

THE
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Numbers 1 & 2

January 20 & March 8, 2016

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EXEMPLARY NOMINEES AND A COLORFUL PUZZLE

PREVIEWING THE 2016 ALMANAC & READER

Green Bagatelle #1 (January 20, 2016)

The “Exemplary Legal Writing” ballots are in the mail. During 2015, judges and other legal scholars nominated judicial opinions and law review articles for our annual collection of exemplary legal writing. Those nominators are now voting for what they believe to be the most especially exemplary of those nominees. In a few weeks we will tally the votes and then publish the top vote-getters in the 2016 *Green Bag Almanac & Reader*. We had planned to honor exemplary writing in four categories, but we ended up with just three, for a reason that will become obvious if you keep reading.

Here is a complete list of the exemplary legal writing on the ballot:

I. OPINIONS FOR THE COURT

Cecilia Maria Altonaga, *In re Denture Cream Products Liability Litigation*, 2015 WL 392021 (S.D. Fla. Jan. 28, 2015)

Charles R. Breyer, *In re Hewlett-Packard Company Shareholder Derivative Litigation*, No. 3:12-cv-06003-CR (N.D. Cal. July 28, 2015)

The Court, *In re Hong Yen Chang*, 344 P.3d 288 (Cal. 2015)

Frank H. Easterbrook, *Iqbal v. Patel*, 780 F.3d 728 (7th Cir. 2015)

Judith L. French, *In re Complaint of Pilkington North America, Inc.*, 2015 WL 7485933 (Ohio 2015)

Elena Kagan, *Mach Mining, LLC v. EEOC*, 135 S.Ct. 1645 (2015)

Cornelia T.L. Pillard, *Arpaio v. Obama*, 797 F.3d 11 (D.C. Cir. 2015)

Jed S. Rakoff, *In re Petrobras Securities Litigation*, 104 F.Supp.3d 618 (S.D.N.Y. 2015)

Antonin Scalia, *Johnson v. U.S.*, 135 S. Ct. 2551 (2015)

Amul R. Thapar, *Wagner v. Sherwin-Williams Co.*, 2015 WL 5174130 (E.D. Ky. 2015)

William G. Young, *In Re Nexium (Esomeprazole) Antitrust Litigation*, 309 F.R.D. 107 (D. Mass. 2015)

II. CONCURRENCES,
DISSENTS & OTHER OPINIONS

- Carlos T. Bea, *John Doe I v. Nestle USA, Inc.*, 788 F.3d 946 (9th Cir. 2015)
Frank H. Easterbrook, *Thomas v. Clements*, 797 F.3d 445 (7th Cir. 2015)
Jennifer Walker Elrod, *Trent v. Wade*, 801 F.3d 494 (5th Cir. 2015)
Alex Kozinski, *Garcia v. Google, Inc.*, 786 F.3d 733 (9th Cir. 2015)
Goodwin Liu, *People v. Grimes*, 340 P.3d 293 (Cal. 2015)
Jill A. Pryor, *In re Rivero*, 797 F.3d 986 (11th Cir. 2015)
John G. Roberts, Jr., *McFadden v. U.S.*, 135 S.Ct. 2298 (2015)
Ojetta R. Thompson, *Sanchez v. Roden*, 2015 WL 8057132 (1st Cir. 2015)
Don R. Willett, *Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69 (Tex. 2015)

III. LAW REVIEW ARTICLES
PUBLISHED 50 YEARS AGO

- David L. Bazelon, *Law, Morality, and Civil Liberties*, 12 UCLA Law Review 13 (1964-1965)
John R. Brown, *The Trumpet Sounds: Gideon — A First Call to the Law School*, 43 Texas Law Review 312 (1965)
Guido Calabresi, *The Decision for Accidents: An Approach to Nonfault Allocation of Costs*, 78 Harvard Law Review 713 (1965)
Paul Mishkin, *Foreword: The High Court, the Great Writ, and the Due Process of Time and Law*, 79 Harvard Law Review 56 (1965)
Joseph T. Sneed, *The Criteria of Federal Income Tax Policy*, 17 Stanford Law Review 567 (1965)
Arthur E. Sutherland, Jr., *Crime and Confession*, 79 Harvard Law Review 21 (1965)
Herbert Wechsler, *The Courts and the Constitution*, 65 Columbia Law Review 1001 (1965)

IV. U.S. SUPREME COURT BRIEFS

Interestingly, our voters have nothing to vote for in this category because we received zero nominations. We wonder why.



Like every *Green Bag Almanac & Reader*, this year's will have — in addition to the “Exemplary Legal Writing” honorees — our perennially popular annual reviews:

Bryan Garner's *The Year in Language & Writing*

Greg Jacob and Rakesh Kilaru's *The Year in Law*

Tony Mauro's *A Term in the Life of the Supreme Court*

and

Kevin Underhill's *A Year of Lowering the Bar*

We will also have our customary thematic “useful and entertaining tidbits.” Like last year's *Almanac & Reader*, this year's will have a Sherlock Holmes/John Watson theme. This time we will focus on two stories: “The Reigate Puzzle” (one of the classics) and “The Field Bazaar” (a somewhat obscure and controversial vignette).

Unfortunately, there are limits to what we can do in the *Almanac & Reader*, mostly because it is a small book (6 inches wide by 9 inches tall) and it is printed in plain, relatively inexpensive black and white. That's too bad. Some of the most appealing of the old printings of the Sherlock Holmes stories are from large-format newspapers and magazines, with colorful illustrations.

For example, as Ira Brad Matetsky explained in the 2015 *Almanac & Reader*, the last complete set of the *New York World* was almost lost to the world. Heroics by crusading ink-on-paper lover Nicholson Baker saved the last complete set of that historically significant newspaper:

Owned by Joseph Pulitzer from 1883 until his death in 1911, the paper acquired a reputation for sensationalism and the original “yellow journalism.” In 1896, it became the first newspaper with a four-color press, of which it took robust advantage during the ensuing years. It published O. Henry and Mark Twain and A.J. Liebling and later Dor-

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othy Parker; it featured the first comic strip (“Hogan’s Alley,” aka “The Yellow Kid”) and the first crossword puzzle.¹

Today, those old *Worlds* are in the care of Duke University’s David M. Rubenstein Rare Book and Manuscript Library.

Duke’s collection includes a colorful 1905 edition of “The Reigate Puzzle.”² We cannot faithfully reproduce it in our plain, cellulose-based *Almanac & Reader*, but we can in this, our snazzy, web-based *Green Bagatelle*. And so, with the generous assistance and permission of the kind people at the Rubenstein Library, we present the *World’s* “Reigate Puzzle” here. But first, the *World’s* Saturday (June 10, 1905) cliffhanger introduction to the full Sunday (June 11) version of the story . . .³

— Ross E. Davies

¹ Ira Brad Matetsky, *The Adventure of the New York World*, 2015 GREEN BAG ALM. 465, 467.

² Arthur Conan Doyle, *The Reigate Puzzle*, N.Y. WORLD, June 11, 1905, Sunday Edition, Magazine Section, at 7-8, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

³ Arthur Conan Doyle, *The Reigate Puzzle*, N.Y. WORLD, June 10, 1905, Evening Edition, Story Supp., at 3 (via *Chronicling America*, Library of Congress, chroniclingamerica.loc.gov).

EXEMPLARY WRITING FROM 2015 & RULES FOR 2016

Green Bagatelle #2 (March 8, 2016)

Here is a list of our “exemplary legal writing” honorees for 2015. Most can be found on the web. *Green Bag* subscribers will find all of them (except the books) in the 2016 *Almanac & Reader*, which will be in mailboxes worldwide later this month. Congratulations to all:

OPINIONS FOR THE COURT

Charles R. Breyer, *In re Hewlett-Packard Company Shareholder Derivative Litigation* (N.D. Cal. July 28, 2015)

Elena Kagan, *Mach Mining v. EEOC*, 135 S.Ct. 1645 (2015)

Cornelia T.L. Pillard, *Arpaio v. Obama*, 797 F.3d 11 (D.C. Cir. 2015)

Amul R. Thapar, *Wagner v. Sherwin-Williams Co.*, 2015 WL 5174130 (E.D. Ky. 2015)

CONCURRENCES, DISSENTS, ETC.

Carlos T. Bea, *Doe v. Nestle*, 788 F.3d 946 (9th Cir. 2015)

Frank H. Easterbrook, *Thomas v. Clements*, 797 F.3d 445 (7th Cir. 2015)

O. Rogeriee Thompson, *Sanchez v. Roden*, 808 F.3d 85 (1st Cir. 2015)

Don R. Willett, *Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69 (Tex. 2015)

LAW REVIEW ARTICLES FROM 50 YEARS AGO

Guido Calabresi, *The Decision for Accidents*, 78 Harvard Law Review 713 (1965)

Herbert Wechsler, *The Courts and the Constitution*, 65 Columbia Law Review 1001 (1965)

BOOKS

Recommended by our respectable authorities — Femi Cadmus, Lee Epstein, Cedric Merlin Powell, and Susan Phillips Read:

Akhil Reed Amar, *The Law of the Land* (Yale)

Adam Benforado, *Unfair* (Crown)

Ellen Berrey, *The Enigma of Diversity* (Chicago)

The Green Bag's

2016

ALMANAC

of useful & entertaining tidbits for lawyers
for the year to come

&

READER

of exemplary legal writing
from the year just passed
(see honorees on back cover)

is a special

SHERLOCK HOLMES ENCORE EDITION

with much mystery
steeped in Victorian imagery

as well as our perennially popular

ANNUAL REVIEWS

The Year in Language & Writing
Bryan A. Garner

The Year in Law
Gregory F. Jacob

**A Year in the Life
of the Supreme Court**
Tony Mauro


A Year of Lowering the Bar
M. Kevin Underhill

FEATURES coming soon


law books of 2015 recommended by our respectable authors
Femi Cadmus • Susan Phillips Read
Cedric Merlin Powell • Lee Epstein
And much more, including . . .

the Court's attention that . . .

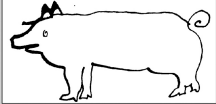
. . . an UNREADABLE OPINION, . . .



. . . old and new versions of
THE REIGATE PUZZLE . . .



. . . and THE FIELD BAZAAR, . . .



. . . JUDICIAL, SCIENTIFIC,
and OTHER PIGS, . . .

Your co-workers take pleasure in
your great sense of creativity.

. . . FORTUNES from COOKIES,
and so on and so on . . .

Stephen Breyer, *The Court and the World* (Knopf)

John Bronsteen, Christopher Buccafusco & Jonathan S. Masur, *Happiness and the Law* (Chicago)

Irin Carmon & Shana Knizhnik, *Notorious RBG* (HarperCollins)

Ta-Nehisi Coates, *Between the World and Me* (Spiegel & Grau)

John C. Coffee, Jr., *Entrepreneurial Litigation* (Harvard)

Alan M. Dershowitz, *Abraham* (Schocken)

Nancy E. Dowd (ed.), *A New Juvenile Justice System* (NYU)

Jeffrey A. Engel (ed.), *The Four Freedoms* (Oxford)

Nuno Garoupa & Tom Ginsburg, *Judicial Reputation* (Chicago)

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Gunnar Grendstad, William R. Shaffer & Eric Waltenburg, *Policy Making in an Independent Judiciary* (ECPR)

Wil Haygood, *Showdown* (Knopf)

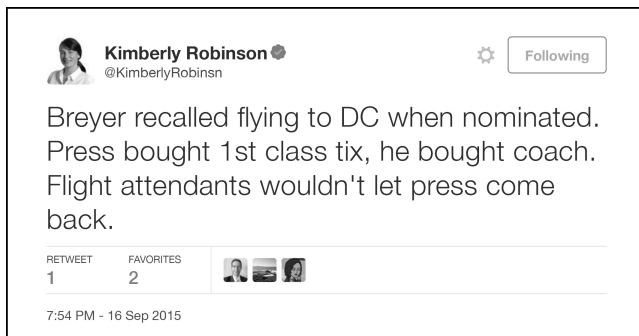
Dan Jones, *Magna Carta* (Viking)

Burt Neuborne, *Madison's Music* (New)

Richard A. Posner, *Divergent Paths* (Harvard)

Cass R. Sunstein, *Constitutional Personae* (Oxford)

Michael A. Zilis, *The Limits of Legitimacy* (Michigan)



In related business, here are some new and perhaps improved rules for selection of our “exemplary legal writing” honorees for 2016.

FORM

First, all nominations must be sent to editors@greenbag.org and must include the following in the body of the email: (a) an accurate citation or functional link to the nominated work, (b) the nominator’s real name, and (c) an email address and a snail-mail address for the nominator (for Category #5 — see below — also include a Twitter handle).

CONTENT

Second, we have tinkered with some categories, given up on one, and added two new ones:

Category #1: Judicial Opinions — We are expanding the pool of nominators. Any judge in active service in 2016 on a state or federal court may nominate one or two signed opinions issued in 2016.

Category #2: State Supreme Court Briefs — We are ditching “U.S. Su-

preme Court Briefs.” We had zero nominees in 2015. It is easy to imagine reasons for this, and none of the likely ones involves conditions over which the *Green Bag* has much influence. So, we are moving on to another field where good litigators write. Category #2 is now “State Supreme Court Briefs.” Anyone listed as counsel on a brief filed in a state supreme court in 2015 or 2016 may nominate a brief filed in that court in 2016.

Category #3: Law Review Articles — We are pretty happy with this category, so the only changes are the qualifying years for nominators and nominees. Anyone who (a) wrote something with a 2015 publication date in any law review at a U.S. law school, and (b) was not a law student at the time, may nominate in this category any article with a 1991 publication date in any law review at a U.S. law school. This is, as it was last year, a test of durability and timeliness: What scholarship published 25 years ago is the most readable and worth reading today?

Category #4: Books — We are happy with this as well. We hope all four of our respectable authorities return for 2016. We might add one or two.

Category #5: Tweets — This is a new category. Anyone with a Twitter account may nominate an exemplary law-related tweet by sending us a link. Hashtags, likes, and retweets are irrelevant in this context. We will have no stuffing of ballot boxes at the *Green Bag*, if we can avoid it. To get you thinking about excellence in tweeting we’ve included one by Kimberly Robinson that we think is mighty good: compact, articulate, and interesting, with a point and an edge but no barb.

PROCESS

Third, we have done a little bit of tinkering with the voting qualifications, just to make them line up with the other changes we’ve made:

Who can vote? Anyone who sends a valid nomination in any category gets to vote in all categories.

What will they actually vote on? A ballot of finalists winnowed from the pools of nominees. It will be mostly a popularity-and-persuasion contest — works receiving the most nominations are most likely to make the ballot. A few others whose nominations are accompanied by especially persuasive explanations of their sterling qualities are likely to make it too.

And, finally, there is the nomination deadline: January 1, 2017.

— *Ross E. Davies*