



THE GREEN BAG

AN ENTERTAINING JOURNAL OF LAW

SECOND SERIES • VOLUME 14, NUMBER 4 • SUMMER 2011

ESTABLISHED 1889 • RE-ESTABLISHED 1997

[A] word of advice to such of my hearers as may happen to be professors. I am allowed to use plain English because everybody knows that I could use mathematical logic if I chose. . . . I suggest to young professors that their first work should be written in a jargon only to be understood by the erudite few. With that behind them, they can ever after say what they have to say in a language 'understood of the people'. In these days, when our very lives are at the mercy of the professors, I cannot but think that they would deserve our gratitude if they adopted my advice.

Bertrand Russell

*How I Write, in Portraits from
Memory (1956)*

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
Anna Ivey

Curtis E. Gannon


Britton B. Guerrina
Thomas B. Nachbar

Board of Advisers

Robert C. Berring
A. Morgan Cloud
Richard A. Epstein
Samuel Estreicher
Leonard Garment
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 © 2011 by The Green Bag, Inc., except where otherwise indicated and for original U.S. governmental works. ISSN 1095-5216. "The Green Bag" and the  are our registered trademarks. Thanks to Mayer Brown 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 2/21/12. 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. 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.

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 14, NUMBER 4 • SUMMER 2011

EX ANTE

<i>Our Mistake</i>	355
<i>Canadian Green Bag Update</i>	355
<i>Waiting for Wayne State</i>	358
<i>ABA Resolution 10B, Part 2</i>	359
<i>A Founding Tiger Mother</i>	361
<i>The Annotated Bobblehead: Justice Clarence Thomas</i>	362

TO THE BAG

Robert A. James	365
<i>A Madman by Any Other Name</i>	
Ira Brad Matetsky.....	366
<i>The Titles 6</i>	
Daniel H. Borinsky.....	367
<i>In for a Dime, in for 90 Million</i>	
Erik M. Jensen.....	368
<i>A Tax or Not a Tax, That Is the Question</i>	

ARTICLES

Erwin Chemerinsky	375
<i>Closing the Courthouse Doors:</i> <i>October Term 2010</i>	
Charles G. Kels	391
<i>Active Practice</i>	

Contents

Stephen R. McAllister.....	405
<i>A Marbury v. Madison Moment on the Eve of the Civil War: Chief Justice Roger Taney and the Kentucky v. Dennison Case</i>	
John V. Orth.....	423
<i>Plain Meaning in the Law of Property: A Socratic Dialogue</i>	

FROM THE BAG

Ross E. Davies.....	435
<i>The Judiciary Funded: The Generosity of David Dudley Field</i>	
David Dudley Field & Daniel W. Middleton.....	445
<i>Correspondence, 1873-1878</i>	

REVIEW

J.W. Verret.....	455
<i>Concrete Rules and Fluid Feds</i>	
<i>Allan H. Meltzer, A History of the Federal Reserve, Volume 2, Books 1 & 2, 1951-1986 (University of Chicago Press 2009)</i>	

EX POST

Scott J. Silverman	467
<i>A South Florida Legal Brief</i>	
<i>Acknowledgments, Credits & Featured Books</i>	469