

families of Jason Daubert and Eric Schuller, the petitioners in the case that has mistakenly come to be called the “Dough-bear” case. My principal contribution to this Symposium is to report that the folks who brought this case to the Supreme Court pronounce their name “Dow-burt” – or, as some might say, exactly as it’s spelled. The penchant for foreign fancies has caused many to show their expertise in French pronunciation at the expense of this all-American family.

The confusion was hardly mitigated during the Supreme Court argument. The first Justice to use the name in framing a question chose “dough-bear,” and I faced the tricky tactical question of whether to spend my precious time (and all hope of kindly reception) correcting this judicial mispronunciation. I opted not to, and the rest of the Justices all then assumed, gallingly, that the Gallic was apropos.

Let me, then, use this occasion to make amends to my clients. The family’s name is not dough-bear. Whether this will (or should) affect the way people pronounce the name of the Supreme Court’s opinion is, of course, another matter. Do the litigants or the Court own title to the pronunciation of the name of a Court opinion?

Michael H. Gottesman, *Admissibility of Expert Testimony After Daubert: The “Prestige” Factor*, 43 EMORY L.J. 867, 867-68 (1994).

### HOLMES’S GREEN BAG

WE HAVE ALWAYS liked the idea that the legal giants on whose shoulders our authors and subscribers stand once toted their work around in green bags. And evidence to support that supposition has begun to trickle in. A sketch of Oliver Wendell Holmes, Jr. published in 1933 – shortly after he retired from the Supreme Court of the United States and before he died in 1935 – describes the behavior of a much younger Holmes as he “was preparing the twelfth edition of Kent’s *Commentaries*, which was published in 1873”:

There is an interesting story about this work. It was customary in Holmes’s day at the [Harvard] Law School, as in ours, to carry one’s books in a lawyer’s green bag. Very oft there was only a newspaper in the bag, but it was carried just the same – the habit persists today. Holmes devoted a special bag to his growing manuscript of Kent, took it with him each day to the law library, brought it home at night, and before he went to bed placed the bag with its precious manuscripts by the front door. Once a month all the members of the Holmes family, including the servants, had a fire drill whose purpose was to instil[l] in them the fact that on the first sign of fire they should rush to the front door and get that green bag out of danger before doing another thing.

Frederick C. Fiechter, Jr., *The Preparation of an American Aristocrat*, 6 NEW ENGLAND Q. 3, 21 (March 1933); see also Louis Menand, *THE METAPHYSICAL CLUB: A STORY OF IDEAS IN AMERICA* 216 (Farrar, Straus & Giroux 2001).

### MILITARY TRIALS & TRIBUNALS

LAST YEAR we noted the publication of the National Institute of Military Justice’s *Annotated Guide* to the procedures for trials before United States military commissions. As the military commission process picked up steam, the Department of Defense and a variety of interested groups began to generate more and more paper on the subject, and the NIMJ responded in June 2003 by collecting those materials in a *Military Commission Instructions Sourcebook*. The flow of paper has continued and grown, although, as NIMJ president Eugene Fidell has observed, “[t]he public record remains incomplete.” And so the NIMJ has issued a second volume of its *Sourcebook*, which includes the handy flowchart reproduced on the next page.

*Commission Annotation*, 6 GREEN BAG 2d 117 (2003); MILITARY COMMISSION INSTRUCTIONS SOURCEBOOK, VOLUME 2 (NIMJ 2004); www.nimj.org.