This is the "Ethereal Version" of the Green Bag's

2017

ALMANAC & READER

of useful and entertaining tidbits for lawyers
and exemplary legal writing from the year just passed

celebrating

Lyndon Johnson's 1967 announcement of Thurgood Marshall's nomination to the Supreme Court of the United States

and featuring our

Legal Writing Honorees

as well as our perennially popular annual reviews

The Year 2016 in Grammar, Language, and Writing
Bryan A. Garner

The Year in Law
Gregory F. Jacob, Rakesh Kilaru, Kristi Gallegos & Brian Quinn

A Year in the Life of the Supreme Court
Tony Mauro

A Year of Lowering the Bar
M. Kevin Underhill

The Year in Legal Information/Legal Tech
Wendy Everette, Catherine Gellis, Fatima Nadine Khan,
Eli Mattern & Whitney Merrill

Almanac Excerpts

This year's *Almanac Excerpts* consists of more than mere excerpts –
it is the entire "Ethereal Version" of the 2017 *Green Bag Almanac & Reader*!

ETHEREAL VERSION

THE GREEN BAG

ALMANAC

OF USEFUL AND ENTERTAINING
TIDBITS FOR LAWYERS

&

READER

OF EXEMPLARY LEGAL WRITING
FROM THE YEAR JUST PASSED

2017

EDITED BY

ROSS E. DAVIES

&

CATTLEYA M. CONCEPCION

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First two-version edition.

There are two versions of the 2017 *Almanac & Reader*: the *Material Version* (it features videos in an ink-on-paper format, aka flipbooks), and the *Ethereal Version* (it features videos in an electrons-on-internet format, aka URLs). Each eligible *Green Bag* subscriber should receive one version or the other, but maybe not both.

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CORRESPONDENCE. Please write to The Green Bag, Inc., 6600 Barnaby Street NW, Washington, DC 20015, visit www.greenbag.org, or email editors@greenbag.org.

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★ *Law Review Articles of 25 Years Ago* ★

We'd hoped to honor a third article, but the author, a professor at a prominent Connecticut law school, never responded to our polite (we hope) and persistent (we know) pursuit of permission to republish. We view his non-response and the non-response by the Delaware lawyer (see above) as (a) denials of permission and (b) healthy reminders of the *Green Bag*'s insignificance in the eyes of at least some (and maybe more than some) VIP lawyers.

★ *Books* ★

★ *Tweets* ★

ALMANAC OF USEFUL & ENTERTAINING TIDBITS

▼ *Last Year* ▼

▼ *This Year* ▼

▼ *Videos* ▼

[1] From the "Hearst Metrotone News Collection" at the UCLA Film & Television Archive.

PREFACE

SELECTING SELECTORS AND FLIPPING BOOKS

Ross E. Davies

This is the 12th *Green Bag Almanac & Reader*. For an explanation of why we at the *Green Bag* think the world is a better place with the *Almanac & Reader* than without it, read the "Preface" to the 2006 edition. It is available on our website (www.greenbag.org).

Having kept the series afloat for a dozen years, we figure the *Almanac & Reader* is here for the long haul, if not forever. That is why we've added it to our basic *Green Bag* subscription, starting with this edition.

I.
EXEMPLARY LEGAL WRITING

Our Tinkering Continues

Last year (and the first month of this year) was supposed to be our second round of conducting an open, two-step process for picking our "exemplary legal writing" honorees.[1]

First, we invited everyone to nominate works throughout 2016 in fields in which they were active: judges could nominate judicial opinions; supreme-court litigators could nominate briefs filed in state supreme courts; law review authors could nominate law review articles; tweeters could nominate tweets.

Second, anyone who nominated in any category could vote at the end of the year (in January 2017, actually) in every category.

The idea was to (1) harness the expertise of practicing specialists to build a ballot of credibly exemplary nominees in each category, and then (2) rely on the generalist sensibilities of a wide range of thoughtful reader-nominators to identify those works that impressed both non-specialists and specialists.

Unfortunately, it did not work out very well. Our best guess is that we were victims of our own success. In recent years, some legal writers have begun to value recognition in the *Green Bag Almanac & Reader*. We had some inkling of this pleasing trend, but developments during the 2016 nomination process really brought it home. Here are a few examples:

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[1] *See Preface*, 2016 Green Bag Alm. 1-5.

In 2016, we received more nominations of briefs than ever. And for the first time, every single one was nominated by a lawyer on the brief. A few admirably forthright nominators even volunteered that they were nominating their own best briefs, rather than the best briefs they had seen. At least one added "nominated for Green Bag award for excellence in legal writing" to his online c.v. after nominating his own brief. (Don't bother looking for it. It's not there anymore.)

In 2016, we received, as always, a healthy number of nominations of judicial opinions. For the first time, however, most opinions were nominated by judges sitting on the same courts as the authors of the nominated works.

In 2016, we received plenty of nominations of law review articles too. For the first time, most — and in this category it was a vast majority — had a hometown flavor. More than 80% of nominators nominated works written by scholars (or published in law reviews) based in the nominators' home institutions. Tweeters self-nominated at about the same rate.

There is nothing wrong with what might be called the parochial promotional pursuit of prizes. Indeed, that approach may well be the norm. There are quite a few famous prizes and awards that seem to work pretty much that way. And then there are the habits of mind developed by players of the *U.S. News & World Report* game.

But we at the *Green Bag* were thinking of our system differently. We imagined experts who read widely and wrote seriously in their day jobs — judges, litigators, law professors, and so on — applying their wisdom and experience to identify and honor the best legal writing they found anywhere. We did not imagine them focusing on putting their own work (or the work of their closest associates) in the spotlight.

We could be wrong. Maybe the connections between nominators and nominations are coincidences. Or maybe the experts — more worldly than the naïfs at the *Green Bag* — know that "read global, nominate local" is the best way to operate in this context. Or maybe, in the real world, experts don't have time to read outside their own circles. Or maybe something else.

Wrong or right, though, we felt we had failed at the nominations stage of our process in 2016. So, we called off the vote and set to tinkering again. And we were fortunate to have a ready fix at our fingertips.

Our New New System for Last Year — 2016

The fix is a black box.

First, some background. Every year we get unsolicited (but welcome) advice from a variety of first-rate legal writers. Most (but not all) are *Green Bag* authors or subscribers or advisers. In the course of our cordial (and often

constructively critical) back-and-forths with these folks, they opine from time to time about what we ought to publish in the *Almanac & Reader*. They ignore our limits on who is allowed to nominate what sorts of works, probably because their main interest is simply the exchange of ideas about interesting writing, not the placement of particular pieces in a particular book. In the past, we've read and enjoyed and learned from their comments, and then, with regret, ignored them when the time came to run our process for picking exemplary legal writing to honor in the *Almanac & Reader*. We had a process, and we stuck to it.

Now — and you can probably guess where this is headed — a bit more about our new black box.

For this *Almanac & Reader*, we reversed ourselves. We abandoned the process we had planned to use and instead adopted our correspondents' cranky (and thoughtful, and good-spirited) freelancing as our process.

We enlisted a bunch of them — more than a dozen, less than a hundred — to be the voters for our 2016 "Exemplary Legal Writing" honors. We are not going to disclose the name of any voter to you or to anyone else (including other voters), ever. We are hoping that a combination of electoral anonymity and editorial resistance to parochial promotion might foster impartiality about exemplariness. You will just have to rely on the *Green Bag*'s willingness and ability to build a good ballot, select a good electorate, and administer the vote honestly.

We sent each voter a ballot listing some of our correspondents' jawboning suggestions and some non-parochial nominees from the nomination process we'd planned to use. They did their reading and their voting. Then we did our tallying. We think the results — most of which appear in this *Almanac & Reader* — are, well, exemplary.

Our New New System for This Year — 2017

We like our new system. To us, it feels pure (or at least not yet noticeably corrupt) and sturdy (or at least hard to corrupt) and fair. But then, we feel that we are honest and diligent and fair-minded, and that the voters on our secret panel are too. We might be wrong about some of that. Our readers will, of course, salt to taste, and we will carry on as best we can.

So, we will select exemplary legal writing from 2017 for publication in the 2018 *Almanac & Reader* using pretty much the same system we ended up using for this one. We are recruiting some knowledgeable, thoughtful, good-spirited, and sometimes nicely cranky people to do the choosing. They will make their choices from a ballot provided by the *Green Bag*.

And that brings us to the one big change: nominations. For 2017 — meaning starting now — anyone can nominate anything published in 2017 in any of the categories we intend to honor in the 2018 *Almanac & Reader*. To nominate something (this is the only way to do it), send an email to editors@greenbag.org with this information in the body of the message:

- full name(s) of the author(s)
- full title of the work
- full citation or a working hyperlink
- full name of the nominator
- working email address for the nominator

If you send us less than all of that, then you are giving us a research assignment that we will not do. Instead we will delete your message.

And here are the categories for 2017:

- judicial opinions
- briefs filed in a state or federal appellate court
- law review articles published in 1992
- tweets
- regulations issued by a state or federal agency

Our respectable authorities (whose number may grow) will continue to recommend good books. Let the nominating begin!

II.
THE FLIPBOOKS

We are publishing two versions of this, the 2017 *Almanac & Reader*. One version — the *Material Version* — features videos in an ink-on-paper format (aka flipbooks). The other — the *Ethereal Version* — features videos in an electrons-on-internet format (aka URLs). Please adjust your outlook to match the version you are viewing.

If you page through the *Material Version*, you will see that it is about 50% pictures. If you do your paging quickly enough, you will see that the pictures move. How does that work? No idea. Here at the *Green Bag* we do not know how flipbooks work their magic, but we do know that they are fun. And that's enough for us, because we believe enjoyable content improves the odds that you will keep an *Almanac & Reader* long enough, and open it often enough, to get through much of the good, meaty material inside.

Similarly, if you copy-and-paste or type the URLs from the *Ethereal Version* into your web browser you will see on your computer screen the same

moving pictures that are in the *Material Version*. But you won't have to do any work to make the moving happen — no flipping of pages for you! Viewing videos on the web can be great fun too. But, once those URLs are in your browser, you will be able to have that kind of fun without holding onto the *Almanac & Reader*, so I guess we will just have to hope that you'll find other reasons to come back for more of the good, meaty material inside.

Let's return to the flipbooks for a moment. Why do they still exist at all? Why are they still popular? (If you doubt their popularity, search for "flipbook" at amazon.com and browse the 10,208 — the count as I write this — products that pop up.) Shouldn't flipbooks have been superseded a long time ago by ever-cheaper and ever-easier video recording (think smartphones) and playback (think YouTube)? But they persist. YouTube, for example, is well-stocked with, of all things, digital video recordings of old-fashioned, ink-on-paper flipbooks being flipped by old-fashioned, flesh-and-bone human hands. It's weird. Or maybe it isn't.

We are corporeal beings, connected to the physical world in ways that are sometimes hard to define and explain, and yet, for some folks in some contexts, easy to dismiss. Maybe they shouldn't. Consider this episode from the *Green Bag*'s own ongoing engagement with worlds both physical and digital:

The Case of the Environmentally Friendly Bobblehead

Several years ago, I was engaged in a friendly email back-and-forth with a *Green Bag* subscriber. He was arguing that we should abandon ink-on-paper and go pure-digital. He gave two excellent — and, I believe, correct — reasons: (1) it would reduce the *Green Bag*'s production costs and (2) it would reduce our environmental impact. Manufacturing ink and paper, processing them, moving them around, and returning them to the earth all cause wear and tear on our home planet, and all cost money. I made a few countervailing arguments in favor of ink-on-paper (I won't waste ink and paper on them here), which he rejected as insufficient to overcome the moral imperative to reduce the *Green Bag*'s environmental impact.[2]

As our cordial chitchat was progressing, the *Green Bag* was producing a bobblehead doll of Justice Ruth Bader Ginsburg.[3] When the Justice Ginsburg bobbleheads arrived, Cattleya Concepcion made a video of the bob-

[2] Being a smart aleck, I also suggested that we will know when the best legal minds have concluded that ink-on-paper publishing is truly a bad idea because the great courts and best law schools will stop doing it, and he will stop placing his own work in ink-on-paper publications. That got me a smiley.

[3] Manufactured by the best bobblehead makers in the world, Alexander Global Promotions.

bling doll for the *Green Bag* and we posted it on the web.[4] I emailed my correspondent a link to the video, with a note explaining that the *Green Bag* was giving him the digital Justice Ginsburg bobblehead rather than the usual ink-on-paper certificate to redeem for a paint-on-ceramic doll, thus saving the *Green Bag* some money and reducing the environmental impact of the bobblehead project. He got the joke, and replied with a "haha" and a request for an ink-on-paper certificate. I declined, citing his imperative morality and convincing economics. He was not so amused. But we did manage to move on, on friendly terms.

The point is probably obvious: None of us should underestimate our own attachment to the material world. Nor should we ignore the possibility that our own material-vs.-digital preferences reflect no principle more sound than our own tastes and self-interest.

Anyway, in an attempt to honor the values and celebrate the joys of both the physical world and the digital world, we are publishing this, our first *Material & Ethereal Almanac & Reader*. And we also have two more reasons for publishing the material/ethereal flipbook/URL parts.

First, it was 50 years ago today that President Lyndon Johnson announced that he was about to nominate Solicitor General Thurgood Marshall to be an Associate Justice of the Supreme Court of the United States. That moment, that act, and the lawyer at the center of the action deserve celebration. So, the main flipbook feature of this *Almanac & Reader* is the Hearst newsreel report of Johnson's announcement. (We, and you, have the generosity of the UCLA Film & Television Archive to thank for that.)

Second, the flipbooks printed in the *Material Version* may eventually become useful examples for courts, their reporters of decisions, and people who write about courts and their reporters.

Here's why: Using video recordings in courtrooms and judicial opinions is still controversial — *Scott v. Harris*[5] (a case involving a car chase that ended in tragedy) is a prominent example — but the practice seems to be here to stay. The practicalities, however, are more up in the air. There are, for example, at least four reasons to worry about how videos that appear in judicial opinions are reported: (1) inequality of access (not everyone has access to the web, or to the software needed to view videos in whatever formats a court or reporter might choose to use); (2) link rot and software obsolescence (keeping things up-to-date is notoriously difficult, and notoriously neglected); (3) security (neither Article III nor a state equivalent bestows

[4] *See Ruth Bader Ginsburg bobblehead opera*, GBRC1 (2012) (Cattleya Concepcion, producer and director), www.youtube. com/watch?v=ITiR7Vg38eo.
[5] 550 U.S. 372 (2007).

immunity from hacking and other nefariousnesses); and (4) integrity (the temptation to secretly, or at least sneakily, revise documents post-publication can be difficult to resist, and tinkerings of that sort are easier to engage in, and may be harder to detect and police, when everything involved is digital-only). Are these concerns legit? Could ink-on-paper flipbooks be useful tools for dealing with any of them? Maybe. All we are trying to do now is demonstrate the ease with which even a low-budget independent publisher can put such things in print.

III.
OTHER BUSINESS

Homer's Nodding

More than a decade of practice producing a big book in a hurry has made us better at making mistakes, not better at catching them. Fortunately, we have kindly readers who help us with the catching. And so we have a bundle of corrections to last year's *Almanac & Reader* — the 2016 edition, that is — to share with you.

First, from Harold Kahn (a judge with the kind of temperament many of us can only, but should always, aspire to):

Page 45:

> I was the trial judge in the *Pao v. Kleiner Perkins* sex discrimination and retaliation trial which ended in a jury verdict in favor of Kleiner Perkins on all claims. As the trial was in a California state court, it was not a "federal jury" that rendered the verdict, as stated in the March 27 entry on page 45. I suspect that this is an error that only the trial judge might care about, and even he is untroubled by it.

Second, from Shannon Sabo at W.S. Hein & Co. (operators of the superb HeinOnline database):

Page 146, footnote 87:

> Replace "Luanne von Schneidemesser" with "Lynne Murphy" — she is the author of the blog post cited there.

Third, from our friend Ira Brad Matetsky (who is better at catching his own mistakes than we are) we have a handful of corrections:

Page 153, footnote 91:

> In the second paragraph, replace "195" with "168" in the citation of *Bram v. United States*.

Page 228, footnote 11:

> Remove the comma between "note" and "2".

Page 231, footnote 21:

> Replace the text with this: "Alternatively, a few sources speculate that it may have been the printed magazines themselves, rather than the printing plates, that crossed the Atlantic. This appears not to have been the case during the bulk of the American *Strand*'s existence, but has not been wholly ruled out for the earliest years."

Pages 232:

> Replace "[footnote here]" with the call for footnote 25.

That's all for now. There is surely more to come.

Arthur Conan Doyle's Pigs

In the 2016 *Almanac & Reader* we invited readers to pick up a pen and try a Victorian fad in which Arthur Conan Doyle and many other celebrities participated: drawing a pig with eyes closed (the artist's eyes, not the pig's).[6] We heard from a lot of readers who did, and enjoyed it. But only nine were brave (or foolish) enough to share their artwork with us so that we could share it with you. And so the fine porcine portraits by Ben Baring, Ross Campbell, Timothy Delaune, Kevin Elliker, Paul Kim, Jack Metzler, Sutton Smith, Jason Steed, and Maggie Wittlin appear on the calendar pages of the first nine months of this *Almanac & Reader*. The last three months feature related pigs.

Our pig project did provide an unanticipated benefit for the study of detective fiction. Rachel Davies wrote to us to flag a connection of a sort (there are many) between Sherlock Holmes (and his creator, Arthur Conan Doyle) and Nero Wolfe (and his creator, Rex Stout):

> Just read on page 7 of Stout's *And be a Villain*: "By Sunday he [Nero Wolfe] had finished the book of poems and was drawing pictures of horses on sheets from his memo pad, testing a theory he had run across somewhere that you can analyze a man's character from the way he draws a horse."

Our Goals

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 2016 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

[6] *Arthur Conan Doyle's Pig, and Yours*, 2016 Green Bag Alm. 537.

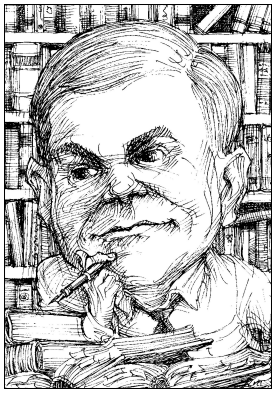
are not entirely accurate.

Our Thanks

We always end up owing thanks to many good people for more acts of kindness than we can recall. And so we must begin by saying "thank you" and "we're sorry" to all those who deserve to be mentioned here but aren't. We cannot, however, forget that we owe big debts of gratitude to the generous, anonymous friends of the *Green Bag* who stepped up late in the game to bear the burden of selecting the exemplary writing honored here; to O'Melveny & Myers LLP (especially Nadine Bynum and Greg Jacob); to the Scalia Law School; to Kara Molitor and Danielle Faye of the UCLA Film & Television Archive; and to Ira Brad Matetsky — author, editor, and all-around literatus — who never fails to make any work he touches better.

Finally, the *Green Bag* thanks you, our readers. Your continuing kind remarks about the *Almanac & Reader* are inspiring.

Ross E. Davies
June 13, 2017



Bryan A. Garner[†]

THE YEAR 2016

IN GRAMMAR, LANGUAGE, AND WRITING

JANUARY

In Lancashire, England, the BBC reported on a terrorism investigation after discovering that a 10-year-old schoolboy had written that he lived in a "terrorist house." Under the 2015 Counter-Terrorism and Security Act, U.K. schoolteachers must notify authorities of any suspected terrorist activity. After a brief investigation, police — and the boy's teacher — discovered that the boy had merely made a spelling error. The boy and his family informed the investigators that he meant to say that he lived in a "terraced house." Upon this revelation, the police and county council released a statement informing the public that no further concerns had been identified and that "no further action was required by the agency." The matter was then referred to the spelling authorities. ● In a move that may seem woefully late, the American Dialect Society announced the 600-year-old pronoun *they* as its Word of the Year for 2015. But this isn't just any *they*; it's the singular *they*, long decried

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[†] Bryan A. Garner is the author of more than a dozen books about words and their uses, including *Garner's Dictionary of Legal Usage* (Oxford, 3d ed. 2011) and *Garner's Modern English Usage* (Oxford, 4th ed. 2016). He is editor in chief of *Black's Law Dictionary* (West, 10th ed. 2014) and the author of the chapter on grammar and usage in the *Chicago Manual of Style* (Chicago, 16th ed. 2010). He coauthored two books with Justice Antonin Scalia: *Making Your Case* (2008) and *Reading Law* (2012).

by grammarians yet used daily by everyone else in the English-speaking world as a gender-neutral alternative to *he or she*. As NPR reported, changing conceptions of gender identity have granted the singular *they* new cultural legitimacy: in November 2015 *The Washington Post* style guide accepted its use for people who think of themselves as neither male nor female, and Facebook, other social-media platforms, and even major universities now allow users to select it as their personal pronoun of choice for automated communications. Although your high-school English teacher will still balk at the usage, they may just have to get accustomed to it. • Though the ADS may have settled on *they*, *The New York Times* reported on the continuing search for other gender-neutral pronouns. Along with the singular *they*, the *Times* listed these new candidates — *ey*, *ze*, *E* — in use among U.S. universities. The *Oxford English Dictionary* also added *Mx.* (pronounced "mix") as a genderless prefix. (The *x* functions like an *x* in algebra equations — representing an unknown.) *Trans**, with an asterisk, now refers to "non-cisgender" identities. While Mount Holyoke decided that *The Vagina Monologues* now presents too straitened a view of gender to be suitable for production, Columbia University replaced the play altogether with *Beyond Cis-terhood*. • Parents, take heart: your teenager's slang and texting shorthand may not be ruining the language after all. According to a study published by Mary Kohn of Kansas State University, teens' role in language change is overstated. The study, based on a corpus of annual recordings of 67 children's speech from infancy though their early 20s, found that while individual speakers' vocabulary and pronunciations changed as they entered adolescence and sought to define themselves as individuals, linguistic change in this period was no more significant than in any other — say, when they entered their 20s and sought to blend in with a professional environment. "Very commonly, people think that teenagers are ruining language because they are texting or using shorthand or slang," Kohn explained. "But our language is constantly developing and changing and becoming what it needs to be for the generation who is speaking it." So parents who are worried about their teenagers' speaking habits should get with it, remember their own groovy teenage slang, and don't have a cow, man.

FEBRUARY

Education Week reported that the Common Core standards may cause a resurgence in grammar education by returning the subject to the "high-stakes tests" that American students face annually. (Grammar wasn't separately tested under No Child Left Behind.) Whether or not any such grammatical renaissance occurs, the possibility has stirred up the old debate about how

grammar should be taught. "We are asking kids to dive into complex texts and understand them, so we need to teach them how to read complex sentences," one veteran teacher said, adding that this requires a solid grasp of grammar. • The Académie Française, established in 1635 as curator and guardian of the French language, sparked a furor when it announced spelling changes to about 2,400 words. Many words borrowed from English, such as *le week-end* and *le strip-tease*, will lose their hyphens, and a slew of native words will be changed to better reflect pronunciation — *oignon* ("onion"), for instance, will become *ognon*. By far the most controversial change was the broad elimination of the circumflex, the accent affectionately known as "the hat" appearing in words such as *hôtel* and *tête-à-tête*. Public defense of the endangered diacritic was vitriolic and swift: the hashtag #JeSuisCirconflexe (a play on the #JeSuisCharlie rallying cry expressing solidarity after the *Charlie Hebdo* attacks) went viral on Twitter. Hold on to your hats. • Even young royals get bedtime stories. A piece in *The Telegraph* (U.K.) described how the Prince of Wales's passion for literature had been instilled in him at an early age. One of his favorite works is Henry Wadsworth Longfellow's *The Song of Hiawatha*. In an appeal for funds by the Friends of the National Libraries, Prince Charles wrote: "I can remember the electrifying moment the first time I heard Longfellow's words, which he uses like music in a mesmerising rhythm that runs throughout the epic poem." His love of literature also led to an appreciation for good grammar. He noted that correct grammar lets the reader be sure of what the writer means. "If we stop using commas, or even full stops, I do wonder how we can hope to make sense of the world. Grammar matters!" Who better to defend the Queen's English? • ScienceDaily.com reported that reading and listening to music at the same time affects how you hear the music. Specifically, the complexity of the grammar makes a difference in how complete you perceive the chord sequences to be. Language scientists and neuroscientists from Radboud University and the Max Planck Institute for Psycholinguistics asked people to read both simple and complex passages while listening to a short piece of music. The study showed that the readers found the music less complete with the grammatically difficult sentences than with the simple sentences. Because language and music are processed by the same part of the brain, handling both simultaneously overloads the region known as Broca's area, located under the left temple. The report's lead author, Richard Kunert, stated: "Previously, researchers thought that when you read and listen at the same time, you do not have enough attention to do both tasks well. With music and language, it is not about general attention, but about activity in the area of the brain that is shared by music and language."

MARCH

As the 2016 presidential campaigns swung into high gear, Carnegie Mellon University's Language Technologies Institute studied about 40 speeches by all the major candidates for their readability scores. Donald Trump scored lowest on grammar — at a fifth-grade level — while other candidates scored at sixth- through eighth-grade levels. On vocabulary scores, Bernie Sanders topped the field with an 11th-grade level. Ted Cruz's vocabulary was put at a ninth-grade level, and the frontrunners, Trump and Clinton, were both on an eighth-grade level. ● *The New York Times* reviewed *You Could Look It Up: The Reference Shelf from Ancient Babylon to Wikipedia* by Jack Lynch, a professor of English at Rutgers University and a scholar of lexicography. The *Times* calls it "a lively and erudite history" of society's passion for putting things in order. Lynch says: "I'll argue — with only a small bit of exaggeration — that the reference book is responsible for the spread of empires, the scientific revolution, the French Revolution, and the invention of the computer." ● *The New York Times* suspended "After Deadline," its weekly mea culpa of stylistic and grammatical oversights that made their way onto the Gray Lady's pages. Among the final week's catches: *sprung a leak* for the past-tense *sprang a leak*; the redundant *from whence* misused to mean "of which"; *women employees* where *Times* style prefers *female employees* or a rewrite; *each . . . were* for *each . . . was*; *grabbing his podium* for *grabbing his lectern*; and *no-holds-bar* for *no-holds-barred*. "After Deadline" editor Philip B. Corbett promised to continue occasional posts to the online "Times Insider." ● The U.S. Patent and Trademark Office published a patent filing by Facebook for "social glossary" software. According to the application, the algorithm aims to identify, "slang, terms of art, portmanteaus, syllabic abbreviations, abbreviations, acronyms, names, nicknames, repurposed words or phrases, or any other type of coined word or phrase" by mining users' posts for words and usages not yet associated with a known meaning. By collating these usages with data such as a user's language and location, the glossary software could detect emerging linguistic trends among particular demographic groups — even predicting slang before it catches on in those groups or the general population. Imagine a world in which parents might know the newest slang before their teenagers do.

APRIL

Who owns the copyright to the English language? That's easy — no one does. But what about the Klingon language? According to *The Hollywood Reporter*, CBS and Paramount say it's their intellectual property, and they're

suing the makers of a Star Trek fan-funded movie. In an amicus brief, the Language Creation Society argues that the alien language "has taken on a life of its own," far beyond what was incorporated into Star Trek movies. "Thousands of people began studying it, building upon it, and using it to communicate among themselves." Boldly, no doubt. • Researchers in the linguistics and psychology departments at the University of Michigan published a study correlating social disagreeability with the tendency to notice and comment on grammatical gaffes. Participants were asked to look through e-mail responses to an ad seeking a roommate. Some e-mails were error-free, while others contained common mistakes such as swapping *they're*, *their*, and *there*; *your* and *you're*; and *then* and *than* — along with everyday typos such as *abuot* for *about*. Those who had a "more agreeable" personality type (as determined by a five-factor personality test) tended not to notice the errors; "less agreeable" types were significantly more likely to be bothered by the substandard grammar. So their. • A new dictionary app, as reviewed on TechCrunch.com, should appeal to the linguistically curious. Cocreator Tony Tao said that *Miss D* is intended to create curiosity about learning other languages. In fact, the app simultaneously translates a chosen term or phrase into ten other languages: French, Spanish, German, Japanese, Russian, Chinese, Italian, Portuguese, Korean, and Polish. Tao says, "Our target audience should be people using apps like Google Translate, and we position our app as something between a comprehensive dictionary app and traditional translation app." The search result may even give you an appropriate emoji or the Wikipedia entry (in English) for the term.

MAY

Do Texas Republicans really think most Texans are gay? Probably not — but arguably their party platform suggested as much. As the *San Antonio Current* pointed out, the relevant plank approved at the 2016 state convention led off: "Homosexuality is a chosen behavior that is contrary to the fundamental unchanging truths that has been ordained by God in the Bible, recognized by our nation's founders, and shared by the majority of Texans." The 2014 platform had been identical except that it used *have* instead of *has*, so that the ending series of phrases (including "shared by the majority of Texans") clearly attached to *truths* instead of *behavior*. What a difference two years make. • The Scripps National Spelling Bee raised the bar this year — or tried to. After the competition ended in ties in both 2014 and 2015, its organizers decided to introduce longer rounds and harder words to match competitors' advanced skills. In particular, they expanded the list of "cham-

pionship words" from 25 to 75 and gave judges the discretion to increase the difficulty of the words given if necessary. All this seemingly in hopes of avoiding yet another tied bee — and all ultimately in vain: Jairam Hathwar, 13, and Nihar Janga, 11, were declared this year's cochamps. • Where are past winners of the Scripps National Spelling Bee now? Olivia Waxman of *Time* set out to find the answer. She talked with eight former champions from 1954 to 2002 and asked them how the spelling bee had influenced their lives. The oldest winner she spoke to — William Cashore, 76, of Rhode Island — is a neonatology specialist and professor emeritus at Brown University's Alpert Medical School. Mr. Cashore credits the Bee with giving him confidence in public speaking. The winning word for Molly Dieveney Baker in 1982 was *psoriasis*. It came back to haunt her 20 years later at a doctor's appointment when she was diagnosed with the chronic skin disease. Current occupations of the other champions Waxman interviewed ranged from software engineer to professional poker player to psychologist to, of course, spelling-bee coach.

JUNE

The Huffington Post reported that searches for *faute de mieux* jumped 495,000% in Merriam-Webster's online dictionary after Justice Ruth Bader Ginsburg of the U.S. Supreme Court used the French phrase in her majority opinion in *Whole Woman's Health v. Hellerstedt*. The surge of interest in the phrase, which means "for lack of something better," is characteristic of the relationship between language and current events, according to Merriam-Webster editor at large Peter Sokolowski. For instance, searches for *androgynous* jumped after the deaths of paragons David Bowie and Prince; *presumptive* and *caucus* predictably rose this year (as they do every election cycle); and *plagiarize* always spikes in early September, when the school year starts. • *CBS News* asked its readers to spot the problem with New York City's

Verrazano-Narrows Bridge, connecting Brooklyn and Staten Island. The bridge is named after Italian explorer Giovanni da Verrazzano — with two *z*'s. Yet the bridge has only one. After the bridge opened in 1964, the error wasn't corrected. This month, a college student started a petition to fix the misspelling on the bridge honoring Verrazzano, the first European to explore the Atlantic Coast. But the Metropolitan Transportation Authority, which operates the span, refused, explaining that correcting the spelling on all signage would cost $4 million. There still seems to be some debate about whether the omitted *z* was truly a typographic error or an intentional result

of the strong urge to Anglicize the name.

JULY

The seventh Star Wars installment, *The Force Awakens*, debuted in December 2015, but it wasn't until six months later that a couple of commas — or their absence — spawned a new fan theory that Princess Leia has another brother besides Luke. The movie's traditional opening scroll tells audiences that Leia (aka General Organa) "is desperate to find her brother Luke and gain help restoring peace and justice to the galaxy." Savvy fans recognized the restrictive appositive when they saw it (because *Luke* isn't framed by commas) and deduced that there must be at least one other brother around, right? Not so, said producer J.J. Abrams: "I take full responsibility for any punctuation errors." ● According to a story in *The New York Times*, the Academy of the Hebrew Language works to update the ancient Hebrew language for the digital era. Recent additions announced on Twitter were Hebrew words for *shaming* (*biyush*: an outgrowth of an existing verb, "to shame"), *hashtag* (*tag hakbatza*: literally, "group tag"), and *big data* (*netunei atek*). Recently the Academy tried to come to the rescue of Israel's health minister after he made a powerful enemy in the fast-food industry. He had declared that his own word for junk food was *McDonald's*. The Academy suggested the alternative *zlolet*, a combination of *zlila*, or "gluttony," and *zol*, which means "cheap." ● The world's most popular word-processing software got a little smarter. Microsoft rolled out two new features in its ubiquitous Word application: Researcher and Editor. The former allows users to do research from within Word itself, offering reliable sources on a given topic, vetted by Microsoft's search engine, Bing — even automatically adding citations for the sources used. The latter, described as "spell check on steroids," combines machine learning with input from linguists to offer not only spelling and grammar corrections, but also stylistic suggestions, along with explanations for all of the above. Whether users will see this automated advice as a godsend or the most obnoxious feature since Clippy (the animated-paperclip "assistant" whose attempts to be helpful never actually were) remains to be seen.

AUGUST

"Severe misuse" halted a survey promoted by Oxford Dictionaries on its website to find the most disliked English word. Only one day after the launch of the #OneWordMap feature, Oxford had to close it after being flooded with "a mixture of swearwords and religiously offensive" vocabulary. Although Oxford intended it to be a positive experience with language (interesting to

think that searching for the least favorite word would be positive), according to Dan Stewart, the head of international marketing at Oxford Dictionaries, the misuse made the results unusable. ● It took the University of Texas half a century to erect a memorial to the students and others shot by Tower sniper Charles Whitman on August 1, 1966. But as *Spectrum News* of Austin reported, the memorial's text contained a prominent error: the Latin word *interfectum* should have been *interfecti*, according to the Classics department chair, Lesley Dean-Jones. "This is a mistake that a student who passed the first semester of Latin with a C would have found," she said, suggesting that planners may have relied on Google Translate instead. A University source said the monument would be corrected. ● *The Guardian* (U.S. edition) reported on the making of a Hollywood drama about the creation of *The Oxford English Dictionary*. The film is based on the bestselling novel *The Surgeon of Crowthorne: A Tale of Murder, Madness and the Love of Words* by Simon Winchester. Oscar winner Mel Gibson is set to portray Professor James Murray, who started compiling the dictionary in 1857. Another Oscar winner, Sean Penn, is being considered for the role of retired army surgeon W.C. Minor, who submitted over 10,000 dictionary entries to Murray while imprisoned at an asylum for the criminally insane. The working title is *Professor and the Madman* (following the book's American title). ● Scripps Spelling Bee cochampion Jairam Hathwar got the rare opportunity to challenge one of his heroes, golfer Jordan Spieth, at his own game — and win. When AT&T, one of Spieth's sponsors, heard that the PGA star was Hathwar's favorite athlete, the company put the two on the putting green for a little friendly competition. But first, a miniature spelling bee determined ball placement: each word spelled correctly moved the speller's ball closer to the hole; each spelled wrong moved it away. From *zoysia* (a type of grass often found on golf courses) to *logorrhea*, Spieth's ball moved ever farther back toward the edge of the green, while Hathwar's flawless spelling earned the Scripps champ an easy tap-in. When Spieth's 30-foot, uphill putt went wide, his loss was official. Hathwar's advice to the golfer: read the dictionary cover to cover — twice.

SEPTEMBER

An article in BusinessWeek.com featured a high-school teacher who had decided not to mark the singular *they* as incorrect in student papers. Steve Gardiner of Montana, a teacher for 38 years, argued that the prohibition of the singular *they* outlived its relevance: "I have burned up hundreds of red pens, and hours of time, correcting this grammatical usage based on a traditional gender binary of *he* and *she*. It's time to move on." ● Once again, the

latest update to the revered *Oxford English Dictionary*, final authority for all die-hard snoots, sent the more hidebound of its faithful into fits. Among the 1,200 new words or senses were mundane additions such as *spanakopita* (a Greek pastry dish) and *kare-kare* (a Filipino stew), as well as a handful of whimsical terms coined or popularized by author Roald Dahl, whose 100th birthday was this year — including *witching hour*, *Oompa Loompa*, and *scrumdiddlyumptious*. As always, however, the most controversial additions were those taken from popular slang: *YOLO* (You Only Live Once), *squee* (an expression of extreme delight, primarily found on the Internet), *moobs* (man boobs), and *biatch* (and seven other alternative spellings of *bitch*). • *The Independent* (U.K.) reported that confusion over a comma let an important clue in a murder case go unnoticed for 21 years. In 1993, Stephen Lawrence was killed in an unprovoked and presumably racially motivated attack. One item found at the scene was a purse strap, which the crime-scene examiner's handwritten field notes placed about five yards away from Lawrence's body. The person who transcribed those notes, however, misread a critical comma and mistakenly grouped the strap with the next item the examiner listed — about 100 yards away. Police now think that the strap may have been used as part of an adapted weapon, and new DNA swabs of it have linked an unknown woman to the scene, providing a lead to a previously unknown and potentially crucial witness.

OCTOBER

The next time you eat out, pay closer attention to the adjectives in the restaurant's menu. According to Daniel Jurafsky, professor of linguistics and computer science at Stanford University, less-expensive restaurants usually use vague adjectives such as *delicious*, *flavorful*, and *terrific*, whereas middle-priced restaurants tend to use sensory adjectives such as *zesty*, *rich*, *crispy*, and *creamy*. His study, conducted in collaboration with Carnegie Mellon researchers, showed that the higher-toned restaurants have more succinct menu descriptions because patrons expect superior quality food and so don't need such tasty testimonials. • *Quartz* reported the launch of a new online slang dictionary. Jonathon Green has been collecting slang words for 35 years and compiled them into *Green's Dictionary of Slang*, published in 2010. This month *Green's* went online with over 132,000 entries. Searches for a word and its etymology are free to all; paying subscribers have access to a broader range of citations and a usage timeline. One of Green's rules of slang is that a word is "always a bit older than you think it is." For example, the verb *to dis* was first mentioned in an Australian newspaper in 1905 — 75 years before its popularization in 1980s hip-hop. Why does he find slang so

interesting? Green said that when we use slang words — for sex, body parts, or insults — we're talking in our "most honest and most human way." ● *The Daily Mail* (U.K.) reported that Oxford University Press, publisher of the *Oxford English Dictionary*, refused to remove the term *Essex girl* despite a petition that garnered 3,000 signatures. Essex residents Natasha Sawkins and Juliet Thomas, who started the campaign to remove the term, objected to the "appalling stereotype" expressed in the *OED*'s definition, which reads: "Essex girl *n.* [after *Essex man n.*] *Brit. derogatory* a contemptuous term applied (usu. *joc.*) to a type of young woman, supposedly to be found in and around Essex, and variously characterized as unintelligent, promiscuous, and materialistic." An OUP spokesman explained: "Oxford Dictionaries set out to describe the language as it's used rather than specify how words should be used. . . . We can't make changes as a result of a petition as this would go against our descriptive editorial policy and undermine the evidence-based approach that our dictionaries are built on."

NOVEMBER

In *The New York Times*, Lynne Truss reviewed *The Word Detective: Searching for the Meaning of It All at the Oxford English Dictionary* by lexicographer John Simpson, who joined the dictionary in the mid-1970s and retired in 2013 after many years as editor in chief. Truss describes the book as a "charmingly full, frank and humorous account of a career dedicated to rigorous lexicographic rectitude." It may be worth the read just to find out the workplace stories behind "dictionary tea" and his run-in with a chocolate orange. ● What's in a name? After four years of researching meanings and origins, the four-volume *Oxford Dictionary of Family Names in Britain and Ireland* may have the answer — at least for 50,000 or so U.K. surnames. As reported by *The Guardian* (U.S. edition), about half the 20,000 most common names are locative (derived from places); a quarter are relationship names, such as Dawson ("Daw's son"); and a fifth are nicknames. Each entry includes the name's meaning, its frequencies in 1881 and 2011, its primary location in Britain and Ireland, its language or culture of origin, and, if available, the historical evidence for it. Peter McClure, the dictionary's chief etymologist, gives this example: "Edgoose (historically a south Lincolnshire surname) has nothing to do with geese but is a 16th-century pronunciation of the name Edecus, a rare pet form of Edith." ● Oxford Dictionaries announced its Word of the Year: *post-truth*. The lexicographical outfit cited a 2,000% increase in usage compared to 2015 "in the context of the EU referendum in the United Kingdom and the presidential election in the United States." Though Oxford

identifies the term's first use as being in a 1992 essay about the Iran-Contra scandal, *post-truth* had, in fact, appeared earlier — but always meaning "after the truth was known," rather than implying that truth has become irrelevant. Often the publisher's U.S. and U.K. branches will choose different terms, but this year the choice was the same on both sides of the pond. "It's not surprising that our choice reflects a year dominated by highly charged political and social discourse," said Oxford Dictionaries president Casper Grathwohl. "Given that usage of the term hasn't shown any signs of slowing down, I wouldn't be surprised if *post-truth* becomes one of the defining words of our time." Among the runners-up were *alt-right*, *Brexiteer*, and *coulrophobia* (the fear of clowns). • Comedian Stephen Colbert took issue with Oxford's Word of the Year choice, complaining that *post-truth* ("relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief") was "clearly a rip-off" of *truthiness* ("the belief in what you feel to be true rather than what the facts will support"), which he coined a decade ago on *The Colbert Report* — and which, incidentally, was Merriam-Webster's 2006 Word of the Year. Responding with a new coinage of his own, Colbert described his feelings about the alleged linguistic theft as "pre-enraged."

DECEMBER

The BBC looked back on a big year for the neologism *Brexit*: "the political word of 2016." Coined in 2012 to parallel *Grexit*, the possible split of Greece from the European Union, the term was often rendered *Brixit* at first before *-exit* became standard. The BBC quoted the linguist David Crystal on the rarity of a new suffix shared in different contexts (e.g., *Frexit* for *French exit*). "A previous example was *-gate* after Watergate," he said. Collins Dictionary editor Mary O'Neil said of the sudden spurt, "It was talked about a bit last year, but not nearly as much as it was in 2016." • Like Oxford's Word of the Year, Merriam-Webster's was a sign of the times: *surreal*. Citing search spikes after such events as the Brussels bombings in March, the July terrorist attack in Nice, and the summer's attempted coup in Turkey, the publisher explained: "'Surreal' is one of the most common lookups following a tragedy." It's perhaps a telling counterpoint to Oxford's Word of the Year, *post-truth*. Both choices seem to reflect the modern world's increasingly fraught conception of reality: Oxford's describes a world in which facts are increasingly irrelevant; Merriam-Webster's speaks to one in which the facts are almost too strange to be believed. And speaking of surreal, the Australian National Dictionary Centre's Word of the Year? *Democracy sausage*.

Gregory Jacob, Rakesh Kilaru,
Kristi Gallegos & Brian Quinn[†]

The Year in Law

2015-2016

November 2015

November 2: The Obama Administration announces that the Office of Personnel Management will be taking action to "ban the box" in federal employment — that is, delay inquiries into criminal history until later in the hiring process, so that applicants with prior criminal histories have a better chance of competing for federal employment.

November 3: A report indicates that over $15.8 million have been spent on Pennsylvania's seven-way Supreme Court election, making it the costliest state supreme court race in history.

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November 6: The Supreme Court grants review in *Zubik v. Burwell*, a challenge to the accommodation for nonprofit religious groups that object to the Affordable Care Act's contraceptive mandate (see May 16 entry).

November 9: By a 2-1 vote, the U.S. Court of Appeals for the Fifth Circuit upholds a district court's injunction halting President Obama's executive actions on immigration. • The University of Virginia's Phi Kappa Psi chapter files a defamation lawsuit against *Rolling Stone* magazine and its publisher over the magazine's retracted story regarding an alleged gang rape at one of the fraternity's parties.

November 10: New York State Attorney General Eric Schneiderman orders popular daily fantasy sports companies DraftKings and FanDuel to stop accepting bets from New York residents, claiming the games constitute illegal gambling.

November 13: The Supreme Court grants review in *Whole Woman's Health v. Hellerstedt*, a challenge to two provisions of a Texas law requiring physicians who perform abortions to have admitting privileges at a nearby hospital and requiring abortion clinics to be equipped similarly to ambulatory surgical centers (see June 27 entry).

November 18: Judge Anne-Christine Massullo of San Francisco Superior Court rules that a divorced couple's embryos must be destroyed, per an agreement they signed during their marriage. The former wife had argued that she should be allowed to use the embryos, because she would otherwise no longer have the chance to bear biological children.

November 20: The Obama Administration files its petition for certiorari in *United States v. Texas*, seeking review of a decision enjoining President Obama's executive actions on immigration (see November 9, 2015 and June 23 entries). • United-Health Group announces that it is considering discontinuing its participation in the Affordable Care Act's exchanges in 2017.

November 30: Joseph Anthony Caputo, who wrapped himself in an American flag and then jumped over the White House fence on Thanksgiving, pleads not guilty to criminal charges and is released pending further proceedings.

DECEMBER 2015

December 3: Texas files suit against the Obama Administration, seeking to stop the resettlement of Syrian refugees in the state.

December 4: Prosecutors in Manhattan declare that they are planning to reprosecute several former leaders of Dewey & LeBoeuf LLP, a law firm that

dissolved into bankruptcy proceedings. The trial of those leaders, for grand larceny, had ended in a mistrial. • The U.S. Court of Appeals for the D.C. Circuit hears oral argument on the legality of the FCC's most recent "net neutrality" order (see June 14 entry).

December 7: The Supreme Court denies review in *Friedman v. City of Highland Park*, a case challenging an Illinois town's ordinance that bans the possession of assault weapons or large-capacity magazines. The Seventh Circuit had upheld the ordinance. Justices Antonin Scalia and Clarence Thomas dissent from the denial of review.

December 9: The Supreme Court hears oral argument in *Fisher v. University of Texas*, a challenge to the University of Texas at Austin's use of race in college admissions. This argument is the second in the case's history — the case was before the Court two Terms earlier, and culminated in a decision remanding the case to the Fifth Circuit for further proceedings (see June 23 entry).

December 14: The Army announces that it will try Sergeant Bowe Bergdahl on charges that he deserted his unit in Afghanistan and endangered the lives of soldiers who searched for him. Bergdahl was captured by the Taliban after he left his unit, and returned to the United States in a prisoner exchange in 2014. If convicted, Bergdahl could be sentenced to life in prison.

December 15: The U.S. Court of Appeals for the D.C. Circuit overturns a decision striking down a revised District of Columbia gun ordinance, ruling that the judge lacked authority to issue the decision. U.S. District Court Judge Frederick Scullin, Jr., of Syracuse, New York had been appointed to resolve a challenge to an earlier version of the law, and when the law was revised, the subsequent challenge was automatically assigned to him as well. The D.C. Circuit ruled that Scullin's assignment to decide a case outside his ordinary jurisdiction ended when the first case ended.

December 16: Baltimore Circuit Judge Barry Williams declares a mistrial in the prosecution of Baltimore Police Officer William G. Porter for his role in the death of Freddie Gray. Gray died after suffering serious injuries in the back of a police van, and Porter was the first of six officers to be tried in connection with Gray's death.

December 20: In an interview with CBS's "60 Minutes," Apple, Inc. CEO Tim Cook defends his company's policy of keeping some iPhone data encrypted, notwithstanding suggestions that such data could be used to combat terrorism.

December 21: The Pennsylvania Supreme Court upholds Governor Tom

Wolf's decision to impose a moratorium on the death penalty while awaiting a report on the way the penalty is administered in the state.

December 29: A grand jury in Cleveland, Ohio decides not to indict the police officer who shot and killed Tamir Rice, a 12-year-old boy who was carrying a toy gun. The incident was one of several in 2015 that generated nationwide scrutiny of interactions between law enforcement and African Americans.

December 31: Chief Justice John Roberts issues his year-end report on the federal judiciary, in which he discusses recent changes to the Federal Rules of Civil Procedure and urges "a change in our legal culture that places a premium on the public's interest in speedy, fair, and efficient justice."

JANUARY 2016

January 4: President Obama announces a series of executive actions designed to expand background checks for the purchase of firearms, increase enforcement of federal gun laws, enhance mental health reporting to the background check system, and explore new gun safety technology.

January 6: Alabama Chief Justice Roy Moore issues an order requiring state probate judges to enforce the state's same-sex marriage ban, citing "confusion" over the interaction between a March 2015 decision by his court upholding that ban, and a June 2015 decision by the Supreme Court holding that the U.S. Constitution guarantees marriage equality.

January 11: The U.S. Court of Appeals for the Fourth Circuit issues its decision in *Bauer v. Lynch*, reversing a ruling invalidating the FBI's gender-normed physical fitness standards. The lawsuit had been filed by a male applicant who completed 29 of the required 30 pushups for male trainees, and claimed it was unlawful for the FBI to require female trainees to complete only 14 pushups. The Fourth Circuit remands the lawsuit for further consideration by the district court. • The Supreme Court hears oral argument in *Friedrichs v. California Teachers Association*, a case seeking reversal of long-standing Supreme Court precedent allowing public sector unions to collect fees from all employees. Press coverage suggests that the Court is ready to overrule that precedent after repeatedly calling it into question in recent decisions (see March 29 entry).

January 14: Citizens United, the advocacy group involved in the Supreme Court's landmark *Citizens United v. FEC* decision, files a lawsuit seeking Chelsea Clinton's correspondence with State Department officials during her mother's tenure as Secretary of State.

January 15: The Supreme Court grants certiorari in *McDonnell v. United States*, a challenge to former Virginia Governor Bob McDonnell's public corruption convictions (see June 27 entry).

January 19: Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia rules that the Obama Administration must turn over to Congress documents about the "Fast and Furious" gun-tracking operation, despite the Administration's claims of executive privilege. Jackson also leaves open the possibility that some of the documents may be withheld for other reasons. • The Supreme Court grants review in *United States v. Texas*, a challenge to President Obama's executive actions on immigration. The Court also adds a question for the parties to address regarding whether the President's actions violate the Constitution's Take Care Clause (see November 20, 2015 and June 23 entries).

January 20: The Detroit, Michigan school district files a lawsuit to try to stop a massive "sick-out" by teachers protesting conditions in the city's public schools. The lawsuit is later dismissed.

January 25: The Supreme Court issues its decision in *Montgomery v. Louisiana*, holding that its 2012 decision in *Miller v. Alabama* is retroactive to cases on state collateral review. *Miller* held that juvenile homicide offenders cannot be sentenced to mandatory life without parole. • Trial begins in federal court in a challenge to North Carolina's voter ID law.

January 27: Ferguson, Missouri releases a proposed consent decree with the Justice Department that contains reforms to its police department and court systems in the hope of avoiding a federal lawsuit stemming from the Department's investigation of the city following the 2014 death of Michael Brown.

January 28: Governor Doug Ducey (R-AZ) issues a statement to the *Arizona Republic* supporting his state's removal from the Ninth Circuit Court of Appeals on the ground that it is "by far the most overturned and overburdened court in the country."

FEBRUARY 2016

February 3: Judge Steven O'Neill, a state court judge in Pennsylvania, rules that a former district attorney's promise not to prosecute Bill Cosby for sexual assault was not legally binding, thus allowing prosecutors to move forward with a case against him.

February 4: The U.S. Court of Appeals for the Fourth Circuit issues a decision in *Kolbe v. Hogan*, holding that the Second Amendment requires the

application of strict scrutiny in a challenge to Maryland's Firearm Safety Act. The court subsequently grants rehearing *en banc*.

February 9: The Supreme Court issues an order staying implementation of the Clean Power Plan — the EPA's carbon rule for power plants — pending the resolution of a legal challenge to the rule in the U.S. Court of Appeals for the D.C. Circuit. The Court's ruling is split 5-4, with Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan dissenting.

February 10: The Department of Justice announces that it has filed a civil rights lawsuit against the city of Ferguson, Missouri, alleging that local law enforcement officials' conduct violates the First, Fourth, and Fourteenth Amendments as well as federal civil rights laws (see January 27 entry).

February 13: Justice Scalia passes away at age 79 while on a vacation at Cibolo Creek Ranch in Texas. Scalia had served on the Supreme Court for three decades after being appointed by President Reagan.

February 14: All current and retired Justices issue statements regarding the death of Justice Scalia (see preceding entry), describing him as a brilliant jurist and close friend.

February 19: The Supreme Court hosts a memorial service for Justice Scalia, during which his former clerks stand vigil over the Justice's casket. The casket is placed on the Lincoln Catafalque, the platform that held President Lincoln's coffin after his assassination. Thousands of mourners attend, including President Obama.

February 22: Judge Ann Nevins, a bankruptcy judge presiding over the bankruptcy proceedings for popular rapper 50 Cent, orders him to explain pictures posted on his Instagram account of him playing with stacks of money. 50 Cent later explains that the money was fake.

February 23: Senator Mitch McConnell (R-KY) announces that Republicans will not hold confirmation hearings for any nominee selected by President Obama to fill the vacancy on the Supreme Court (see February 13 entry).

February 24: President Obama authors a post on the popular Supreme Court blog, "SCOTUS-Blog" regarding the approach he will take in selecting a nominee to replace Justice Scalia on the Supreme Court. • The Utah Senate approves a resolution calling on Congress to repeal the Seventeenth Amendment to the Constitution and allow state senators to select U.S. senators.

February 29: A group of professors releases a law review article suggesting

that judicial law clerks tend to be "disproportionately liberal," particularly on lower courts. • Judge Tanya Walton Pratt of the U.S. District Court for the Southern District of Indiana issues a decision enjoining enforcement of an order from then-Indiana Governor Mike Pence barring state agencies from helping Syrian refugees resettle in Indiana. The court's opinion finds that the directive "clearly discriminates" against the refugees. • Justice Thomas asks a series of questions at oral argument in *Voisine v. United States*, breaking a decade-long silent streak at oral arguments.

MARCH 2016

March 2: The Supreme Court hears oral argument in *Whole Woman's Health v. Hellerstedt*, a challenge to two provisions of a Texas law requiring physicians who perform abortions to have admitting privileges at a nearby hospital and requiring abortion clinics to be equipped similarly to ambulatory surgical centers (see November 13, 2015 and June 27 entries). Two days later, the Court stays enforcement of a similar Louisiana law pending its decision in the Texas case. • The Utah Senate narrowly votes to abolish the death penalty.

March 7: The Supreme Court denies a petition for certiorari filed by Apple, Inc. seeking review of a decision holding that the company violated antitrust laws in pricing e-books. • The Supreme Court issues a per curiam decision in *V.L. v. E.L.*, overturning an Alabama Supreme Court decision holding that the Constitution's Full Faith and Credit Clause does not require the Alabama courts to respect a Georgia same-sex adoption decree.

March 8: The Maryland Court of Appeals rejects Baltimore police officer William G. Porter's request not to testify against five fellow officers involved in the 2015 death of Freddie Gray.

March 10: Administrative proceedings begin in a dispute between the National Labor Relations Board and McDonald's over whether McDonald's is a "joint employer" with franchised restaurants and thus liable for labor law violations at the restaurants.

March 11: Judge Dan Pellegrini of the Pennsylvania Commonwealth Court dismisses a lawsuit claiming that Senator Ted Cruz (R-TX), one of the Republican nominees for President, is ineligible for office because he was born outside the United States.

March 16: President Obama nominates Chief Judge Merrick Garland of the U.S. Court of Appeals for the D.C. Circuit to fill the Supreme Court vacancy created by the passing of Justice Scalia. The nomination is met with op-

position from Republicans, who had previously asserted that the vacancy should not be filled because it arose during an election year (see February 23 entry).

March 17: Chief Judge Richard Roberts retires from the U.S. District Court for the District of Columbia amid claims that he had an inappropriate relationship with a witness in his former career as a federal prosecutor.

March 21: The Supreme Court issues a per curiam opinion in *Caetano v. Massachusetts*, vacating a decision by the Supreme Judicial Court of Massachusetts upholding a law prohibiting the possession of stun guns. The Court rules that the state court did not correctly apply the framework for analyzing Second Amendment questions set forth in the landmark *District of Columbia v. Heller* decision. • The Supreme Court grants review in *Samsung Electronics Co. v. Apple*, a dispute over how damages should be assessed in Apple's lawsuit against Samsung for infringement of design patents for the iPhone. • Daily fantasy sports companies DraftKings and FanDuel comply with New York State Attorney General Schneiderman's order to stop taking bets in New York (see November 10 entry).

March 22: The Kansas State Senate passes a bill creating a list of impeachable offenses for Kansas justices and other elected individuals, which includes "attempting to usurp" legislative powers.

March 23: The Supreme Court hears oral argument in *Zubik v. Burwell*, a challenge to the accommodation for nonprofit religious groups that object to the Affordable Care Act's contraceptive mandate. Press coverage suggests that the Justices are divided on how to resolve the case (see May 16 entry).

March 24: A survey of recent law school graduates published by Access Group and Gallup reveals that only 38 percent of graduates reported having a good job upon graduation, and that only one out of every five recent graduates agreed that law school was worth the cost.

March 28: The ACLU of North Carolina and Equality North Carolina file a lawsuit in federal court challenging North Carolina HB-2, a bill requiring transgender people to use the public bathroom corresponding to their sex assigned at birth.

March 29: Sheldon Silver, the former speaker of the New York State Assembly, is disbarred following his conviction on federal public corruption charges. • The Supreme Court issues a per curiam opinion in *Friedrichs v. California Teachers Association*, affirming (by an equally divided Court) the decision below. The case had presented a major challenge to public sector union financing, and the 4-4 result leaves in place longstanding Supreme

Court precedent allowing such unions to collect fees from all employees (see January 11 and March 29 entries). • The Supreme Court asks the parties in *Zubik v. Burwell* to file supplemental briefs regarding potential alternatives to the Affordable Care Act's contraceptive accommodation process (see March 23 and May 16 entries).

March 31: George Mason University announces that it will be renaming its law school the "Antonin Scalia School of Law," in honor of recently deceased Justice Scalia. • Business groups file a lawsuit seeking to enjoin the Department of Labor's "Persuader Rule," which would require employers to file reports disclosing interactions with consultants who help the employer manage its message in response to union organizing campaigns.

APRIL 2016

April 1: For the first time in hundreds of years, Congress exercises its power under the Constitution to "grant Letters of Marque and Reprisal" to announce that all candidates in the 2016 Presidential Election can attack and capture each other on Twitter.[*]

April 4: The Supreme Court issues its unanimous decision in *Evenwel v. Abbott*, holding that states can apportion legislative seats by equalizing the total population of voters in each district. The plaintiffs in the case had alleged that the "one person, one vote" doctrine precluded using that metric, because it counts individuals who cannot vote.

April 5: Republican Senator Susan Collins (R-ME) urges her colleagues to meet Merrick Garland, and the Senate Judiciary Committee to grant him a hearing, after he visits her office (see March 16 entry). • George Mason University announces that it will be renaming its law school the "Antonin Scalia Law School," after posts on the internet suggest that the previously-proposed name ("the Antonin Scalia School of Law") will create an unfortunate acronym (see March 31 entry).

April 12: Merrick Garland has breakfast with Senate Judiciary Committee Chairman Charles Grassley (R-IA) (see previous entry).

April 13: The U.S. Court of Appeals for the Sixth Circuit holds that the government does not need a warrant to access "cell-site location information," or records of when cell phones check in with the nearest cell towers.

April 14: A three-judge panel of the California Court of Appeals reverses

[*] April Fools.

and remands L.A. County Superior Court Judge Rolf M. Treu's decision in *Vergara v. California*, in which he held that five sections of the California Education Code establishing a teacher tenure system violated the California Constitution's equal protection provisions.

April 18: The Supreme Court hears oral argument in *United States v. Texas*, a challenge to President Obama's executive actions on immigration. Most coverage of the argument suggests the Justices are evenly divided over how to resolve the case (see January 19 and June 23 entries).

April 19: Chief Justice Roberts welcomes 12 deaf or hard-of-hearing lawyers to the Supreme Court bar by using American Sign Language from the bench, marking the first time he has used a language other than English in an admissions ceremony. Roberts reportedly learned to sign the phrase "Your motion is now granted" prior to the ceremony. • Judge Barbara Bellis of the Connecticut Superior Court sets an April 2018 trial date in a lawsuit filed by families of victims of the 2012 Newtown school massacre against the manufacturer of the gun used by the perpetrator.

April 22: A lawsuit filed by advocacy organizations alleges that fees on the "PACER" system are illegally high. The system allows the public to access federal court documents over the internet.

April 25: City of Cleveland officials agree to pay $6 million to settle a civil rights and wrongful death lawsuit based on the 2014 death of Tamir Rice, a boy who was shot by police while carrying a toy gun (see December 29 entry). • The U.S. Court of Appeals for the Second Circuit reinstates New England Patriots quarterback Tom Brady's four-game suspension based on the "Deflategate" controversy. NFL Commissioner Roger Goodell suspended Brady based on his alleged role in a scheme to deflate footballs before the 2015 AFC Championship Game against the Indianapolis Colts. A district judge had previously overturned Brady's suspension. • In a 485-page opinion, Judge Thomas D. Schroeder of the U.S. District Court for the Middle District of North Carolina upholds North Carolina's strict voter ID law in *League of Women Voters v. North Carolina*, finding that North Carolina's law did not depart from "the mainstream of other states."

April 27: The Supreme Court hears oral argument in *McDonnell v. United States*, a challenge to former Virginia Governor Bob McDonnell's public corruption convictions. Based on the questioning from the Justices, press coverage universally suggests that the government will lose and McDonnell's conviction will be overturned (see June 27 entry).

April 28: A blog post on "Empirical SCOTUS" deems the *Harvard Law*

Review the most-cited law review in Supreme Court opinions issued since the April 2013 Term. Yale, Columbia, Chicago, and NYU round out the top five.

MAY 2016

May 3: U.S. District Court Judge Mark Goldsmith recuses himself in the Flint, Michigan water lawsuit because he drank Flint-River-sourced water during a four-month stint at the Flint Federal Courthouse in 2014.

May 4: A government transparency group obtains and releases testimony from a 2012 closed hearing of the Senate Intelligence Committee, indicating the Obama Administration had been making increased use of criminal laws to sanction government officials who are suspected of leaking classified information.

May 5: Arsenio Hall sues Sinéad O'Connor for libel based on a Facebook post in which O'Connor accuses him of supplying Prince with drugs "over the decades" and of drugging her years earlier at Eddie Murphy's house. In the post, O'Connor also claims she reported Hall to the Carver County Sheriff's Office, which is the agency investigating Prince's April 2016 death from an overdose. Hall seeks $5 million in damages.

May 6: Facebook loses its motion to dismiss a class action lawsuit based on allegations that its facial recognition technology violates an Illinois law that restricts the collection of certain biometric data from people without their consent. U.S. District Court Judge James Donato rejects Facebook's position that California law, which does not include such a restriction on the collection of biometric data, should apply, stating that doing so would completely negate Illinois' "biometric privacy protections."

May 10: The U.S. Department of Justice files suit to enjoin enforcement of North Carolina's transgender bathroom access law. • The FBI finds evidence that at least one Bangladesh Bank employee likely assisted computer hackers who stole $81 million from the bank's account at the Federal Reserve Bank of New York. The hackers allegedly logged the keystrokes of key bank employees to get the necessary passwords to authorize the transfers. The Federal Reserve Bank of New York blocked all but five of the 35 transfer orders sent by the hackers, who attempted to steal nearly $1 billion in the heist.

May 11: A federal judge blocks a proposed merger between Staples, Inc. and Office Depot, Inc., finding there "is a reasonable probability the proposed merger will substantially impair competition."

May 16: The Supreme Court issues a per curiam decision in *Zubik v. Bur-*

well, remanding the cases to the lower courts in light of the supplemental briefs filed by the parties regarding potential alternatives to the existing contraceptive accommodation (see March 29 entry). The Court instructs the lower courts to give the parties "an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans receive full and equal health coverage, including contraceptive coverage" (quotations omitted).

May 17: Robert Shapiro breaks his 20-year silence and speaks with Megyn Kelly of Fox News about the 1995 O.J. Simpson double-murder trial. Shapiro states he knew the infamous glove would not fit Simpson because Shapiro had tried it on previously and that Simpson still owes him money from the trial. Shapiro claims that immediately following the verdict, Simpson whispered to him, "You had told me this would be the result from the beginning. You were right."

May 18: Republican presidential candidate Donald Trump releases a list of 11 potential candidates to fill Justice Scalia's Supreme Court seat.

May 19: A former Skadden Arps lawyer receives a five-year sentence for stealing $5 million in a Ponzi Scheme. • A Colorado jury finds Cinemark is not liable in connection with the mass shooting at their Aurora, Colorado theater in 2012. The personal injury and wrongful death suit was brought by victims and their families in state court. A similar suit involving different victims is pending in federal court (see June 27 entry).

May 20: Judge Andrew S. Hanen of the U.S. District Court for the Southern District of Texas orders Washington, D.C. Justice Department attorneys to attend an annual ethics course after the Department files a court-ordered brief detailing why its attorneys inaccurately told the court that no deportation deferrals had been processed after Hanen entered an injunction enjoining their use, when in fact the government processed more than 100,000 of them. • Citing personal safety concerns, Dallas County District Court Judge Eric V. Moye voluntarily recuses himself after the defendant in a lawsuit over which he was presiding was connected to the death of opposing counsel in a "suspicious" house fire.

May 23: Tony Gwynn's family files a wrongful death suit against the tobacco industry claiming that the Hall of Fame baseball player was manipulated into using the smokeless tobacco that eventually killed him. Gwynn died in 2014 from salivary gland cancer.

May 24: A Pennsylvania judge finds there is enough evidence to support

criminal prosecution against Bill Cosby for felony indecent assault stemming from a 2004 incident in which it is alleged that Cosby drugged a woman's drink and touched her. Approximately 50 other women have accused Cosby of similar conduct though most claims are barred by the statute of limitations.

May 27: The Connecticut Supreme Court rules that the state's 2012 abolition of the death penalty also applies to inmates who were on death row when the ban was passed.

May 31: The *en banc* U.S. Court of Appeals for the Fourth Circuit rules that law enforcement may request location data found in cell phone records without a warrant because there is no reasonable expectation of privacy in information voluntarily provided to a third party.

JUNE 2016

June 1: Republican presidential candidate Donald Trump's campaign settles a lawsuit with two photographers who claim the campaign used their photo of a bald eagle without permission. • A newly discovered species of praying mantis from Madagascar is named *Ilomantis ginsburgae* in honor of Justice Ginsburg.

June 6: Cravath, Swaine & Moore LLP increases associate salaries for the first time since 2007, leading other firms to follow suit. First-year-associate salaries increased by 12.5% to $180,000. • The Georgia Supreme Court rules that the owner of a tortiously injured dog cannot recover damages for the intrinsic value of the animal, which is "beyond legal measure."

June 9: The U.S. Court of Appeals for the Ninth Circuit rules that there is no Second Amendment right to carry concealed firearms in public. • The California End of Life Option Act takes effect, making California the fifth state to legalize physician-assisted suicide.

June 10: Gawker Media files for Chapter 11 bankruptcy protection following a ruling awarding Hulk Hogan $140 million in damages after the site posted a video in which he was having sex with his former best friend's wife. Peter Thiel, a co-founder of PayPal, secretly contributed $10 million to fund Hogan's suit against Gawker, sparking debate about whether such third-party funding of lawsuits could result in wealthy individuals suppressing the media's First Amendment rights.

June 11: *Law360* reports that some BigLaw partners are billing $2,000 per hour for high-stakes legal matters.

June 12: An American-born man claiming allegiance to ISIS opens fire inside an Orlando nightclub, killing 49 and injuring 53 before he is shot and killed by police. This is the deadliest mass shooting in U.S. history.

June 13: The Supreme Court issues its 5-2 decision in *Puerto Rico v. Franklin California Tax-Free Trust*, holding in an opinion written by Justice Thomas that Puerto Rico was preempted from enacting its own bankruptcy scheme to restructure the debt of its public utilities. Justice Sotomayor dissents, joined by Justice Ginsburg. Justice Samuel Alito takes no part in the decision.

June 14: The U.S. Court of Appeals for the D.C. Circuit rules that internet service providers ("ISPs") are subject to federal regulations just like other common carriers of utilities. The decision also keeps in place the FCC's 2015 Open Internet Order, which promulgated rules preventing ISPs from blocking or slowing down access to lawful content, and, conversely, from offering priority access to content for a premium.

June 18: *Law360* reports that 80% of AmLaw 200 firms have both equity and nonequity partners. Some equity partners report being "de-equitized," meaning they are removed from the equity track and relegated to a nonequity position.

June 20: The Supreme Court issues its decision in *Utah v. Strieff*, holding, by a 5-3 vote, that the Fourth Amendment's exclusionary rule does not require the suppression of evidence seized during an unconstitutional investigatory stop if, during the stop, the officer learns that the suspect is subject to a valid arrest warrant and seizes the evidence during a search incident to that arrest. Justice Thomas issues the opinion for the Court, which is joined by the Chief Justice and Justices Anthony Kennedy, Breyer, and Alito. Justice Sotomayor issues an impassioned dissent, citing social science research and criticizing the police practices at issue in the suit. • The Senate votes to reject four gun-control bills one week after the nightclub shooting in Orlando, Florida (see June 12 entry). The proposals were aimed, in part, at restricting gun sales to suspected terrorists.

June 22: NFL player Johnny Manziel's attorney mistakenly sends a text to the Associated Press indicating concerns that his client would not pass a urine test. The attorney later withdraws as counsel.

June 23: The Supreme Court issues its decision in *Fisher v. University of Texas at Austin*, holding that the university's limited use of race in college admissions decisions does not violate the Equal Protection Clause. Justice Kennedy authors the opinion of the Court, which is joined by only three

other Justices (Ginsburg, Breyer, and Sotomayor). The opinion states that "[c]onsiderable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission." The Chief Justice and Justices Thomas and Alito dissent. Justice Kagan is recused (see December 9 entry). • The Supreme Court deadlocks 4-4 in *United States v. Texas*, issuing a one-sentence per curiam opinion. This preserves the U.S. Court of Appeals for the Fifth Circuit's decision concluding that President Obama likely exceeded his powers in issuing two executive actions — "Deferred Action for Childhood Arrivals" or "DACA" and the expansion of "Deferred Action for Parents of Americans and Lawful Permanent Residents," or "DAPA" — which shielded approximately 5 million undocumented immigrants from deportation (see April 18 entry).

June 24: A jury in California finds that Led Zeppelin, in its hit *Stairway to Heaven*, did not copy a guitar riff from the group Spirit's song, *Taurus*.

June 27: The Supreme Court, split 5-3, issues its decision in *Whole Woman's Health v. Hellerstedt*, a challenge to two provisions of a Texas law requiring physicians who perform abortions to have admitting privileges at a nearby hospital and requiring abortion clinics to be equipped similarly to ambulatory surgical centers. In his opinion for the Court, Justice Breyer states that both provisions place "a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden on abortion access, and each violates the Federal Constitution" (see March 2, 2016 entry). • In *McDonnell v. United States*, a unanimous Supreme Court invalidates McDonnell's public corruption convictions, ruling that the prosecution rested on an overly broad definition of "official act" in the public corruption statutes, and remands the case for further proceedings (see April 27 entry). The government later announces that it will not seek re-prosecution. • A federal judge dismisses a negligence suit filed against Cinemark in connection with the 2012 shooting at its Aurora, Colorado theater (see May 19 entry).

June 28: After holding a rehearing petition in *Friedrichs v. California Teachers Association* for several months, the Supreme Court denies it. The Court had previously deadlocked 4-4 in the case about public sector unions (see March 29 entry).

June 30: Adnan Syed, who was featured in season 1 of the *Serial* podcast, has his conviction vacated and is ordered to receive a new trial. Syed is serving a life sentence after being convicted of killing his ex-girlfriend, Hae Min Lee.

July 2016

July 1: Following a private meeting with former President Bill Clinton, U.S. Attorney General Loretta Lynch states she will accept the recommendations of the FBI and the Justice Department regarding whether to charge Hillary Clinton in connection with her handling of e-mails while serving as Secretary of State. Lynch claims the two did not discuss the e-mail investigation during the impromptu meeting on an airport tarmac in Phoenix, but expresses concern that the meeting could "cast a shadow" over the Department's reputation and cause the public to question its impartiality. Lynch does not formally recuse herself in the matter.

July 4: Former Chief Judge of the U.S. Court of Appeals for the D.C. Circuit Abner J. Mikva dies following a battle with cancer.

July 5: The U.S. Court of Appeals for the Federal Circuit rules that the commercial marketing provision of the U.S. biosimilar statute is mandatory. The statute requires biosimilar makers to notify brand-name rivals 180 days before launching new products. Although intended to streamline patent litigation, it may also delay lower-cost biologics from entering the marketplace for an additional six months. • Alton Sterling, an African American man, is fatally shot by two white police officers in Baton Rouge, Louisiana. A video of the incident shows that Sterling is pinned to the ground by officers when at least one officer shoots him. Officers claim Sterling was reaching for a weapon when he was shot, but it is unclear whether he was armed (see July 8 entry).

July 6: Former *Fox and Friends* host Gretchen Carlson files suit in the Superior Court of New Jersey against Fox News CEO Roger Ailes, alleging wrongful termination and sexual harassment. • Attorney General Lynch announces her decision not to charge Hillary Clinton in connection with her handling of classified information while serving as Secretary of State, accepting the recommendation made the day before by FBI Director James Comey.

July 7: Philando Castile is shot and killed by police in St. Paul, Minnesota in the second fatal encounter between police and an African American man this week. Castile's girlfriend, Lavish Reynolds, who was in the car during the traffic stop, records the encounter with police and posts the video on Facebook. In the video, Reynolds states that Castile let the officer know he was licensed to carry and was carrying a firearm, and that Castile was reaching for his license as the officer requested when he was fatally shot (see July 8 entry).

July 8: Two snipers open fire at a Dallas police brutality protest, killing 5 officers and injuring 6 others. The protest follows the police shootings of Alton Sterling and Philando Castile (see July 5 and July 7 entries).

July 11: The U.S. Court of Appeals for the Ninth Circuit rules that an $11.25 million fraud suit by investors against Venable LLP and former Venable partner David Meyer can move forward. The suit alleges that Meyer made false claims that he represented an investor affiliated with billionaire Carlos Slim, when he actually represented a conman falsely claiming to have access to pre-IPO Facebook shares. • Justice Ginsburg publicly criticizes presidential candidate Donald Trump, calling him a "faker" and stating "I can't imagine what the country would be with Donald Trump as our president." She later apologizes, saying her remarks about Trump were "ill-advised" and that she regrets making them. She adds, "In the future I will be more circumspect."

July 13: The U.S. Court of Appeals for the Second Circuit denies a request for rehearing filed by the NFL Players Association and New England Patriots quarterback Tom Brady in connection with Brady's four-game "Deflategate" suspension (see April 25 entry).

July 15: The U.S. Court of Appeals for the Second Circuit holds that a class may be decertified after a jury verdict but before judgment.

July 16: *Law360* reports that Artificial Intelligence has entered the legal profession as virtual legal assistant "Ross" is licensed by BigLaw firms. Ross uses natural language processing to understand questions from lawyers and returns relevant court cases and legislation in seconds. Ross has already learned bankruptcy law and its creators plan to branch out into other practice areas.

July 18: Ohio Governor John Kasich's office states that he is unable to suspend Ohio's open carry law at the Republican National Convention as "Ohio governors do not have the power to arbitrarily suspend federal and state constitutional rights."

July 19: A Maryland judge acquits Lieutenant Brian Rice of all charges stemming from the 2015 death of Freddie Gray while he was in police custody. This is the fourth defeat for prosecutors in as many attempts to secure convictions against the officers charged.

July 21: The NBA cancels plans to hold the 2017 All-Star Game in North Carolina after passage of state legislation that removes discrimination protections for LGBT persons.

July 20: Merrick Garland sets the record for Supreme Court nominees awaiting a Senate decision on confirmation, breaking Louis Brandeis's 1916 record of 125 days.

July 22: The Virginia Supreme Court grants a writ of mandamus compelling the Virginia Commissioner of Elections to disregard executive orders issued by Governor Terry McAuliffe on April 22, May 31, and June 24, which purport to restore the right of all convicted felons in Virginia to vote, hold public office, and serve on juries, instructing instead that the Commissioner remove felons from the voter rolls. The court holds that because Virginia's Constitution requires the Governor to communicate the "particulars of every case" for a pardon to be valid, the blanket group pardon amounted to a de facto illegal failure to enforce the law.

July 26: A U.S. District Court Judge preliminarily approves a $15 billion settlement in the class action suit against Volkswagen for rigging diesel emissions tests (see October 25 entry).

July 29: The U.S. Court of Appeals for the Third Circuit holds that Senator Bob Menendez (D-NJ) must face criminal charges stemming from allegations that he accepted and failed to disclose receipt of gifts worth close to $1 million in exchange for unlawful assistance with legal matters in which the donor was involved. Menendez claims that his actions are protected under the Speech or Debate Clause because they are genuine expressions of legislative interest, not favors for the donor as alleged. • The U.S. Court of Appeals for the Fourth Circuit strikes down North Carolina's voter ID law.

AUGUST 2016

August 1: The U.S. Attorney's Office for the Southern District of New York and the Department of Justice in Washington, D.C. investigate whether Mossack Fonseca, the law firm implicated in the "Panama Papers" scandal, helped its clients to launder money or avoid paying taxes. • Randolph County, Illinois Judge Richard Brown sentences convicted murderer Drew Peterson to another 40 years in prison for his efforts to arrange the murder of Will County, Illinois State's Attorney James Glasgow. • An *en banc* panel of the U.S. Court of Appeals for the Third Circuit holds that the federal government is the lawful owner of several rare gold coins stolen from the U.S. Mint in the 1930s, ending a lengthy legal battle with the children of a jeweler who discovered the coins. • Pennsylvania Attorney General Kathleen G. Kane's lawyers file a "King's Bench" motion with the Pennsylvania Supreme Court seeking dismissal of perjury and other associated criminal charges (see August 15 and October 24 entries). • A trial involving Pricewaterhouse-

Coopers LLP and the bankruptcy trustee for Taylor Bean & Whitaker Mortgage Group begins in Florida state court, with Taylor seeking $5.5 billion in damages allegedly resulting from PwC's failure to detect a mortgage fraud scheme.

August 2: The U.S. Court of Appeals for the Second Circuit upholds a $400 million arbitration award confirmed by a lower court in a dispute between Pemex, Mexico's national oil company, and KBR, Inc., a U.S.-based engineering and construction company. • Maryland's Attorney General appeals Judge Martin P. Welch's decision (see June 30 entry) to grant Adnan Syed a new trial based on newly introduced evidence regarding the location of Syed's cellphone. • The U.S. Court of Appeals for the D.C. Circuit holds in *Pursuing America's Greatness v. FEC* that the Federal Election Commission could not prevent super PACs from using the names of candidates in pitch e-mails and web addresses. • The Delaware Supreme Court holds that the state's death penalty law is unconstitutional in *Rauf v. State of Delaware*. • North Carolina Attorney General Roy Cooper says that he agrees with a lower court's decision and will not defend the state's voter ID law at the appellate level, leaving outside counsel for Governor Pat McCrory and state legislative leaders to defend the law.

August 4: The Supreme Court stays a decision from the U.S. Court of Appeals for the Fourth Circuit invalidating a Virginia school board policy requiring students to use bathrooms that correspond to their "biological genders." Justice Breyer provides the fifth vote "as a courtesy" to preserve the status quo until the court decides whether to grant certiorari. • The U.S. Court of Appeals for the Eighth Circuit upholds a trial court decision affirming an arbitrator's decision in *National Football League Players' Association v. National Football League* confirming the NFL's discretion to fine Vikings running back Adrian Peterson in relation to a child abuse case.

August 5: An *en banc* panel of the U.S. Court of Appeals for the Fifth Circuit holds in *United States v. Gonzalez-Longoria* that the "crime of violence" definition incorporated by reference into the U.S. Sentencing Guidelines passes scrutiny under constitutional vagueness principles. • In *True the Vote, Inc. v. IRS*, the U.S. Court of Appeals for the D.C. Circuit reverses a lower court's dismissal of a lawsuit accusing the IRS of discriminating against conservative advocacy groups seeking tax-exempt status.

August 8: The U.S. Court of Appeals for the Second Circuit holds in *Chevron v. Donziger* that Steven Donziger, a U.S. attorney representing indigenous villagers from Ecuador, committed fraud and cannot enforce an $8.65 billion environmental judgment.

August 9: The U.S. Court of Appeals for the Third Circuit invalidates a New Jersey law aimed at expanding sports betting beyond Las Vegas to casinos and racetracks in New Jersey, handing four sports leagues including the NFL and the NCAA a victory and disappointing New Jersey Governor Chris Christie, who anticipated that expanded sports gambling would jumpstart the state's gambling industry. • The American Bar Association approves new rules classifying harassment or discrimination in the practice of law as professional misconduct subject to sanction.

August 10: In *Frank v. Walker*, the U.S. Court of Appeals for the Seventh Circuit stays a district court order requiring Wisconsin election officials to accept an affidavit from a voter that he or she had a reasonable impediment to obtaining one of the required IDs in lieu of the one of the required IDs. • In *State of Tennessee v. FCC*, the U.S. Court of Appeals for the Sixth Circuit holds that the FCC cannot block states from limiting the expansion of municipal broadband internet networks.

August 11: In *Laffitte v. Robert Half International*, the California Supreme Court approves percentage-based fee awards as a reasonable means of compensating attorneys who bring class action litigation, aligning California state courts with the prevailing practice in every federal circuit.

August 15: In *Constand v. Cosby*, the U.S. Court of Appeals for the Third Circuit declines to reseal documents unsealed by a district court. The documents revealed several damaging admissions that Bill Cosby made in a 2005 deposition when asked about his sexual behavior. • The U.S. Court of Appeals for the Ninth Circuit holds in *Democratic Party of Hawaii v. Nago* that Hawaii's open primary voting system is constitutional and does not violate the First Amendment associational rights of the Democratic Party. • North Carolina asks the Supreme Court to stay the decision of the U.S. Court of Appeals for the Fourth Circuit invalidating the state's voter ID law and allow the law to remain in effect during the upcoming presidential election. • A jury convicts Pennsylvania Attorney General Kane of charges including perjury and criminal conspiracy in relation to leaked grand jury testimony (see August 1 and October 24 entries).

August 16: A unanimous panel of the U.S. Court of Appeals for the Ninth Circuit holds in ten consolidated interlocutory appeals and writs of mandamus that the federal government cannot spend money prosecuting individuals who grow and distribute marijuana in states where that activity is legal. • A unanimous three-judge panel of the U.S. Court of Appeals for the Third Circuit affirms the denial of class certification for a putative class of law students in *Harnish v. Widener University School of Law*. The students claimed

that they were defrauded by their law school via misleading statistics about employment.

August 18: The U.S. Court of Appeals for the Fifth Circuit issues a per curiam ruling in *Whole Woman's Health v. Hellerstedt*, invalidating key provisions of a 2013 Texas law addressing abortion, following the Supreme Court's earlier decision and remand order in the same case (see June 27 entry).

August 22: The California Supreme Court declines to take up a challenge to teacher tenure laws in *Vergara v. California*, preserving a lower court decision (see June 10, 2014 entry) maintaining traditional job protections for teachers. • In a unanimous opinion in *In re Reglan Litigation*, the New Jersey Supreme Court holds that federal law does not preempt state law claims regarding the adequacy of the warnings contained on the label of the prescription drug metoclopramide.

August 23: A divided three-judge panel of the U.S. Court of Appeals for the Sixth Circuit reverses a lower court opinion in *Ohio Democratic Party v. Husted*, reinstituting a "Golden Week" in Ohio, in which prospective voters can register to vote and vote on the same day. • A divided three-judge panel of the U.S. Court of Appeals for the Third Circuit affirms a district court holding invalidating Philadelphia's ban on "non-commercial" advertisements at the Philadelphia International Airport.

August 24: A unanimous panel of the U.S. Court of Appeals for the Ninth Circuit overturns a jury verdict in *Estate of Manuel Diaz v. City of Anaheim*, clearing Anaheim police of responsibility in the shooting of an unarmed man and ordering the retrial of a civil rights claim. • Pharrell Williams, Robin Thicke, and rapper T.I. appeal to the U.S. Court of Appeals for the Ninth Circuit, seeking reversal of a California district court's holding that their smash hit "Blurred Lines" infringed Marvin Gaye's copyright in the song "Got To Give It Up."

August 26: The U.S. Court of Appeals for the Ninth Circuit reverses a Washington district court's dismissal of Trader Joe's trademark infringement suit against "Pirate Joe's," a Canada-based grocery store that resold Trader Joe's products.

August 29: The U.S. Court of Appeals for the Ninth Circuit reverses a district court's denial of AT&T's motion to dismiss in *FTC v. AT&T Mobility LLC*, in which the FTC accused AT&T of throttling data speeds of customers who purchase an unlimited data plan.

August 31: The U.S. Court of Appeals for the Second Circuit vacates a

$655.5 million verdict against the Palestine Liberation Organization and the Palestinian Authority arising out of American families' damages from suicide bombings and terrorist machine gun attacks, finding that U.S. federal courts do not have jurisdiction over the case. • The Supreme Court splits 4-4 with regard to North Carolina's application to recall and stay a decision of the U.S. Court of Appeals for the Fourth Circuit striking down portions of its voter ID law, leaving the earlier decision in place in advance of the presidential election.

SEPTEMBER 2016

September 1: Republican lawmakers ask the Virginia Supreme Court to hold Governor McAullife in contempt for failing to adhere to that Court's earlier ruling invalidating McAullife's attempt to restore voting rights to ex-felons as unconstitutional (see July 22 entry).

September 2: The U.S. Court of Appeals for the Ninth Circuit holds in *Public Integrity Alliance v. City of Tucson* that Tucson's hybrid election process complies with the Equal Protection Clause's "one person, one vote" principle and imposes no "significant burden on the right to vote." • After losing at the U.S. Court of Appeals for the Seventh Circuit, Epic Systems, a Wisconsin-based medical software company, asks the Supreme Court to grant certiorari to resolve a circuit split as to whether mandatory arbitration agreements in employment contracts are enforceable under the Federal Arbitration Act, notwithstanding the provisions of the National Labor Relations Act. • The California State Bar seeks temporary authority from the California Supreme Court to collect dues from its members to address emergency fiscal needs.

September 3: In *In re Missouri Department of Corrections*, a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit issues a per curiam opinion ordering the State of Missouri to reveal the source of the lethal injection drug it intends to administer to an inmate to carry out a death sentence.

September 6: The Georgia Bar Board announces that it mistakenly informed 90 prospective lawyers who took the July 2015 or February 2016 bar exam that they had failed, when they had in fact achieved passing scores. • A Pennsylvania judge sets a June 2017 date for Bill Cosby's sexual assault trial. Cosby remains free after posting bail in the amount of $1 million. • 21st Century Fox announces that it has settled a lawsuit brought by former anchor Gretchen Carlson for an expected $20 million. Carlson accused former Fox News Chairman and CEO Roger Ailes of sexual harassment (see July 6 entry).

September 7: In *Mohamed v. Uber Technologies*, the U.S. Court of Appeals for the Ninth Circuit reverses and remands a trial court determination that Uber's mandatory employee arbitration agreement was substantively unconscionable, holding that Uber's arbitration terms are valid and enforceable under a California state law unconscionability standard.

September 8: EY (formerly Ernst & Young) follows Epic Systems's lead (see September 2 entry) and asks the Supreme Court to resolve a circuit split over the legality of mandatory arbitration terms in employment contracts under the collective bargaining provisions of the National Labor Relations Act and the Federal Arbitration Act.

September 9: The Justice Department announces that it will drop charges against former Virginia Governor McDonnell and his wife Maureen McDonnell after the Supreme Court held that the conduct in question did not amount to an "official act" in exchange for a bribe (see January 15, April 27, and June 27 entries). • In *League of Women Voters v. Newby*, the U.S. Court of Appeals for the D.C. Circuit blocks a new proof-of-citizenship certification requirement from appearing on federal mail-in voter registration forms. • The Supreme Court denies an application for a stay in *Johnson v. A. Philip Randolph Institute*, thereby allowing Michigan voters to "straight-vote" a party's entire slate of candidates with one ballot notation.

September 12: Paul Clement, Viet Dinh, and a team of appellate lawyers from Bancroft PLLC join the Washington, D.C. office of Kirkland & Ellis LLP. • Arguments begin in U.S. District Court in Portland, Oregon before Judge Anna J. Brown in the trial of Ammon Bundy and seven other occupiers of the Malheur National Wildlife Refuge. • A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit affirms District Court Judge Richard A. Jones's dismissal of a plaintiff's claim that Yelp!, Inc. was liable for a "one-star" review posted on the plaintiff's business's Yelp page in *Kimzey v. Yelp!*.

September 13: A review undertaken by the Justice Department's research arm reveals that prison populations in at least five states — Arkansas, Hawaii, Kentucky, New Hampshire, and Ohio — have rebounded after declining during the period from 2007 to 2014, likely due to an opiate epidemic and a series of high-profile examples of recidivism. • Eleven years after Eliot Spitzer filed financial fraud charges against former AIG CEO Maurice R. "Hank" Greenberg, trial begins before Judge Charles Ramos in New York Supreme Court in Manhattan. • The U.S. Court of Appeals for the Third Circuit rejects Senator Menendez's request for an *en banc* hearing to evaluate his claims that the Speech or Debate Clause of the Constitution shields him

from legal liability for conduct relating to legislative activities (see July 29 entry). • New York Governor Andrew Cuomo and New York's principal banking regulator propose first-in-the-nation rules that would require banks to adopt cybersecurity protection programs.

September 14: Federal prosecutors in the Southern District of New York and the Northern District of California investigate sales practices at Wells Fargo & Co. that gave rise to a $185 million fine by the Consumer Financial Protection Bureau. Wells Fargo employees secretly opened and funded more than two million new accounts for existing customers in an effort to generate fees, reach sales targets, and capture compensation incentives. • The American Beverage Association and other beverage industry groups ask the Philadelphia County Court of Common Pleas and the Pennsylvania Supreme Court to enjoin Philadelphia's soda tax, claiming that the tax is illegal under Pennsylvania state law. • Missouri lawmakers override Governor Jay Nixon's veto of a bill requiring voters to show government-issued photo identification, effective in 2017. On election day 2016, Missouri voters will pass a constitutional amendment by a 63-37 margin, overturning a decade-old Missouri Supreme Court decision prohibiting voter ID requirements, thus allowing the law to take effect.

September 15: In *Tyler v. Hillsdale*, an *en banc* panel of the U.S. Court of Appeals for the Sixth Circuit holds that individuals who are involuntarily committed to mental institutions cannot be permanently deprived of the right to own a firearm. • The former dean of the University of California, Berkeley Law School, Sujit Choudhry, files a federal discrimination lawsuit against the Regents of the University of California and UC President Janet Napolitano, alleging that administrators treated him differently during their investigation of sexual misconduct allegations because of his race.

September 16: A Swedish court of appeals holds that a Swedish prosecutor's request to detain WikiLeaks front-man Julian Assange should remain in force.

September 19: In *Lund v. Rowan County*, a divided three-judge panel of the U.S. Court of Appeals for the Fourth Circuit reverses and remands a district court determination that an invocation delivered at the beginning of public Rowan County Board meetings violates the Establishment Clause of the First Amendment, citing the Supreme Court's decision in *Town of Greece v. Galloway*. • The trial of Bridget Anne Kelly and Bill Baroni, formerly close advisors to New Jersey Governor Christie who were implicated in the "Bridgegate" scandal, begins in Newark, New Jersey before U.S. District Judge Susan D. Wigenton. • The U.S. Department of Transportation releas-

es the first guidelines regarding safety expectations and the importance of uniform rule-making with regard to driverless cars, including a 15-point safety standard for such vehicles.

September 20: The U.S. Court of Appeals for the Second Circuit vacates a $147.8 million jury verdict and orders dismissal of the price-fixing case, *In re Vitamin C Antitrust Litigation*, concerning the conduct of two Chinese producers of vitamin C. • The attorneys general of 21 states and more than 50 business groups file a series of lawsuits seeking invalidation of the Department of Labor's rule that would qualify millions of Americans for more overtime pay.

September 22: The U.S. Court of Appeals for the Fourth Circuit hears oral argument in *Lee v. Virginia State Board of Elections*, a challenge to Virginia's voter ID law. • U.S. District Judge Glen E. Conrad holds that trial can go forward (see November 9, 2015 and November 4, 2016 entries) after finding that a "reasonable jury could infer malice in light" of the record established in *Eramo v. Rolling Stone, Inc.*, which concerned inaccurate allegations about sexual misconduct at the University of Virginia that appeared in *Rolling Stone*'s story "A Rape on Campus," by Sabrina R. Erdely.

September 23: In *A. Philip Randolph Institute v. Husted*, a divided three-judge panel of the U.S. Court of Appeals for the Sixth Circuit reverses a district court determination and holds that Ohio's method of purging voters from its registration rolls violates provisions in the National Voting Rights Act of 1993 and the Help America Vote Act of 2002.

September 24: The National Museum of African American History and Culture opens, with the only reference to Clarence Thomas — the second African American Justice to sit on the Supreme Court — being found in a display on the story of Anita Hill, who claimed during Thomas's confirmation hearings that he had sexually harassed her.

September 26: The U.S. Court of Appeals for the Second Circuit reverses a lower court's holding that American Express violated Section 1 of the Sherman Act in *United States v. American Express Co.*, permitting AmEx to stop merchants from asking customers to pay with cards that charge lower fees. • In *International Union of Operating Engineers Local 139 v. Schimel*, U.S. District Court Judge J.P. Stadtmueller rejects a challenge to Indiana's "right-to-work" law banning labor contracts that require workers to pay union fees as a condition of employment.

September 27: The U.S. Court of Appeals for the Second Circuit upholds a $50 million judgment against Vivendi SA in *In re Vivendi SA Securities Liti-*

gation, a shareholder class action suit alleging that the company made false or misleading statements to investors regarding the company's financial well-being in the wake of its 2000 merger with Seagram Co. and Canal Plus. • The Supreme Court refuses Lynn Tilton's application for a stay in her administrative case at the SEC, where the agency claims she overcharged investors by $200 million. Tilton contends that the SEC's use of agency-specific administrative judges is unconstitutional. • Shawnee County (Kansas) District Judge Larry Hendricks orders Kansas Secretary of State Kris Kobach to work with county election officials to notify thousands of voters that their votes in the upcoming election will count even if they did not provide proof of their citizenship when registering.

September 28: The *en banc* U.S. Court of Appeals for the D.C. Circuit hears more than six hours of oral argument in a challenge to President Obama's Clean Power Plan in *West Virginia v. Environmental Protection Agency*. • The U.S. Court of Appeals for the First Circuit invalidates New Hampshire's ban on "ballot-selfies" (photographs that record a person's filled-out ballot), holding that the ban is unconstitutionally broad and unnecessarily restricts speech protected by the First Amendment.

September 29: The Supreme Court grants certiorari in *In re Tam* — in which an Asian American band named "The Slants" was denied trademark protection because of their allegedly disparaging band name — to determine whether the Lanham Act's disparagement provision, which denies trademark protection for marks that disparage "institutions, beliefs or national symbols," is constitutional. • Congress overrides President Obama's veto of the Justice Against Sponsors of Terrorism Act, which permits Americans to sue foreign governments for their involvement in terrorist attacks. • The Centers for Medicare and Medicaid Services conclude a rulemaking proceeding geared toward barring any nursing home receiving federal funding through Medicare or Medicaid from requiring residents to arbitrate disputes.

September 30: The Court of the Judiciary of Alabama suspends Alabama Supreme Court Chief Justice Roy Moore for the remainder of his term because of his violation of the Alabama Canons of Judicial Ethics. Moore's suspension arises from his instructions to Alabama probate judges to defy federal court orders regarding same-sex marriage (see January 6 entry). • California makes it a felony for a prosecuting attorney to "intentionally and in bad faith alter, modify, or withhold" any information "knowing that it is relevant and material to the outcome of the case."

OCTOBER 2016

October 3: After holding a rehearing petition in *United States v. Texas* over the summer, the Supreme Court denies it. In March, the Court had divided 4-4 in the case challenging President Obama's executive actions on immigration (see June 23 entry). • The Supreme Court rejects a petition for a writ of mandamus seeking to compel the Senate to vote on the confirmation of Merrick Garland to serve as a Justice of the Supreme Court. • The U.S. Court of Appeals for the Fifth Circuit grants Mississippi Attorney General Jim Hood's petition for a writ of mandamus to remove U.S. District Judge Henry Wingate of the Southern District of Mississippi from presiding over the state's fraud case against Entergy Corp. The petition was prompted by Wingate's numerous delays in the case, including taking 3½ years to rule on the state's motion to remand (denied in 2012), followed by more than four years to rule on Entergy's motion for judgment on the pleadings (denied two weeks earlier in an effort to moot the petition for reassignment). • The U.S. Court of Appeals for the Seventh Circuit enjoins Indiana Governor Mike Pence's order forbidding the state to fund the resettlement of Syrian refugees, holding that the order likely constituted unlawful discrimination on the basis of nationality (see February 29 entry).

October 4: The Supreme Court begins the October Term 2016 by hearing oral argument in two cases: *Bravo-Fernandez v. United States*, regarding the Double Jeopardy Clause, and *Shaw v. United States*, regarding the scope of the federal bank fraud statute. • The Massachusetts Supreme Judicial Court unanimously rules in *Partanen v. Gallagher* that an unmarried gay woman has the capacity to establish parental rights, including both legal and physical custody, to the biological children of an ex-girlfriend.

October 5: The Supreme Court hears oral argument in *Salman v. United States*, regarding the proof prosecutors must put forth to sustain an insider-trading prosecution. • Luis Rivera pleads guilty to second-degree murder for his involvement in the July 2014 killing of Florida State University law professor Daniel Markel. Police allege that Rivera and another man were hired to kill Markel by the family of attorney Wendi Adelson, Markel's ex-wife.

October 6: Kaplan Test Prep releases a survey showing that 65% of law schools agree it "would be a good idea if at least a few law schools closed," and 52% support prohibiting the ABA from accrediting new law schools for a period of one year, even though law school applications are up for the first time since 2009. • Carl Ferrer, the CEO of classified ads website Backpage.com, is arrested in Texas on California felony charges for pimping minors, because the website allegedly profits from escort advertisements, in-

cluding advertisements posted by those engaged in human trafficking.

October 10: During a presidential debate, Donald Trump tells Hillary Clinton that "If I win, I am going to instruct my attorney general to get a special prosecutor to look into your [missing e-mail] situation."

October 11: The Supreme Court hears oral argument in *Samsung Electronics Co. v. Apple*, a dispute over how damages should be assessed in Apple's lawsuit against Samsung for infringing on design patents for the iPhone (see March 21 entry). • The U.S. Court of Appeals for the Second Circuit throws out a lawsuit filed by the heirs of Bud Abbott and Lou Costello against the Broadway play "Hand to God," finding the heirs had no copyright interest in the comedians' 1930s "Who's on First" routine, as Abbott and Costello failed to renew their 1944 copyright. • A split panel of the U.S. Court of Appeals for the D.C. Circuit rules that the Consumer Financial Protection Bureau, created by the Dodd-Frank Act in 2010, is unconstitutionally structured because it is independent of the President yet lacks a compensating multi-member commission structure. The panel remedies the problem by striking down the CFPB Director's for-cause removal protection, thus subjecting the Director to the control of the President.

October 12: A survey published by Major, Lindsey & Africa finds that male law partners make on average 44% more than female law partners (in 2014, male partners made 47% more). Male law partners reported averaging $2.59 million in originated business, 50% more than the average of $1.73 million originated by female law partners. • McDonald's and the National Labor Relations Board agree to sever "joint employer" proceedings (see March 10 entry) before an Administrative Law Judge in New York from corresponding proceedings in Chicago and Los Angeles, and to stay the latter proceedings pending the outcome of trial in the New York matter.

October 14: Delaware car enthusiast Charles Williams uses crowdfunding (in combination with copious media attention) to raise more than $58,000 towards his $300,000 legal bill for his successful defense of a lawsuit filed by three neighbors attempting to shut down as a nuisance a non-commercial 1,920 foot car repair garage he built in his backyard with all required permits.

October 18: Justice Ginsburg presides over a moot court of *Bradwell v. State of Illinois*, 83 U.S. 130 (1873), jointly hosted by the *Green Bag*, the Newseum, and O'Melveny & Myers LLP, in honor of Belva Ann Lockwood, the first woman admitted to the bar of the U.S. Supreme Court (1879) and the first woman to run for President of the United Sates (1884). • A class-action lawsuit is filed against Samsung concerning its Galaxy Note 7 smartphones,

which were twice recalled (the second time recalling supposedly safe replacement units) for spontaneously bursting into flames, seeking reimbursement for lost data and voice plan charges.

October 19: Kentucky Fried Chicken removes to federal court a $20 million lawsuit filed by New York plaintiff Anna Wurtzburger, who claims that KFC engaged in false advertising by underfilling buckets of chicken (the $20 "Family Fill Up Meal") that TV ads portray as bountifully overflowing.

October 20: The *en banc* U.S. Court of Appeals for the D.C. Circuit rules 6-3 to affirm the conviction by military commission of Yemeni citizen Ali Hamza Ahmad Suliman al Bahlul, an Al Qaeda master propagandist who worked closely with Osama bin Laden to plot the September 11 attacks, for conspiracy to commit war crimes. The dissent argues that al Bahlul could only be tried by an Article III court because the international law of war does not recognizing an offense of conspiracy, and military commissions are limited to trying offenses recognized under international law. The fractured per curiam decision does not definitively resolve that question. • The ABA's Council of the Section of Legal Education and Admissions to the Bar votes to tighten the bar-passage requirements for accredited law schools, requiring that 75% of graduates pass the bar within two years of graduating (rather than five), and eliminating a variety of loopholes that made it easier for law schools to meet the 75% standard. • The Minnesota Supreme Court rules that BB guns do not count as firearms under Minnesota's felon possession statute.

October 24: Former Pennsylvania Attorney General Kane is sentenced to ten to 23 months in prison (*see* August 1 and August 15 entries) in relation to her convictions for perjury and criminal conspiracy for leaking, and then lying about leaking, grand jury records.

October 25: A federal judge approves a $15 billion settlement in which Volkswagen agrees to buy back the 475,000 U.S. diesel cars in which fraudulent software had been inserted to help the cars dodge emissions standards. • New York State Attorney General Schneiderman announces that New York has reached a $12 million settlement with daily fantasy sports companies DraftKings and FanDuel arising out of the companies' allegedly false and deceptive advertising practices.

October 28: FBI Director Comey sends a letter to Congress supplementing his earlier testimony that his e-mail investigation of Hillary Clinton's personal e-mail server was closed, stating that in connection with an unrelated case "the FBI has learned of the existence of e-mails that appear to be perti-

nent to the investigation," that "the FBI cannot yet assess whether or not this material may be significant," but that the FBI would be taking additional "appropriate investigative steps" to assess the importance of the e-mails. • The Supreme Court grants certiorari in *Gloucester County School Board v. G.G.*, a case challenging the validity of a Dear Colleague Letter issued by the U.S. Department of Education requiring recipients of Title IX funding to "generally treat transgender students consistent with their gender identity." • A split panel of the U.S. Court of Appeals for the Sixth Circuit overturns a district court injunction entered on October 24 that would have prevented Michigan from enforcing its 125-year-old law prohibiting voters from exposing their marked ballots to others. The dissent argued that the ability to take "ballot-selfies" and post them on social media is conduct protected by the First Amendment.

October 31: The Arizona Democratic Party files suit seeking an injunction preventing the Arizona Republican Party, the Trump Campaign, and the organization "Stop the Steal" from engaging in what the Democratic Party characterizes as voter intimidation in violation of the Ku Klux Klan Act of 1871. According to the complaint, one prominent example of voter intimidation was an Arizona GOP statement to poll watchers that "If you observe anything improper or illegal at the polls on Election Day please use this form to report it to the Arizona Republican Party. Submit any photos, videos, or other materials as evidence. Thank you for your service to ensure the integrity of elections in Arizona!" The U.S. District Court for the District of Arizona denies the requested injunction on November 4. • Similar lawsuits filed the same day by Democrats in Nevada, North Carolina, and Pennsylvania also fail to garner injunctions. A nearly identical Ohio lawsuit resulted in a district court injunction issuing on November 4. It was reversed by the Sixth Circuit on November 6.

NOVEMBER 2016

November 2: The U.S. District Court for the Northern District of California denies the ACLU's request to enjoin California's law prohibiting ballot-selfies. Two days later, the U.S. District Court for the District of Colorado grants an injunction prohibiting Colorado from enforcing its ballot-selfie ban.

November 4: A federal jury awards defamation damages (later set at $3 million) to a University of Virginia administrator against *Rolling Stone* and reporter Sabrina R. Erdely for their November 2014 article titled "A Rape on Campus." • The *en banc* U.S. Court of Appeals for the Ninth Circuit votes

7-4 in *Feldman v. Arizona Secretary of State* to reverse a 2-1 panel decision rendered the day before that would have blocked Arizona from enforcing its law requiring that ballots cast in the wrong precinct be discounted. The same court votes 6-5 to reverse a 2-1 panel decision rendered on October 30 and to issue an injunction preventing Arizona from enforcing a law that prohibits third parties (excepting election officials, family members, caregivers, and other similar parties) from collecting early ballots from other people.

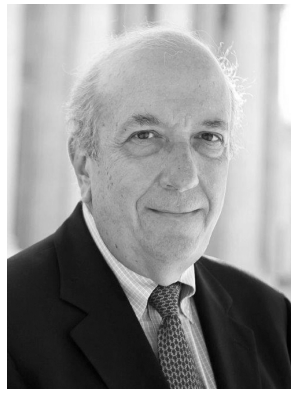
November 5: Justice Kennedy grants a stay of the injunction issued by the Ninth Circuit in *Feldman v. Arizona Sec'y of State*, pending final disposition of the appeal.

November 6: FBI Director Comey informs Congress that after review of the newly discovered e-mails related to Hillary Clinton's private server, he has reaffirmed his conclusion that Clinton should face no charges for her handling of classified information (see October 28 entry).

November 7: The Supreme Court hears oral argument in *National Labor Relations Board v. SW General*, a challenge to the President's ability to have certain government officials serve as nominees to offices requiring Presidential appointment and Senate confirmation while they are also serving in an acting capacity in those roles. • Former U.S. Attorney General Janet Reno, the first woman to serve in that post, dies at age 78. • Suffolk County (Massachusetts) Superior Court orders that three individuals who missed the State's 20-day voter registration deadline be allowed to vote provisionally (the court later orders the state to count their votes), holding that although the state went to great lengths to educate voters about the impending deadline, such educational efforts failed to account for "the need [of voters] to attend to other more pressing or immediate matters, the late-breaking awareness that the election does matter to them, or the like."

November 8: Donald Trump is elected President of the United States, having won the electoral college vote 306-232, but lost the popular vote by nearly 3 million votes. • Republicans retain control of the Senate (52-46-2) and House of Representatives (241-194), having lost two Senate seats and a net of six House seats. • Republicans make significant gains at the state level, holding 33 of 50 governor's seats, gaining a net of 43 state legislative seats, and controlling 68 State legislative chambers to Democrats' 31, with complete control of all branches of government in 25 states compared to Democrats' 6. • Voters in California, Maine, Massachusetts, and Nevada pass ballot initiatives repealing state laws against marijuana, while Arizona voters reject marijuana legalization. Medical marijuana access is legalized or expanded in Arkansas, Florida, Montana, and North Dakota. • Voters in Cali-

fornia (54% to 46%) and Nebraska (61% to 39%) vote to retain the death penalty, and voters in Oklahoma (66% to 34%) retain the death penalty without limitations as to methodology. Justice Kennedy groupies discern in the voting margins a trend indicating that all civilized people reject the death penalty as cruel and unusual. • Maine voters reject expanded gun background checks, while California and Nevada voters approve them. Nevada's measure is approved by fewer than 10,000 votes, having lost in 16 of 17 Nevada counties. • Oklahoma voters pass a ballot initiative reclassifying a variety of drug possession offenses as misdemeanors.



Tony Mauro[†]

A YEAR IN THE LIFE OF THE SUPREME COURT

2016

A summary of developments involving the U.S. Supreme Court, most of which are unlikely to be memorialized in the United States Reports.

Heads, You Win: Carter Phillips and Seth Waxman, titans of the Supreme Court bar, both wanted to argue the same side of two consolidated patent cases — *Stryker v. Zimmer* and *Halo Electronics v. Pulse Electronics* — set for argument in late February 2016. The court refused their request for divided argument, so they did what the National Football League does every game: flip a coin. Neither lawyer was present for the tie-breaking moment. A Sidley Austin LLP colleague of Phillips borrowed a quarter and flipped it while the two were on the phone, without knowing who had claimed heads and who had tails. It came up heads, which was Phillips's call. "Carter won the coin toss," WilmerHale's Waxman reported in a terse email. It was a costly coin toss, since the fee for the argument portion of litigating a Su-

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preme Court case can run between $100,000 and $200,000, or more. In the end, Phillips's side lost.

A Justice's Death: Justice Antonin Scalia's unexpected death on February 13 at age 79 shocked the nation and cast a pall on the operations of the high court. It also had the effect of inserting the court into the presidential campaign. Scalia, whose tenure on the court neared 30 years, died at Cibolo Creek Ranch in West Texas during a hunting trip. At the request of the family, no autopsy was performed. Local officials were satisfied that because of his medical history — including diabetes, sleep apnea, chronic pulmonary disease, smoking, and high blood pressure — he died because of "significant medical conditions." The absence of Scalia's larger-than-life personality made the court a "grayer place," several justices said. In a statement on behalf of the court, Chief Justice John G. Roberts, Jr. said, "He was an extraordinary individual and jurist, admired and treasured by his colleagues. His passing is a great loss to the Court and the country he so loyally served. We extend our deepest condolences to his wife Maureen and his family."

Thomas Speaks: On February 29, Justice Clarence Thomas asked questions during oral argument in *Voisine v. United States*, marking the first time in a decade that he had done so. The case challenged a federal statute banning firearm ownership for those convicted of a misdemeanor crime of domestic violence. Thomas's questions seemed to channel concerns that Scalia would have had — namely, that the ban implicated Second Amendment rights. The justice hasn't asked a question since, and the court upheld the ban.

Lights Out: In the midst of a routine oral argument March 1, the lights went out in the courtroom for unknown reasons. The case, *Nichols v. United States*, involved the registration of sex offenders who moved abroad. A quick-witted Chief Justice calmed the startled audience when he said, "I knew we should have paid that bill." With natural light still flooding the chamber, the argument continued.

Extended Vacancy: Acting quickly to name a replacement for Scalia, President Barack Obama nominated Chief Judge Merrick Garland of the U.S. Court of Appeals for the D.C. Circuit on March 16. Garland gamely met with senators, but there was an air of unreality to the nomination. That is because the Republican-led Senate held to an unprecedented pledge that majority leader Mitch McConnell made an hour after Scalia's death. McConnell said that there would be no hearings and no vote on any Obama nominee until after the presidential election. With the election of Donald Trump as president, that pledge extended through Inauguration Day.

Deaf Lawyers: In a historic first, 12 deaf or hard-of-hearing lawyers were sworn into the Supreme Court bar on April 19 by Chief Justice Roberts. The lawyers were members of the Deaf and Hard of Hearing Bar Association, founded in 2013. The association proposed the mass swearing-in ceremony and the court agreed, providing interpreters and necessary technology. The lawyers were allowed to bring their smartphones into the court chamber — also a first — so they could read what was being said as it was transcribed. As the ceremony ended, Roberts used American Sign Language from the bench to signify that they had been admitted to the bar.

Name that Justice: It used to be common for advocates — even veteran lawyers — to address "Justice Ginsburg" as "Justice O'Connor," or vice versa. But that embarrassing mistake ended when Sandra Day O'Connor retired in 2006 — or so it seemed. Jones Day's Noel Francisco called Justice Ruth Bader Ginsburg "Justice O'Connor" during arguments April 27, much to Ginsburg's amusement. "That hasn't happened in quite some time," she exclaimed. Francisco said he was "very, very, very sorry" and quickly moved on.

Confessing Errors: An investigative law review article by Harvard Law School professor Richard Lazarus in 2014 shed light on the court's practice of correcting or amending its opinions after they are issued — changes that were not announced to the public. The court in 2015 stated it would be more transparent about such changes, and that new policy was reflected with changes made in *United States v. Bryant*, a June 2016 Indian Major Crimes Act decision. In a letter, deputy solicitor general Michael Dreeben informed the court that the opinion, written by Justice Ginsburg, misstated the scope of the law in a way that could "give rise to misunderstanding" in subsequent cases. The court made the change in July and highlighted it on the court's website. Less important changes have also been posted in other cases.

Ginsburg Speaks Out: In a series of media interviews after the end of the high court term in June, Justice Ginsburg openly acknowledged her dislike for then-presidential candidate Trump. Among other things, she called him "a faker" and half-joked that moving to New Zealand would be an option if Trump won. "He says whatever comes into his head at the moment. He really has an ego," Ginsburg also said. Trump fired back on Twitter, calling her comments a "disgrace to the court" and adding for good measure, "Her mind is shot — resign!" Judicial ethics experts voiced concern that her remarks amounted to an unforced error that could encourage parties to request her recusal in cases that named or significantly involved Trump or his personal interests. Others also pointed to the Code of Conduct for U.S. Judges which says that judges should not "make speeches for a political candidate,

or publicly endorse or oppose a candidate for public office" or "engage in any other political activity." The code does not apply to Supreme Court justices, though high court members say they consult it in guiding their own conduct. Ginsburg soon issued a statement regretting her "ill-advised" remarks: "Judges should avoid commenting on a candidate for public office," she said.

Bar Merger: The staid Supreme Court bar was shaken up in September when the boutique firm Bancroft PLLC joined the much larger Kirkland & Ellis LLP. Former solicitor general Paul Clement, viewed as one of the top high court advocates of his generation, had turned Bancroft into the go-to firm for conservative causes. For both firms, the synergies seemed irresistible. "One plus one equals three!" Bancroft founder Viet Dinh said two months after the merger. "We came together very amicably and efficiently. We're doing the same thing, only more of it."

Bait and Switch Briefs: Twice in the fall of 2016 justices displayed their ire at Supreme Court practitioners who file petitions raising issues that win certiorari — but when it comes time to filing briefs on the merits, they pile on with new and different issues and arguments. During oral argument in *Moore v. Texas*, Chief Justice Roberts scolded Skadden, Arps, Slate, Meagher & Flom LLP partner Clifford Sloan for reciting a "long laundry list" of complaints about Texas death penalty procedure when "your question presented focused only on one." Before that, the court pulled two antitrust cases from its argument docket and dismissed them altogether. The reason, the court said, was that the petitioners had "persuaded" the court to grant cert on one issue but then "chose to rely on a different argument" in the merits briefing. The cases were *Visa v. Osborn* and *Visa v. Stoumbos,* and the brief at issue was by Neal Katyal of Hogan Lovells.

Healthy Justices: The health of presidential candidates and how public they should be about it was a hotly contested issue during the campaign. Scalia's untimely death raised interest in the well-being of Supreme Court justices as well, especially because the public was unaware of Scalia's numerous health problems until after his death. *The National Law Journal* asked each of the eight justices to disclose basic health details. But only one justice replied. Chief Justice Roberts, speaking on behalf the entire court, wrote a letter to the newspaper that was published in September. "You can expect to see an able and energetic Court when we reconvene in October." He pledged that the court would release justices' health information "when a need to inform the public arises."

Thomas Accused: A national conversation about sexual harassment of women by powerful men, spurred by taped comments by Trump, also ran

through the presidential campaign. Against that backdrop, new allegations surfaced against Thomas. *The National Law Journal* in October reported that an Alaskan attorney named Moira Smith claimed that Thomas groped her at a dinner party in 1999 when she was a Truman scholar in Washington, D.C. Her three former housemates and two other Truman scholars at the time recalled Smith telling them of the incident shortly afterward. Thomas said the allegation was "preposterous and it never happened."

Scalia Law School: Backed by $30 million in donations, Virginia-based George Mason University was quick to rename its law school to honor the late justice. Some faculty members voiced "deep concern" that the move would be polarizing and could discourage diverse views among applicants and students. But the change went forward, though its first proposed name — the Antonin Scalia School of Law at George Mason University — did not last long because of its unfortunate acronym: ASSLaw. Without missing a beat, university officials switched the name to Antonin Scalia Law School at George Mason University. Six Supreme Court justices from across the ideological spectrum traveled to the Arlington, Virginia law school on October 6 to attend ceremonies celebrating the renaming of the school. Justice Elena Kagan described Scalia as "one of the most important Supreme Court justices ever, and also one of the greatest."

Hail from the Chief: In past years, Chief Justice Roberts has sometimes used his annual year-end report to advocate for higher pay for judges, or to defend the ethics of his fellow justices. But his 2016 report, issued on December 31, had no sharp edges or fodder for controversy. Instead he spotlighted the "crucial role" played by federal district judges, asserting they "deserve tremendous respect" for performing the often thankless tasks of the job. "The district judge serves as the calm central presence to ensure fair process and justice for the litigants," Roberts wrote in his annual written report on the federal judiciary. "This is no job for impulsive, timid or inattentive souls."

M. Kevin Underhill[†]

A YEAR OF LOWERING THE BAR

2015-2016

NOVEMBER 2015

November 3: According to a spokesperson for the D.C. Lottery, "It is important to note that frequent wins by individuals . . . do not definitively mean improper activity has occurred." This follows a report that one individual has won 123 times in eight years, another has won 28 times in three years, and three of the top five recent winners also happen to sell lottery tickets. An expert says the odds of this happening randomly are about 10 billion to one.

November 10: A plaintiff who bought a vehicle at auction for $300,000 sues the seller in California, saying the vehicle was never delivered and was "damaged by the elements" after the auction. The complaint is vague, however, about how the "elements" damaged the vehicle, which is a Sherman tank.

November 18: Police in Perth, Australia, ask the public for assistance in locating nine individuals who were seen riding through town on two motor-

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[†] Kevin Underhill is a partner with Shook, Hardy & Bacon LLP, recent press releases from that firm notwithstanding. He is the author of the legal-humor website *Lowering the Bar* as well as *The Emergency Sasquatch Ordinance*, a book about weird laws. Kevin's writing has previously appeared in the *Green Bag*, *Forbes*, and the *Washington Post,* on a string of billboards outside Tucumcari, New Mexico, and inexplicably baked into the underside of a cheese omelet later eaten by L. Ron Hubbard.

ized picnic tables. Pictures suggest the individuals were drinking at the time, but police say picnic tables are not "roadworthy" vehicles anyway.

November 21: On the other side of the continent, police in Sydney receive numerous calls from citizens reporting high-pitched, hysterical screams coming from a nearby home, as well as a man's voice shouting "I'm going to kill you! Die! Die!" Police find not a domestic-violence incident but rather a lone man who sheepishly admits he had been screaming while desperately trying to kill a spider. "It was a really big one," the man explains.

November 25: Reuters reports that a British woman who tried to poison her husband has pleaded guilty to attempted murder. She called paramedics to say her husband was unconscious, and when they arrived gave them a note purportedly from him, saying he did not wish to be revived "as I would like to die with dignaty [sic] with my family by my side thank you." His name was typed at the end rather than signed. Given the chance to spell "dignity" by police, the woman misspelled it the same way.

December 2015

December 2: Michigan's legislature repeals more than 80 laws it has decided are antiquated or unnecessary, including laws against trespassing on a cranberry marsh, swearing in front of women or children, and singing "The Star-Spangled Banner" in a nontraditional or disrespectful manner. The latter also made it illegal to play the anthem as part of a medley, as an exit march, or for purposes of dancing, though it seems doubtful anyone has ever really tried to dance to the national anthem.

December 4: Reports say that a Turkish court considering defamation charges against President Recep Tayyip Erdogan has decided to seek advice from a group of experts on *The Lord of the Rings*. This is because the defendant is accused of comparing Erdogan to Gollum. The defendant's lawyer argues the comparison isn't sufficiently insulting to be defamatory, noting that Gollum in fact plays an instrumental role in defeating Sauron.

December 12: It seems very unlikely that nothing stupid happened between December 4 and 19, 2015, but that's what my records suggest.

December 19: A man is arrested in Manitoba, Canada, on suspicion of driving under the influence after he allegedly crashed the Zamboni ice machine he was driving into the boards of a hockey rink. It is at least the fifth Zamboni DUI case in the past decade.

December 21: In Montana, a man who allegedly threatened a Facebook friend with a gun is charged with felony assault. The friend allegedly dis-

closed details of the new Star Wars movie, *The Force Awakens*, without providing a spoiler warning.

December 26: A New York judge dismisses DWI charges against a woman after her attorney argues she unknowingly suffered from "auto-brewery syndrome," also known as "gut fermentation syndrome," in which alcohol is produced from sugar by microorganisms within a person's digestive tract. Fewer than two dozen cases of ABS have been reported worldwide, but this is apparently the second DWI case in which the defense has worked.

JANUARY 2016

January 6: In *Naruto v. Slater*, a court rules Naruto cannot claim copyright in a remarkable picture he took in Indonesia a few years before, because he is a monkey. (Slater set his camera up in the jungle, and Naruto took a "selfie" while playing with it.) The lawsuit was brought on Naruto's behalf by People for the Ethical Treatment of Animals. The court holds that Congress could extend the Copyright Act to animal art if it wanted to, but it hasn't. Therefore, as the defendant's motion argued, "[t]he only pertinent fact in this case is that Plaintiff is a monkey suing for copyright infringement."

January 21: The chairman of the Kansas Senate's Ethics Committee, who is a man, issues a "code of conduct" with instructions for women on how to look "professional" when testifying before the committee. "Low-cut necklines and mini-skirts are inappropriate," for example. According to the *Topeka Capital-Journal*, the chairman said he considered rules for men "but decided males didn't need supplemental instruction on how to look professional."

January 22: In a case entitled *New Zealand Transport Agency v. New Zealand Transport Agency*, a New Zealand court holds that a government agency can appeal its own decision.

January 25: A California jury awards over $7 million to one of the women suing Bikram Choud-hury, creator of "Bikram yoga," for harassment. The $6 million punitive award may arise from the contrast between Choudhury's testimony that he is too broke to pay any award and evidence that he owns a "palatial" Beverly Hills home and "30 to 40" luxury cars, among other assets. Upon hearing Choudhury testify that he built the cars himself with parts he found in junkyards, "several members of the jury quietly laughed."

January 26: The Kansas senator who issued professionalism rules for women apologizes and retracts them. The retraction appears to have followed "conversations with a lot of his colleagues" about the rules, says the President of the Kansas Senate, who is a woman.

February 2016

February 4: Maine's highest court holds that a prosecutor did not commit prejudicial error in a murder case by pretending to be asleep during the defense's closing argument. The conduct was "sophomoric" and "unprofessional," the court says, but could not have been prejudicial given the evidence against the defendant. A witness also claimed to have seen the prosecutor mouth the words "he did it" to the jury during the argument, but the court says if that did happen, the same analysis would apply.

February 8: The parties disputing Warner/ Chappell Music's right to charge royalties for "Happy Birthday to You" ask the court to approve a settlement under which Warner would pay $14 million — one-third of it to the class's attorneys — and the court would declare the song to be in the public domain.

February 9: Florida authorities have arrested the man who threw a live alligator through the window of a Wendy's drive-through last October. Neither the employee nor the alligator were harmed in the incident, but the man is charged with unlawful possession of an alligator, assault with a deadly weapon (the alligator), and petty theft (a drink he ordered but didn't pay for).

February 19: In Tennessee, a federal magistrate judge dismisses an officer's civil-rights lawsuit against the city that fired him for violating the department's firearms policy. The officer had been asked to help get a squirrel out of the local general store, and responded by trying to shoot it with his handgun.

February 24: The BBC reports that police who responded to calls about a man carrying a small child along the M60 motorway near Manchester have sounded the all-clear. The man was actually carrying a garden gnome.

March 2016

March 1: The New York Senate's Transportation Committee favorably recommends a bill requiring any driver involved in a collision to surrender any personal electronic devices to a police officer "solely for the purpose of field testing." The stated intent is to deter use of the devices while behind the wheel by allowing police to gather evidence at the scene. It goes without saying, of course, that there is no risk whatsoever police would look at anything else on the device.

March 2: The *Washington Post* reports that while testifying before the Utah Senate on a bill to legalize medical marijuana, a DEA special agent argued the proposal would be bad for wildlife. At one illegal field, he claimed to

have personally witnessed "rabbits that had cultivated a taste for the marijuana" and became addled as a result. "One of them refused to leave us," he testified, "and we took all the marijuana around him, but his natural instincts were somehow gone."

March 7: Prosecutors announce they have charged a former Brink's employee with stealing $196,000 from a federal reserve bank. This is more impressive than it sounds because it was all in quarters. The defendant allegedly stole all 784,000 quarters between January 1 and February 20, 2014, an average of 15,372 quarters (weighing about 192 pounds) per day. • The Supreme Court declines to review the Ninth Circuit's decision that the design of the Batmobile is protected by copyright.

March 11: In *United States v. Ragin*, the Fourth Circuit holds that "when counsel for a criminal defendant sleeps through a substantial portion of the trial," no separate showing of prejudice is necessary to establish ineffective assistance. While prejudice is normally required, the court says, "the buried assumption" in that analysis is that "counsel is present and conscious" for the vast majority of trial.

March 17: The Maryland Senate votes to amend the official state song, "Maryland, My Maryland." Some have objected that the song, which was originally a Confederate anthem, still contains lines such as "Huzza! She spurns the Northern scum."

March 22: The Supreme Court vacates a Ninth Circuit decision that precluded John Sturgeon from using his hovercraft to hunt moose in Alaska, saying the lower court misinterpreted federal conservation law.

March 23: A North Carolina man is arrested for failing to return a videotape he rented 14 years before. James Meyers said that after he was stopped for a broken taillight, the officer approached him and said, "I don't know how to tell you this, but there's a warrant out for your arrest from 2002. Apparently you rented the movie 'Freddy Got Fingered' and never returned it." The department claims it had no choice but to arrest and book Meyers because of the outstanding warrant for "failing to return hired property."

March 24: The Idaho Legislature passes S.B. 1342, which would permit the use of "religious texts, including the Bible," for "reference purposes" in a variety of subjects for which an understanding of such texts might be useful or relevant. Some believe this conflicts with the First Amendment as well as the state constitution, specifically the part that says "[n]o books . . . of a political, sectarian or denominational character shall be used" in Idaho schools. The sponsors insist, however, that the Bible is nonsectarian and nondenom-

inational. "The little Supreme Court in my head says this is okay," one reports.

April 2016

April 1: Missouri state Rep. Tracy McCreery introduces H.R. 1220, which urges House members to stop saying "physical" when they mean "fiscal," as in "fiscal year." "It happens pretty much daily," McCreery says. "It really does."

April 4: Welsh sources report that the gang members who stole £20,000 worth of "Jammie Dodger" shortbread biscuits in 2015 have been convicted and sentenced to several years in jail. "Anyone want a biscuit?" one shouts as he is led away, suggesting that he knows the whereabouts of at least one of the delicious treats, which have not been recovered. • The Tennessee Legislature passes H.B. 615, which designates the Bible as the "official state book."

April 5: Idaho's governor vetoes S.B. 1342 (see March 24), saying that although he personally has "deep respect and appreciation for the Bible," the law is clearly unconstitutional. This does not, however, affect existing code section 33-1604, which mandates daily Bible readings in Idaho public schools, and is still on the books although it was held unconstitutional in 1964.

April 14: Tennessee's governor vetoes H.B. 615, similarly saying that while he personally believes the Bible is a "sacred text," for that very reason it would be unconstitutional to make it the official state book.

April 20: In Boise, organizers of an annual event that includes a "dachshund race" say they have canceled the race because local authorities notified them that a state statute prohibits dog racing. It does ban "live dog racing," but was intended to end greyhound racing because of concerns about the dogs' welfare, not to prevent 30-yard dachshund dashes once a year.

April 26: The *Eugene Register-Guard* reports that a federal judge has ordered Oregon to pay $318,000 in attorney fees in a civil-rights case due partly to the state's trial tactics. Among other things, the judge notes that while the plaintiff was testifying, one of the state's attorneys "pretended to be asleep in his chair, his unconscious visage . . . broken only by an occasional loud sigh. [This] failed miserably to impress the jury and required repeated warnings from the court."

April 29: The National Labor Relations Board holds that a company may not have a rule requiring employees to "maintain a positive work environment by communicating in a manner that is conducive to effective working

relationships." The rule did not actually require a positive attitude, but the NLRB said it could be interpreted to allow punishment of anyone who did not appear sufficiently positive about working conditions.

MAY 2016

May 5: An American Airlines flight returns to its gate in Philadelphia after a woman reports concerns about her seatmate, who appears to be foreign and is intently focused on a notepad covered with a script she does not recognize. After the man is removed from the plane, he tells agents he is an Italian economist, and that the script the woman did not recognize is math.

May 9: An Arkansas judge resigns after learning investigators have recovered about 4,000 embarrassing images from his computer depicting defendants in cases over which he presided. A letter sent by investigators in the case stated: "The paddle appears in photographs and has been identified by witnesses as belonging to the judge. Please accept this as notice to your client to not destroy [or] otherwise dispose of this paddle or other devices used to cause the red marks in the photographs." The judge claimed he kept the photos only "to corroborate participation in community service."

May 18: Google is awarded Patent No. 9,340,178, entitled "Adhesive Vehicle Front End for Mitigation of Secondary Pedestrian Impact," which describes a method of making the hood of a car sticky enough that a pedestrian would not bounce off it in the event of a collision, causing further injury. "It is also desirable," the patent states, "to have the adhesive in the adhesive layer release after a short period of time to allow for the removal of the pedestrian from the vehicle."

May 24: The Associated Press reports that the TSA's assistant administrator for security operations has been fired after an oversight hearing on alleged "mismanagement." Kelly Hoggan was reportedly paid over $90,000 (almost half his base salary) in awards and bonuses during the previous 13 months, a period during which the TSA failed to detect about 95 percent of concealed weapons and explosives that testers tried to smuggle through checkpoints.

JUNE 2016

June 2: CNN reports that it has located Yusuf Abdi Ali, an accused war criminal who allegedly participated in torture and mass executions while he was a military commander during the Somalian civil war. It turns out Ali should not have been that hard to find, since he was working as a security guard at Dulles International Airport. Ali somehow managed to pass a fed-

eral background check although you can find details of his alleged crimes by Googling his name.

June 3: D.C.'s Board of Professional Responsibility agrees that former judge Roy Pearson acted unreasonably and interfered with the administration of justice when he pursued a $65 million lawsuit against a dry cleaner he accused of losing a pair of pants.

June 15: A 21-year-old Welshman pleads guilty to assaulting another man who he suspected of stealing a friend's imitation Viking battle axe. All three were members of the "Viking Society" at Trinity St David's University in Lampeter. The defendant said he confronted the victim about the missing axe, and lost his temper when the victim smirked in response.

June 23: Voters in the United Kingdom go to the polls to vote on the "Brexit" referendum. If it passes, Britain will leave the EU.

June 24: About eight hours after the polls closed, Google Trends reports it has detected a large surge in the number of searches for the phrase "what happens if we leave the EU."

July 2016

July 13: In *Reuth Dev. Co. v. H&H Reuth*, Judge John Sedia writes that he is compelled to grant the defendant's summary judgment motion because of the plaintiff's delay in responding to it. Specifically, the response was due on July 14, 1995, so it is just one day short of 21 years late.

July 21: A California federal court rules that it has admiralty jurisdiction over a shark-bite lawsuit. The plaintiff is suing a dive instructor she claims was intoxicated during the dive, allegedly contributing to the attack. The court finds that the bite had the "potential to disrupt maritime commerce" because another boat might have had to be diverted in order to offer first aid.

August 2016

August 2: In a letter to Gov. Jay Nixon, the director of Missouri's Public Defender System says he believes drastic measures are necessary due to budget cuts that have made it difficult for his office to do its job. Specifically, the director says he has noticed (1) that state law gives him authority to appoint "any member of the state bar" to represent criminal defendants if necessary, and (2) that Nixon is a member of the state bar. He therefore appoints Nixon to work on a case. Some speculate the director is just trying to make a point about funding and doesn't actually expect the governor to show up in court, but the letter is pretty specific.

August 12: The CBC reports that a trucking company is offering a $10,000 reward for the return of 20,000 liters of maple syrup stolen from a holding facility in Montreal. The shipment was headed for Japan. While shocking, the theft is far smaller than the 2012 heist in which 2.7 million liters were stolen from the Global Strategic Maple Syrup Reserve.

August 15: Michigan lawyer Robert Mol insists that his write-in campaign against Circuit Judge Kent Engle has nothing to do with the fact that Engle is presiding over a custody battle between Mol's wife and the father of her 10-year-old daughter. Coincidentally, Mol's wife has filed a petition asking that Engle be removed from the case on the grounds that her husband's candidacy means Engle has a conflict of interest.

August 19: In New York, a defendant hoping to fire his court-appointed lawyer insists that the lawyer has repeatedly lied to him, but can only think of one example and turns to his lawyer for help. "What else [did you lie to me about]? You remember?" he asks. "You're asking Mr. Pesserillo how many lies he's told you?" the judge asks. The exchange causes "chuckles in the courtroom," including from the defendant, the sort of levity that is rare in a murder case.

August 22: Police say no charges will be filed against a 53-year-old Nebraska man, or his children, after an incident in which the man accidentally ate four brownies containing an active ingredient other than sugar. According to the *Omaha World-Herald*, "Paramedics called to the scene [by the man's wife] found his vital signs to be normal. But they noted that he was displaying odd behavior — crawling around on the floor, randomly using profanities and calling the family cat a 'bitch.'" The man later admitted the profanity but denied any intent to insult the cat.

August 25: Katrina Pierson, spokesperson for presidential candidate Donald J. Trump, insists the candidate's statement that he would "not necessarily" deport all illegal immigrants is consistent with his earlier statements that he would indeed do that. Trump "hasn't changed his position on immigration," Pierson explains, he's just "changed the words that he is saying."

August 29: Multiple sources report that an Idaho woman is suing police for trashing her home during a 10-hour standoff in which they smashed doors and windows, fired tear-gas grenades, and created a large hole in her ceiling when one of the officers fell through it. The behavior is unusual because the woman had consented to a search and given officers the keys, and turned out to be unnecessary because the only person inside was a dog.

August 31: Calling it a "highly unusual situation," *North Carolina Lawyers Weekly* reports that a defendant in a case under grand-jury consideration has the same name as one of the grand jurors. This turns out to be because it is in fact the same person. "I asked him if he stepped aside" when it came time to vote, the judge says, "and he did not." Because grand-jury proceedings are secret, of course, there is no way to know whether the defendant voted to acquit himself, but if he did he was outvoted.

September 2016

September 2: In Sweden, *Skånska Dagbladet* reports that a man has successfully defended against a charge of knowingly operating an unregistered vehicle by claiming he suffers from a phobia of official correspondence. His phobia allegedly prevented him from opening letters from the government that would have informed him of the need to register.

September 7: According to the *Kansas City Star*, a 70-year-old man who robbed a local bank said he did so because he would rather go to jail than keep living with his wife. He got an undisclosed amount of money from the teller by handing over a note, and then sat down in the lobby to await police. Kansas law defines "robbery" as "knowingly taking property from the person or presence of another by force or threat of bodily harm," so that is probably still a robbery even if he didn't intend to get away with it.

September 21: Closing arguments are heard in the trial of a former employee of the Royal Canadian Mint, who is accused of smuggling out 210-gram "pucks" of nearly pure gold by inserting them into what one might call an internal smuggling compartment. After walking carefully out of the mint, the man would sell the pucks at a local gold-buying shop and then deposit the checks in a bank at the same mall. He was caught after a bank teller became suspicious and noticed that he worked for the mint.

September 29: Senate Majority Leader Mitch McConnell criticizes President Obama for a new law authorizing 9/11 lawsuits against Saudi Arabia, saying Obama should have done a better job explaining the law's pitfalls (such as potentially subjecting the U.S. to retaliatory lawsuits in foreign courts). The criticism is unusual given that Obama vetoed the bill for exactly that reason, a veto that McConnell and 96 other Senators had voted to override.

October 2016

October 5: An Australian lawyer prevails in his battle to be compensated by Domino's Pizza for its failure to deliver three (3) pizzas, two (2) garlic

breads and two (2) drinks in April 2015. Tim Driscoll said the branch manager promised to refund his $37.35 but never did, and that the board of directors also ignored him (though he is a shareholder). He sued after a year of being ignored, and won when Domino's failed to respond. Driscoll reportedly recovered his original $37.50 plus about $1200 in fees and costs.

October 7: The *Boston Globe* reports that in this year's "marijuana eradication operation," an annual joint exercise by the state police and National Guard, authorities managed to seize a total of 44 plants, including one from the backyard of an 81-year-old grandmother. A National Guardsman spotted the plant from a helicopter, and several police vehicles swooped in for the seizure. "I had been nursing this baby through a drought," said Peg Holcomb, "and I was pretty pissed to tell you the truth."

October 14: According to Courthouse News Service, the parties to the shark-bite lawsuit (see July 21) have settled for an undisclosed amount.

NOVEMBER 2016

November 8: The D.C. Circuit holds that officers who broke down a veteran's door without a warrant and arrested him after he accidentally called a suicide hotline are not entitled to qualified immunity. "I don't have time to play this constitutional bullshit," one officer allegedly said after the plaintiff refused consent, but the court says officers need to play it anyway.

November 9: The *Chicago Tribune* reports that Rhonda Crawford, currently under indictment for posing as a judge in Cook County, has been elected to be a judge in Cook County. Crawford won the Democratic primary and so had no real competition, but the state supreme court held she still should not have been allowed to "sit in" and rule on cases before actually taking the bench. • Justice Peter Doody holds that although circumstantial, the evidence supports the conclusion that Leston Lawrence did indeed smuggle gold nuggets out of the Canadian Mint by hiding them in his rectum (see September 21).

November 12: Three members of the gang who somehow stole 3,000 tons of syrup from the Global Strategic Maple Syrup Reserve in 2012 are convicted in Quebec. One wept on the stand, claiming he had been forced to participate at gunpoint, although evidence showed he had sent a text message to that person saying, "Come see me, my love, I miss you."

November 21: The FBI says it is looking for a bank robber it has nicknamed the "Spelling Bee Bandit" because in each of his four robberies he wrote "ROBERY" or "ROBERT" on the back of a withdrawal slip. It's not clear

why informing a teller your name is "ROBERT" would get you any money, but they handed over some in each case. • In *Nobody v. Ontario Civilian Police Commission*, the court rules that Adam Nobody has the right to appeal a finding that officers who beat him during the G20 protests in Toronto were not guilty of misconduct. The officers had argued Nobody missed the deadline. During coverage of the protests in 2010, Nobody admitted he had changed his name from "Adam Trombetta" because "it made for better puns." • A judge in Fort Bend County, Texas, grants Lan Anh Cai's anti-SLAPP motion against her former attorneys, who had sued her for complaining about them on Yelp. The order dismisses their suit and awards her $26,831 in attorney fees. The firm involved was the Law Offices of Tuan A. Khuu & Associates, in case they want to sue me for mentioning them.

November 26: Police in Forest Grove, Oregon, say they responded to a report of a "verbal altercation" — sometimes referred to as an "argument" — sparked by a man's alleged refusal to stop whistling the song "Closing Time" by Semisonic. The song hit #11 on the Billboard chart in 1998, but at least one woman did not want it whistled anywhere near her home in 2016.

November 28: Belgium and the Netherlands sign a treaty agreeing to swap three tiny enclaves that have been marooned on the wrong sides of their border since the Meuse River changed course slightly about 50 years ago. Nobody lives in the enclaves, but "antisocial behavior" has reportedly thrived there because the relevant authorities had to cross the river to police them.

November 30: DOJ officials tell Congress that for years the DEA has been paying U.S. transit employees — including TSA workers — millions of dollars in exchange for "tips" on travelers they find suspicious. Because the informants were paid if their actions resulted in seizures of drugs or cash, the payments gave them a clear incentive to conduct more searches. One informant was reportedly paid more than $1 million over five years, and an airline worker earned well over $600,000 in four years.

December 2016

December 2: *Ghana Business News* reports that the fake U.S. embassy in Accra has finally been shut down. The operators ran up the U.S. flag three days a week and sold stolen and counterfeit documents while posing as U.S. officials. According to the report, the scam had been in place for ten years.

December 5: Iowa announces it has completely disbanded its "interdiction" and civil-forfeiture team, although it has not yet changed the underlying laws that allow police departments to keep money they seize from suspects.

It also agrees to pay $60,000 to two poker players whose bankroll was taken by officers who pulled them over for an alleged traffic violation.

December 6: The *Guardian* reports that an Oxford graduate has sued the university for not giving him the top grade in a history class 16 years ago. The plaintiff, now a 38-year-old solicitor, alleges that the university has admitted it had a shortage of faculty then, and that both the teaching and grading were "appallingly bad." He alleges the second-class grade he received in Indian Imperial History has "denied him the chance of becoming a high-flying commercial barrister," and demands £1 million in lost earnings.

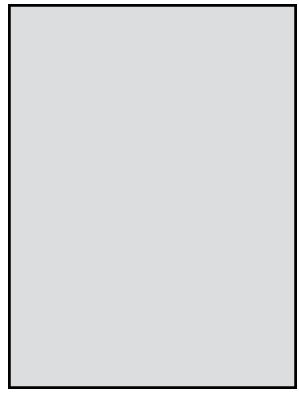
December 8: Canadian sources report that customers there have been perplexed by labels on snow globes warning that the products "may cause cancer." It turns out the labels are there to satisfy a California law requiring warnings on products that contain any of the hundreds of chemicals California says are dangerous, even if the levels in that product are actually safe. The glass in the globes apparently contains trace elements of lead.

December 12: A man suspected of being the "Spelling Bee Bandit" (see November 21) is arrested in Boston. The break in the case reportedly came after the suspect's mother recognized him in surveillance photos and called the FBI. "So that's what happened to my Patriots hat," she said after seeing one of the photos, although that wasn't until after she turned him in.

December 19: Though not at gunpoint, a majority of electors cast votes for Donald J. Trump, officially making him the President-elect. Eleven electors either refused to vote for Trump or tried to do so before being removed under state laws that make such defections illegal. The Supreme Court has never decided whether such laws are constitutional, though people who write legal-humor blogs think it's pretty obvious they aren't.

December 22: The *Washington Post* reports that Maine authorities have finally approved Phelan Moonsong's request to wear goat horns in his driver's license photo. • The DOJ sues Barclay Bank and several affiliates, alleging they engaged in a fraudulent scheme to sell overvalued residential mortgage-backed securities. Among the allegations: the banks allegedly told investors only "reliable" or "robust" loans were included in the program, though internal emails described some of the same loans as "craptacular," among other terms.

December 29: The *St. Louis Post-Dispatch* reports that a 28-year-old man fleeing from a probation violation spent Christmas Eve stuck in a hay bale. He fell into it while trying to hide in a barn loft, so that's how that happens.



Wendy Everette, Catherine Gellis, Fatima Nadine Khan, Eli Mattern & Whitney Merrill[†]

THE YEAR IN LEGAL INFORMATION/LEGAL TECH

HIGHLIGHTS FROM 2016

JANUARY

2016 opened with the Federal Trade Commission's inaugural Privacy Con, bringing together privacy and security researchers with FTC staff in Washington D.C. for a day of presentations on privacy, security, and usability. Panels included "Big Data and Algorithms: Transparency Tools Revealing Data Discrimination," which explored biases in online ad bidding systems, "Consumer Privacy Expectations," and "Security and Usability." Opening the afternoon session, then-FTC Commissioner Julie Brill lauded the "cross-disciplinary, richly detailed picture of consumers and how they make decisions about technology use" presented by the researchers and welcomed the commitment by schools to bring lawyers and technologists together to

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make interdisciplinary work on law, technology, and public policy "a core mission." • A recurring theme throughout 2016 was the use of data science to explore our legal system. In one such paper, *Emotional Judges & Unlucky Juveniles*, Ozkan Eren and Naci Mocan of Louisiana State University, analyzed publicly available data to determine whether football team losses or wins affected the sentences passed out by judges. (They did.) • Despite being charged with drafting bills on technical topics, Capitol Hill is not a bastion of computer experts. Enter Tech Congress, which sponsors fellows to spend a year offering their tech knowledge to our nation's lawmakers. 2016 marked Tech Congress's second year of bringing "talent, ideas and training to Congress" to build bridges between policymakers and the tech community. • Bernard Marr at *Forbes* reviewed *How Big Data Is Disrupting Law Firms and The Legal Profession*, noting that the use of analytics in the legal field had mostly been confined to billing and marketing functions until recently. He optimistically notes that "routine but time consuming procedures such as parking ticket appeals . . . could be settled by algorithms" but expects that it will be "some time" before algorithms replace judges. The automation of legal analysis is often known as computational law; this branch of legal technology seeks out legal disputes with discrete steps and develops software that can traverse these discrete paths. As Marr notes, automated legal analysis beyond routine procedures like parking tickets would require advances far beyond the types of software currently available. • File this one under The Art of Showing What's Possible. In 2014, David Zvenyach built a twitter account (*@Scotus_servo*) to track changes ("diffs" as they are colloquially known) to Supreme Court opinions on the Court's website. (See the 2015 *A Term in the Life of the Supreme Court* for the origin story.) A year later, the Court began publishing the diffs themselves, prompting Zvenyach to retire the account. When the DC Legal Hackers group gave a Le Hackie award to the Supreme Court in recognition for beginning to publish their own diffs, the Supreme Court didn't attend to accept their award, and Zvenyach accepted on their behalf. His acceptance speech noted the sweet joy that came from innovating himself out of a job.

FEBRUARY

Judge Jeffrey White allowed discovery to proceed in *Jewel v. NSA*, regarding the NSA's warrantless surveillance of American citizens. *Jewel* has been a long running case about a fiber optic splitter in AT&T's facilities sending a copy of all internet traffic passing by to the NSA. Rejecting the government's sovereign immunity and state secrets claims, Judge White found that the Foreign Intelligence Surveillance Act controlled instead. The case, origi-

nally filed in 2008, may still face standing challenges as it moves beyond the pleadings stage. • California Attorney General Kamala D. Harris used the release of the *California Data Breach Report* on February 19 to offer a definition of "reasonable" data security from the Center for Internet Security's Critical Security Controls. The controls are a list of twenty recommendations for organizations to implement, ranging from restricting unauthorized software on laptops or phones to automated scans for vulnerabilities or rogue actors within an organization's network. • On February 26, President Barack Obama signed the Judicial Redress Act, considered an important step towards the approval of the E.U.-U.S. Privacy Shield, which allows cross-border data transfers between Europe and the States. The Judicial Redress Act grants some non-U.S. citizens a private right of action for alleged privacy violations. • On February 22, Court Listener launched their new Supreme Court visualization tool, allowing visitors to the SCOTUS Mapping Project website to construct graphs displaying connections between cases cited in Supreme Court opinions. How has the Economic Liberty doctrine evolved between the *Slaughter House Cases* and *Lochner*? Enter your starting and ending cases, choose the type of graph, and the website will render a visualization.

MARCH

The 30th annual ABA Tech Show took place March 16-18 in Chicago, featuring a variety of sessions on legal automation, open data, social media, expert systems, and more. Keynote speaker Cindy Cohn, executive director of the Electronic Frontier Foundation, reflected on the state of computers when she began in the field 25 years ago: "Computers were something that only secretaries had back then." The upcoming 2017 show will feature, for the first time, 12 legal startups building products ranging from time-tracking software to managing pro-bono cases. Many of these startups focus on growing legal tech infrastructure to enable attorneys to work more efficiently. • 2016 saw the new Federal Rules of Civil Procedure take effect, with many wondering what impact they might have on e-discovery cases. In *Brown Jordan Int'l, Inc. v. Carmicle*, a district court applied the new FRCP 37(e)(2) to the case of an employee who destroyed evidence on both personal and work devices in his control. The court found that Carmicle acted with the intent to deprive Brown Jordan of the use of the data in litigation and allowed an adverse evidentiary inference, but refused to grant dismissal of the case or award attorney fees.

APRIL

A new tool for explaining the often dense legalese of online Terms of Service and Privacy Policies launched at tosdr.org. The name is a play on "tl;dr" ("too long; didn't read," a tag which originated on Reddit above summaries of long posts), and while the website does require some reading to make use of it, the site creators have developed an interesting and user-friendly style of display. • The Internet & Jurisdiction multistakeholder policy network launched their *Retrospect Database*, "an open access database to document jurisdictional trends on the internet and inform policy discussions." The cases within the *Retrospect Database* have been specially tagged by issues and actors, allowing interested parties to locate relevant cases of interest. This type of custom search engine also appears in the International Association of Privacy Professionals' *FTC Casebook*, which is a searchable database of FTC actions. The *Casebook* database allows searching by Industry, Remedies, and other attributes. Will these types of small, specialized search engines become more common as various legal niches develop custom tools? • The FTC launched the *Mobile Health Apps Interactive Tool* to guide application developers through the thicket of regulations and laws governing health data. The FTC's web application leads users through a series of questions, such as "Do consumers need a prescription to use your app?" to present a customized list of applicable laws for the application developer. • Data breach litigation stemming from the Sony Pictures 2014 hack settled on April 6. The case, *Corona et al. v. Sony Pictures Entertainment Inc.*, stemmed from a cyberattack allegedly perpetrated by North Korea on Sony Pictures in retaliation for the movie *The Interview*. • On April 21, three nonprofits (National Consumer Law Center, the Alliance for Justice, and the National Veterans Legal Services Program) filed a class action lawsuit alleging that the PACER system was charging too much for access to court documents and preventing public access. PACER launched on the internet in 1998 and charges 10 cents a page for federal court records. The suit alleges that "fees imposed for PACER access" are "excessive in relation to the cost of providing the access . . . higher than 'necessary' to 'reimburse expenses incurred in providing the services' for which they are 'charged'" under 28 U.S.C. § 1913. • Law firm computer security surfaced as an issue to watch in 2016 when 11.5 million files were leaked from the database of the world's fourth biggest offshore law firm, Mossack Fonseca. Whether the firm was hacked or an insider leaked the files, the episode highlights the incredible amount of confidential information that firms guard. Are law firms doing enough to guard client data? Do firms have an ethical obligation to their clients to upgrade their computer security systems and invest in expensive monitoring systems to detect ex-

filtration of data? • Communication can be key during a cybersecurity incident. A North American Electric Reliability Corporation (commonly known as "NERC") Cyber Threat Testing of the Power Grid showed the need for improved communication between incident response teams and law enforcement officials.

MAY

The ROSS AI, newly "hired" at BakerHostetler to assist bankruptcy attorneys, is hailed as the first "artificially intelligent system," and relies on natural language processing ("NLP"). NLP looks to the structure and meaning of text, rather than analyzing activity by users through the use of collaborative filtering, which is a methodology where the actions of many users are analyzed to derive connections between objects and is behind many software recommendation systems (attorneys may be familiar with collaborative filtering through WestlawNext's suggested documents). Although in its current incarnation ROSS is more of a tool than an attorney itself, it raises questions about artificial intelligence and the unauthorized practice of law. Might a system using artificial intelligence be smart enough one day to be guilty of unauthorized practice of law? Will artificial intelligence software be used by non-attorneys seeking legal advice or assistance? • On May 16, the Supreme Court held in *Spokeo Inc. v. Robins* that plaintiffs seeking standing must show injury, through "an invasion of a legally protected interest" that is "concrete and particularized," not just inaccurate data or a statutory violation. • May was a busy month for drones, as the FAA announced its Drone Advisory Committee on May 4 and the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) released its Drone Best Practices Report on May 19. Traditionally, the FAA has regulated larger aircraft used in general and commercial aviation. The sudden emergence of lightweight autonomous airborne vehicles as popular consumer items has led industry and the FAA to seek solutions to support the safe operation of these vehicles, especially in crowded urban areas. The FAA released their new rules in June under Part 107 of the Federal Aviation Regulations, allowing drone operations by persons without a pilot license. This is likely not the last time that there will be the rapid emergence of a new technology that doesn't quite fit into an existing regulatory scheme. • Algorithmic bias was another emerging field in 2016. Pro Publica published their analysis of a computer algorithm used to predict likelihood of criminals to commit a second crime, and found it to be biased towards harsher penalties for people of color. "When a full range of crimes were taken into account — including misdemeanors such as driving with an expired license —

the algorithm was somewhat more accurate than a coin flip . . . We also turned up significant racial disparities . . . In forecasting who would re-offend, the algorithm made mistakes with black and white defendants at roughly the same rate but in very different ways."

JUNE

On June 2, the U.S. and the European Union signed an Umbrella Agreement to implement a comprehensive data protection framework for criminal law enforcement cooperation. The EU-U.S. Umbrella Agreement protects personal data exchanged between E.U. Member States and the U.S. by establishing guidelines for use, and granting E.U. citizens judicial redress rights in U.S. courts (U.S. citizens could seek redress in European courts even without the agreement). • The creator of "Chatbot lawyer" *DoNotPay*, which has overturned over 160,000 parking tickets and is growing their brand to assist homeless people, spoke with *The Guardian* in June about his creation. Joshua Browder is a self-taught software developer who found the "relatively formulaic" process of appealing parking tickets well suited to mapping legal decision making into software. • Relatedly, the FTC and DOJ joined together in June to endorse legal information websites to aid the public. "Websites that offer this type of interactive software may be more cost-effective for some consumers, exert downward price pressure on licensed lawyer services, and promote more efficient and convenient access to legal services." • DHS and DOJ issued final guidance on the *Cybersecurity Information Sharing Act of 2015* on June 15. The guidelines, in *Receipt of Cyber Threat Indicators and Defensive Measures by the Federal Government,* outline procedures governing the sharing of threat intelligence between the private and public sector, removing personally identifying information, and lay out the automated methods by which companies may share cybersecurity threat intelligence with the government.

JULY

Dynamo Holdings v. Comm'r of Internal Revenue addressed the e-discovery "myth of a perfect response" under Tax Court Rule 70(f), the equivalent to Federal Rule of Civil Procedure 26(g). Ruling on the search terms used for a document production, the court found that FRCP 26(g) "requires the attorney to certify, to the best of their knowledge formed after a 'reasonable inquiry,' that the response is consistent with our Rules, not made for an improper purpose, and not unreasonable or unduly burdensome given the needs of the case. . . . [W]hen the responding party is signing the response

to a discovery demand, he is not certifying that he turned over everything, he is certifying that he made a reasonable inquiry and to the best of his knowledge, his response is complete." • Startup incubator Y Combinator's Summer '16 class was set to include a new legal innovator, Legalist, launching with a new way to search state court records. But within a month, the startup had pivoted to litigation financing, using software to analyze promising cases to back. • The European Commission adopted the E.U.-U.S. Privacy Shield on July 12 to enable cross-Atlantic data flows. Privacy Shield replaces the earlier Safe Harbor protections that were invalidated by the European Court of Justice in 2015. • In London, SeedCamp and Next Law Labs partnered with the Dentons law firm to form the LegalTech accelerator. The project looked for "forward-thinking startups to come in and shake up the space and become the next generation of market-defining companies," and offered funding, training, and mentorship to participants. The first two companies chosen are Libryo and Clause. Libryo planned to focus on building software to help companies understand their regulatory obligations and receive updates on the relevant law, while Clause planned to spend their time on the creation of intelligent contracts.

AUGUST

Starting the month off with another e-discovery case, *Hyles v.City of New York* held that a party could not be required to use Tech Assisted Review ("TAR"), sometimes otherwise referred to as predictive coding, for document production. In deciding the case, Judge Andrew J. Peck wrote "it is not up to the Court, or the requesting party (Hyles), to force the City as the responding party to use TAR when it prefers to use keyword searching. While Hyles may well be correct that production using keywords may not be as complete as it would if TAR were used, the standard is not perfection, or using the 'best' tool, but whether the search results are reasonable and proportional." • In an August write-up of the Harvard Law School's Caselaw Access project, which is digitizing casebooks from the Harvard Law Library, managing director Adam Ziegler explained that the project seeks to increase the distribution of legal knowledge in order to promote access to justice, as well as to spur innovation, "to drive new insights from the law that we've never been able to do when the law was relegated to paper." The project estimated that they will have digitized 40 million pages from 43,000 casebooks before they are done. Zach Bodnar, digitization specialist on the project, shared that the machine which splits the spines of casebooks does so with "more force than a great white shark." • The Ninth Circuit found for AT&T after the FTC asserted "two claims against AT&T under section 5 of the

FTC Act, pursuant to which the FTC may 'prevent persons, partnerships, or corporations, except . . . common carriers subject to the Acts to regulate commerce . . . from using . . . unfair or deceptive acts or practices in or affecting commerce.'" In its opinion in *FTC v. AT&T Mobility LLC*, the court found that "The common carrier exemption in section 5 of the FTC Act carves out a group of entities based on their status as common carriers. Those entities are not covered by section 5 even as to non-common carrier activities. Because AT&T was a common carrier, it cannot be liable for the violations alleged by the FTC." • The American Bar Association's Commission on the Future of Legal Services released its 2016 Report with a survey of the current state of legal services delivery. The report contained recommendations from the Commission, some sweeping ("the criminal justice system should be reformed") and some more targeted ("all members of the legal profession should keep abreast of relevant technologies"). The Commission offered hope that practitioners would "pay particular attention to technology that improves access to the delivery of legal services and makes those services more affordable to the public." Commenting on the report, *Above the Law* criticized the composition of the Commission for not being nerdy enough, writing "without the active participation of technology innovators, entrepreneurs, and leaders, how can you hope to make recommendations on delivering the future of legal services?" • As new search tools develop, should we begin to think about research in new ways? In a provocative new paper, *New Wine in Old Wineskins: Metaphor and Legal Research*, Amy E. Sloan and Colin P. Starger wrote "[w]ords can facilitate our thoughts, but so too can they calcify our thinking . . . . When a primary challenge of research was physically gathering hidden and expensive information, metaphors based on journey, acquisition, and excavation helped make sense of the research process. But new, technologically-driven search methods have burst those conceptual wineskins." Recommended to any readers interested in the intertwining of legal theory and technological innovation. • The Congressional Research Service is tasked with supporting the special needs of Congress by, among other duties, developing research reports for Congressional staff. These reports have been available piecemeal from a variety of unofficial sources in the past. Stepping in to make a full set of the reports available to the public, everycrsreport.com launched in August. The site is searchable and offers bulk downloads and JSON (a.k.a. machine readable structured text) feeds with title, summary, and topic information for each report. • While many law reviews publish articles on their websites, little about the practice is standardized. Sarah Glassmeyer studied 591 student-edited law journals to determine how many published their articles online, what for-

mats they presented the content in, and how open the content was. She explained, "My personal definition of Open Access includes the rights of users to remix and reuse content — *libre* access, not just *gratis* access in the lingo used." Her results are available online in the "How Free & Open are Law Journals?" report on sarahglassmeyer.com.

SEPTEMBER

In a ballot selfie case before the First Circuit, *Rideout, Langlois, and Ross, v. Gardner*, amicus curiae, Snapchat, filed a brief with a footnote offering a broad definition of a selfie as "a photo where the photographer is also a subject. But the term has also been used to describe all smart-phone pictures shared online, including those here." The explanation made it into footnote two in the court's opinion, and was picked up by Sean Marotta on Twitter, who shared the footnote with the caption "One of my favorite footnotes I've written, defining 'selfie' for Article III judges, made the final opinion." • The ABA launched a free virtual legal advice clinic on September 22, offering a chance for low-income users to ask non-criminal law questions of pro bono attorneys. The ABA hoped that the online format's flexibility would boost participation. • Does learning to code make you a better lawyer? An article under that title in the *ABA Journal* explored some ways in which software development skills assist attorneys. Paul Ohm, who teaches a *Computer Programming for Lawyers* class at Georgetown University that was covered in this article, hopes that the students' new skills will be useful "in a profession that is increasingly data driven." • Meanwhile, posting on the Lawfare Blog on September 26, Paul Rosenzweig asked *Do Lawyers Understand Technology?* and posited the inverse as well, "[m]ost technologists don't understand law and policy." The post prompted a spirited debate on Twitter about the level of expertise needed by attorneys working in areas involving technology. • Also on September 26, the Free Law Project shared some progress on their search tool for PACER, fed by documents that come from the RECAP browser plugin. To be searchable, all the text in their archive must first be cataloged and in a format that computers can parse. Optical Character Recognition ("OCR") is used to find and generate text from image format files, such as pages containing handwritten content, briefs written in cursive, or typed forms that overlap lines on the page. The Free Law Project's blog showed examples of both of these types of work, which their software had to tackle to extract the document text. • On September 29 Florida became the first state to make tech CLEs mandatory. Starting in 2017, lawyers admitted to the Florida Bar will take three hours of technology-related CLEs in each three-year cycle. The Florida Supreme Court also noted that attorneys could

retain non-lawyer advisers with "established technological competence" to assist in providing competent representation in areas involving cybersecurity and protection of sensitive data.

OCTOBER

Recognizing the "proliferation and widespread adoption of cloud computing solutions," the Department of Health and Human Services released their cloud computing guidance on October 6. The guidance makes cloud services providers, as business associates, directly liable for misuse or breaches of health information. • On October 10, the Royal Swedish Academy of Sciences granted the Nobel Prize in Economics to Oliver Hart and Bengt Holmström for their work on contract theory. Their research investigated the optimal allocation of control rights in a contract, given that it is impossible for any contract to specify every possible outcome. • A team of computer scientists at University College London published *Predicting Judicial Decisions of the European Court of Human Rights: A Natural Language Processing Perspective*, in the journal PeerJ Computer Science on October 24. The paper presented a predictive model that is capable of guessing the outcomes of European Court of Human Rights cases with 79% accuracy. The scientists hoped their model would prove useful in "rapidly identifying patterns in cases that lead to certain outcomes." • Georgetown Law's Center on Privacy & Technology released their Perpetual Line-Up project on October 18, wrapping up a yearlong effort to collect records from police departments on facial recognition and analyze the existing laws and regulations governing the use of biometric data. Researchers requested records from 106 state and local law enforcement agencies in the U.S., and received "substantive" responses from 90 agencies. The records and extended phone interviews formed the basis of the Perpetual Line-Up report, which included a Face Recognition Scorecard as well as an analysis of accuracy and transparency issues in the use of facial recognition by domestic law enforcement agencies. • Does a corporate IT policy to monitor email affect the attorney-client privilege? A court in New York found that the answer could be yes. The court held that Disney's policy of monitoring employee emails meant that Ike Perlmutter, the chairman of Marvel Entertainment, did not have a "reasonable expectation of privacy" in emails he sent from his work account, thus waiving the attorney-client and work-product privileges. • Although limited to foreign defendants at the moment, a federal court allowed service of process via Twitter under FRCP 4(f)(3), citing the defendant's "active Twitter account," and failure to serve him via other methods. The case, *St. Francis Assisi v. Kuwait Fin. House*, allowed for the use of a social media platform to contact

the defendant as an alternative to more traditional means of service. Unfortunately, FRCP 4(f) covers only international service, so #legaltwitter, please hold your memes and animated gifs for now.

NOVEMBER

Will "robot lawyers" be a big trend in legal technology? In *Law Technology Today*, Nicole Black noted that AI software could "supplement" some attorney skills, but automation within the legal industry would likely follow larger trends by making inroads in areas involving repetitive and simple tasks. Black offers tracking and billing time as an area ripe for automation and innovation, and as users of timekeeping software currently available, we agree and hope it arrives quickly. • On November 20, members of the Asia-Pacific Economic Cooperation ("APEC") group reaffirmed the implementation of the APEC Cross-Border Privacy rules. The rules are a regional cross-border privacy protective framework. • Meanwhile on Twitter, inside baseball comments from past SCOTUS insiders continued to entertain and inform us. Lawrence Tribe (a former Justice Potter Stewart clerk) tweeted on November 27 about the *Katz v. United States* opinion and a lawyer's role. In response to a tweet by *@ArsLaw* that discussed the attorney who argued *Katz* before the Supreme Court, Tribe shared, "As the law clerk who drafted that decision for Justice Stewart I can vouch for the vital role this advocate played." • The Wisconsin State Bar named Colleen Ball a Lifetime Innovator as part of the 2016 "That's a Fine Idea: Legal Innovation Wisconsin" awards. Ball's most recent project was to set up the Appellate Help Desk for pro se civil claimants seeking help with appeals before the Wisconsin Court of Appeals. Ball noted that the "appellate process is befuddling and intimidating" to pro se litigants, causing many to give up their claims because they can't figure out the best steps to take to have their case heard. The virtual helpdesk features volunteer attorneys answering questions regarding appellate procedure over email, by SMS, or over the phone through Google Voice. The virtual nature of the helpdesk allows volunteer attorneys anywhere in the state to assist litigants who similarly may be scattered around Wisconsin.

DECEMBER

Ravel Law announced their State Court Analytics research tool on December 5. Ravel, which has been pairing with Harvard Law School on their casebook digitization project, launched their Judge Analytics project last year. The *Wall Street Journal* calls analytics tools like these "moneyball for

judges." • Police in Bentonville, Arkansas served Amazon.com with a warrant seeking voice recordings from an Amazon Echo device inside a home where a murder allegedly occurred. The case raised questions about the privacy implications of smart home devices. Police in this case have already used timestamped data from a water meter to show high usage over the night in question, suggesting that the data indicates that there may have been a cleanup effort to wash away evidence in the home that night. • A change to the Federal Rules of Criminal Procedure Rule 41 granted the DOJ the ability to seek warrants for search and seizure of electronic devices when the location has been masked ("concealed through technological means"), as when a location masking service such as Tor is used, or if the case involves computers in more than five districts. Critics fear that the rule change granted the FBI greatly expanded mass hacking powers. • In what U.S. Attorney Preet Bharara called "a wake-up call for law firms around the world," three Chinese hackers were indicted for stealing law firm credentials and using them to access internal emails. The information was used in an insider-trading scheme that is alleged to have reaped $4 million.

JANUARY

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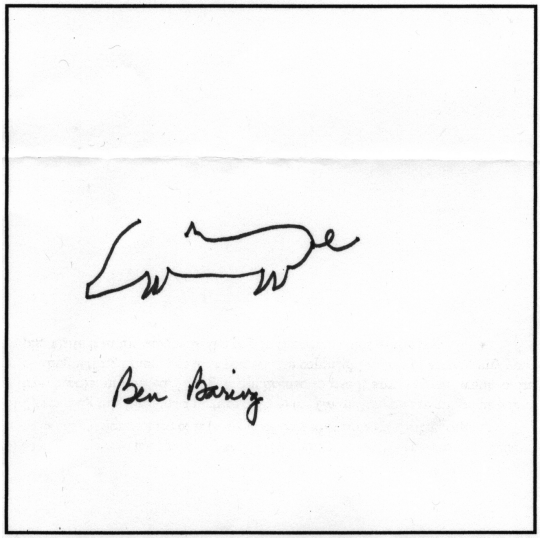
GREEN BAG PIG FORM



Pig. Drawn by Ben Baring with eyes closed. Why? See 2016 Green Bag Alm. 537.

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• BOOKS •

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(SEE ALSO PAGES 176, 184 & 189)

FIVE RECOMMENDATIONS

Lee Epstein[†]

Michael J. Graetz & Linda Greenhouse
The Burger Court and the Rise of the Judicial Right
(Simon & Schuster 2016)

Toward the end of the Burger Court years, Justice Lewis Powell declared, "There has been no conservative counterrevolution" in his Court — and commentators seem to agree. The tamely titled *The Burger Court: The Counter-Revolution that Wasn't* is the most prominent volume about the era. Not so fast, say Graetz and Greenhouse. True, the Burger Court didn't overrule *Miranda* and *Mapp*; it only eviscerated them. And true, the Burger Court established the fundamental right to abortion — but then allowed the government to place many burdens on it. Along the way, the Burger justices paved the wave for *Citizens United* in *First National Bank of Boston v. Bellotti*, protected commercial speech, required proof of an actual purpose to dis-

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[†] Ethan A.H. Shepley Distinguished University Professor, Washington University in St. Louis.

criminate, rewound Warren Court decisions favoring unions against business, and on and on. The counter-revolution that wasn't, well, was. Even if you aren't convinced by Graetz and Greenhouse's thesis, *The Burger Court* is a great read: all the (well-told) behind-the-scenes stories, and all the reminders of things past — including a Court whose key players didn't all come from the federal appellate bench or receive law degrees from Harvard or Yale but did serve in the military, win political elections, play professional sports, and even "flirt" with journalism.

Nancy Maveety
Picking Judges
(Transaction Publishers 2016)

Speaking of Linda Greenhouse: Five years ago she contributed an excellent volume on the U.S. Supreme Court to Oxford's *Very Short Introduction* series (not just short but very small too!: 7x4); I recommend it regularly. Maveety's book is in the same vein. It too is concise; and it too is a book I'll recommend. But not because I like how the press framed it: as a "presidential briefing book" designed to offer strategic advice to presidents confronted with obstructionist senators. That's a little hokey. The book's strength rather lies in Maveety's ability to boil down and analyze the vast literature on the appointment of federal judges. Well showing off that skill is Chapter 1, where Maveety charts the history of appointments, delineating various mileposts along the way. Those who think "the confirmation mess" started with Bork will be surprised to learn of the truly vicious battles of earlier eras; and those who treat Bork as the culmination of a trend long in the making are also in for some surprises — notably the huge structural break his nomination caused.

Ryan C. Black, Ryan J. Owens,
Justin Wedeking & Patrick C. Wohlfarth
U.S. Supreme Court Opinions and their Audiences
(Cambridge University Press 2016)

To many legal academics, political scientists are simpletons. We reduce vast swaths of law to little more than dichotomies: the court affirmed or reversed, the judge voted in the liberal or conservative direction, the business party won or lost, and on and on. I plead guilty as charged. But the authors of this book: not so much. Rather than focus on the usual bottom line of opinions, they study opinion content. The central idea is that Supreme Court justices write more (or less) clear opinions to boost support for their decisions. Not all lawyers will like Black et al.'s approach and measures, but most will appreciate their effort to take a systematic look at the Court's major

work products. As for my colleagues in political science: *U.S. Supreme Court Opinions* is a great start; it's just the kind of original thinking our corner of the discipline so desperately needs.

Susan B. Haire & Laura P. Moyer
Diversity Matters: Judicial Policy Making in the U.S. Court of Appeals
(University of Virginia Press 2016)

Yet another exception to the political-scientists-as-simpletons rule — though not in the first few chapters. There the material is kinda standard fare in my field: Are black judges more likely to find for plaintiffs in cases of race-based employment discrimination, and are female judges more plaintiff-friendly in gender discrimination litigation? (Yes and yes.) But from there the book lives up to its title, taking some interesting turns. We learn that opinions written by female judges are more likely to a seek a "middle ground" and that the more diverse the panel, the more thorough the deliberative process. There are circuit effects too — for example, the larger the fraction of female judges, the lower the dissent rate (perhaps reflecting their taste for middle ground). Some of the findings seem predictable; some unexpected. Either way, *Diversity Matters* pushes us to think beyond the simple vote dichotomies that have long ruled empirical work in this field.

Yuhua Wang
Tying the Autocrat's Hands
(Cambridge University Press 2016)

I believe in the power of graphs, and the one on page 2 is a good example of why. On the horizontal axis is a measure of the degree of democracy in 157 countries; the vertical axis shows rule-of-law scores for each country. If you can visualize that, you'd probably think that the relationship between the two is linear: the higher the level of democracy, the stronger the rule of law. You'd be wrong. Yes, the rule of law tends to be stronger in democracies but in some authoritarian regimes it's strong too and in others, weaker. In other words, this simple graph raises great questions: Why do some authoritarian leaders advance the rule of law, and how do they do it without losing power? Focusing on China (though with implications for many authoritarian regimes), Wang's answer centers on the interest of rulers in "tying their hands" in the commercial context. Somewhere the late great Doug North and the noted political scientist Barry Weingast are smiling. Drawing on evidence from 17th century England, they made a version of this argument years ago. It's apparently held up quite well.

FEBRUARY

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GREEN BAG PIG FORM

Pig. Drawn by Ross Campbell with eyes closed. Why? See 2016 Green Bag Alm. 537.

March

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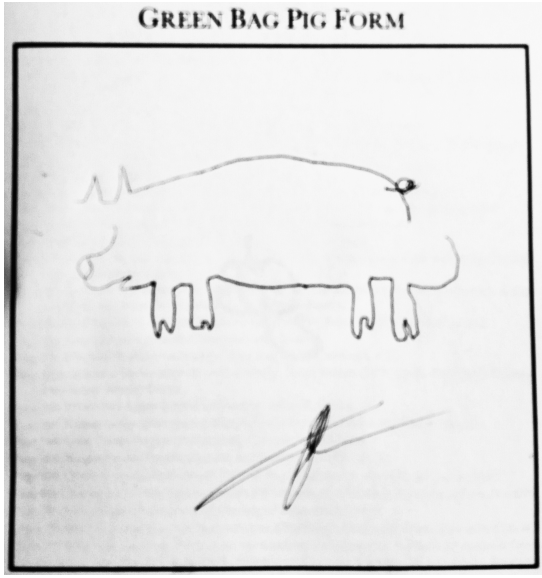

Pig. Drawn by Timothy Delaune with eyes closed. Why? See 2016 Green Bag Alm. 537.

April

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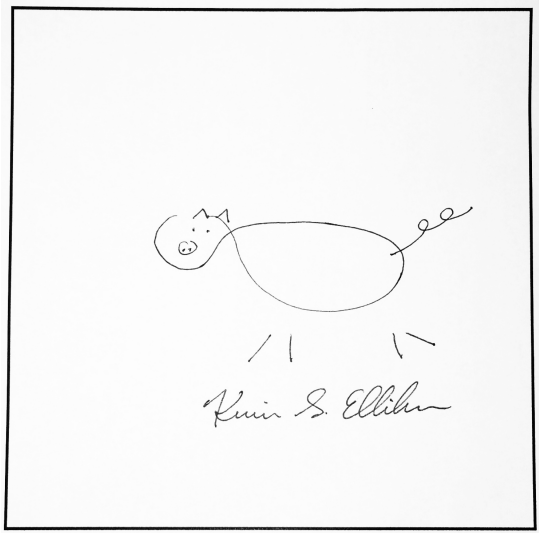
Green Bag Pig Form



Pig. Drawn by Kevin Elliker with eyes closed. Why? See 2016 Green Bag Alm. 537.

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FIVE RECOMMENDATIONS

Femi Cadmus[†]

Richard A. Posner
Divergent Paths: The Academy and the Judiciary
(Harvard University Press 2016)

In *Divergent Paths*, Judge Posner reflects, from his firsthand perspective as a federal judge and former law professor, on the widening gulf between academia and the bench. He discusses the challenges and deficiencies of the judiciary and the extent to which the legal academy could ameliorate or provide improvement. At the same time, he acknowledges that the current writings of law faculty about the judiciary are not always particularly useful to the bench and the legal academy supplies law clerks lacking adequate preparation to provide helpful insights to judges. Change, he observes, may come from the outside with the call for more practice-ready law graduates but challenges

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[†] Edward Cornell Law Librarian, Associate Dean for Library Services, and Professor of the Practice, Cornell Law School.

will continue to persist because of the entrenchment of traditions both in the judiciary and in law schools which may hinder significant changes.

Ruth Bader Ginsburg
My Own Words
(Simon and Schuster 2016)

This first and engaging personal biographical account by Justice Ginsburg is crafted through her own words as conveyed in speeches, legal briefs, and law journal articles, with accompanying narratives from her two authorized biographers. The biography covers her journey from childhood through college, to her work as a law professor and on the bench. Also included are tributes to those who influenced her career, and reflections on her fondness for opera, the lighter side of life on the Supreme Court, and more serious issues like gender equality and judging and justice.

Nicole Dyszlewski & Raquel Ortiz,
with illustrations by Liz Gotauco *What Color is Your CFR?*
(CALI eLangdell Press 2016)

Books on legal research are almost never of the coloring book variety. In *What Color is Your CFR?* the authors, two law librarians and an illustrator, take a decidedly non-traditional approach on how to research the law. Whimsical animal drawings and accompanying text cover the basic essentials of legal research, including how to find relevant primary and secondary sources of the law. Humorous and serious at the same time, the coloring exercises end with advice on connecting with the ultimate legal information resource: "How to Contact a Law Librarian."

Kevin Ring
Scalia's Court
(Regnery Publishing, 2016)

A selection of memorable opinions by the late Justice Antonin Scalia, which the author acknowledges are not necessarily the most important, but rather what he describes as "the most powerful, colorful and entertaining opinions ever written by an American jurist." Scalia's judicial philosophy, specifically his textualist and origin-alist approach, are analyzed in the introductory chapter. Ensuing chapters cover Scalia's opinions relating to a variety of subjects including race, abortion, gun rights, death penalty, illegal immigration, and sexual equality. A brief historical and constitutional background of each case with highlights of Scalia's perspectives precedes a full text of the

opinion. The book concludes with quotes from colleagues on the Supreme Court, constitutional scholars, and critics.

Paul W. Kahn
Making the Case: The Art of the Judicial Opinion
(Yale University Press 2016)

Kahn discusses the essential skills vital to the preparation of students to become successful lawyers. Students must be able to analyze the full text of opinions and not merely rely on excerpts from casebooks. In order to develop a persuasive case, the entire legal opinion must be examined because the law is contextual, embedded in the facts, and does not exist in the abstract as legal doctrine. He also discusses other issues of interest to scholars and students alike, including legal opinions as self-govern-ment through the law, the role of narrative and voice, and the development of doctrine.

May

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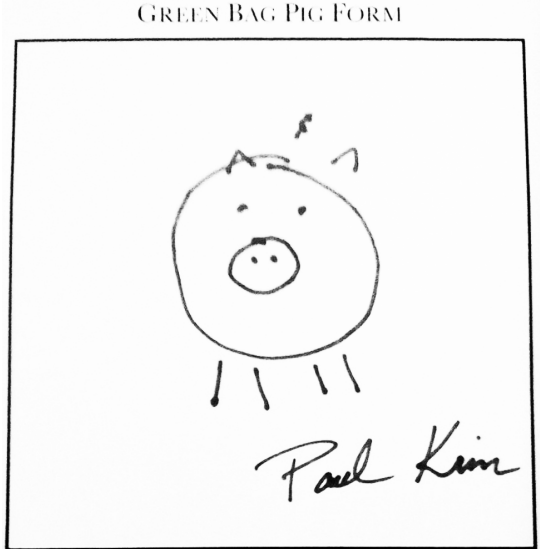

Pig. Drawn by Paul Kim with eyes closed. Why? See 2016 Green Bag Alm. 537.

June

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GREEN BAG PIG FORM

Pig. Drawn by Jack Metzler with eyes closed. Why? See 2016 Green Bag Alm. 537.

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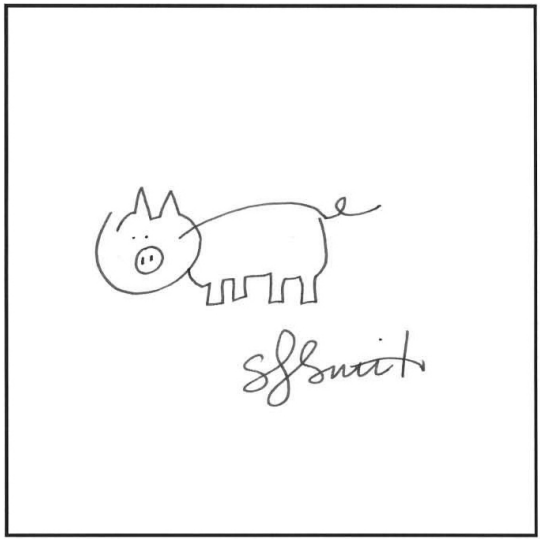
Green Bag Pig Form



Pig. Drawn by Sutton Smith with eyes closed. Why? See 2016 Green Bag Alm. 537.

August

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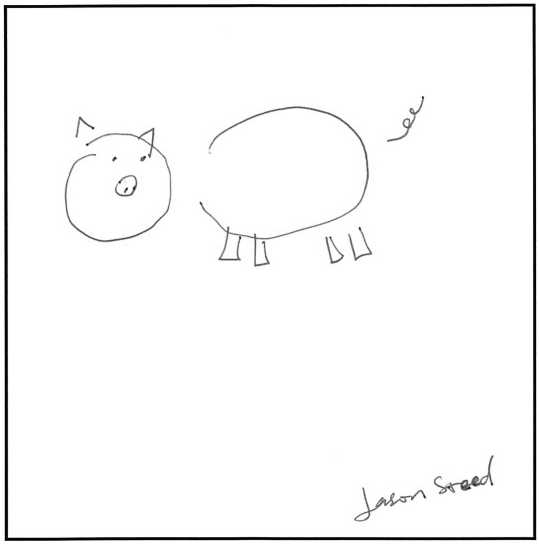

Pig. Drawn by Jason Steed with eyes closed. Why? See 2016 Green Bag Alm. 537.

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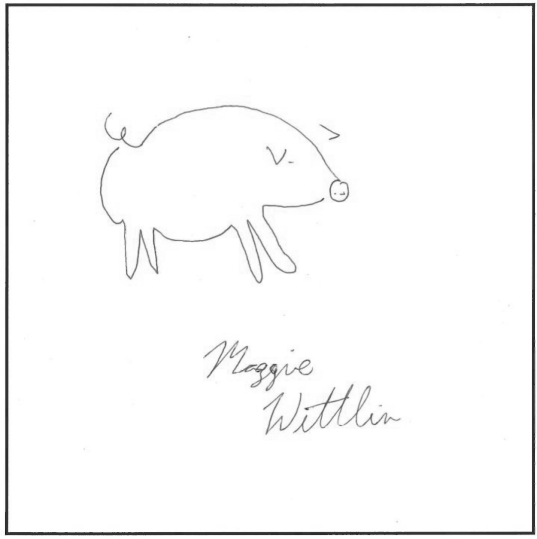

Pig. Drawn by Maggie Wittlin with eyes closed. Why? See 2016 Green Bag Alm. 537.

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(SEE ALSO PAGES 170, 176 & 189)

FIVE RECOMMENDATIONS

Cedric Merlin Powell[†]

Justin Krebs
Blue In a Red State: The Survival Guide to Life In the Real America
(The New Press 2016)

Shattering prevailing political conventions and traditional conceptions of American democracy, a billionaire populist was elected the 45th President of the United States. The true irony is that an electoral majority voted for a candidate who may be directly opposed to their interests. Not many saw this political seismic blast coming, but there were many important political, cultural, and social cues that were obscured or ignored. Justin Krebs unpacks these undercurrents in the American polity.

Canvassing the United States, Krebs offers a compelling and original view of a diverse, complex, and contradictory landscape of the American political psyche. This unique book reads like a long-form essay with powerful

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[†] Professor of Law and Associate Dean for Research and Faculty Development (2015-17), University of Louisville Brandeis School of Law.

narratives voiced by citizens who live in places as disparate as Tuscaloosa, Alabama, Milford, Massachusetts, and Idaho Falls, Idaho. What is striking about this book is that it illustrates the futility of labels based on place, race, or social status. The real question, which remains unanswered, is how do we reach across these lines to find the commonality that unites us all as Americans? *Blue in a Red State* offers an important place to start this fragile and complex unification.

Steve Phillips
Brown is the New White: How the Demographic Revolution Has Created a New American Majority
(The New Press 2016)

Advancing a bold and comprehensive critique of the progressive movement, Steve Phillips gives an insightful analysis of the limitations inherent in the current colorblind political strategy that is designed primarily not to alienate White swing voters. This ostensibly neutral strategy is doomed to failure, Phillips argues, because it overlooks the New American Majority, a citizenry of color that "numbered more than 104 million people in 2008." It is this demographic revolution, as Phillips terms it, which was the foundation of the Obama coalition that won the presidency in 2008 and 2012.

In an eerily prescient passage, Phillips all but predicts the improbable demise of the Democratic Party in the 2016 Presidential Election: "Too often, people in power in the progressive movement in general and the Democratic Party in particular have not seen the New American Majority as a political force to advance a progressive agenda and expand the terms of debate. Instead, they tend to see people of color and progressive Whites as nuisances who need to be silenced for fear of alienating White swing voters." As political commentators strain to rationalize President-Elect Trump's hateful rhetoric as mere hyperbole to advance the cause of forgotten White citizens, Phillips' authoritative book proffers facts, figures, and piercing analysis to rebut the alluring appeal of post-racial populism. Our transformative demo-graphics should be a gift to the promise of America; Phillips compellingly illustrates how inclusion is the key to the future of the American polity.

Susan E. Eaton
Integration Nation: Immigrants, Refugees, and America at Its Best
(The New Press 2016)

Building upon her previous work on busing and school desegregation, Susan E. Eaton provides a comprehensive and evocative analysis of the American identity and immigration in *Integration Nation*. Engaging diverse

communities across the country, this book connects the rapidly transforming demographics of America to a social and political conception of inclusion. The choice of integration over exclusion is at the very core of American history and culture, and this book provides a powerful counter-narrative to the prevailing discourse of fear, hatred, and exclusion; America is at its best when it embraces the multiplicity of its diversity to form a pluralistic society of inclusion.

There is an important conversation that is taking place across America in small communities, away from the politically tinged rhetoric of "protecting our borders" and "preserving American values." What these community stories represent is the choice of citizens across the country to embrace inclusion. *Integration Nation* is an important contribution to discussions on race because it lays bare the many obstacles that block the discussion — much as the rhetorical obstacles that are deployed to the "Other" in discussions of immigration policy — and offers an approach to breaking down the barriers of exclusion through the choice of inclusion as an American value.

Michael D. White & Henry F. Fradella
Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic
(New York University Press 2016)

Terry v. Ohio is a seminal decision in American constitutional criminal procedure jurisprudence. It stands for the proposition that a police officer may lawfully initiate an encounter with a person on the street based upon reasonable articulable suspicion. The difficulty has been how to define this standard so that there is a constitutional balance between effective law enforcement and limitless intrusions on a citizen's constitutional rights. This issue is at the core of current public discourse and Justice Department investigations about the use of excessive force against people of color.

In the first comprehensive historical, legal, and sociological analysis of stop, question, and frisk (SQF), White and Fradella posit a thoroughly insightful critique of SQF as a policing tactic. New York City is often heralded as being resurrected through effective policing that dramatically reduced crime in its five boroughs. White and Fradella unpack this misleading urban myth to illustrate that not only has SQF been disproportionately misused, it also has not contributed significantly to the dramatic drop in crime in New York City. This book will be a canonical work because it links the New York City SQF tactical experience to other cities like Philadelphia, Baltimore, and Chicago to underscore strategic commonalities and differences; it reconceptualizes SQF as a tactic focused on the deterrence of crime; and it explores how racial injustice, such as stereotypical profiling, has been a promi-

nent feature of policing. What is particularly valuable is the authors' careful discussion of how SQF can be used with appropriate constitutional limits, clearly defined police discretion, and sensitivity to citizens' constitutional rights and concerns.

Richard A. Rosen & Joseph Mosnier
Julius Chambers: A Life in the Legal Struggle for Civil Rights
(The University of North Carolina Press 2016)

This long overdue biography of Julius LeVonne Chambers, a pivotal figure in American constitutional law jurisprudence and the struggle for civil rights, will be an essential historical text in chronicling the legal campaign to dismantle structural inequality. What is unique and powerful about this book is that it integrates a legal and historical perspective relying upon the expertise of Richard Rosen, a law professor, and Joseph Mosnier, a historian. Combining their divergent and complementary perspectives, Rosen and Mosnier present a well-researched blend of social science, historical narrative, and primer of social change through the life, times, and struggles of Julius Chambers.

Chambers' sterling legal career is a cavalcade of firsts: he was the first African-American editor-in-chief of the prestigious *North Carolina Law Review*, graduating first in his class; in 1963, he was the NAACP Legal Defense and Education Fund's (LDF) first civil rights intern; he founded the first integrated law firm in North Carolina; and twenty-one years after his LDF internship, he would succeed Jack Greenberg to become LDF's third counsel-director, following in the footsteps of its first counsel-director, Thurgood Marshall. The book firmly establishes Chambers as one of the great Supreme Court practitioners of the twentieth century by highlighting his major wins before the high Court. For example, the 1971 case of *Swann v. Charlotte-Mecklenburg Board of Education*, a landmark decision in which the Court embraced the broad equitable powers of federal courts in fashioning desegregation remedies in public school systems, is treated in great depth to illustrate not only its jurisprudential and societal significance, but Chambers' central role in securing this transformative victory. Unfortunately, some of Chambers' most impactful victories, like *Swann*, have given way to retrogression as schools become re-segre-gated throughout the nation. This book is invaluable as documentary evidence of the illusiveness of substantive equality; it is a true testament to Chambers' life in the legal struggle for civil rights.

OCTOBER

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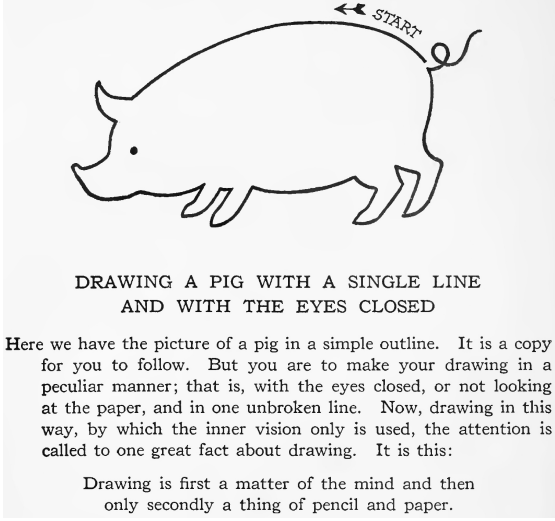

DRAWING A PIG WITH A SINGLE LINE
AND WITH THE EYES CLOSED

Here we have the picture of a pig in a simple outline. It is a copy for you to follow. But you are to make your drawing in a peculiar manner; that is, with the eyes closed, or not looking at the paper, and in one unbroken line. Now, drawing in this way, by which the inner vision only is used, the attention is called to one great fact about drawing. It is this:

Drawing is first a matter of the mind and then only secondly a thing of pencil and paper.

From E.G. Lutz, Drawing Made Easy 48

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(SEE ALSO PAGES 170, 176 & 184)

FIVE RECOMMENDATIONS

Susan Phillips Read[†]

Guido Calabresi
The Future of Law and Economics: Essays in Reform
(Yale University Press 2016)

I was shocked to discover that Guido Calabresi began drafting his first major contribution to the field of the law and economics in 1956-57, when he was still just a student at Yale Law School. In this series of short and lucid essays, Judge Calabresi, now senior judge on the United States Court of Appeals for the Second Circuit, sums up his nearly 60 years of subsequent thinking about the relationship between economic theory and the legal system. He divides law and economics scholars into two camps: Economic Analysis of the Law, whose advocates use economic theory to analyze aspects of the legal world and, where they find a lack of fit, consider the law to be "irrational" and argue for reform; and Law and Economics, whose supporters, amongst whom he counts himself, consider whether economic theory

[†] Of Counsel, Greenberg Traurig, LLP; Associate Judge (ret.), New York Court of Appeals.

can explain the legal world as it is and, where it cannot, ask if traditional economic principles may be expanded enough without distortion to explain why this is the case. Judge Calabresi's book is a must-read for anyone interested in acquiring a deeper understanding of one of the most vibrant fields of legal scholarship of our lifetimes.

Adam Cohen
Imbeciles, The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck
(Penguin Press 2016)

Most of us probably remember only one thing about the United States Supreme Court's 1927 decision in *Buck v. Bell*: Mr. Justice Holmes's declaration that "Three generations of imbeciles are enough." The decision, which held that a Virginia statute permitting involuntary sterilization of certain mentally defective inmates of state-supported institutions did not violate the Fourteenth Amendment, cleared the way for the sterilization of Carrie Buck. Born into poverty in Charlottesville, Virginia in 1906, Carrie Buck was taken into a foster family at the age of four and attended grade school, where she successfully completed the sixth grade. At that point, Carrie Buck's foster family pulled her out of classes, probably to free her up to perform more housework for them and to hire her out during the day for paid housework for neighbors. Then Carrie Buck became pregnant at the age of 17, likely as a result of a rape committed by her foster mother's nephew. Given the stigma of out-of-wedlock childbirth and the nonconsensual circumstances of this particular pregnancy, the foster family was only too eager to get rid of their foster daughter, who was in short order adjudged to be feebleminded or epileptic and shipped off to the state-run Colony for Epileptics and Feeble-Minded in Lynchburg, Virginia. There, she unfortunately attracted the attention of the colony's superintendent, a true believer in the "science" of eugenics, who was looking to set up a test case to validate Virginia's new eugenic sterilization law and establish a national precedent at a time when most state courts were refusing to uphold these kinds of statutes. Weaving together biographies of Carrie Buck, the colony's superintendent, its lawyer, its eugenic sterilization expert, and Holmes, the author paints a vivid portrait of a miscarriage of justice perhaps best understood as the product of the genuine although wholly misguided fear that eugenic measures were necessary to save the nation from being "swamped with incompetence."

Charles F. Hobson
The Great Yazoo Lands Sale: The Case of Fletcher v. Peck
(University Press of Kansas 2016)

Published as part of the University of Kansas's estimable *Landmark Law Cases and American Society* series, this book tells the story of the Yazoo lands sale and the litigation that it spawned. In 1795, the State of Georgia sold its western territory, encompassing most of present-day Alabama and Mississippi, to four land companies. Reacting to obvious signs of bribery and corruption in the sale of these lands, commonly called "Yazoo" after the river that later figured prominently in the Vicksburg campaign of the Civil War, a newly elected Georgia legislature in 1796 revoked the sale and all contracts made under it, and reclaimed the territory. Then in 1802 Georgia ceded the Yazoo lands, still mostly inhabited by Native Americans, to the United States. Of course, by this time the companies had long since sold Yazoo tracts to numerous third-party purchasers, many of them New Englanders who doggedly and simultaneously pursued redress in Congress and the federal courts. These purchasers ultimately obtained a partial indemnity from Congress in 1814, but key to their lobbying success was the United States Supreme Court's 1810 decision in *Fletcher v. Peck*. There, the Court for the first time applied the still new Constitution (the contract clause) to invalidate state legislation (the 1796 Georgia statute). The author, the longtime editor of *The Marshall Papers*, masterfully blends the Yazoo saga in all its delicious detail (shortly after the Georgia legislature rescinded the 1795 statute, the official record of this "usurped act" was burned in a carefully choreographed public ceremony in the state-house square; John Quincy Adams agreed to represent Peck in the high court after two months of negotiation to set an acceptable fee; oral argument was twice postponed because of the unexplained absence of Fletcher's able lawyer, nicknamed "Lawyer Brandy Bottle") with his observations about the Marshall Court's treatment of the contract clause, the primary constitutional restraint on state interference with vested property rights before this role was largely taken over by the Fourteenth Amendment.

Michael J. Klarman
The Framers' Coup: The Making of the United States Constitution
(Oxford University Press 2016)

This book presents a richly detailed and thoroughly accessible account of the why and how of the Constitution's making, the contest over ratification, and the creation and adoption of the Bill of Rights. While these topics are

hardly unexplored in the vast legal and historical literature devoted to the Founding Era, this volume surely ranks at or near the top of the class. In general, the author unspools the story of the Constitution's creation through the participants' own words without much in the way of editorializing. He does, however, admit to a desire to demythify the Framers, who "although extremely impressive . . . were not demigods" but rather, like all human beings, "had interests, prejudices, and moral blind spots. They could not foresee the future, and they made mistakes." He also provocatively portrays the Framers (and Madison in particular) as thorough-going elitists who, in a sense, miraculously got away with incorporating many anti-democratic features in the Constitution (hence the "coup" of the book's title).

Gillian Thomas
Because of Sex: One Law, Ten Cases, and Fifty Years That Changed American Women's Lives at Work
(St. Martin's Press 2016)

The section dealing with equal employment opportunity in the bill that would become the 1964 Civil Rights Act originally prohibited discrimination "because of" race, color, religion, and national origin. On the last day of debate on the bill in the House of Representatives, Congressman Howard W. Smith, an 80-year-old avowed segregationist from Virginia, offered an amendment to insert the word "sex" after the word "religion." One of his (few) female colleagues, sought to boost the amendment's prospects by warning that without it, the bill conferred more rights on black women than on white women. Whatever Smith's motives, which the author says are argued about to this day, his "little amendment" passed the House by a vote of 168 to 133 and survived in the Senate. And so it came about that among the 1964 Civil Rights Act's provisions was a ban on employment discrimination "because of sex." Each of this book's 10 chapters profiles a single case in which the United States Supreme Court fleshed out what this unadorned phrase meant for women dealing with various real-life workplace dilemmas defined by their sex. The book's special charm lies in the behind-the-scenes narratives of the individual plaintiffs' and their lawyers' struggles and strategies, and its portrayal of the plaintiffs' lives in the aftermath of their Supreme Court victories.

November

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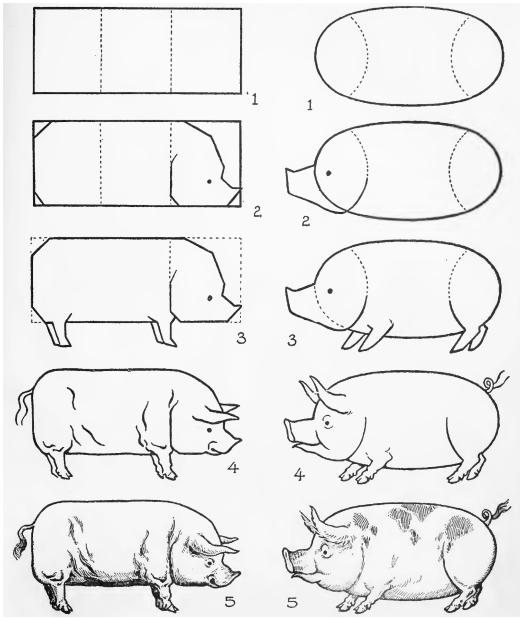

From E.G. Lutz, Drawing Made Easy 49 (1921).

December

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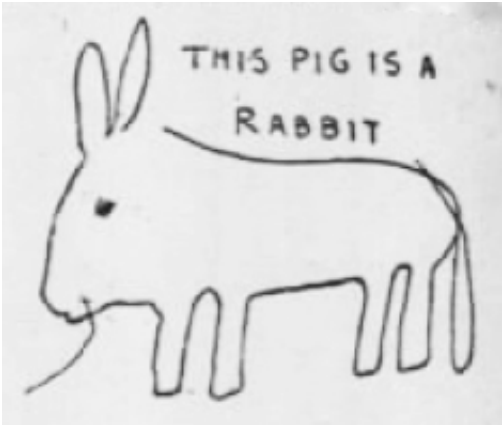

From Chicago Tribune, Feb. 23, 1896, at 26.

TRANSCRIPTS

Thurgood Marshall Nominated to Supreme Court (June 13, 1967)

Music: In the introduction, and in the background throughout.

Commentator (Peter Roberts): Historians will note this hour at the White House. In a Rose Garden ceremony, a 58-year-old great-grandson of a slave is nominated by President Johnson to be a Supreme Court Justice. He is Solicitor General Thurgood Marshall, acknowledged the best-known Negro lawyer of the century. The President also calls his nominee "best qualified."

U.S. President Lyndon Johnson: I have just talked to the Chief Justice and informed him that I shall send to the Senate this afternoon the nomination of Mr. Thurgood Marshall, Solicitor General, to the position of Associate Justice of the Supreme Court made vacant by the resignation of Justice Tom C. Clark of Texas.

Commentator (Peter Roberts): Thus, the highest court in the land, with the vacancy owing to the stepping down of Justice Clark, has named to its august body Thurgood Marshall, the first of his race so honored.

A Story Without Words: The Yankee Cop (1897)

No transcript. Silent original.

CREDITS

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Constantine L. Trela, Jr., Ruth Greenwood, and Annabelle Harless, Brief of *Amici Curiae* League of Women Voters, et al., *Hooker v. Illinois State Bd. of Elections*, 63 N.E.3d 824 (Ill. 2016). Reprinted with permission of Constantine L. Trela, Jr., Ruth Greenwood, and Annabelle Harless.

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Pigs

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