Foreword
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Defense procurement fraud has traditionally impaired the relationship between government and the defense industry. In recent years, reports of inflated prices charged by defense providers have garnered national headlines. In our lead Article, Attorney Steven D. Overly presents a critical discussion concerning the government’s growing campaign to combat excessive pricing claims submitted by defense contractors. The author examines the numerous penalties, both civil and criminal, available to ensure accuracy in the submission of cost or pricing data. While criticizing the criminalization of the public contracting process, the author advises public contractors that submitting to the government all factual data relating to contract negotiations is the best way to avoid liability for fraudulent pricing claims.

Disputes between the securities industry and its public customers implicate three statutory regimes: the Securities Act of 1933, the Securities Exchange Act of 1934, and, insofar as it has been employed in securities litigation, the Racketeer Influenced and Corrupt Organizations Act. Our second Article, authored by Attorney Michael A. Lindsay, addresses issues that arise when a statute creates a cause of action and provides a specific judicial remedy, yet private parties contractually agree to resolve disputes, including controversies based on the provisions of those statutes, in a private forum. The Federal Arbitration Act provides that a written predispute arbitration agreement shall be valid and enforceable. However, in the securities context, some courts have held predispute agreements invalid by finding an implied exception to the Federal Arbitration Act for rights based on federal statutes, particularly on statutes that the courts believe are designed to implement some important public policy. Mr. Lindsay proposes that predispute agreements to arbitrate securities controversies that involve broker/dealers and their customers should be enforced in accordance with the Federal Arbitration Act. Such enforcement, the author explains, will not diminish the private securities plaintiff’s ability to obtain justice, nor will the policies underlying the statutory schemes be undermined.

Many state statutes provide that a child born to a married couple is presumed to be the legitimate child of the husband, even though the husband may not be the biological father. The biological father is denied the right to rebut this presumption of legitimacy by proving that the mother’s husband is not the biological father, even though the presumed
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women's late women's to a women's Anderson established thirteenth gues, presumption father's Professor viable includes sor precise (legal) cause coverage problems. Our passage of the Equal Opportunity Act, and the flawed logic of the women's banks' target market strategy, the success of women's banks as a marketplace solution to the problem of gender discrimination in access to credit was severely undermined. As a result, the authors conclude that the solution to gender discrimination in access to credit must come from stricter banking regulations, rather than marketplace solutions like women's banks.

Issue three also includes eight student written selections.

Our first student Comment examines fiduciary principles as they relate to the banking industry. The author critically analyzes two recent California appellate court decisions, Commercial Cotton Co. v. United California Bank and Barrett v. Bank of America, which extended fiduciary principles to the ordinary bank-depositor and bank-borrower relationships. The author concludes that these courts misapplied case law and improperly imposed fiduciary obligations upon banks in relationships which have traditionally been considered debtor-creditor. The author proposes a two-part test for determining when a fiduciary relationship exists between banks and its customers.

The second student piece presented in this issue examines Farmers Insurance Exchange v. Adams, a recent California case addressing the problems raised by the existence of two conflicting standards for determining coverage under an all-risk homeowners' policy where multiple perils combine to produce a loss. In Adams, the insurer sought to have coverage of the insured's claims determined under the efficient proximate cause theory. The court of appeal rejected the insurer's request stating that insureds may also be able to prove coverage under the second, much broader standard, the concurrent cause theory. This Note examines the
history of these two conflicting coverage standards, as well as the effect of the court's failure to clearly define the scope of their application. The author examines a recent decision limiting the applicability of the concurrent cause standard and offers a suggestion aimed at preventing insurance coverage disputes in the future.

The second major assault on cigarette companies in the past quarter century has generated a theory of recovery new to cigarette litigation. Plaintiffs claim that cigarette companies have caused injury by failing to adequately warn of the hazards of smoking. Defendant companies argue that Congress preempted these failure-to-warn claims by enacting federal labeling legislation. Though several federal courts have addressed the issue, they have reached conflicting decisions. Our third student selection considers preemption as it applies to common-law tort claims against cigarette companies for failure to adequately warn of the hazards associated with smoking. The author discusses the preemption doctrine generally, outlines the twenty-two year legislative history of the Federal Cigarette Labeling and Advertising Act, and sets forth the analysis which several courts have applied to decide whether plaintiffs' failure-to-warn claims are preempted. Following a critique of existing law, the author proposes a test which courts might apply to determine congressional intent. The author concludes that congressional purpose, language and debate, taken as a whole, are sufficient evidence from which to infer that Congress did not intend to preempt common-law causes of action.

In *Cleburne v. Cleburne Living Centers*, a local zoning ordinance requiring a home for mentally retarded persons to obtain a special use permit was challenged under the equal protection clause of the fourteenth amendment. The United States Supreme Court, while striking down the statute as applied to the mentally retarded, made several troubling determinations concerning critical issues. First, the Court held that mentally retarded individuals are not a "suspect" or "quasi-suspect" class. Second, the Court, while claiming to employ a "rational basis" test, utilized a standard that closely resembled the more heightened test generally afforded "quasi-suspect" classifications. This Note criticizes the majority's approach, emphasizing in particular the implications of the Court's unexplained departure from precedent in the equal protection area. The author asserts that the Court's new test will not only create further confusion and inconsistencies in the application of the equal protection clause, but also may seriously threaten future application of the close scrutiny presently applied to legislation affecting "suspect" and "quasi-suspect" classes. The author then advocates an approach that is more consistent with prior equal protection cases, provides the flexibility
necessary in the equal protection area and, most importantly, requires
the Court to more clearly articulate its reasoning in each case.

Our third Comment questions whether electricity and electrical util-
ity transmission facilities should be governed by strict liability. After
reconciling existing electric utility case law, the author traces the evolu-
tion of strict liability in California. Since electricity fulfills strict liabil-
ity's analytical prerogatives, and because strict liability policy
justifications would not be offended, electricity could be held to be a
product subject to strict liability. Although an extension of strict liability
to transmission facilities is analytically possible, the author concludes
that such an extension would be practically unwise and, moreover, inco-
sistent with the policies motivating strict liability.

Last summer, the United States Supreme Court addressed the con-
stitutionality of a Georgia statute criminalizing consensual adult sodomy
occurring in the home. In a decision carrying wide implications for the
right to privacy, the Supreme Court held that the statute was constitu-
tional as applied to homosexuals. Analyzing the majority opinion in
Bowers v. Hardwick, this Note criticizes the foundation upon which the
Court rested its decision. The author notes particularly that certain fac-
tors considered by the majority, such as the statute's long history and its
moral/religious motivations, were insufficient to justify constitutional
validation of the sodomy statute. More importantly, the author criticizes
the majority's conclusion that the statute did not violate the petitioners
right to privacy and argues that constitutional protections should be ex-
tended to consensual adult sodomy when the behavior occurs in the pri-
vacy of the home.

Our seventh student piece focuses on the constitutional rights of stu-
dent journalists in California's public high schools. During the 1970's,
federal and California courts first began to recognize that students pos-
sess free expression and press rights protected by the first amendment to
the United States Constitution. In a bold move to codify these newly
recognized rights, the California Legislature enacted section 48907 of the
California Education Code—the Students' Bill of Rights. Section 48907
protects student expression in general; however, it authorizes prior re-
straint of student expression which school officials deem to be "obscene,"
"libelous," or otherwise inappropriate. The author contends that while
the California Legislature has taken a commendable step in legislat-
ing student press freedom, the constitutional infirmities in section 48907
render the statute a dangerous license for impermissible administrative
censorship of student expression. The author proffers a method of analy-
sis for courts to employ in addressing the constitutionality of section
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48907 and also proposes an amendment to section 48907 which would bring the statute within constitutional bounds.

The California Legislature's timely response to the disorderly and often contradictory development of trade secrets law, by the codification of the Uniform Trade Secrets Act, is the topic of our final student selection. This Comment critiques the statute in relationship to its common law development and the competing interests influencing the California Legislature during the statute's formation. While championing the strict and simple language of the statute, the author concludes that the statute will not be properly or fairly applied unless courts, in their analyses, balance the interests recognized by the California Legislature.

Issue three concludes with a review of the book "The Case for Animal Rights." In reviewing Tom Regan's book, Attorney Steven Zak contends that Regan only partially succeeded in fulfilling his aim to "lay the philosophical foundation of the animal rights movement." While recognizing the valuable contribution Regan's book makes to the animal rights dialogue, Zak contends that Regan's view that "all subjects of a life . . . must have their inherent value respected" stumbles over utilitarianism principles and offers a confusing "miniride" analysis which is never fully developed.