

Green Bags

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FIVE SCORE AND EIGHT years ago a new periodical appeared on the American scene. Self-deprecatingly proclaiming itself “A Useless but Entertaining Magazine for Lawyers,” it was called the *Green Bag* – an allusion to that time-honored receptacle in which members of the legal profession traditionally carried their papers and law students their casebooks, even within the memory of some of us still living. The lawyer’s green bag was a repository of knowledge, if you will; and so was its namesake, the *Green Bag*.

It was no ordinary legal journal. “[T]he lawyer who turns to these pages for material which will aid him in the preparation of his case,” Editor Horace W. Fuller warned in the first issue, “will seek in vain. But if wearied by the labors of the day his mind requires relaxation, it will find in the ‘Green Bag,’ we hope, entertainment and amusement.” For “the green bag of the lawyer, although ostensibly designed for the convenient transportation of dry and musty papers of the law, frequently is made use of as a receptacle for many articles not strictly within the letter of the law,” such as a pair of shoes purchased on the way home

for one of the attorney’s children. Correspondingly, it was the Editor’s plan to present to his readers “a collection of articles, which we trust will prove of interest, though they may not all prove to be strictly legal.”

It has seemed to us that a work of this kind will supply a long-felt want in the profession, namely, a bright, entertaining magazine, designed rather to interest and amuse than to instruct; and that is just what we intend the “Green Bag” to be.

And so it was. The first issue boasted a brief genealogy of Chief Justice Melville Fuller, a sixteen-page history of the Harvard Law School by Louis Brandeis, and chatty discussions of spectacular English and French murder cases. It contained a plea for support of the Selden Society, a few quaint examples of “legal antiquities,” a handful of lawyer jokes, and two indifferent examples of doggerel about the law:

But, desperandum nil!

Oh, desperandum nil!

Tramp bravely on, my brothers, in

The grand old legal mill!

As advertised, “[a] considerable space” was also “devoted to current legal news and gossip.” Finally, as if to demonstrate that the disclaimer of any intention to “instruct” was not to be taken too seriously, there was a short article on the history of specific performance of contracts, complete with footnotes, by Professor J.B. Ames.

And so it went for twenty-six volumes, until December 1914, when the last Editor sorrowfully announced that after the current issue the *Green Bag* would not publish again. The support of its loyal constituency, while gratifying, was insufficient to permit the magazine to continue “in the absence of a wider and more sympathetic community.” The Editor consoled (or tormented) himself with the observation that it hardly mattered: “[O]ur purposes are so far from having been realized that it cannot seriously be considered that the community will suffer any appreciable loss through the discontinuance of the *Green Bag*.”

But it did. How many of us can recall our delight, many years after the last issue of the *Green Bag* appeared, on first encountering its dusty but refreshing volumes in the course of some tedious inquiry into – *n’importe quoi?* How many, unaware of its existence, have perceived once again “the long-felt want” of “a bright, entertaining magazine,” calculated “to interest and amuse”?

Legal scholarship is undergoing a crisis of constipation not unlike that of the judicial system. The complexity, expense, and delays of litigation have brought about widespread flight from the courts to streamlined and functioning alternative institutions for resolving disputes. The new *Green Bag* is addressed to a

similar problem. It is the ADR of legal scholarship.

There is something radically amiss in a world where hundred-page articles with more footnotes than text proliferate, where authors feel constrained to rehearse in hideous detail what every imaginable reader already knows before coming forth with the usual mouse, where readers must sift through mountains of verbiage to find the kernels of truth they so diabolically conceal. Any article of more than forty pages should be reconsidered; any article with a table of contents should be suppressed. Far too many legal writers do not understand (or do not dare to live by their understanding) that the way to attract readers is to write something they can read, and that the way to propagate ideas is to express them simply.

We need a forum in which legal thinkers can reveal their thoughts without spending six months to encase them in the cloying paraphernalia prescribed by the prevailing mores of contemporary scholarship. We need a periodical to which the inquiring reader can turn for amusement, enlightenment, and even instruction without having to take the weekend off. The exchange of ideas should be a treat, not a chore; and it is in that spirit that the *Green Bag 2d* is conceived.

A spoonful of sugar, in short, does make the medicine go down. But it was W. S. Gilbert’s Jack Point who put it best:

*I can teach you with a quip, if I’ve a mind;
I can trick you into learning with a laugh;
Oh, winnow all my folly, and you’ll find
A grain or two of truth among the chaff!*

