

THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

SECOND SERIES • VOLUME 24, NUMBER 2 • WINTER 2021

ESTABLISHED 1889 • RE-ESTABLISHED 1997

In memory of Brian Sicknick, who died from wounds suffered while defending the legislature of the United States of America on January 6, 2021.

THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

Ross E. Davies Editor-in-Chief

David M. Gossett

Executive Editor

Gregory F. Jacob Senior Editor

Contributing Editors

Cattleya M. Concepcion, Susan M. Davies, Anna Ivey, Rakesh Kilaru, Thomas B. Nachbar, Sarah Nash, and Meaghan VerGow

Editorial Alumni

Daniel G. Currell, Thomas H. Dupree, Jr., Steve Engel, David L. Franklin, Curtis E. Gannon, Suzanne Garment, Britton B. Guerrina, James C. Ho, Melanie James, Susan Kearns, Montgomery N. Kosma, David B. Salmons, Keith Sharfman, Edward N. Siskel, Roger V. Skalbeck, and Amy Steacy

Board of Advisers

Robert C. Berring, A. Morgan Cloud, Richard A. Epstein, Samuel Estreicher, Suzanne Garment, Bryan A. Garner, Mary Ann Glendon, R.H. Helmholz, Philip B. Heymann, Dennis J. Hutchinson, Montgomery N. Kosma, Henry P. Monaghan, James M. Rosenbaum, Suzanna Sherry, and Kate Stith

Copyright © 2021 by The Green Bag, Inc., except where otherwise indicated and for U.S. government works. ISSN 1095-5216. "The Green Bag" and the "GB" logo are our trademarks. Thanks to O'Melveny & Myers LLP.

SUBSCRIPTIONS. Subscribe at www.greenbag.org or use the form in this issue. Claims must be filed at subscriptions@greenbag.org by 7/1/21. When you buy a *Green Bag* subscription, that is all you are buying — one copy of each issue of the journal and the *Almanac & Reader* (plus, for "extravagant" subscribers, four surprises per year) for the duration of your paid order. Everything else we make is a gift (e.g., a bobblehead Justice) that may or may not be given to some subscribers and other people, or something sold separately (e.g., the *Baker Street Almanac*), or something else (e.g., a Lunchtime Law Quiz prize).

EDITORIAL POLICY. We publish authors' ideas in their own words. We fix typos and mistakes and make minor changes to produce an attractive, grammatical, readable journal.

AUTHOR NOTES. Gratitude to RAs is nice. Colleagues who make major contributions should share the byline. Recognize those who help in small ways with something printed by Hallmark, not the *Bag*.

SUBMISSIONS. Please send them to editors@greenbag.org. We welcome anything interesting, law-related, well-written, and short (no more than 5,000 words, including no more than 50 footnotes).

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

WEB CITES. We are not responsible for the accuracy or persistence of cited URLs for websites. We do not guarantee that the content on any of those websites is accessible, accurate, or appropriate.

COPYRIGHT. If a copyright notice appears in an author note, get permission to copy from the holder. All other copying requires advance written permission from us.

CORRESPONDENCE. Please write to The Green Bag, Inc., 6600 Barnaby Street NW, Washington, DC 20015, visit www.greenbag.org, or email editors@greenbag.org.

CONTENTS

SECOND SERIES • VOLUME 24, NUMBER 2 • WINTER 2021

Ex Ante
Our Mistake99
The Yale Card99
TO THE BAG
Colin Clark101
The Card and the Court
ARTICLES
Robert A. James107
Thunderbolts on Olympus
Charles E. Littlefield121
The Impeachment of Judge Swayne:
A Green Bag Defense and a Green Bag Report
Jack Metzler139
Quorumifications
John V. Orth149
Reading Magna Carta: Textualist or Originalist?
FROM THE BAG
Cynthia Roman & Mike Widener159
Trial by Media: The Queen Caroline Affair, Part 4 – Pamphlet Literature

Contents

Susannah Walker	169
Trial in Absentia? Criminal Proceedings	
and Public Personae	
Ex Post	
James Boyle	179
Dumping: On Law Reviews	
D. Brock Hornby	189
Fables in Law, Chapter 16:	
Legal Lessons from Field, Forest, and Glen	
Notes and Credits	105