

# THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

SPRING 2005

2D SERIES • VOLUME 8 • NUMBER 3

---

*There are many, many types of books in the world, which makes good sense, because there are many, many types of people, and everybody wants to read something different. For instance, people who hate stories in which terrible things happen to small children should put this book down immediately. But one type of book that practically no one likes to read is a book about the law. Books about the law are notorious for being very long, very dull, and very difficult to read. This is one reason many lawyers make heaps of money. The money is an incentive – the word “incentive” here means “an offered reward to persuade you to do something you don’t want to do” – to read long, dull, and difficult books.*

Lemony Snicket

---

*A Series of Unfortunate Events: The Bad Beginning 83-84 (1999)*



# 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  
SAMUEL ESTREICHER

LEONARD GARMENT  
SUZANNE GARMENT  
BRYAN A. GARNER  
MARY ANN GLENDON  
R.H. HELMHOLZ  
PHILIP B. HEYMAN

DENNIS J. HUTCHINSON  
HENRY P. MONAGHAN  
A.W.B. SIMPSON  
KATE STITH-CABRANES  
WILLIAM W. VAN ALSTYNE

---

The *Green Bag 2d* is published quarterly. © 2005 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](http://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 (6/20/05) via [subscriptions@greenbag.org](mailto: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](mailto: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.

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



## Contents

---

### *Ex Ante*

- 221 We Need More Faculty Like This Guy  
 222 Advice to Lawyers  
 222 The Ivey League  
 225 Rank Profits  
 226 By Definition

### *To the Bag*

- 227 Don't Stay Too Long!  
 228 But-For Wealth and Power

### *Articles*

- 231 Less is More. Really.  
*Robert C. Berring*
- 235 A Mother's Day Salute to Mary Hamilton Houston  
*Paul D. Carrington & Kenneth Ching*
- 239 The Constitution of the Republic of Texas  
 PART 2 OF 2: THE DECISIONS  
*David P. Currie*
- 249 Three Lawyer-Poets of the Nineteenth Century  
*M.H. Hoeflich & Lawrence Jenab*
- 261 Disrespecting the "Opinions of Mankind"  
 INTERNATIONAL LAW IN CONSTITUTIONAL INTERPRETATION  
*Eugene Kontorovich*

- 269 Judicial Activism in Eighteenth-Century English  
Common Law in the Time of the Founders  
THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME  
*James Oldham*
- 281 Language Wars Truce Accepted (with conditions)  
*Peter Tiersma*
- 291 The Treatise Power  
*Laurence H. Tribe*

### *From the Bag*

- 307 The Thirteenth Congress  
*Mathew Carey*

### *Reviews*

- 311 Ticking Bombs & Catastrophes  
SANFORD LEVINSON, ED.  
TORTURE: A COLLECTION  
*Rosa Brooks*
- 321 Judge Crater's New York  
RICHARD J. TOFEL  
VANISHING POINT: THE DISAPPEARANCE OF JUDGE  
CRATER, AND THE NEW YORK HE LEFT BEHIND  
*Eugene R. Fidell*

### *Ex Post*

- 325 Questions  
FRED GUCCI, PART 7  
*Michael Parish*