

## To The Bag

“Green Bag” has this problem.  
“Green Bag” had to find a cure.  
The chosen resolution, though,  
Is painful to endure.

Instead of sending out the dolls,  
“Green Bag” simply sends a chit.  
What I get is a certificate,  
It’s a hassle [pick a word to fit].

And now I’ll need an ID.  
Just like getting on a plane.  
Kind of like Homeland Security,  
But even more insane.

I live in far mid-Continent,  
Not near the water’s salt,  
So going to George Mason,  
Is no solution, Oy Gevalt!

I don’t belong to the ABA,  
Or its meeting in Chi-town.  
The AALS won’t recruit me,  
So I ain’t District bound.

This means I’m reduced to begging,  
And seek to register a plea-a,  
Can’t I just send you money,  
To Fed Ex my Scalia?

James M. Rosenbaum  
United States District Court  
for the District of Minnesota

## An Irrational Market

To the Bag:

In *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), the Supreme Court upheld the “fraud-on-the-market” theory of securities liability. This theory is founded upon the “efficient market hypothesis,” which posits that in an open and developed market composed of rational investors, an asset’s price will reflect all available material information concerning its value.

*Id.* at 241–42. However, *Basic* was decided by a vote of 4-to-2, with three Justices disqualified and not voting. *Id.* at 250. It thus represented the decision of a “bobtailed court.” Cf. *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 614 (Blackmun, J., dissenting).

A one-year subscription to the Green Bag costs \$35.00. See, e.g., 8 GREEN BAG 2D inside back cover (Summer 2005). For the past four years, many subscribers to the Green Bag have received a complimentary bobblehead doll depicting a Justice of the Supreme Court of the United States. This summer, the Green Bag sent certificates to many of its subscribers redeemable for this year’s bobblehead featuring Justice Antonin Scalia. See *id.* at inside front cover ¶ 335.

It has long been common knowledge that the Green Bag’s bobblehead dolls routinely change hands on eBay auctions for hundreds of dollars or more. See Howard Bashman, *How Appealing*, [www.appellateblog.com](http://www.appellateblog.com), passim. In September 2005 – while many Green Bag subscribers were still redeeming their complimentary certificates – a Justice Scalia doll was auctioned for \$361.00, or more than ten times the Green Bag’s annual subscription price. See *id.* (Sept. 26, 2005, 6:30 a.m.). Meanwhile two auctions of the late Chief Justice Rehnquist’s doll, which was sent to Green Bag subscribers just three years ago, each realized more than \$2,000.

A rational investor – even if he or she is a philistine, interested neither in the learned and entertaining articles published in this journal nor in the aesthetic pleasures of bobblehead ownership – would embrace the obvious arbitrage opportunity presented by this situation. To be sure, the investor would discount for the fact that the Green Bag makes no promise of a bobblehead or anything else other than the journal itself to any subscriber, see 8 GREEN BAG 2D ii ¶ inside back cover (Summer 2005), so that a

subscriber's likelihood of obtaining a bobblehead is less than 100%. Nonetheless, based on past performance, an individual subscriber's parlaying a Green Bag subscription into a valuable commodity is pretty good, and certainly has a discounted present value exceeding \$35.00.

Thus, if the market acted rationally and on the basis of all available information, then logically, everyone would immediately subscribe to the Green Bag. The demonstrable fact that this has not yet occurred suggests that investors sometimes ignore well-publicized information about their investment opportunities. The market is not always rational and efficient after all.

Within a few years, the Green Bag will have produced bobbleheads of at least six sitting Justices, representing a quorum of the Court, 28 U.S.C. § 1, and the same number who sat in *Basic*. The market for those selfsame bobbleheads, as compared with that for Green Bag subscriptions, will probably continue to undermine the foundations of *Basic*. Which raises the question: Can a bobtailed Court be overruled by a bobblehead one?

Ira Brad Matetsky  
Ganfer & Shore, LLP  
New York, NY

