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As disputants more frequently resort to arbitration, the likelihood that invidious discrimination in arbitrator selection will occur also increases. While some disputants might consent to selecting an arbitrator for particular reasons relating to cultural issues pertinent to their dispute, troublesome issues can arise if repeat players, such as employers and businesses, use their greater knowledge and experience with the arbitral process to gain control over the arbitrator selection process through the use of invidious peremptory challenges. Opponents of arbitration have attempted to adopt existing legal arguments to address this problem. Unfortunately, however, neither the state action doctrine nor the use of the existing public policy exception to the enforcement of an arbitration agreement or arbitral award will be successful as a means to challenge the use of invidiously discriminatory peremptory strikes. Because existing legal arguments fail to address this growing problem, this Article proposes an amendment to the Federal Arbitration Act and the Uniform Arbitration Act to address the problem of discriminatory arbitrator selection.

David B. Mustard

Workers' compensation is big business. On a national level, workers' compensation pays out billions of dollars annually in benefits. Yet, most lawyers and legal scholars know very little about the system's operation. This Report reflects one state's attempt to measure the performance of its workers' compensation system. It identifies long term trends affecting workers' compensation systems, compiles data from a variety of sources, makes interstate comparisons of system performance, and identifies issues of concern and further study. Among its conclusions are that the Georgia workers' compensation system
is not in a crisis; Georgia has comparatively low total costs compared to other states; workers' compensation costs do not place Georgia employers at a competitive disadvantage in national or regional markets; and that injured workers in Georgia are provided less income protection (expressed as a percentage of average weekly wage) than their counterparts in most other states.

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More Proposals to Simplify Modern Federal Procedure .................. Carl Tobias 1323

This timely and insightful piece is offered as a response to (former Civil Rules Advisory Committee Reporter) Professor Edward Cooper's provocative proposal to simplify the Federal Rules in the context of less complex lawsuits. Professor Tobias applauds Professor Cooper's treatment of this contentious subject. Specifically, Professor Tobias argues for Congress to amend Rule 83 to allow local, experimental measures disparate from federal ones in order to take advantage of the laboratory of states in the search for efficacious civil rule reform measures. This process, while proliferating inconsistency, would do so in a limited number of districts allowing genuine assessment of the dissimilar measures under the watchful eye of the Judicial Conference, rather than the random balkanization of local strictures that occurred under the Civil Justice Reform Act of 1990. In addition to this legislation, Professor Tobias also urges the Judicial Conference and Councils, as well as the district courts, to engage in a strict review of—and ultimately to eliminate—local measures that either conflict with or repeat federal rules. Such a review would aid in cabining local experimentation under the more regimented program offered by the suggested amendment to Rule 83.

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Hanging The Ten Commandments on the Wall Separating Church and State: Toward a
New Establishment Clause Jurisprudence ......... Adam M. Conrad 1329

Under what circumstances may a community place the Ten Commandments on public property? The question is surprisingly difficult to answer, owing to a confusing body of
Commandments jurisprudence. The confusion largely stems from the Lemon test, currently embraced by the Supreme Court as the leading test in all Establishment Clause cases. Inconsistencies in high profile Ten Commandments cases offer a lens through which to critique the Lemon regime and signal the need for a new approach to Establishment Clause jurisprudence. Specifically, the new jurisprudence should promote clarity, religious liberty, and healthy federalism. To achieve these goals, the Supreme Court must replace Lemon with a new test, focusing on state initiation and coercion.

Lacks v. McKechnie and the Quest for On-Sale Bar Certainty ...................... R. Jason Fowler 1369
Lacks Industries, Inc. v. McKechnie Vehicle Components, Inc. represents the Federal Circuit's most recent attempt to define the "commercial offer for sale" prong of Pfaff v. Wells Electronics, Inc. By suggesting that course of dealing and industry practice should be relevant in the on-sale bar analysis, the Lacks majority has departed from the course for certainty set by the Supreme Court in Pfaff. This Note argues that the Lacks court erred in its departure from precedent by failing to look for the common denominator of state Uniform Commercial Code jurisprudence and failing to look to the common law when a question of UCC interpretation arose. This Note further argues that considering course of dealing and industry practice in the on-sale bar analysis will lead to an uncertain and untenable standard in contravention to the policies underlying the on-sale bar. Finally, this Note concludes that course of dealing and industry practice must be excluded from the on-sale bar analysis in the interest of certainty and uniformity in the federal patent system.

It's About Time: The Scope of Section 804 of the Sarbanes-Oxley Act of 2002 ................ Amy Grynol Gibbs 1403
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United States Code, and its legislative history to determine the inferences that may be drawn regarding the intended scope of Section 804. Though it will focus primarily on whether the two and five year limitations period applies to Section 11 of the Securities Act, this Note will highlight some general principles that may be helpful in determining whether Section 804 also applies to other express or implied private actions arising under the federal securities laws. This Note will conclude that Section 804 of the Sarbanes-Oxley Act does not apply to Section 11 claims, even when those claims involve fraud. The Note suggests additionally, however, that Section 804 may apply in cases where Congress has carved out an exception to the strict liability scheme of Section 11, such as when the plaintiff’s claim is based on a forward-looking statement.
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In 2002, the Illinois Supreme Court adopted its third witness disclosure rule. Nearly 20 years earlier, the court had adopted its first such rule, Supreme Court Rule 220. On close inspection, however, the Rule 220 requirements did not cover all expert witnesses. So, in 1995, the Illinois Supreme Court adopted its second witness disclosure rule, repealing Rule 220 and amending Rule 213, to address the witness disclosure concerns. While this change solved most of Rule 220's problems, Rule 213 had problems of its own. Part I of this article reviews the lessons learned under the first two rules. In 2001 and 2002, the Illinois Supreme Court Rules Committee considered proposed solutions to Rule 213's problems and adopted its third witness disclosure rule. The development of the new rule, an amended version of Rule 213, took place in several stages before its adoption by the Supreme Court. Part II of the article describes this new rule's drafting history. Since new Rule 213 took effect, the changes made by the rule have raised issues. In particular, the meanings of the terms "retained" expert and "reasonable notice" have been questioned.

Part III of the article discusses these key issues under the new rule. Part IV of the article proposes the Illinois Supreme Court next adopt rules that allocate and reduce the expense of discovering the opinions of treating physicians. With the new rule in place, these issues have come to light. These concerns are the newest in a long line of witness disclosure issues in Illinois. Articles Editor, Allen D. Roe.

FORENSIC INDIVIDUALIZATION SCIENCES AND THE CAPITAL JURY: ARE WITHERSPOON JURORS MORE DIFFERENTIAL TO SUSPECT SCIENCE THAN NON-WITHERSPOON JURORS?

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Forensic science and capital punishment are increasingly at the forefront of America's consciousness. Not a day goes by where the media fails to mention capital punishment's various injustices or forensic science's advancing technology. Forensic science, which is the application of science to law, has been an invaluable tool for the criminal justice system for over a century. While forensic science and capital punishment are hot topics of discussion, they are also invariably intertwined with one another. This is because capital punishment can only be imposed where a death has occurred. Thus, it is not surprising that physical evidence is employed by the state to establish the criminal elements of homicides more so than any other type of violent crime. As a result, forensic evidence and testimony are essential in deciding a capital case's outcome. For one reason or another, it is perceived by many legal actors, namely judges and attorneys, that jurors typically ascribe more authority to physical evidence than other evidence. A primary focus of this Article is concerned with how individualizing forensic evidence is perceived and weighed by individuals who sit, and do not sit, on capital juries. It was predicted that people who are permitted to serve on capital juries (death-qualified subjects) tend to rate forensic individualization evidence as more trustworthy and thus give it more weight than people who are excluded from serving on capital juries due to their opposition to the death penalty (excludable subjects). After reading a brief scenario regarding a homicide, subjects were asked to rate the various forms of forensic individualization evidence identified
TO GROUP OR NOT TO GROUP: STUDENTS' PERCEPTIONS OF COLLABORATIVE LEARNING ACTIVITIES IN LAW SCHOOL.

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The purpose of this qualitative study was to investigate the phenomenon of group learning in law schools. Specifically, 141 second- and third-year students at 7 different law schools were asked to describe their perceptions and experiences with group learning. Most students focused on their first-year experiences with study groups. Findings indicated that although study groups are pervasive in the first year of law school, few are sustained; and although students recognize particular benefits from participating in study groups, few believe that the necessary high investment is worth the small return in terms of grades. Groups that persisted over the entire first year attributed their success to diversity among members, trust achieved through confronting interpersonal discomforts, and high levels of personal investment, or dedication to the group activities. These identified benefits of collaborative work align well with learning theories predicated on social relations. Articles Editor, Megan Rich.

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EMBRYO ADOPTIONS: THAWING INACTIVE LEGISLATURES WITH A PROPOSED UNIFORM LAW.

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With the advancement of assisted reproductive technologies such as in vitro fertilization (IVF) in recent years, people who were previously unable to conceive children through traditional methods have been given a new opportunity to experience parenthood. Unfortunately, IVF has created a problem as yet unsolved—what to do with the more than 200,000 excess embryos being cryopreserved in our country. Although the United States government supports an embryo adoption program to reduce the number of frozen embryos in storage, state legislatures have not taken the initiative to pave the way for such adoptions by enacting adequate legislation. This author advocates the implementation of a uniform law governing in vitro fertilization clinic procedures and embryo adoption procedures to facilitate the transfer of excess embryos from donor parents to intended parents. A uniform law would reduce the possibility of a contract between the parties to facilitate an embryo adoption being declared unenforceable as against public policy, as many surrogacy contracts have been. Additionally, a uniform law would give the judiciary some guidance in resolving many disputes which may arise and allow them to interpret the law of embryo adoptions rather than write it. Editor, William Hudson.

Spoiling an Illinois Personal Injury Plaintiff's Spoilation Claim for Routinely Maintained Items.

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In situations involving routinely maintained items, a claim for spoliation of evidence places an extreme burden on the defendant to keep potential items of evidence from being altered. This creates tension between a plaintiff's need to prove a case with the actual evidence and the defendant's burden to store or catalog these items. There are two critical concepts that form the basis of a spoliation claim that may not be present with routinely
maintained items. The first is the creation of a legal duty to preserve evidence. Second is the foreseeability of a potential claim for spoliation. The author contends that routinely maintained items should not be the subject of a spoliation claim if the plaintiff has not given reasonable notice to the defendant of the relevance of the evidentiary item. The proposed resolution would add a notice element to a current jury instruction normally used in Illinois for spoliation of evidence. This would provide a defendant with less of a burden to indefinitely keep items and also allow a defendant to maintain and service items of potential evidence. Editor, Becky A. Ray.

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Southwestern Illinois Development Authority v. National City Environmental, L.L.C. involves issues regarding the right of a state to condemn property for public use. Gateway International Motorsports Corporation (Gateway), after a failed attempt to negotiate the purchase of land belonging to National City Environmental and St. Louis Auto Shredding Company (NCE), asked SWIDA to exercise its eminent domain powers to transfer NCE’s land to Gateway for development of a racetrack parking facility. NCE argued the taking was not only unnecessary, as Gateway already owned land that could be utilized for a parking facility, but also unconstitutional because it was for a private use. The St. Clair County Circuit Court approved the taking as constitutional, but the Fifth District Appellate Court of Illinois disagreed and reversed the circuit court’s decision. Initially, the Illinois Supreme Court agreed with the circuit court. Upon review, however, it affirmed the decision of the appellate court and held SWIDA had exceeded its authority. This author contends that although the court’s decision is ultimately correct, the public use test adopted by the court is unsound. In deciding the constitutionality of condemnation in eminent domain cases, the court should validate the taking only when the public is the intended beneficiary. Editor, Becky A. Ray.
Texas Law Review
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