



# TO THE BAG

## AUTHORITATIVE INDECISION

To the *Bag*:

Apropos of Judge Wilson’s *My God! Now He Is Arguing with Himself*, 12 GREEN BAG 2D 475 (2009), you might want to consider publishing Justice Jackson’s concurrence in *McGrath v. Kristensen*, 340 U.S. 162 (1950), which cites Lord Westbury “who, it is said, rebuffed a barrister’s reliance upon an earlier opinion of his Lordship: ‘I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion.’” Justice Jackson’s concurrence is cited in Justice Sims’s opinion in *People v. Webb*, 186 Cal. App. 3d 401 (1986), which begins, “I write separately to fall on my sword.” Both opinions found their way into 4 C.I.Q. 1, at 4, where we wrote in the editorial box, “In the last issue, we stated that all errors were attributable to Rob James. Alas, that statement itself was in error.” (That issue of *CIQ* was accompanied by an erratum sheet that reprinted an order modifying an opinion in which a party’s name was published in error; the order modifying the opinion, of course, reprinted the defendant’s name fifteen times, presumably to ensure no one would notice the name.)

Adam Sachs

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To the *Bag*:

Judge Wilson’s letter to Judge Gruender reminds me of the classic example: “The matter does not appear to me now as it appears to have appeared to me then.” *Andrews v. Styrap*, 26 L.T.R. (N.S.) 704,

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*Baron Bramwell*

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706 (Ex. 1872) (Bramwell, B.). This is quoted, with several other examples, by Jackson, J., writing separately in *McGrath v. Kristensen*. I once did a piece on recantation for Judicature that goes into some detail on *Andrews v. Styrup* (which had to do with bogus academic degrees) and Baron Bramwell. It was great fun to research.

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## To the Bag

To the *Bag*:

Your Summer 2009 issue contained a letter from U.S. District Judge William R. Wilson to U.S. Circuit Court Judge Raymond Gruender concerning individuals ruling inconsistently with their prior rulings or positions.

This issue was the subject of an episode in Gilbert & Sullivan's *The Mikado*. Here is the dialogue, in Act I, between Ko-Ko (the Lord High Executioner) and Pooh-Bah (the Lord High everything else):

*Ko* Pooh-Bah, it seems that the festivities in connection with my approaching marriage must last a week. I should like to do it handsomely, and I want to consult you as to the amount I ought to spend upon them.

*Pooh* Certainly. In which of my capacities? As First Lord of the Treasury, Lord Chamberlain, Attorney-General, Chancellor of the Exchequer, Privy Purse, or Private Secretary?

*Ko* Suppose we say as Private Secretary.

*Pooh* Speaking as your Private Secretary, I should say that, as the city will have to pay for it, don't stint yourself, do it well.

*Ko* Exactly – as the city will have to pay for it. That is your advice.

*Pooh* As Private Secretary. Of course you will understand that, as Chancellor of the Exchequer, I am bound to see that due economy is observed.

*Ko* Oh! But you said just now "Don't stint yourself, do it well."

*Pooh* As Private Secretary.

*Ko* And now you say that due economy must be observed.

*Pooh* As Chancellor of the Exchequer.

*Ko* I see. Come over here, where the Chancellor can't hear us. (*They cross the stage.*) Now, as my Solicitor, how do you advise me to deal with this difficulty?

*Pooh* Oh, as your Solicitor, I should have no hesitation in saying "Chance it –"

*Ko* Thank you. (*Shaking his hand.*) I will.

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*Pooh* If it were not that, as Lord Chief Justice, I am bound to see that the law isn't violated.

*Ko* I see. Come over here where the Chief Justice can't hear us. (*They cross the stage.*) Now then, as First Lord of the Treasury?

*Pooh* Of course, as First Lord of the Treasury, I could propose a special vote that would cover all expenses, if it were not that, as Leader of the Opposition, it would be my duty to resist it, tooth and nail. Or as Paymaster-General, I could so cook the accounts that, as Lord High Auditor, I should never discover the fraud. But then, as Archbishop of Titipu, it would be my duty to denounce my dishonesty and give myself into my own custody as First Commissioner of Police.

*Ko* That's extremely awkward.

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