

A YEAR OF EXTRAVAGANCE IN LEGAL PUBLISHING

Green Bagatelle #3 (August 16, 2016)

Last year the *Green Bag* announced a huge price hike (we called it a “subscription innovation”). At the same time we attempted to offer more value and variety for our subscribers’ dollars. We added our *Almanac & Reader* to the basic subscription, and we introduced a premium package (we called it “extravagant”) consisting of the basic subscription plus four surprises. See *Green Bag Subscription Innovations!*, 19 *Green Bag* 2d 3 (2015).

Our readers seem to have come to terms with these changes. We have more subscribers today than we did a year ago. We have no idea why we are not suffering the way many other periodicals are — no solid evidence about actual or proximate cause — but we sure are happy about it. And so we say “thank you” to our loyal and generous and sometimes extravagant friends.

Some of those friends have asked for a review of our first year of extravagance, and particularly for explanations of why we did what we did and what it all means. Indeed, some subscribers are not sure what has been an extravagance and what has been a mere arbitrary and capricious act of generosity. Their confusion is quite reasonable, given the *Green Bag*’s past, present, and probably future reliably erratic behavior. Let’s start at the beginning.

EXTRAVAGANCE #1:

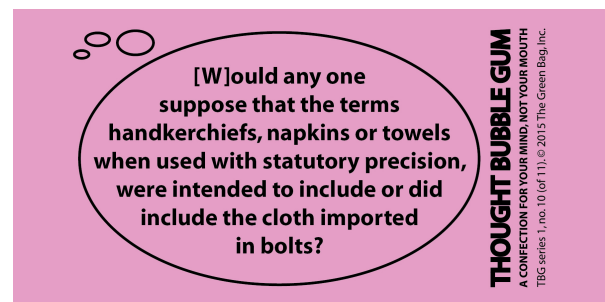
THE PINK BEACH TOWEL

Back in 2009, when we produced our first piece of “Thought Bubble Gum” in the form of a fridge magnet, we described TBGs as “pink rectangles of wisdom and wonder.” This was conscious foreshadowing of a future in which TBGs would appear in other forms. The main constraint, as is often the case with small businesses, was funding. We could not afford to make TBG boogie boards or bed sheets

or iPad cases or the like in appropriate quantities. (Yes, there were other, cheaper possibilities. More on that below, under Extravagance #4.)

But opportunity knocked when we invited extravagant subscribers. We had only about 150 early adopters. So we splurged on our first extravagance, knowing we would take a loss on every item but could make it up (sort of) on (low) volume. We opted for beach towels. They were not cheap. Small, thin, cheesy towels are a dime a dozen. Big, thick, luxurious towels are not.

Numbers 1 through 9 in our first TBG series (which will end, very soon, with number 11) are all fridge magnets. Number 10 — which you should imagine as 30 inches wide and 60 inches long, and soft rather than magnetic — is this:



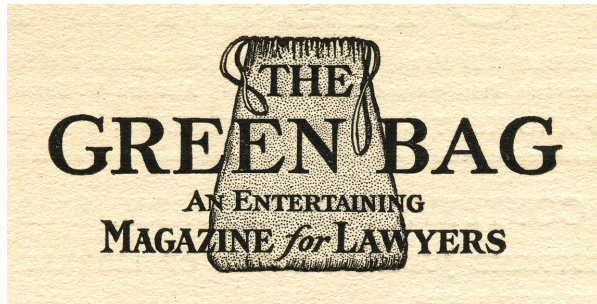
The quote is from a dissent in the non-landmark case of *Hartranft v. Meyer*, 149 U.S. 544, 550 (1893) (Brewer, J., joined by Brown, J., dissenting). The U.S. Supreme Court has, inconveniently, never had much to say about towels.

EXTRAVAGANCE #2:

THE “YATES” GREEN BAG

It will come as no surprise that we have long dreamed of creating our own green bags. There was a time, long ago, when lawyers really did carry their papers and other supplies in drawstring bags

made of green cloth. That is how the *Green Bag* — a journal originally produced for bag-carrying lawyers — got its name in the first place, back in the 1800s:



But what could possibly inspire lawyers to go back to using drawstring bags? We puzzled over that one for many years — 19 of them (the current incarnation of the *Bag* has been around since 1997). We tried dropping hints about role models. We reported that “Daniel Webster, Abraham Lincoln, Oliver Wendell Holmes, Jr., Louis Brandeis, and many other lawyers of days gone by” had carried green bags, and that Harvard Law students had too. See *Grandpa’s Old Bag*, 10 *Green Bag* 2d 2 (2006); *Green Bag at Harvard*, 8 *Green Bag* 2d 4 (2004). Nothing happened. Might fear be a better motivator? Humor? Both? Yes!

Then opportunity knocked again. The Supreme Court decided *Yates v. U.S.*, 135 S.Ct. 1074 (2015). Justice Ruth Bader Ginsburg announced the judgment of the Court and delivered an opinion joined by Chief Justice John Roberts and Justices Stephen Breyer and Sonia Sotomayor:

John Yates, a commercial fisherman, caught undersized red grouper in federal waters in the Gulf of Mexico. To prevent federal authorities from confirming that he had harvested undersized fish, Yates ordered a crew member to toss the suspect catch into the sea. For this offense, he was charged with, and convicted of, violating 18 U.S.C. § 1519, which provides:

“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.” . . .

Section 1519 was enacted as part of the Sarbanes-Oxley Act of 2002, 116 Stat. 745, legislation designed to pro-

tect investors and restore trust in financial markets following the collapse of Enron Corporation. A fish is no doubt an object that is tangible; fish can be seen, caught, and handled, and a catch, as this case illustrates, is vulnerable to destruction. But it would cut § 1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance, destroyed with obstructive intent. Mindful that in Sarbanes-Oxley, Congress trained its attention on corporate and accounting deception and cover-ups, we conclude that a matching construction of § 1519 is in order: A tangible object captured by § 1519, we hold, must be one used to record or preserve information.

Id. at 1078-79.

The case seemed tailor-made to inspire shivers of both fear (google “Sarbanes-Oxley” and “scary” — you’ll get the idea) and laughter (read Justice Elena Kagan’s dissent in *Yates* — joined by Justices Antonin Scalia, Anthony Kennedy, and Clarence Thomas — with its citation to Dr. Seuss’s seminal work on statutory interpretation, *One Fish Two Fish Red Fish Blue Fish*). We’d been waiting nearly two decades for something like this.

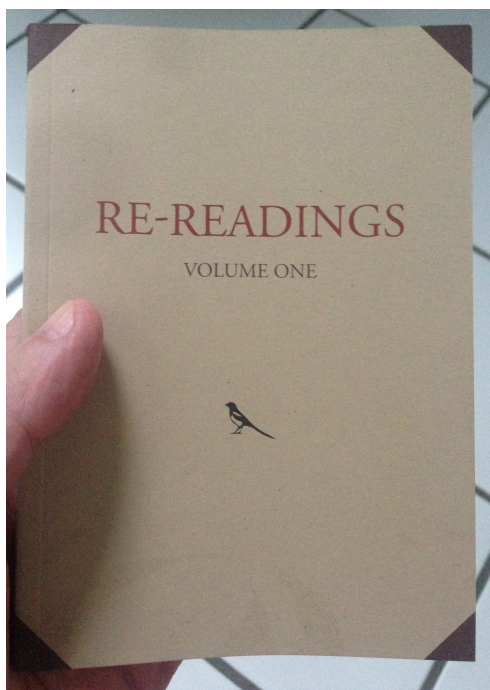
So, we made a green bag of it. We ordered several hundred of the children’s drawstring bag called “Paws and Claws Sportpack — Lake Fish” in “Hunter Green Multicolor” from one of our favorite suppliers, 4imprint, with this imprint:



SOX-Safe

This bag is tangible, but it is also undersized, and a fish. Cf. Yates v. U.S., 13-7451 (U.S. 2015).

“SOX” is, you know, short for “Sarbanes-Oxley.” Ha ha. I won’t speculate about implications for SOX-compliant recordkeeping. Rumor has it the bags are being carried mostly by lawyers’ offspring. Oh well.



EXTRAVAGANCE #3:
RE-READINGS, VOLUME I

The *Green Bag* is — or perhaps it would better to say it aspires to be — a purveyor of well-chosen words and associated works of high and low art. In any event, the focus of our first two extravagances was mostly on art. Appropriately then, we attended mostly to words for the third extravagance.

Re-Readings, Vol. I is supposed to do two things: (1) entertain readers with pleasingly easy-to-read works and (2) inspire better writing by lawyers by making it easier for them to enjoy some non-legal writing. Writing experts Bryan A. Garner and Judge Frank H. Easterbrook have expressed the thinking behind our little book better than we could:

Garner: “How does a law student or lawyer who wants to improve [as a writer] actually do it?” . . .

Easterbrook: “Spend more time reading. And stop reading what lawyers are writing, because mostly lawyers read what other lawyers are writing . . . and that’s mostly bad. Start reading Hemingway and Faulkner. Their styles are different, but they’re both wonderful writers. Read the Saul Bellows of the world. There’s a lot of good and interesting writing out there. . . . So read *good* prose. And then when you come back and start writing legal documents, see if you can write your document like a good article in *The Atlantic*, addressing a generalist audience. That’s how you do it: get your nose out of the lawbooks and go read some more.”

Garner on Language and Writing 15-17 (2009). Early reviews from extravagant subscribers seem to indicate the first volume of *Re-readings* is a small step in that direction. Here’s hoping the second volume is another. A few readers have already offered suggestions. We would be happy to have more.

EXTRAVAGANCE #4:
THE “FIRST 4” SLUGGERS

The “First 4” series of *Supreme Court Sluggers* trading cards is going into the mail this week. It marks the return of the *Sluggers* and of portraitist extraordinaire John A. Sargent III.

The “First 4” *Sluggers* salute two groups of extraordinary women in the law. Myra Bradwell and Belva Lockwood were 19th-century lawyers who began blazing trails that would eventually lead to a U.S. Supreme Court with bench and bar open to women. Justices Sandra Day O’Connor, Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan are the first four trailblazing women to serve on the Court.

The cover card for the packets features tiny versions of Sargent’s portraits of the “First 4” Justices:



In addition, each packet contains some but not all of the other cards in the series:

- card #1: Justice Sandra Day O'Connor
- card #2: Justice Ruth Bader Ginsburg
- card #3: Justice Sonia Sotomayor
- card #4: Justice Elena Kagan (Bradwell version)
- card #5: Justice Elena Kagan (Lockwood version)
- card #6: Cover card

No one gets all six. There is a reason why portable works of art and data like these are called trading cards. High-resolution images of the "First 4" cards are available via the "Supreme Court Sluggers" link on the *Green Bag's* website (www.greenbag.org). For starters, the backs of the Ginsburg card and one of the Kagan cards are reproduced in the right-hand column of this page.

Many "First 4" packets also contain the eleventh and last piece in our first series of "Thought Bubble Gum." It is a simple sticker — an appropriate complement to the luxurious beach towel with which we began our first annual cycle of extravagance. TBG images are available via the "Thought Bubble Gum" link on the *Green Bag's* website.

We may end up with some extra "First 4" cards. If we do, we will probably scatter them arbitrarily and capriciously to, well, whoever receives them.

EXTRAVAGANCE #5

What's next? How will we wrap up 2016? We are still working on it. Indeed, we are working on half-a-dozen extravagances, partly because we would like to get a little bit more ahead of schedule, and partly because a production problem or a threat of spurious litigation or a lost package or something else sometimes fouls things up at the last minute. We will take Extravagance #5 on the road, or drop it in the mail, as soon as we can. We hope you like it.

Has the *Green Bag* managed to fritter away the huge (by our standards) influx of cash resulting from the extravagance of 500 or so generous and fun-loving subscribers? Yes, and it has been fun — for the *Green Bag*, at least.

— Ross E. Davies



A Supreme Court First: Belva Lockwood (above) was the first woman admitted to the Supreme Court bar, and the first to argue a case there. **A Supreme Court "First 4":** Justice Ruth Bader Ginsburg (other side) is portrayed by artist John A. Sargent III in the same pose as catcher (and lawyer) Herold "Muddy" Ruel on the Goudey 4-in-1 card that inspired our "First 4" Sluggers series. See *First 4 Slugger #1*. The others feature Justices O'Connor (as Mickey Cochrane), Sotomayor (as Al Simmons), and Kagan (as Willie Kamm). © 2016 The Green Bag, Inc.



Supreme Court First: Myra Bradwell (above) took her case against sex discrimination to the Court. She lost. *Bradwell v. State* (1873). But her views eventually prevailed. *Frontiero v. Richardson* (1973). **Supreme Court "First 4":** Justice Elena Kagan (other side) is portrayed by artist John A. Sargent III in the same pose as infielder Willie Kamm on the Goudey 4-in-1 that inspired our "First 4" Sluggers series. See *First 4 Slugger #1*. Other "First 4" cards feature Justices O'Connor, Ginsburg, and Sotomayor as other baseball stars. © 2016 The Green Bag, Inc.