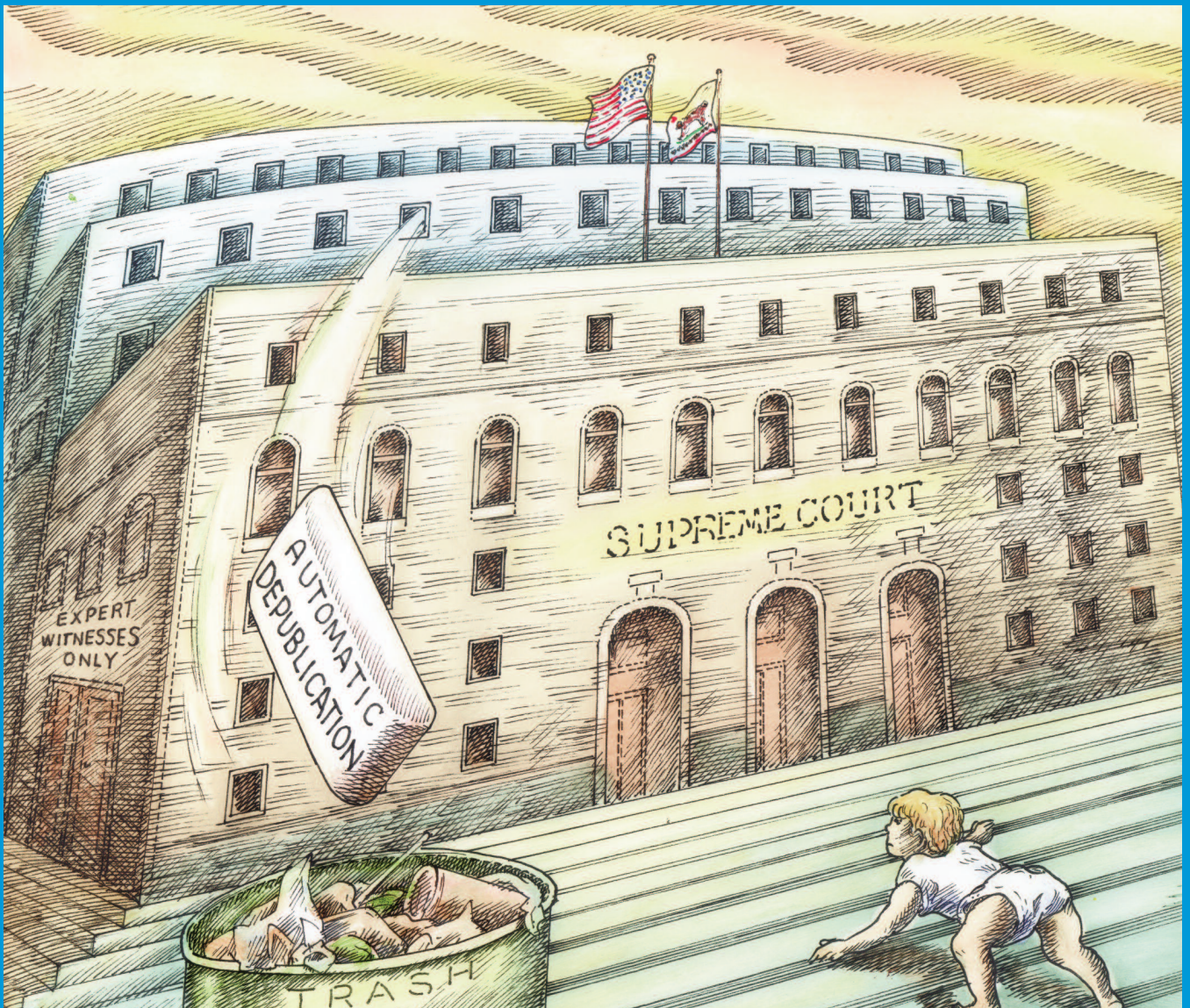


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This is Not a Book Review

By Benjamin G. Shatz, Editor-in-Chief

Philosophy majors and art history majors are acquainted with René Magritte's *The Treachery of Images*, a surrealist painting showing a pipe above the phrase "Ceci n'est pas une pipe" (i.e., this is not a pipe). This intriguing work of imagination serves as an example of a metamessage conveyed by paralanguage. For present purposes, please just acknowledge that this space, often used for book reviews, does not contain a book review. Instead, it contains a plea for book reviews.

By holding this journal, you've proven yourself a reader. And this journal is undoubtedly not your sole reading material. So what else have you read lately that would be of interest to your fellow litigators? If that question stumps you, then how about considering the following recommendations?

Books that would enhance a litigator's advocacy: Steven Pinker, *The Sense of Style: The Thinking Person's Guide to Writing in the 21st Century*; Ross Guberman, *Point Taken: How to Write Like the World's Best Judges*; Joel Trachtman, *The Tools of Argument: How the Best Lawyers Think, Argue, and Win*; Jonathan Shapiro, *Lawyers, Liars and the Art of Storytelling: Using Stories to Advocate, Influence, and Persuade*; Brian Johnson & Marsha Hunter, *The Articulate Advocate: Persuasive Skills for Lawyers in Trials, Appeals, Arbitrations, and Motions*.

Books about the Supreme Court and its justices: Erwin Chemerinsky, *The Case Against the Supreme Court*; Michale Graetz & Linda Greenhouse, *The Burger Court and the Rise of the Judicial Right*; Noah Feldman, *Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices*; Justice Stephen Breyer, *The Court and the World*; Melvin Urofsky, *Dissent and the Supreme Court: Its Role in the Court's History and the Nation's Constitutional Dialogue*; Linda Hirshman, *Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World*; Joan Biskupic, *Breaking In: The Rise of Sonia Sotomayor and the Politics of Justice*; Wil Haygood, *Showdown: Thurgood Marshall and the Supreme Court Nomination that Changed America*; Laurence Tribe & Joshua Matz, *Uncertain Justice: The Roberts Court and the Constitution*.

Books about famous judges: Thomas Healy, *The Great Dissent: How Oliver Wendell Holmes Changed His Mind — and Changed the History of Free Speech in America*; Seth Sterns, *Justice Brennan: Liberal Champion*; Melvin Urofsky, *Louis D. Brandeis*; Linda Greenhouse, *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey*; Irin Carmon & Shana Knizhnik, *Nororious RBG: The Life and Times of Ruth Bader Ginsburg*; Justice Sonia Sotomayor, *My Beloved World*.

Books about law and society: Ta-Nehisi Coates, *Between the World and Me*; Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption*. Or for somewhat lighter fare, perhaps a mixing of legal theory and science fiction fantasy, such as Cass Sunstein's *The World According to Star Wars*.

Finally, there are legal novels: Jay Wexler, *Tuttle in the Balance*; Christopher Buckley, *Supreme Courtship*; Kermit Roosevelt, *Allegiance*; Lindsay Cameron, *BigLaw: A Novel*.

These are just a few suggestions. The legal universe is awash in wonderful books. Why not discover some and share what you've found?

Editor's Foreword

Baby Steps: On the Path to Full Publication?

By Benjamin G. Shatz



Benjamin G. Shatz

Snarky east-coasters are fond of saying that the country was tilted west, and all the loose nuts slid down to the left coast. That sentiment is mere jealousy, of course. California is a wonderfully unique place. Any nuttiness just enhances the flavor. California law, of course, also has its peculiarities — especially when viewed by outsiders. This naturally includes certain features of California litigation. Probably the biggest perplexing anomaly concerns “unpublished” and “depublished” appellate opinions — these terms honored by quotation marks because they can be hard to understand literally in today’s digital world, where all written decisions are so readily available. Yet every litigator must understand how publication and depublication work because getting it wrong can get you into hot water.

This year marks a huge change in the publication status of an admittedly small class of cases: When the California Supreme Court grants review of a published opinion, the case is no longer automatically depublished. (See Cal. Rules of Court, rule 8.1105(e) (1)(B), amended effective July 1, 2016.) *Did you hear that?* Those were shouts of joy from lawyers opposed to the very notion that a hard-litigated case, and no doubt hard-drafted published opinion, would simply vanish solely because the Supreme Court decided to weigh in. Indeed, there are many lawyers who find the whole idea of any “unpublished” appellate decision decidedly distasteful.

The welcome demise of automatic depublication, however, merely whets the appetite of those who would like to eradicate other forms of depublication and nonpublication. Exhibit A is our lead article by Justice Kline and Jerry Falk, who make the case that *It's Time To Replace Summary Depublication* (i.e., selective depublication under rule 8.1105(e)(2)) *by the California Supreme Court with Something Better*. Hence our cover illustration, *Baby Steps*. Is eliminating automatic depublication the first move toward eliminating selective depublication, and perhaps toward ending nonpublication? Time will tell.

Also in this issue are valuable articles on litigation management. Allen Lanstra provides BA-esque leadership lessons, while Travis Burch makes the case for careful use of jury instructions. Phil Simmons provides guidance on selecting and managing expert witnesses.

On the ethics side of the road, Wendy Chang addresses witnesses and how to ethically address perjury. Jake Glucksman then shares his take on client perjury, channeling Fleetwood Mac, in *Sweet Little Lies*. We round out our descent into ethical problems with a primer on the State Bar Court by Jim Ham and Ellen Pansky. Never heard of the State Bar Court? Well, good! That means you’re keeping your nose clean. On the other hand, all lawyers should know that this special court exists, and litigators will be interested in how its procedures differ from other courts.

Next, Dorit Warner shares her insights about litigation from an inside-out perspective. There’s first-rate wisdom to be had from secondments.

Finally, Judge Kent Hamlin addresses the serious problems arising from the absence of court reporters in many courtrooms. He insists, *We Must Promptly Restore Court Reporters to Trial Courts Throughout California*.

Are there topics you believe California Litigation should be covering? Let us know. And if any of this issue’s articles prompts a reaction, letters to the editor are most welcome — and are selectively published, not depublished.

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Benjamin G. Shatz, Editor-in-Chief of this journal, is a Certified Specialist in Appellate Law and co-chairs the Appellate Practice Group of Manatt, Phelps & Phillips, LLP, in Los Angeles. BShatz@Manatt.com
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