

Autumn 1997 2d Series • Volume 1

I know of no field of learning so vulnerable to burlesque, satire, or occasional pokes in the ribs as the bombastic pomposity of legal dialectic. Perhaps that is the very reason why there are no jesters or gag men in legal literature and why law review editors knit their brows overtime to purge their publications of every crack that might produce a real laugh. The law is a fat man walking down the street in a high hat. And far be it from the law reviews to be any party to the chucking of a snowball or the judicious placing of a banana-peel.

> Fred Rodell Goodbye to Law Reviews 23 VA. L. REV. 38 (1936)





Ross E. Davies Editor-in-Chief

David M. Gossett & Montgomery N. Kosma Executive Editors

> Contributing Editor THOMAS H. DUPREE, JR.

A. Morgan Cloud David P. Currie Richard A. Epstein Board of Advisors Mary Ann Glendon R.H. Helmholz Philip B. Heymann

Dennis J. Hutchinson A.W.B. Simpson Kate Stith-Cabranes

The Green Bag, Second Series, is published quarterly by The Green Bag, Inc., an Ohio nonprofit corporation. It is printed by Joe Christensen, Inc., in Lincoln, Nebraska. ISSN No. pending. © 1997 The Green Bag, Inc.

SUBSCRIPTIONS: A one-year subscription (four issues) costs \$35. Single issues are \$12. Postage is included. Subscriptions start with the first issue of the current volume, and are automatically renewed unless we receive a timely cancellation notice.

EDITORIAL POLICY: We are committed to publishing authors' ideas in their own words, which means we don't fool around much with either. We assume our authors do careful research and provide accurate references upon which others can rely. We will fix typos and other small problems that we notice, and make minor non-substantive changes to put a piece in the *Green Bag* format. We may make a few additional suggestions, but they will be *only* suggestions.

SUBMISSIONS: We welcome unsolicited manuscripts, preferring submissions via email to GreenBag@ibm.net. We also accept diskettes, and will consider hardcopy submissions in cases of hardship. We accept material that is short, clear, interesting, and law-related – up to 5,000 words, and o to 50 footnotes. We especially encourage the submission of poetry, anecdotes, cartoons, and other miscellany.

LETTERS: We welcome letters, which we subject to the same standards as submissions (who would wish to read a letter with more than 50 footnotes?). DEADLINES: August 1 for the Autumn issue; November 1 for Winter; February 1 for Spring; May 1 for Summer.

COPYRIGHT, ETC: If no copyright notice appears in the author note on a piece, the *Green Bag* holds the copyright. We hereby grant permission to duplicate such items for classroom use, provided (1) copies are distributed at or below cost of reproduction; (2) the author and the *Green Bag* are identified; (3) proper copyright notice is affixed to each copy; and (4) the *Green Bag* is notified of the use. Duplication, including electronic transmission and republication, is otherwise prohibited without advance written permission.

If a copyright notice appears in the author note, all requests for permission to duplicate or republish must be sent directly to that author.

DEALING WITH AUTHORITY: Citations should be accurate, complete, and unobtrusive. Familiar cases may need no citation. Most important, our readers should be able to find the authorities on which our authors rely. Authors may use whatever citation form they prefer; we will make changes only where necessary for our readers' ease or to keep footnotes from looking like goulash. Incidentally, the preferred citation form for any article published in the Green Bag, Second Series, is ____GREEN BAG 2D _____(19_).

CORRESPONDENCE: The Green Bag, P.O. Box 14222, Cleveland, Ohio 44114. Telephone: (773) 288-6236. Email: GreenBag@ibm.net.

Contents

EX Ante Green Bags Ι David P. Currie Articles Ring Dang Doo 3 Bob Berring Full Faith & Credit to Marriages 7 David P. Currie An Old Debate Continues Over Integrated Schools 13 Davison M. Douglas Fidelity Without Translation 21 Richard A. Epstein The Private Interest & the Public Interest 33 Merton H. Miller The Dred Scott Case 39 With Notes on Affirmative Action, the Right to Die & Same-Sex Marriage Cass R. Sunstein How to Deny a Constitutional Right 55 **Reflections on the Assisted-Suicide Cases** Mark Tushnet Dialogue From Morrison to Starr 67 Separation of Powers, the Special Prosecutor & the Court Theodore B. Olson From the Bag' Law in Theory, Law in Practice 73 **ROSCOE POUND'S PRACTICAL PROGRAM OF PROCEDURAL REFORM** Morgan Cloud

75 A Practical Program of Procedural Reform Roscoe Pound

Contents

Terms of Art

95 Judge Bruce Selya, Resipiscent Recidivist David Franklin

Reviews

97 The Polygamous Heart? Arlie Russell Hochschild The Time Bind: When Work Becomes Home & Home Becomes Work Katharine Silbaugh

101 More Than One Cent for Tribute Fred S. McChesney Money for Nothing: Politicians, Rent Extraction & Political Extortion Gregory E. Maggs

105 One Nation Color-Blind

J. Harvie Wilkinson, III One Nation Indivisible: How Ethnic Separatism Threatens America Ashutosh Bhagwat

EXPOSE

113 Casey Jones Redivivus Ringhiser v Chesapeake & Ohio Ry., 77 S. Ct. 1093 (1957)

Brainerd Currie