

THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

AUTUMN 2004

2D SERIES • VOLUME 8 • NUMBER I

New York, the state that is always telling the others about progress, this is written two weeks after election and their returns havent come in yet. All the primitive States were in by nine o'clock election night. They sent one hundred lawyers up state to see about the counting of the votes. Can you imagine 100 lawyers? Why two lawyers can make a scandal out of anything they have anything to do with. 100 will bring a revolution.

Will Rogers

*"Shades of Jeff Davis," 18 November 1928,
in Will Rogers' Weekly Articles 3:221, 223
(James M. Smallwood ed. 1981)*



THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

ROSS E. DAVIES
Editor-in-Chief

DAVID M. GOSSETT & MONTGOMERY N. KOSMA
Executive Editors

Senior Editors

JAMES C. HO

GREGORY F. JACOB

THOMAS B. NACHBAR

Contributing Editors

DANIEL G. CURRELL
SUSAN M. DAVIES

THOMAS H. DUPREE, JR.
BRITTON B. GUERRINA

DAVID B. SALMONS
KEITH SHARFMAN

Board of Advisers

ROBERT C. BERRING
A. MORGAN CLOUD
DAVID P. CURRIE
RICHARD A. EPSTEIN
LEONARD GARMENT

SUZANNE GARMENT
BRYAN A. GARNER
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 2d* is published quarterly. © 2004 The Green Bag, Inc., an Ohio nonprofit. ISSN 1095-5216. "The Green Bag" and the *GB* logo are our registered trademarks. Thanks to Jones Day; Gibson, Dunn & Crutcher LLP; and Mayer, Brown, Rowe & Maw LLP.

SUBSCRIPTIONS. Visit www.greenbag.org to subscribe, or use the form at the back of this issue. For back-issues, call Hein at (800) 828-7571. Claims must be filed within 3 months of the publication date (12/25/04) via subscriptions@greenbag.org. When you buy a subscription to the *Green Bag*, that is all you are buying – one copy of each issue of the journal for the duration of your order. Everything else we produce is either a gift that may or may not be delivered to some or all of our subscribers (e.g., a bobblehead) or a product that you may purchase separately (e.g., *Judge Dave & the Rainbow People*). In addition, to the extent that the *Green Bag* does occasionally and arbitrarily give away goodies, we do not give multiple goodies to anyone carrying more than one *Green Bag* subscription.

EDITORIAL POLICY. We publish authors' ideas in their own words. We fix typos and mistakes we notice, and do our best to produce beautiful text, consistently formatted. Our additional suggestions are just that.

AUTHOR NOTES. Gratitude to research assistants is nice. Colleagues who make major contributions should share the byline; those who help in small ways should be recognized in something printed by Hallmark, not the *Green Bag*.

SUBMISSIONS. Send them to editors@greenbag.org. We welcome anything short, clear, interesting, and law-related – meaning no more than 5,000 words and zero to 50 footnotes (which count against your 5,000). Letters are welcome.

DEALING WITH AUTHORITY. Citations should be accurate and unobtrusive. Authors may use any form they like. We edit only to keep footnotes from looking like goulash.

COPYRIGHT. If a copyright notice appears in an author note, get permission to copy from the author. Otherwise, we hold the copyright (except for original U.S. government works). You may copy such items for classroom use, if you: (1) distribute copies at or below the cost of reproduction; (2) identify the author and the *Green Bag*; (3) affix proper copyright notice to each copy; and (4) tell us. All other copying requires advance written permission.

EDDIES IN THE SPACE-TIME CONTINUUM. A 2010 *Green Bag* recently appeared in our offices. Please contact us if you know a way to place odds on Supreme Court decisions for OT 2008. Although we are loath to publish anything on future legal developments, we thought the fabric of reality could handle adjusting the *Green Bag* to conform to its future layout and design. Hence the new look for this, the beginning of our eighth year in print.

CORRESPONDENCE. The Green Bag, Inc., 6600 Barnaby Street NW, Washington DC 20015. Phone (703) 993-8049. Please visit our website at www.greenbag.org or email us at editors@greenbag.org. *GB*



Contents

Ex Ante

- 1 Bobblerratum, etc.
- 2 The Geography of Justices
- 3 ABA Memorabilia
- 4 Green Bag at Harvard

To the Bag

- 7 De Minimis
- 7 Hamilton's Honor

Articles

- 17 A Backward Glance
Bennett Boskey
- 19 Finding the Workers' Law
Ellen Dannin
- 29 Unions & the NLRB
Julius G. Getman
- 33 Better Lucky Than Good
Neal Devins
- 43 Perspectives on *Brown*
Dennis J. Hutchinson
- 51 A Lawyer in Baghdad
Brett H. McGurk
- 59 Intention in the Law of Property
THE LAW OF UNINTENDED CONSEQUENCES
John V. Orth

- 67 Iraq on the Way to Its New Constitution
Ronald D. Rotunda

From the Bag

- 75 President Polk on Internal Improvements: The Undelivered Veto
David P. Currie & Emily E. Kadens
- 81 Harbours & Rivers
James K. Polk

Features

- 99 The Law School Observer
Brian Leiter

Reviews

- 101 Putting the Second Amendment to Sleep
H. RICHARD UVILLER & WILLIAM G. MERKEL
*THE MILITIA AND THE RIGHT TO ARMS, OR, HOW
THE SECOND AMENDMENT FELL SILENT*
- DAVID C. WILLIAMS
*THE MYTHIC MEANINGS OF THE SECOND AMENDMENT: TAMING
POLITICAL VIOLENCE IN A CONSTITUTIONAL REPUBLIC*
- Nelson Lund*

Ex Post

- 111 Partnership Agreement
FRED GUCCI, PART 5
Michael Parish
- 117 A Slippery Slope
*MEGAL V. GREEN BAY AREA VISITOR & CONVENTION
BUREAU, 672 N.W.2D 105 (WIS. APP. 2003)*
Robert E. Rains
- 121 Cell Phones, Socializing & Psychotic Behavior
A BRIEF GUIDE TO LIBRARY ETIQUETTE
Charles J. Ten Brink