Dear Readers:

Much to our surprise, and thanks to all of you, the Green Bag, Second Series is still in business as we approach the tenth anniversary of our first publication. In giddy anticipation of that event, we will be engaging in a variety of frivolities, beginning with some experimentation in publication re-design (you are holding the first example). Others will follow.

In the meantime, we direct your attention to this issue of the Bag. Like Dr. Frankenstein, we have good intentions, but whether society (or even the creation itself) can see the beauty in our work is another matter. And so, as always, we welcome your comments on our form and our content.

Gratefully and enthusiastically yours,

The Editors
# The Green Bag

**AN ENTERTAINING JOURNAL OF LAW**

Ross E. Davies  
*Editor-in-Chief*

David M. Gossett & Montgomery N. Kosma  
*Executive Editors*

Gregory F. Jacob & Roger V. Skalbeck  
*Senior Editors*

### Contributing Editors

<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniel G. Currell</td>
<td>Curtis E. Gannon</td>
<td>David B. Salmons</td>
</tr>
<tr>
<td>Susan M. Davies</td>
<td>Britton B. Guerrina</td>
<td>Keith Sharfman</td>
</tr>
<tr>
<td>Thomas H. Dupree, Jr.</td>
<td>Thomas B. Nachbar</td>
<td>Amy Steacy</td>
</tr>
</tbody>
</table>

### Board of Advisers

<table>
<thead>
<tr>
<th>Name</th>
<th>Name</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Robert C. Berring</td>
<td>Suzanne Garment</td>
<td>Henry P. Monaghan</td>
</tr>
<tr>
<td>A. Morgan Cloud</td>
<td>Bryan A. Garner</td>
<td>James M. Rosenbaum</td>
</tr>
<tr>
<td>David P. Currie</td>
<td>Mary Ann Glendon</td>
<td>Suzanna Sherry</td>
</tr>
<tr>
<td>Richard A. Epstein</td>
<td>R.H. Helmholtz</td>
<td>A.W.B. Simpson</td>
</tr>
<tr>
<td>Samuel Estreicher</td>
<td>Philip B. Heymann</td>
<td>Kate Stith</td>
</tr>
<tr>
<td>Leonard Garment</td>
<td>Dennis J. Hutchinson</td>
<td>William W. Van Alstyne</td>
</tr>
</tbody>
</table>

Copyright © 2006 The Green Bag, Inc., except where otherwise indicated and for original U.S. governmental works. ISSN 1095-5216. "The Green Bag" and the logo are our registered trademarks. Thanks to Jones Day; Mayer, Brown, Rowe & Maw LLP; and Gibson, Dunn & Crutcher LLP.

**SUBSCRIPTIONS.** Subscribe at [www.greenbag.org](http://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 3/11/07. 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 produce is a gift that may or may not be delivered to some or all of our subscribers (e.g., a bobblehead) or a product that you may purchase separately (e.g., Judge Dave & the Rainbow People). When we do arbitrarily give away goodies, we do not give multiple goodies to anyone.

**EDITORIAL POLICY.** We publish authors' ideas in their own words. We fix typos and mistakes and make minor changes to produce an aesthetic, readable journal. Additional suggestions are just that.

**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, clear, and short (i.e., no more than 5,000 words and 50 footnotes, which count against your 5,000).

**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 author. We hold all other copyrights. You may copy such items for classroom use, if you: (1) distribute copies at or below the cost of reproduction; (2) identify the author and the Green Bag; (3) affix 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](http://www.greenbag.org), email editors@greenbag.org, or call (703) 993-8049.
## CONTENTS

**SECOND SERIES ● VOLUME 10, NUMBER 1 ● AUTUMN 2006**

### Ex Ante

*Redemption Might Be Yours* .................................................. 1  
*Readable Law Reviews* .......................................................... 2  
*Grandpa’s Old Bag* .............................................................. 2  
*Thirdteenth Amendment* ..................................................... 3  
*This Just In* ........................................................................ 5

### To the Bag

Dennis J. Smith ................................................................. 6  
*Ceramic Symbolism*

Michael I. Krauss .............................................................. 6  
*The Kosher Bagel Fish*

### Articles

Joshua Deahl & Bernard A. Eskandari ....................... 7  
*Before & After the Colon*

Allan B. Ecker ................................................................. 25  
*On Motion …*

Richard A. Epstein .......................................................... 37  
*Ending the Mad Scramble: An Experimental Matching Plan for Federal Clerkships*

Samuel Estreicher ............................................................ 49  
*In Defense of Theory: Notes on the Production of Legal Scholarship*
Contents

John V. Orth ........................................................................................................65
  Second Thoughts in the Law of Property

FROM THE BAG

Ross E. Davies ....................................................................................................79
  The Reluctant Recusants: Two Parables of Supreme Judicial Disqualification

Thurgood Marshall et al. ..................................................................................93
  NAACP Recusals

REVIEWS

Charles J. Reid, Jr. ..............................................................................................109
  Hugo Grotius: A Case of Dubious Paternity

Richard A. Paschal ...........................................................................................125
  Constitutional Birth Pains

EX POST

Pendleton Gaines ...............................................................................................139
  Out to Lunch: Physicians Choice v. Miller

Michael Parish ....................................................................................................144
  The Gage Is Mort

Robert E. Rains .................................................................................................145
  The Criminals Who Miscalculated:
      Ratliff v. State

10 GREEN BAG 2D  •  AUTUMN 2006