Behind the GREEN BAG

What jiggles, is judicial, and can be acquired at auction for about a thousand dollars? Consider yourself ultra hip if you actually possess one of the three issued so far: Chief Justice Rehnquist, Justice Stevens, and Justice O'Connor.

The bobbleheads provide some marketing sizzle to the Green Bag, but there's plenty of steak there, too. Founded by three 1997 Law School graduates, with four current Law School faculty members sitting on its advisory board and a vast, multiwing conspiracy of alumni pitching in, Green Bag, Inc. has carved out a niche which seems poised to widen into a publishing empire.

The Green Bag is a law journal founded by Ross Davies, David Gossett, and Montgomery Kosma while they were still law students. They published the first issue soon after graduation, in October 1997. The journal proclaims itself "An Entertaining Journal of Law," and so it is. Entertaining doesn't mean unserious, but it does mean different. In a short time the Green Bag has become recognized as an important contribution to legal scholarship and to the pleasure that committed lawyers take from their profession.

The articles are short, provocative, and engaging. Brian Brooks, '94, a reader and contributor, says, "The editorial style is intended to start an interesting legal discussion rather than trying to have the final word on any subject." He adds, "the Green Bag is for people who care about novel legal ideas, not just to help them with a current case but also because the ideas are interesting in their own right. You could say it's a journal for people who not only work in the law, but enjoy it as one of their hobbies, too."

The Green Bag is increasingly cited in judicial opinions and in other scholarly works. Many of its distinctive qualities are finding their way into journals from the country's leading law schools and are being advocated by leading legal thinkers such as Judge (and Law School senior lecturer in law) Richard M. Posner. The Green Bag enjoys a growing subscription list at a time when many law journals are experiencing circulation slumps. Yale's law journal, for example, has fallen from about 7,000 paid subscribers in 1960 to about 4,000 today.

An Old Bag Inspires New Dreams
Green Bag, the business and the journal, came into being in the way many great things spring from the Law School: through a combination of intense intellectual curiosity, faculty support for exciting new ideas, and a whole lot of entrepreneurial drive. Serendipity played a part, too. In 1996, Davies, as a University of Chicago Law Review staffer, was diligently cite checking an eighty-two page book review. With a perhaps higher-than-normal level of intellectual curiosity, he decided to divert himself on breaks by heading to the library shelves to look through all the law journals there, browsing them in alphabetical order.

After making his way from Akron's law review through Gonzaga's, he encountered a series of old journals, published from 1889 until 1914—the original Green Bag. Davies was immediately captivated by the journal's content. "Kind of enchanting," he says. As he has written about that journal, "Almost every contribution was short, well-written, only lightly footnoted, and thought-provoking. It was, in essence, a journal that appealed to those who valued useful and engaging reading on the legal issues of the day."

As it happens, right around that same time Davies's close friend Kosma was alsocite checking and one of those cites led him directly to the original Green Bag, of which he says, "I instantly became enamored."

The next year Davies became University of...
Chicago Law Review editor in chief. Gossett was serving as an editor there as well. Kosma, who had three children at that time, decided the law review was not a top priority (he did, nevertheless, fit some editing for the Harvard Journal of Law and Public Policy into his schedule). Davies also had a wife and two children and served on the HJLPP editorial board as well, but there came a moment, Gossett recalls, when the possibility of creating a different kind of journal struck them all as very appealing.

Currie’s Favor

Their hopes grew wings as they turned to Law School faculty for ideas about the audacious possibility of publishing a new journal. David Currie, who also remembers encountering the original Green Bag in the same way Davies and Kosma did when cite checking a law review article as a student in

Members of the Green Bag’s editorial board gather monthly for lunch and conversation. These meetings begin with a general discussion of current and future Green Bag projects, and then range widely, anything from the dissenting opinion in Roper v. Simmons to the films of Keanu Reeves. The photographs on these pages were taken at the March 2005 meeting, at which the next bobblehead in the near-legend series was unveiled: Justice Antonin Scalia. It’s worth noting that two versions of the Scalia were made, a “majority” Scalia and a “dissenting” Scalia, each with details illustrating famous cases from those two categories. As to which was ultimately chosen for production, the Record has been sworn to secrecy.
the 1950s, was a principal source of inspiration. Green Bag, in his words, “called to me from just to the left of the Harvard Law Review.”

Currie gladly joined the journal’s advisory board, as did Richard Epstein, Richard Helmholz, and Dennis Hutchinson. Gossett says that these faculty members, along with others, made it possible for the upstart journal to gain a foothold. “They saw value in what we were doing and provided every imaginable kind of assistance, from thinking through logistics to opening doors with distinguished contributors to writing brilliant pieces themselves,” Gossett recalls. “There’s no way we would have succeeded without their help.”

By the time they had graduated, Davies, Gossett, and Kosma had the first issue of the new journal well underway. In addition to Currie’s introduction, they acquired contributions from Epstein, Cass Sunstein, Merton Miller, Mark Tushnet, Theodore Olson, and a host of other luminaries. No article in that first issue was more than fifteen pages long; none labored under a landslide of footnotes; all were invitingly readable and pertinent.

After graduation, Davies and Gossett clerked together for Judge Diane P. Wood at the Seventh Circuit Court of Appeals, and Kosma clerked for Judge David B. Sentelle at the Court of Appeals for the D.C. Circuit. Not only did they keep finding time to publish the the Green Bag on schedule; Kosma’s experience led to the 2002 book, Judge Dave and the Rainbow People—now the best-selling title in the Green Bag, Inc. book division. They also publish, among other things, Quidsome Balm, the legal musings of David Currie’s father, Brainerd (“rhyed paraphrases of exotic cases,” as Currie describes them), and In Chambers Opinions, a three-volume set (with a supplement) containing opinions written by individual Supreme Court Justices sitting as Circuit Justices, when they grant or deny an application that has come before them from their assigned Circuit.

The Greening of Law Reviews

With its relatively brief, highly readable articles, the Green Bag at first was bucking a trend in legal scholarship toward massive, and massively footnoted, journal articles. The trend is now reversing itself. Judge Posner, with characteristic pungency, observed in his article “Against the Law Reviews” in the November/December 2004 issue of Legal Affairs, “The result of the system of scholarly publication in law is that too many articles are too long, too dull, and too heavily annotated . . .” Harvard Law Review recently announced the results of a survey of nearly 800 law professors by saying, “[T]he survey documented one particularly unambiguous view shared by faculty and law review editors alike: the length of articles has become excessive. In fact, nearly 90% of faculty agreed that articles are too long.” “We might have seen some trends a few years before others caught on to them,” concedes Kosma, and Gossett says his highest satisfaction

Justice John Paul Stevens was the second so honored. The order in which they were created reflects each Justice’s seniority on the court.
from the journal comes from “feeling like I’m part of something that is changing the legal academy.”

It Takes a Community

“Being part of something” is an operative phrase for the three founders, who happily acknowledge that they belong to a community of people willing to invest considerable effort toward creating the kind of journal they want to read. Green Bag is still a sideline: Davies teaches law at George Mason University, while Kosma practices at Jones Day and Gossett is a partner at Mayer Brown Rowe & Maw. (Last April, Gossett argued his first case before the Supreme Court, winning it unanimously.)

A large contingent of Washington, DC-based alumni serve on the editorial board or otherwise support its activities. Senior editors include James Ho, ’99, Chief Counsel of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights; Gregory Jacob, ’99, Deputy Solicitor at the Department of Labor; and Thomas Nachbar, ’97, Associate Professor of Law at the University of Virginia Law School.

Contributing editors include Susan Davies, ’91, who works on the hill with Senator Patrick Leahy; Thomas Dupree, ’97, an appellate litigator at Gibson Dunn & Crutcher; and David Salmons, ’96, Assistant to the Solicitor General. Also in Washington is Brian Brooks, a partner at O’Melveny & Myers who has contributed two Green Bag articles—

including one of the most-cited, “Unpublished Opinions,” which he co-wrote with Danny J. Boggs, ’68, Chief Judge of the Sixth Circuit Court of Appeals.

The other contributing editors are more geographically dispersed but they remain close to the action. Britton Guerrina, ’99, is in Chicago at Mayer Brown Rowe & Maw, and Keith Sharfman, ’97, teaches at Rutgers. Dan Currell, ’97, trots the globe in his role as a Senior Director with the General Counsel Roundtable, but that doesn’t mean he’s out of touch. In each common-law country he visits he arranges an appointment with a high-level judge and sends back dispatches about his conversations.

The variety of work experience the alumni editors and contributors bring to their engagement with the Green Bag—and the range of political views they represent—provoke an ongoing stream of fresh ideas for articles, books, and products. “At any time,” Kosma observes, “we might be evaluating a hundred or more different possibilities.” Right now, for instance, more than seventy-five scouts have been enlisted to collect examples of superior legal writing, for possible compilation into a new annual periodical.

“The best way to understand all this,” Ross Davies says, “is that we all loved law school and many of us were very good friends there, so in many ways the Green Bag is an extension for us of what the Green Lounge was. They may say you can’t go home, but we’re keeping things homey for as long as we can.”—G.deJ.

Last year saw Justice Sandra Day O’Connor added to the series. Annotations may be found on the Green Bag website, www.greenbag.org.

David Gossett and Greg Jacob

David Salmons, David Gossett, and Judge David Sentelle