

Ex Ante

News & Editorial

William W. Bedsworth, *No Questions Asked?*, The Recorder, Mar. 26, 2010

Jeffrey Toobin, *Without a Paddle*, The New Yorker, September 27, 2010

Nina Totenberg, *Martin Ginsburg's Legacy: Love of Justice (Ginsburg)*, Weekend Edition Saturday, NPR, July 2, 2010

Miscellany

Heather K. Gerken, *Testimony Submitted to the U.S. Senate Committee on Rules and Administration*, Feb. 2, 2010

Tony West et al., *Opposition to Plaintiff's Motion for Preliminary Injunction and Memorandum in Support of Defendant's Motion to Dismiss, Al-Aulaqi v. Obama*, 2010 WL 4941958 (D.D.C. filed Sept. 25, 2010)



EXEMPLARY LEGAL WRITING OF ANOTHER SORT

The meanings of the word “exemplary” are conveniently and amusingly (for the *Green Bag*, at least) various and potentially contradictory. According to the *Oxford English Dictionary*, “exemplary” can mean both “excellent” and “[o]f a kind to become an example, liable to be turned into a precedent.” It is in those complimentary senses that we use it to describe the works listed above. In the *OED*, “exemplary” can also mean “typical,” as in “[o]f or pertaining to a type” such as “[t]he typical English vices of egotism, hypocrisy, and envy.” It is in that sense that Professor Mark Graber of the University of Maryland could have used the word (had he chosen to do so) when he posted the following bit of perhaps tongue-in-cheek wisdom on *Balkinization* (balkin.blogspot.com) last September 19:

Ex Ante

THE CONDENSED SUPREME COURT JUSTICE'S GUIDE TO THE COURT

Every now and then, a Supreme Court justice or Supreme Court justice wannabee writes a history of the Supreme Court. With a few variations, they are all the same. In the interest of saving Balkinization readers time and money, I present the following condensed version of those histories.

Chapter One: The framers were committed to [whatever theory of government holds broad popular support at this moment].

Chapter Two: Marbury was correctly decided by heroic justices who recognized that judicial review is necessary for democracy, constitutionalism, world peace and Santa Claus.

Chapter Three: Every other major Marshall Court decision was right.

Chapter Four: The Taney Court was pretty good, except Dred Scott. Everything is wrong about Dred Scott, including the penmanship.

Chapter Five: The Supreme Court did nothing anyone would ever be interested in between Dred Scott and the New Deal, except Holmes and Brandeis delivered a series of opinions demonstrating the constitutional commitment to [whatever theory of government holds popular support at this moment].

Chapter 6: The Hughes Court after 1937 acted both democratically and consistently with the framers' intent.

Chapter 7: Brown v. Board of Education demonstrates [my preferred theory of constitutional interpretation] is correct.

Chapter 8: Once we know why Brown was rightly decided, we also know why my votes on abortion, gay marriage, guns, the commerce clause and the most valuable player in the NFL are also right.

Or you can buy the book. Best advice; wait for the movie.