



# GREEN BAG

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## PRESS RELEASE

### ***Green Bag's "Exemplary Legal Writing 2008" Honorees***

The *Green Bag*, a quarterly journal dedicated to good writing about the law, has announced its annual list of outstanding legal writing from the past year. The honorees were selected by the journal's special Board of Advisers on good legal writing, which includes distinguished members from the state and federal judiciaries, private law firms, the news media, and academia. For more information on the selection process and the Board of Advisers, please see the attached excerpts from the *Green Bag Almanac & Reader 2009* — the forthcoming book in which the *Green Bag* will be republishing the "Exemplary Legal Writing 2008" honorees listed below.

#### JUDICIAL OPINIONS

Frank H. Easterbrook, *FTC v. QT, Inc.*, 512 F.3d 858 (7th Cir. 2008)

Robert A. Katzmann, *Aris v. Mukasey*, 517 F.3d 595 (2d Cir. 2008)

M. Margaret McKeown, *Anderson v. Terhune*, 516 F.3d 781 (9th Cir. 2008)

#### BOOKS

Charles Lane, *The Day Freedom Died: The Colfax Massacre, the Supreme Court, and the Betrayal of Reconstruction* (Henry Holt & Co. 2008)

Victoria F. Nourse, *In Reckless Hands: Skinner v. Oklahoma and the Near-Triumph of American Eugenics* (W.W. Norton & Co. 2008)

Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges*, (Thomson West 2008)

Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (Penguin Press 2008)

#### SHORT ARTICLES

Norman Otto Stockmeyer, *To Err Is Human, To Moo Bovine*, 24 Thomas M. Cooley Law Review 491 (2007)

Jeffrey Toobin, *Death in Georgia: The High Price of Trying to Save an Infamous Killer's Life*, *The New Yorker*, Feb. 4, 2008

J. Harvie Wilkinson III, *Toward One America: A Vision in Law*, 83 *New York University Law Review* 323 (2008)

#### LONG ARTICLES

Michael Boudin, *Judge Henry Friendly and the Mirror of Constitutional Law*, 82 *New York University Law Review* 975 (2007)

Lee Epstein, Kevin Quinn, Andrew D. Martin & Jeffrey A. Segal, *On the Perils of Drawing Inferences About Supreme Court Justices from Their First Few Years of Service*, 91 *Judicature* 168 (Jan.-Feb. 2008)

James Robertson, *Quo Vadis, Habeas Corpus?*, 55 *Buffalo Law Review* 1063 (2008)

Philippe Sands, *The Green Light*, *Vanity Fair* (May 2008)

#### MISCELLANY

Richard G. Kopf, *The Top Ten Things I Learned From Apprendi, Blakely, Booker, Rita, Kimbrough and Gall*, *OSJCL Amici: Views from the Field* (Jan. 2008)

John G. Roberts Jr., *Pennsylvania v. Dunlap*, 129 S. Ct. 448 (2008)

## **Excerpts from the *Green Bag Almanac & Reader 2009***

#### OUR DILIGENT BOARD

Our selection process for “Exemplary Legal Writing of 2008” 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 volume 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 volume 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, advisers 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: The volume editor tallies the rankings and compiles the “Reader” portion of the *Almanac & Reader* based on the results, reserving, as editors tend to do, the right to add, subtract, and reorganize within reason. Nominated works not published in the book 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 which 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 2010 *Almanac*.

Despite the substantial work involved in this business, most of our advisers seem to enjoy participating. Those who don’t enjoy it appear to view this business as some sort

of professional duty. Either way, we're glad to have them. But these are people with day jobs, other substantial commitments, and minimum 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 just doesn't seem right to burden someone with some small 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 published on the inside and the outside of this *Almanac* has changed since last year and will, we expect, continue to change from year to year. The fact that people come and go from the board 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.

#### 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 on the list below by a little ★. There were plenty of other good works on the ballot. We list them here. Congratulations to all.<sup>1</sup>



#### OPINIONS FOR THE COURT

Carlos Bea, *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058 (9th Cir. 2008)

Franklin D. Elia, *Krinsky v. Doe 6*, 159 Cal. App. 4th 1154 (6th Dist. 2008)

★ Frank H. Easterbrook, *FTC v. QT, Inc.*, 512 F.3d 858 (7th Cir. 2008)

Ronald M. George, *In re Marriage Cases*, 43 Cal.4th 757 (2008)

Ruth Bader Ginsburg, *Taylor v. Sturgell*, 128 S. Ct. 2161 (2008)

Ronald Gould, *Witt v. Dep't of the Air Force*, 527 F.3d 806 (9th Cir. 2008)

Patrick E. Higginbotham, *In re Katrina Canal Litigation Breaches*, 524 F.3d 700 (5th Cir. 2008)

★ Robert A. Katzmann, *Aris v. Mukasey*, 517 F.3d 595 (2d Cir. 2008)

Alex Kozinski, *Garcia-Aguilar v. U.S. District Court for the Southern Dist. of California*, 535 F.3d 1021 (9th Cir. 2008)

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<sup>1</sup> Some publishers require consideration for reproduction that exceeds the *Green Bag's* modest resources. For the most part it didn't matter this year, but it was publishers' demands for money, not low supplies of votes, that precluded our republication of Adam Liptak's article, *Illegal Globally, Bail for Profit Remains in U.S.*, and H. Jefferson Powell's book, *Constitutional Conscience: The Moral Dimension of Judicial Decision*.

Michael McConnell, *Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008)

★ M. Margaret McKeown, *Anderson v. Terhune*, 516 F.3d 781 (9th Cir. 2008) (en banc)

Antonin Scalia, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008)

J. Harvie Wilkinson III, *EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306 (4th Cir. 2008)

William G. Young, *Situation Management Systems v. ASP Consulting Group*, 535 F. Supp. 2d 231 (D. Mass. 2008)

William J. Zloch, *In re Beck*, 526 F. Supp. 2d 1291 (S.D. Fla. 2007)

#### OPINIONS CONCURRING, DISSENTING, ETC.

Samuel A. Alito Jr., *Kennedy v. Louisiana*, 128 S. Ct. 2641 (2008)

William A. Fletcher, *Navajo Nation v. U.S. Forest Service*, 535 F.3d 1058 (9th Cir. 2008)

Thomas Reavley, *Wheeler v. Pilgrim's Pride Corp.*, 536 F.3d 455 (5th Cir. 2008)

Robert Sack, *Arar v. Ashcroft*, 532 F.3d 157 (2d Cir. 2008)

Antonin Scalia, *Boumediene v. Bush*, 128 S. Ct. 2229 (2008)

David Souter, *United States v. Williams*, 128 S. Ct. 1830 (2008)

John Paul Stevens, *New York State Board of Elections v. Lopez Torres*, 128 S. Ct. 791 (2008)

John Paul Stevens, *Baze v. Rees*, 128 S. Ct. 1520 (2008)

#### BOOKS

(including articles more than 25,000 words long)

Thomas B. Colby, *The Federal Marriage Amendment and the False Promise of Originalism*, 108 Columbia Law Review 529 (2008)

Mary L. Dudziak, *Exporting American Dreams* (Oxford University Press 2008)

Oona A. Hathaway, *Treaties End*, 117 Yale Law Journal 1236 (2008)

★ Charles Lane, *The Day Freedom Died* (Henry Holt & Co. 2008)

★ Victoria F. Nourse, *In Reckless Hands* (W.W. Norton & Co. 2008)

Nicholas Parrillo, *The De-Privatization of American Warfare*, 19 Yale Journal of Law & Humanities 1 (2007)

Justin Peacock, *A Cure for Night* (Doubleday Press 2008)

William D. Popkin, *Evolution of the Judicial Opinion: Institutional and Individual Styles* (NYU Press 2007)

H. Jefferson Powell, *Constitutional Conscience: The Moral Dimension of Judicial Decision* (University of Chicago Press 2008)

★ Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* (Thomson West 2008)

William J. Stuntz, *Unequal Justice*, 121 *Harvard Law Review* 1969 (2008)

Steven M. Teles, *The Rise of the Conservative Legal Movement* (Princeton University Press 2008)

Laurence H. Tribe, *The Invisible Constitution* (Oxford University Press 2008)

★ Benjamin Wittes, *Law and the Long War: The Future of Justice in the Age of Terror* (Penguin Press 2008)

Jonathan Zittrain, *The Future of the Internet and How to Stop It* (Yale University Press 2008)

#### SHORT ARTICLES

Neil Kinkopf, *The Congress as Surge Protector*, [www.acslaw.org/pdf/Kinkopf-Surge.pdf](http://www.acslaw.org/pdf/Kinkopf-Surge.pdf) (2007)

Michael J. Klarman, *Conclusion*, in *Unfinished Business: Racial Equality in American History* (Oxford University Press 2007)

Adam Liptak, *If Your Hard Drive Could Testify . . .*, *New York Times*, January 7, 2008

Adam Liptak, *Illegal Globally, Bail for Profit Remains in U.S.*, *New York Times*, January 29, 2008

Theodore B. Olson, *Clinton v. Obama: The Lawsuit*, *Wall Street Journal*, February 11, 2008

★ Norman Otto Stockmeyer, *To Err Is Human, To Moo Bovine: The Rose of Aberlone Story*, 24 *Thomas M. Cooley Law Review* 491 (2007)

★ Jeffrey Toobin, *Death in Georgia*, *The New Yorker*, Feb. 4, 2008

Henry Weinstein, *Supreme Court takes up lethal injection battle*, *Los Angeles Times*, January 7, 2008

★ J. Harvie Wilkinson III, *Toward One America: A Vision in Law*, 83 *NYU Law Review* 323 (2008)

#### LONG ARTICLES

Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 *Harvard Law Review* 1333 (2008)

*The Green Bag, an Entertaining Journal of Law*

- ★ Michael Boudin, *Judge Henry Friendly and the Mirror of Constitutional Law*, 82 NYU Law Review 975 (2007)
- Jose Cabranes, *International Law By Consent of the Governed*, 42 Valparaiso University Law Review 119 (2007)
- Scott Dodson, *Mandatory Rules*, 61 Stanford Law Review 1 (2008)
- Lisa Eichhorn, *Clarity and the Rules of Civil Procedure: A Lesson from the Style Project*, 5 Journal of ALWD 1 (2008)
- ★ Lee Epstein, Kevin Quinn, Andrew D. Martin & Jeffrey A. Segal, *On the Perils of Drawing Inferences About Supreme Court Justices from Their First Few Years of Service*, 91 Judicature 168 (2008)
- Robert George, *Natural Law*, 31 Harvard Journal of Law & Public Policy 171 (2008)
- Jamal Greene, *Giving the Constitution to the Courts*, 117 Yale Law Journal 886 (2008)
- Steven G. Kalar and Jon M. Sands, *An Object All Sublime – Let the Punishment Fit the Crime*, The Champion 20 (March 2008)
- Jamie Gibbs Pleune, *Is Scalian Standing the Latest Sighting . . . ?*, 38 Lewis & Clark Law School's Environmental Law Online
- ★ James Robertson, *Quo Vadis, Habeas Corpus?*, 55 Buffalo Law Review 1063 (2008)
- ★ Philippe Sands, *The Green Light*, Vanity Fair (May 2008)
- Joseph W. Singer, *Things that We Would Like to Take for Granted*, 2 Harvard Law & Policy Review 139 (2008)
- John Yoo, *Jefferson and Executive Power*, 88 Boston U. L. Rev. 421 (2008)

MISCELLANY

- ★ Richard G. Kopf, *The Top Ten Things I Learned From Apprendi, Blakely, Booker, Rita, Kimbrough and Gall*, osjcl.blogspot.com (2008)
- Ronald B. Leighton, *Presidio Group LLC v. GMAC Mortgage LLC*, 2008 WL 2595675 (W.D. Wash. 2008)
- Benjamin C. Mizer, *Application for a Stay, Brunner v. Ohio Republican Party*, 129 S. Ct. 5 (2008)
- James R. Nowlin, *Waggoner v. Wal-Mart Stores, Inc.*, No. A-07-CA-703-JRN (W.D. Tex., June 3, 2007)
- ★ John G. Roberts, Jr., *Pennsylvania v. Dunlap*, 129 S. Ct. 448 (2008)
- Chris Satullo, *A not-so-glorious Fourth*, Philadelphia Inquirer, July 1, 2008

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