

To the Bag

Hartless

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I, like Professor Berring, enjoyed reading *Hart v. Massanari*, 266 F.3d 1165 (9th Cir. 2001), immensely. However, I do wish that it had been issued as an unpublished opinion. For those who believe that unpublished opinions are not binding precedent, *Hart* merely repeated something that was already understood. And for those who believe that unpublished opinions should be binding, *Hart* presumably would have carried the same force even had it not been published.

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Washington, DC) are binding there. Thus, the Ninth Circuit would not have treated itself – or anyone else other than the parties to Hart – as bound by an unpublished opinion in that case. It seems highly unlikely that those inclined to rely on unpublished opinions would abandon the practice in response to an unpublished opinion in which the Ninth Circuit stated for the benefit of the parties to that case that it would not be bound by unpublished opinions. See Sorchini v. City of Covina, 250 F.3d 706 (9th Cir. 2001) (cited in Linda Greenhouse, Learning to Live with Bush v. Gore, 4 GREEN BAG 2d 381, 388 n.22 (2001)).



We like the idea, but we suspect that the U.S. Court of Appeals for the Ninth Circuit wisely published the opinion in order to avoid petard problems. The Ninth Circuit reserves the power to select the decisions that will bind the court and those within its jurisdiction. Only published Ninth Circuit opinions (and certain unavoidable opinions of the highest court in

To the Bag:

Just got my first copy of the *Green Bag*. Big brother got me a subscription for my birthday. So I sat down for a leisurely read and made it through several articles before I got confused and embarrassed. I started reading Professor Cole's "Modest Proposal for

Bankruptcy Reform" and I can't tell if it's supposed to be satire. I thought perhaps the obvious literary reference in the title should make it clear to me I was reading a very clever satirist. But, my goodness, the subtle sophistry, recondite rhetoric and abstruse assumptions sound soooo similar to the conservative rhetoric written by our favorite conservative columnists. Is the professor's tongue in his cheek, or is he seriously proposing a return to debtor's prison?

I admit, I am embarrassed to have to ask.

Thanks for affording the opportunity to inquire like this.

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Happy to oblige. Here at the Green Bag we are proud of our authors' abstruse and recondite subtlety. As to whether Professor Cole is serious about the merits of debtors' prison, we would suggest that the gravity of a piece of legal scholarship, like the beauty of a piece of art, is in the eye of the beholder.