



# TO THE BAG

## THE TEMPTATION OF THE JUSTICES

To the *Bag*:

Judge Wilkinson's speech this year to the Federalist Society (*The Lost Arts of Judicial Restraint*, 16 GREEN BAG 2D 51) perfectly marks the 50th anniversary of Alexander Bickel's book *The Least Dangerous Branch* (1962).

When Judge Wilkinson and I were in law school together in the early '70s, being taught constitutional law by Prof. Bickel before his tragically young death, his message of judicial restraint was being aimed at Warren Court devotees and overeager "liberal" judges. Judge Wilkinson now aims the same message at Rehnquist/Roberts Court devotees, and overeager "conservatives" (in quotes for both, because inaccurate for both). That the message should have to be redirected from left to right speaks to its timelessness.

So, of course, does its most familiar literary expression, in the mouth of Sir Thomas More: "Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? . . . [I]f you cut them down, . . . do you really think you could stand upright in the winds that would blow then?" (*A Man For All Seasons*, 1966). Temptation and restraint are an eternal theme in law, as elsewhere.

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