

Autumn 1998 2d Series + Volume 2 + Number 1

One of Judge Jerome Frank's law clerks objected to the length of one of his opinions. He spent all of a week and finally cut it down from sixty-five pages to one-half page. He left both on Judge Frank's desk without comment. The following morning Judge Frank rushed into his clerk's office and shouted, "Bully for you," displaying the clerk's work, "we'll add it to the end."

Jerome N. Frank reported in Ed Bander, Doing Justice 72 Law Library Journal 150 (1979)





Ross E. Davies Editor-in-Chief

DAVID M. GOSSETT & MONTGOMERY N. KOSMA Executive Editors

Senior Editors Suzanne Garment Thomas B. Nachbar Contributing Editor
Susan M. Davies
Student Editor
James C. Ho

Board of Advisors

Robert C. Berring A. Morgan Cloud David P. Currie Richard A. Epstein Leonard Garment

Mary Ann Glendon R.H. Helmholz Philip B. Heymann Dennis J. Hutchinson Henry P. Monaghan A.W.B. Simpson Kate Stith-Cabranes William W. Van Alstyne

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. 1095-5216. Copyright © 1998 The Green Bag, Inc. Thanks to Gibson, Dunn & Crutcher LLP for their support.

SUBSCRIPTIONS: One year (four issues) costs \$35. Single and back issues are \$12. Subscriptions start with the next issue, and are automatically renewed absent timely cancellation. Email subscriptions@greenbag.org or see inside back cover.

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 editors@greenbag.org. 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.

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_).

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.

CONTEST: A *Green Bag* prize to the best original limerick or poem on legal publishing or the *Green Bag*, the winner and other selected entries to be published in Spring.

CORRESPONDENCE: The Green Bag, P.O. Box 14222, Cleveland, Ohio 44114. Telephone: (202) 955-8252. Email: editors@greenbag.org. Web: www.greenbag.org



Contents

Ex Ante

I Courtroom Humor

Honorable Stanley Mosk

Articles

- 5 Lawyering Up Susan Bandes ⊕ Jack Beermann
- 15 Gloria Steinem at the Harvard Law Review Banquet Ira C. Lupu
- The Gang's Not Here
 Toni Massaro
- 35 Making a Hash of Sovereignty, Part I Jack N. Rakove
- New Zealand's Failed Experiment with State Monopoly Accident Insurance Bryce Wilkinson

Dialogue

57 Clerkship Politics

Honorable Alex Kozinski & Fred Bernstein

from the Bag'

65 Making History
Barbara Allen Babcock

68 Women Lawyers in the United States Lelia J. Robinson, LL.B.

Terms of Art

93 Worth a Doit

David Franklin

Reviews

97 Populist Pabulum

Akhil Reed Amar & Alan Hirsch

FOR THE PEOPLE: WHAT THE CONSTITUTION REALLY SAYS ABOUT YOUR RIGHTS

Honorable Morris B. Hoffman

109 Remembering the Answers

STEPHEN L. CARTER

CIVILITY: MANNERS, MORALS, AND THE ETIQUETTE OF DEMOCRACY

Basic Books 1998

Susan Estrich

Getting Away With Murder: How Politics Is Destroying the Criminal Justice System

Suzanne Garment

What If This Is As Good As It Gets?

RICHARD A. EPSTEIN

Principles for a Free Society: Reconciling Individual Liberty with the Common Good

Daniel D. Polsby



125 Hum a Few Bar Exam

Eugene Volokh