

THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

SECOND SERIES

VOLUME 16, NUMBER 4

SUMMER 2013

ESTABLISHED 1889

RE-ESTABLISHED 1997

I think you'll do the job all right, Dixon. It's not that you've got the qualifications, for this or any other work, but there are plenty who have. You haven't got the disqualifications, though, and that's much rarer. Any more questions?

Kingsley Amis

Lucky Jim 234 (1953; Penguin USA prtg. 2002)

THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

Ross E. Davies Editor-in-Chief

David M. Gossett

Executive Editor

Senior Editor Gregory F. Jacob

Contributing Editors

Susan M. Davies Curtis E. Gannon Anna Ivey Thomas B. Nachbar

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 Kate Stith William Van Alstyne

Copyright © 2013 by The Green Bag, Inc., except where otherwise indicated and for original U.S. governmental works. ISSN 1095-5216. "The Green Bag" and the "GB" logo are our registered trademarks. Thanks to O'Melveny & Myers LLP.

SUBSCRIPTIONS. Subscribe at www.greenbag.org or use the form at the back of this issue. Call (800) 828-7571 for back issues. Claims must be filed at subscriptions@greenbag.org by 2/1/14. A subscription to the *Green Bag* buys you one copy of each issue of the journal for the duration of your order. Everything else we make is either a gift we may or may not bestow on some of our subscribers and other people and institutions or a product that must be acquired separately.

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 edit only to keep footnotes from looking like goulash.

WEB CITES. We are not responsible for the accuracy or persistence of URLs for websites referred to in this publication, and 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. We hold all other copyrights. You may copy for classroom use items to which the *Green Bag* holds the copyright if you: (1) distribute them at or below the cost of reproduction; (2) identify the author and the *Green Bag*; (3) affix a proper copyright notice to each copy; and (4) tell us. All other copying requires advance written permission.

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 16, NUMBER 4	•	SUMMER 2013

Ex Ante	
Judge Dave and the Bobblehead	355
To the Bag	
David Roe	357
Authorial Restraint	
Curtis Gannon	357
The [T]-shirt	
Articles	
Erwin Chemerinsky	361
The Court Affects Each of Us: The Supreme Court Term in Review	
Edward K. Cheng & Scott J. Farmer	377
A Normalized Scoring Model for Law School Competitions	
M.H. Hoeflich	395
From Scriveners to Typewriters: Document Production in the 19th-Century Law Office	
John V. Orth	413
Then and Now in the Law of Property	
Antonin Scalia & Bryan A. Garner	419
A Note on the Use of Dictionaries	
From the Bag	
Leonard Garment	431
The Wick Tanes	

Contents

MICRO-SYMPOSIUM: SUZANNA SHERRY'S "WHY WE NEED MORE JUDICIAL ACTIVISM" Richard A. Epstein443 Introduction: In Praise of Suzanna Sherry and **Judicial Activism** Suzanna Sherry449 A Summary of "Why We Need More Iudicial Activism" Aaron-Andrew P. Bruhl......453 Judicial Activism and the Problem of Induction Frank J. Colucci455 Sherry's Model Justice: Anthony Kennedy Scott Dodson......457 Parsing Judicial Activism Scott D. Gerber459 Political Theory and Judicial Activism Diane H. Mazur......461 *Judicial Deference Broke the Military* Howard M. Wasserman.....463 Reappropriating Judicial Activism Evan C. Zoldan......465 Targeted Judicial Activism Suzanna Sherry467 A Response to Comments on "Judicial Activism": Liberty's Safety Net

Acknowledgments, Credits & Featured Books477