

To the Bag

sor statutes in the Statutes at Large irrelevant. When enacting a title of the Code, Congress often provides that it intended no substantive change in pre-existing law. For example, Pub. L. No. 107-217, 116 Stat. 1062 (2002), which revised and enacted Title 40 into positive law, includes a section 5(b), 116 Stat. at 1302, which provides: “This Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law.” So much for the authoritative status of current enacted text.

Finally, while the Statutes at Large may have constituted Justice Frankfurter’s “staple reading,” it is doubtful that he neglected the Revised Statutes of the United States. Nor should others. Enacted in 1874, the Revised Statutes repealed all public laws in effect on December 1, 1873, and replaced them with the country’s first complete statutory consolidation, and the only one ever enacted in its entirety into positive law. It rendered volumes 1 through 17 of the Statutes at Large obsolete except for treaties and private laws. While most provisions of the Revised Statutes have been replaced over the years, several hundred provisions remain in effect. At least some of these are regularly cited with reference to the Revised Statutes. *E.g.*, *Scott v. Harris* (the recent high-speed chase case), 127 S. Ct. 1760, 1773 (2007) (“Respondent filed suit against Deputy Scott and others under Rev. Stat. § 1979, 42 U.S.C. § 1983, alleging, *inter alia*, a violation of his federal constitutional rights . . .”). As Mr. Dorsey would no doubt point out, adding “as amended” before “42 U.S.C. § 1983” would have been more accurate.

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MINUTIAE

To the Bag:

As author of “The Shortest Article in Law Review History” (“This is it” was the full text), I’m an expert on the minutiae of legal publication. Please don’t think me small-minded, but the result of shrinking the magazine to the size of a business card is a mixed Bag.

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On the positive side, those tiny pages make us scholarly types look productive. “This is it” would probably print to *two* pages in the downsized *Bag*, and this letter should fill an entire issue by itself. Feigning productivity is what the academy is about, after all, and what better journal for loafing than the *Bagette*?

But I keep losing the miniature *Bag* under computer diskettes and potato chips. Can you please install OnStar[®] or something similar in each issue so I can find the damn thing? It’s really irritating to misplace Mr. Justice Pitney’s recipe for fudge.

In any event, I’m grateful for your thoughtfulness. I assume it still costs you something to mail the *Bag* – even if the journal is microscopic, the Postal Service won’t pay for the privilege of shipping it. So thanks for continuing to send the *Bag* to subscribers rather than expecting us to pick up copies, along with our bobbleheads, at George Mason University between 2 and 6 on Thanksgiving morning.

Very truly yours,

Erik M. Jensen

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