932) 278 Mass. 420, 426 [180 N.E. 212].) Courts considered airplane crashes may often occur without anyone’s fault. (Lowenfeld, p. 520, referring to W. Prosser, Torts (1st ed. 1941) sec. 296; Surface v. Johnson (1975) 215 Va. 777, 779.) The Warsaw Convention, an international agreement in 1929, addressed the air carrier’s liability for injury and the plaintiff’s burden of proof. (Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (hereafter Warsaw Convention).)

THE WARSAW CONVENTION
The Warsaw Convention remedied concerns both of a passenger’s ability to prove negligence and the carrier’s need for a uniform body of law to enhance their investment worthiness. (El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, (1999) 525 U.S. 155, 169) Under the agreement, the carrier was liable for death, wounding or any other bodily injury suffered by a passenger as a result of an accident on board the aircraft, or during embarking or disembarking. (Warsaw Convention, art. 17.) Liability was limited by Article 22 to $8,300, low even for the time. (Lowenfeld at p. 499.) Moreover, the carrier could avoid liability entirely if it proved that “all necessary measures” to avoid damage were taken or that it was impossible to take such measures. (Warsaw Convention, art. 20.) Thus, the carrier had the burden to prove the accident was beyond its control. (Weigand (2000) The Modernization of the Warsaw Convention and the New Liability Scheme for Claims Arising Out of International Flights, Mass. L.Rev. 179.) On the other hand, the limit of liability would not apply at all if the plaintiff could show the injury was the result of willful misconduct by the carrier. (Warsaw Convention, art. 25.) The effect of the Warsaw liability provisions was to impose a rebuttable presumption of liability on the airline for proven damages up to $8,300, and no liability above that absent willful misconduct.

The United States Senate approved the Treaty without debate. (Lowenfeld, p. 502.) However, a debate on the low limit of liability began almost immediately and would endure for the rest of the century. Recoveries in personal injury or death actions were typically much higher than $8,300 in developed countries. (Id. at 504.) Less developed countries were against raising the liability limit. (Id. at p. 565) They felt that rich passengers could purchase insurance if they wanted to cover themselves to a higher limit. (Ibid.)

The Hague Protocol of 1955 doubled the liability limits to $16,600, but this...
Continued - When Friendly Skies Become Turbulent

was insufficient to many in the United States. (Lowenfeld, p. 506.) After years of consideration, the Protocol was never approved by the Senate. Instead, in 1966, the United States negotiated a contractual agreement among airlines, the Montreal Interim Agreement, which raised the liability limit to $75,000 for flights originating, terminating or having a stopping point in the United States. (Kwon v. Singapore Airlines (2003) 356 F.Supp.2d 1041 (N.D.Cal.).) The interim agreement also provided that signatories waive the "all necessary measures" defense of Warsaw's Article 20. Thus the airlines were subject to "virtual strict liability" for a covered injury up to $75,000. (In re Korean Air Lines Disaster of Sept. 1, 1983 (1991) 932 F.2d 1475, 1485 (D.C.Cir.).) Other provisions of Warsaw, including the willful misconduct exception, remained unaffected.

THE MONTREAL CONVENTION
The Montreal Convention is an agreement among member states of the United Nations International Civil Aviation Organization. (Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999,T.I.A.S. 13038 [hereafter Montreal Convention].) Signed in 1999 and ratified in 2003, it superseded the Warsaw Convention. The liability limit was raised to approximately $130,000. (Montreal Convention, art. 21.) The carrier may defeat this strict liability to the extent an injury was caused or contributed to by the passenger, but not otherwise. (Montreal Convention, art. 20.) There is no "all necessary measures" defense. The carrier is not liable for claims above the limit if it proves either that the damage was not due to its acts or omissions, or that damage was solely due to the negligence or other wrongful act or omission of a third party. (Montreal Convention, art. 21(2).) Thus, air carriers operating internationally were now subject to strict liability for proven damages up to $130,000 and to a rebuttable presumption of liability for higher amounts.

Accidents and Injury
Under the Montreal Convention, a carrier is liable for bodily injury as a result of an accident while on board or during embarking or disembarking. An "accident" is defined as an unexpected or unusual event or happening that is external to the passenger." (Air France v. Saks (1985) 470 U.S. 392, 405.) "Bodily injury" means physical injury excluding purely mental distress injury. (Eastern Airlines, Inc. v. Floyd (1991) 499 U.S. 530 [111 S.Ct. 1489, 113 L.Ed.2d 569].) Thus an incident causing a mental fright or emotional distress without physical injury is not recoverable. (Ibid.) The agreement is the exclusive cause of action for claims arising during a covered incident (Montreal Convention, art. 29), so an injured party cannot choose to make a claim under state law for damages arising from an international flight. (El Al Israel Airlines, Inc. v. Tseng (1999) 525 U.S. 155, 161.) Punitive or other non-compensatory damages are not recoverable. (Montreal Convention, art. 29., In re Korean Air Lines Disaster of Sept 1, 1983 (1991) 932 F.2d 1475, 1479.)

COMPARISON TO CLAIMS UNDER STATE LAW
The benefit to plaintiffs from the Montreal Convention is most obvious for occurrences where res ipsa loquitur is not applicable. Cases involving in-flight injuries as a result of the aircraft lurching in turbulence do not give rise to the doctrine. (Widmyer, supra, p. 14.) During a flight from San Jose to Lake Tahoe, a passenger suffered a neck injury when the plane fell 500 feet in a few seconds due to air turbulence. Plaintiff's request for a jury instruction on res ipsa loquitur was denied because the first requirement, that the event does not usually occur in the absence of negligence, could not be met. (Kohler v. Aspen Airways, Inc. (1985) 171 Cal. App.3d 1193, 1202 [214 Cal.Rptr. 720].) The plaintiff failed to prove the air carrier was negligent and recovered nothing. (Id. at p. 1197.) The plaintiff's burden in such a case is to show the carrier knew or should have known of the turbulence, had a duty to fly around it, or to warn the passengers to put their seat belts on. (Palma v. American Airlines, Inc. (2010) Not Reported in F.Supp.2d WL 5140592.) Under the Montreal Convention, on the other hand, any bodily injury sustained during an accident on board the aircraft will be recoverable by strict liability up to $130,000. For example, a passenger on a flight from Hong Kong to Honolulu, while not wearing the seatbelt, fractured three vertebrae when the plane experienced air turbulence. (Dunn v. Trans World Airlines, Inc. (1978) 589 F.2d 408.) The passenger recovered the $75,000 limit under the Montreal Interim Agreement. (Id. at p. 409.)

If Res Ipsa Loquitur is Applicable.
The duty imposed on an air carrier defendant in California is to use the "utmost care and diligence for safe carriage." (Civ. Code sec. 2100.) Under this standard, a defendant has the burden of evidence to show it exercised care as to all preventable causes of an accident. (Roberts v. Trans World Airlines (1964) 225 Cal.App.2d 344, 352 [37 Cal.Rptr. 291, 296].) That common carriers are held to a higher standard than a general duty of care is deeply rooted in common law and public policy. (Widmyer, supra, p. 5.) A defendant airline may rebut an inference of negligence by showing it "exercised due care in all respects wherein it might have been negligent." (Irwin v. Pacific Southwest Airlines (1982) 133 Cal.App.3d 709, 716 [184 Cal.Rptr. 228, 231].) A defendant's duty under Warsaw, in comparison, is generally referred to as an "industry standard of care" or "reasonable care." (Goepp v. American Overseas Airlines (1952) 281 A.D. 105, 112 [117 N.Y.S.2D 276, 282].) Although the terminology of due care varies, a defendant's burden in either case is to prove no negligent causal acts leading to the injury. Given this similarity, the airline's burden to avoid liability under the Montreal Convention is not different than under California law where res ipsa loquitur is applied.

CONCLUSION
Air carrier liability law is currently tilted in favor of a plaintiff's personal injury claim stemming from an accident on an international flight. Strict liability assures recovery for proven damages up to $130,000, even for injury from turbulence, on international flights but not under State law. For most accident cases, a higher claim under international law triggers an identical burden on the defendant as to defeat a State claim in its entirety. The international acceptance of more liberal damage awards than those available under State law is an indication of maturity and confidence of the industry. Even if you are not comfortable in your seat, you may take comfort in that.
For those of you who have taken Professor Gevercer’s Civil Procedure class, "MICRA" will not seem foreign to you. For those of you who have not heard of MICRA, this California statute stands for "Medical Injury Compensation Reform Act." The statutes that make up MICRA claim to benefit California residents by keeping healthcare costs low. However, that is debatable, and the subject of much controversy. MICRA has created an inherent struggle between two parties. On one hand you have victims of substandard medical care who sue health care providers, and they complain they are not being fully compensated for their injuries because of the non-economic cap MICRA places on medical malpractice cases. On the other hand there are the physicians who argue in favor of the caps because it keeps malpractice insurance low and those savings are passed along to California residents. Regardless of the politics that led to this law, as students of Lincoln Law School and potential future lawyers, it is important to be aware of this law and its ramifications for the legal profession, as well as its effect on the average California resident.

In the early and mid-1970s, an appalling trend began to take place where the insurance industry noticed an increase in malpractice lawsuits and an increase in jury awards to victims. As a result, some insurance companies raised their premium costs by up to 300 to 400 percent, while other insurance companies decided not to provide malpractice insurance in California at all. This forced many physicians to choose between performing medical procedures with little or no insurance, or to relocate to another state entirely. Eventually in 1975, Governor Jerry Brown authorized MICRA which was enacted by the California Legislature. This Act placed a cap of $250,000 for noneconomic damages on medical malpractice cases. Noneconomic damages consist of loss of consortium, pain and suffering, loss of limb, loss of sight or hearing, or mental anguish. MICRA also placed a statute of limitation for medical malpractice suits. Further, MICRA allows for binding arbitration and "periodic payments," meaning doctors are allowed to pay the award over time instead of all at once. The purpose of this Act was to reduce the overall number of claims against healthcare providers and the cost of resolving such claims. This in turn would reduce medical malpractice insurance for doctors and allow more doctors to keep their practice within California. The goal being that the financial savings by healthcare providers would lead to affordable premiums for California residents.

Although MICRA was formed with the intent to aid California natives, it is currently facing a lot of retaliation. As stated in "MICRA MADNESS," By Jan Norris in the year 2000, "the first full assault on the statutory scheme did not reach the California Supreme Court until ten years later in Fein v. Permanente Medical Group (1985) 38 C3d 137. In that case, Justice Otto M. Kaus, writing for the 4-to-3 majority, rejected the due process and equal protection challenge reiterating that a plaintiff has no vested property right in a particular measure of damages and that the Legislature possesses broad authority to modify the scope and nature of such damages. 38 C3d at 157." Meaning, the majority believed that a California resident had no Constitutional right to challenge the Legislature when it decided how damages should be measured or limited.

Even though the California Supreme Court has given the State Legislature broad power over determining and limiting damages in civil litigation, there are victim’s rights advocates who continue to relentlessly fight for MICRA reform, and for good reason. Currently, almost 80,000 Americans die annually due to medical negligence in hospitals, and another 300,000 serious injuries are caused annually by negligent medicine (Norris). This begs the question, has MICRA created an environment that has led to a decline in quality of care and physician
accountability? How careful do physicians have to be when they know the worst-case scenario is a slap on the wrist and a $250,000 fine?

Consider the tragic case of Olivia Cull, a 17-year-old girl who went to a hospital for a routine procedure but ended up in a coma and died ten days later due to a physician’s negligence. Because of the limits imposed by MICRA, Olivia’s parents could not afford to retain an attorney. MICRA’s limitations on how much compensation the Cull’s would be able to receive made hiring an attorney and paying for the attorney’s costs impossible. Furthermore, the Culls couldn’t even get UCLA, the hospital where Olivia’s procedure took place, to fully disclose what had gone wrong during this simple procedure (Los Angeles Times, 2011). Olivia’s case is one example of the effects MICRA can have on medical malpractice victims.

A strong argument in favor of reevaluating the noneconomic cap on medical malpractice cases is that MICRA was passed over 38 years ago and the dollar amount of the cap has remained the same. The cost of living has dramatically changed since 1975, and MICRA should be reformed to reflect this change. On the other hand, this cap is only for noneconomic damages; there is no cap on the economic damages in a malpractice suit. An argument can be made that the economic damages make a person whole, and a $250,000 cap is sufficient for damages that are impossible to measure. Regardless of the differences between both sides, we can all agree that simply being informed about MICRA allows students and future attorneys to be one step closer to reaching a reasonable resolution.

Works Cited
I wish I had five bucks for every time an angry buyer of real property has called me at the office to say, "I was told that I owned the old oak tree when I bought my lot. Now my neighbor is telling me that he owns it. I'm going to sue."

Over the years, career title officers like me eventually become involved in just about every possible dispute over real property that one might imagine, and boundary line disputes are no exception. The old oak tree has become an infamous figure in my career because such trees constantly interrupt the otherwise peaceful coexistence of adjacent land owners. I'm a tree hugger at heart, but even I can admit to an argument for the chopping down of all the old oak trees in the world. Right down to the ground.

However, an even more nefarious villain exists than the old oak tree. And that villain is the existing fence. Everyone land surveyor, title officer, and real property attorney learns early in his or her career that fence lines are notorious for monumentalizing anything but the true location of boundary lines. Sellers and recently-licensed realtors will point to the existing fence and tell the prospective buyer that the fence is the boundary, and the unsuspecting buyer then gallops ahead with her purchase. Three days after escrow closes, her neighbor says the fence is actually 36 feet beyond the true property line and not only can she not park her planned mobile home there to house her elderly mother, but the neighbor wants to move the fence back to its rightful position, which turns out to be only five feet away from her house. (This situation occurred in Nevada City in 2006.) Or, the buyer learns after taking possession that her garage sits four feet over the true property line and the neighbor wants the situation resolved immediately because he needs to reclaim that land for a construction project.

These are very common scenarios. If the matter is simply a survey question, her title insurance may not be any help. How do real property attorneys help her resolve such property claims without resorting to the expense and risk of filing an action in Superior Court to quiet the title? There are many approaches that attorneys routinely explore which may satisfy such disputes without forcing the parties into court. This article cannot cover all of the possibilities, but it will discuss some common legal approaches and practical solutions with which I have been personally involved, and shed some light from case law.

AGREED-BOUNDARY DOCTRINE

Before looking at practical solutions to boundary disputes that can keep parties out of court, it is worthwhile to consider how property owners may establish boundaries judicially. Records of surveys, subdivision maps, and the legal descriptions found in deeds are commonly accepted as determinative records of boundary lines. But where an ambiguity exists, a landowner might assert the agreed—
boundary doctrine, which permits a party to assert a certain line as the true boundary when there is "[1] an uncertainty as to the true boundary line, [2] an agreement between the conterminous owners fixing the line, and [3] acceptance and acquiescence in the line so fixed for a period equal to the statute of limitations or under such circumstances that substantial loss would be caused by a change of its position." (Ernie v. Trinity Lutheran Church (1959) 51 Cal.2d 702, 707, 336 P.2d 525.) But while cases have held that uncertainty and agreement can sometimes be inferred from acquiescence to the fence location by neighboring landowners, the Supreme Court has held that even a lengthy acquiescence by landowners to an existing fence line does not by itself "nullify Ernie's other requirements — namely that there be an uncertainty as to the location of the true boundary when the fence was erected, and an agreement between the neighboring property owners to employ the location of the fence as the means of establishing the boundary." (Bryant v. Blevins (1994) 9 Cal.4th 47, 58, italics added.) In other words, a mere longstanding belief that the fence marked the boundary may not be sufficient to keep it there. The agreed boundary doctrine is applied more often when there simply is not a better means to establish the true boundary.

BOUNDARY LINE ADJUSTMENT
Not so much a legal solution as a practical one, perhaps, is a boundary line adjustment (or lot line adjustment). If the attorney determines that a structure was built over the true property line, the path of least resistance is usually to move the boundary, not the building. While this is arguably the best extra-judicial remedy, it is not an inexpensive or simple proposition. Planning Departments require that a formal survey of the disputed boundary be conducted, the fees for which routinely run into the thousands. Also, the written consent of all title holders and mortgagees on both sides of the line is required, both to satisfy the Statute of Frauds and to prevent foreclosure of an existing mortgage from unwinding the new lot line. Getting the consent of all the parties can be challenging, especially from a mortgagor or lender who is being asked to surrender a measure of their collateral. Most lenders require that the loan be paid down or that the lot line adjustment be reciprocal such that each party gives the other an amount of land equal to the amount he or she receives.

EASEMENTS
As every second-year student at Lincoln Law School learns, an easement is "[A]n interest in land owned by another person, consisting in the right to use or control the land...for a specific limited purpose." (Black’s Law Dict. (9th ed. 2009) p. 585.) Easements sometimes serve as a shortcut to fixing a landowner's right to continue encroaching onto the land of another without having to go through the cost and headache of moving the boundary. A cheap fix to an otherwise permanent problem, but it can also be an effective resolution that keeps the parties out of court. This assumes that the attorney can negotiate an acceptable amount of consideration in exchange for a grant of easement from the burdened landowner. If not, it may raise the issue of whether an easement could be asserted judicially under the doctrines of prescription, implication and/or necessity, which doctrines exceed the scope of this article.

However, creating an easement to resolve an encroachment that resulted from doubts about the boundary creates its own issues. For one thing, an easement is not a possessory interest in land; it is a right to use the land for a specific purpose, generally in a manner consistent with how the servient estate owner would use it. But a structure sitting on property enjoys exclusive use of that land to the exclusion of the servient owner. While it might be an easement in name, it amounts to exclusive possession. Secondly, by constituting a servitude against the burdened parcel of land, an easement diminishes the market value of the servient tenement. But because easements can be created with greater ease than some other solutions, real estate professionals often regard them as the perfect solution for every stain without considering the full implications that use rights can have and without exploring other, perhaps better alternatives.

Lawyers who specialize in property law know the wisdom of forging relationships with surveyors, title officers, and other real estate professionals. All of them are resources who can help the attorney find practical solutions to boundary disputes in ways that best serve the client’s interests.