The Green Bag's 2014 ALMANAC & READER

of useful & entertaining tidbits for lawyers for the year to come &
exemplary legal writing from the year just passed
(see honorees on back cover),
featuring our perennially popular

ANNUAL REVIEWS
The Year in Language & Writing • by Bryan A. Garner
A Term in the Life of the Supreme Court • by Tony Mauro
A Year of Lowering the Bar • by Kevin Underhill
The Year in Law • by Gregory F. Jacob & Rakesh Kilaru

plus a special

BREAKFAST TO THE JUSTICES
of the Supreme Court of the United States, originally served to Chief Justice Morrison R. Waite, several of his colleagues, and many other pillars of the bench and bar on September 15, 1887, in Philadelphia, by the bar of that city, and recently reconstructed from the modern market, reformulated for the modern palate, revised for the modern diet, and served (though not to the Justices) on December 7, 2013, in Washington,

by Leiv Blad, Chef, Le Sac Vert
NOW KNOW YE that We, in consideration of circumstances humbly represented unto Us, are Graciously pleased to extend Our Grace and Mercy unto the said Alan Mathison Turing and to grant him Our Free Pardon posthumously in respect of the said convictions;

AND to pardon and remit unto him the sentence imposed upon him as aforesaid;

AND for so doing this shall be a sufficient Warrant.

GIVEN at Our Court at Saint James’s
the 24th day of December 2013;
In the sixty-second Year of Our Reign.

By Her Majesty’s Command.

GREEN BAG READER
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HAMPTON L. CARSON, 1852-1929

Lawyer, Attorney General of Pennsylvania, ABA President, Orator. 

“The magnificent demonstration at Philadelphia on the 15th, 16th, and 17th of September, 1887, showing alike the popular and the official allegiance, on the part of the States and of the nation, to the great Act of 1787, created a profound impression upon the vast throngs of witnesses.”

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**Preface**

This is the ninth *Green Bag Almanac & Reader*. For a reminder of the reasons why the world is a better place with it than without it, read the “Preface” to the 2006 edition. It is available on our website (www.greenbag.org).

**Our Diligent Board**

Our selection process for “Exemplary Legal Writing of 2013” was, like past years’, not your typical invitation to competitive self-promotion by authors and their publishers and friends. We did not solicit (or accept) entries from contestants, charge them entry fees, or hand out blue, red, and white ribbons. Rather, we merely sought to:

(a) organize a moderately vigilant watch for good legal writing, conducted by people (our Board of Advisers) who would know it when they saw it and bring it to our attention;

(b) coordinate the winnowing of advisers’ favorites over the course of the selection season, with an eye to harvesting a crop of good legal writing consisting of those works for which there was the most substantial support (our “Recommended Reading” list);

(c) ballot our advisers to identify the cream of that already creamy crop; and then

(d) present the results to you in a useful and entertaining format — this book.

The nitty-gritty of our process for selecting exemplars is a simple but burdensome series of exercises:

**Step 1:** Our advisers read legal writing as they always have, keeping an eye out for short works and excerpts of longer works that belong in a collection of good legal writing. When they find worthy morsels, they send them to the *Green Bag*. “Good legal writing” is read broadly for our purposes. “Good” means whatever the advisers and the lead editor think it does. As one experienced scholar and public servant on our board put it, “there is good writing in the sense of what is being said and also in the
sense of how it is being said.” Our advisers are looking for works that have something of each. “Legal” means anything written about law — opinions, briefs, articles, orders, statutes, books, motions, letters, emails, contracts, regulations, reports, speeches, and so on. “Writing” means ink-on-paper or characters-on-screen.

**Step 2:** The Green Bag organizes the advisers’ favorites into categories, and then sends a complete set to every adviser. Advisers’ names are not attached to the works they nominate. In other words, everything is anonymized. Advisers vote without knowing who nominated a piece. Similarly, their rankings are secret. No one but the lead editor ever sees individual advisers’ rankings or knows who voted in which categories. And the editor destroys all individualized records once the Almanac is in print.

Advisers are free to vote in as many categories — or as few — as they desire. That is, although there may be scores of nominated works in total, they are free to select the types of writing they want to evaluate. Almost all — but invariably not all — advisers vote in each category.

**Step 3:** An editor tallies the rankings and compiles the “Reader” portion of the Almanac based on the results, reserving, as editors tend to do, the right to add, subtract, and reorganize within reason. All nominated works are listed in the “Recommended Reading” section.

**Step 4:** The advisers and the editor start all over again for next year’s edition — a process that has been underway since last Halloween (recall that our annual cycle for selection of exemplary legal writing begins and ends on October 31), with dozens of nominees already in the queue for the 2015 Almanac.

Despite the substantial work involved in this project, most of our advisers seem to enjoy participating. Those who don’t seem to view it as some sort of professional duty. Either way, we’re glad to have them. But these are people with day jobs, other commitments, and sleep requirements. So not everyone can pitch in every year. Being listed as an adviser implies that a body has done some advising, however, and it doesn’t seem right to burden people with a slice of the collective responsibility (or credit, if there is any) for a project in which they did not participate, at least this time
around. So the list of board members in this Almanac is different from last year’s and will, we expect, be different again next year and thereafter. The fact that people move on and off the list does not necessarily indicate anything about their ongoing commitment to the Almanac, other than when they have had the time and inclination to participate. Of course, we hope they always will.

ILLUMINATED WE ARE, AT THE END OF THE TUNNEL, AND READY FOR BREAKFAST

Like our 2013 Almanac, this one is late — printed in October 2014, not in the winter of 2013-14, as it should have been. But it does not suffer from the other big problem — relative plainness and dullness — that marked the 2013 book. Last year I wrote,

This year [2013] there is not much potpourri; we hope (despite recent experience) that next year will be better.

And this year’s Almanac is indeed filled with potpourri. That is because the Green Bag recently learned that we are really and truly out of the woods when it comes to our recent and mostly self-inflicted tax troubles. We had thought we were nearly through the last bramble bushes last autumn, but it took about one extra year to really get into the clear. (Reinforcing a lesson we learned from the whole business.) Thus both the tardiness and prettiness of this book: We thought we were good to go, and so we prepared a big-budget Almanac, but then we had to hold our horses while we waited nervously to see how one last round of snafus got resolved. Now we know that all is well and we can print our big and beautiful book. And the Green Bag, chastened and enlightened, is looking forward to living happily ever after (or at least as long as corporations are permitted to live), diligently and punctually and cheerfully complying with all relevant tax laws.

Most of the potpourri in this Almanac is connected, in one way or another, with the centennial of the drafting of the U.S. Constitution, and mostly with the celebration of the occasion in Philadelphia in September 1887. The highlight of those festivities — at least as far as the Green Bag is concerned — was an elaborate breakfast for the
Justices of the Supreme Court of the United States (and a few dozen other guests) that the organized bar of Philadelphia hosted on September 15, 1887. We have made that breakfast the centerpiece of this Almanac by commissioning Leiv Blad — the chef who interpreted Rex Stout’s The Nero Wolfe Cookbook in our 2012 Almanac — to re-create the dishes enjoyed by the Justices. Blad’s recipes and associated commentary introduce each monthly section of this year’s Almanac. I have tasted each of the dishes as he has formulated them. They are delicious.

OTHER FINE WRITING

The Green Bag is not the only institution that salutes good legal writing. Here are a few of the others, and some honors they bestowed in 2013:

Scribes:
The American Society of Legal Writers

Book Awards:

Law Review Award (best student-written article):

The Burton Awards
for Legal Achievement

Dozens of awards are listed on the Burton Awards website, at www.burtonawards.com/event2013_winners.html.

University of Alabama School of Law
and the ABA Journal

Harper Lee Prize for Legal Fiction:
Paul Goldstein, Havana Requiem (Farrar, Straus and Giroux 2012).
Preface

Homer Keeps Nodding . . .

We continue to struggle, and fail, to produce a flawless big fat book in a hurry. Here is the only error we are sure we made — there are others, no doubt — in the 2013 Almanac:

Page 137: There should be a closed parenthesis after “1986” at the bottom of the page.

In Other Business

Our goals remain the same: to present a fine, even inspiring, year’s worth of exemplary legal writing — and to accompany that fine work with a useful and entertaining potpourri of distracting oddments. Like the law itself, the 2013 exemplars in this volume are wide-ranging in subject, form, and style. With any luck we’ll deliver some reading pleasure, a few role models, and some reassurance that the nasty things some people say about legal writing are not entirely accurate.

• • • •

Finally, the Green Bag thanks you, our readers. Your continuing kind remarks about the Almanac are inspiring. The Green Bag also thanks our Board of Advisers for nominating and selecting the works recognized here; O’Melveny & Myers LLP (especially Nadine Bynum and Greg Jacob) and the George Mason University School of Law for generous support; and Ira Brad Matetsky of Ganfer & Shore, LLP in New York for his attention to detail and nuance.

Ross E. Davies
October 10, 2014
RECOMMENDED READING

We have tallied the ballots and printed the top vote-getters in this book. They are the ones listed in the Table of Contents above and marked in the list below by a little ✯. There were plenty of other good works on the ballot. We list them here. Congratulations to all.

•      •      •      •

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Edith H. Jones, National Rifle Association, Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 714 F.3d 334 (5th Cir. 2013)


Alex Kozinski, In re Motor Fuel Temperature Sales Practices Litigation, 711 F.3d 1050 (9th Cir. 2013)

Mark S. Massa, Indiana Gas Co. v. Indiana Finance Authority, 992 N.E.2d 678 (Ind. 2013)


Milan D. Smith, Jr., Lane v. Facebook, Inc., 709 F.3d 791 (9th Cir. 2013)

BOOKS

Jess Bravin, The Terror Courts: Rough Justice at Guantanamo Bay (Yale University Press 2013)

Richard R.W. Brooks and Carol M. Rose, Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms (Harvard University Press 2013)


John W. Hartmann, Jacket: The Trials of a New Jersey Criminal Defense Attorney (Plexus Publishing 2012)


Margaret Klaw, Keeping It Civil: The Case of the Pre-nup and the Porsche & Other True Accounts from the Files of a Family Lawyer (Algonquin Books of Chapel Hill 2013)


LONG ARTICLES

G. Ross Anderson, Jr., *Returning to Confrontation Clause Sanity: The Supreme Court (Finally) Retreats from Melendez-Diaz and Bullcoming*, 60 Federal Lawyer 67 (March 2013)


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Melanie Asmar, *Is a fetus a person? The Colorado Supreme Court may have to decide*, Denver Westword, January 24, 2013


Timothy B. Lee, *Enraged by abusive lawsuits, anonymous troll slayers fight back*, Ars Technica, arstechnica.com, February 26, 2013

Dafna Linzer, *Obama Has Granted Clemency More Rarely Than Any Modern President*, ProPublica, propublica.org, November 2, 2012


Sarah Stillman, *Taken*, The New Yorker, August 12, 2013

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Ruben Bolling (aka Kenneth Fisher), *Tom the Dancing Bug: YOU are a computer criminal!*, boingboing.net (January 30, 2013)

Paula J. Frederick et al., *Judge’s Use of Electronic Social Networking Media*, ABA Formal Opinion 462 (February 21, 2013)


Barack Obama, *Statement by the President on H.R. 4310*, The White House, Office of the Press Secretary (January 3, 2013)


legal concision’s
stranger than prolixity
harder than haiku

Robert A. James
January 13, 2013