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Three States, One River: Exploring the Tri-State Water Dispute, 22nd Annual Red Clay Conference

Environmental Law Society

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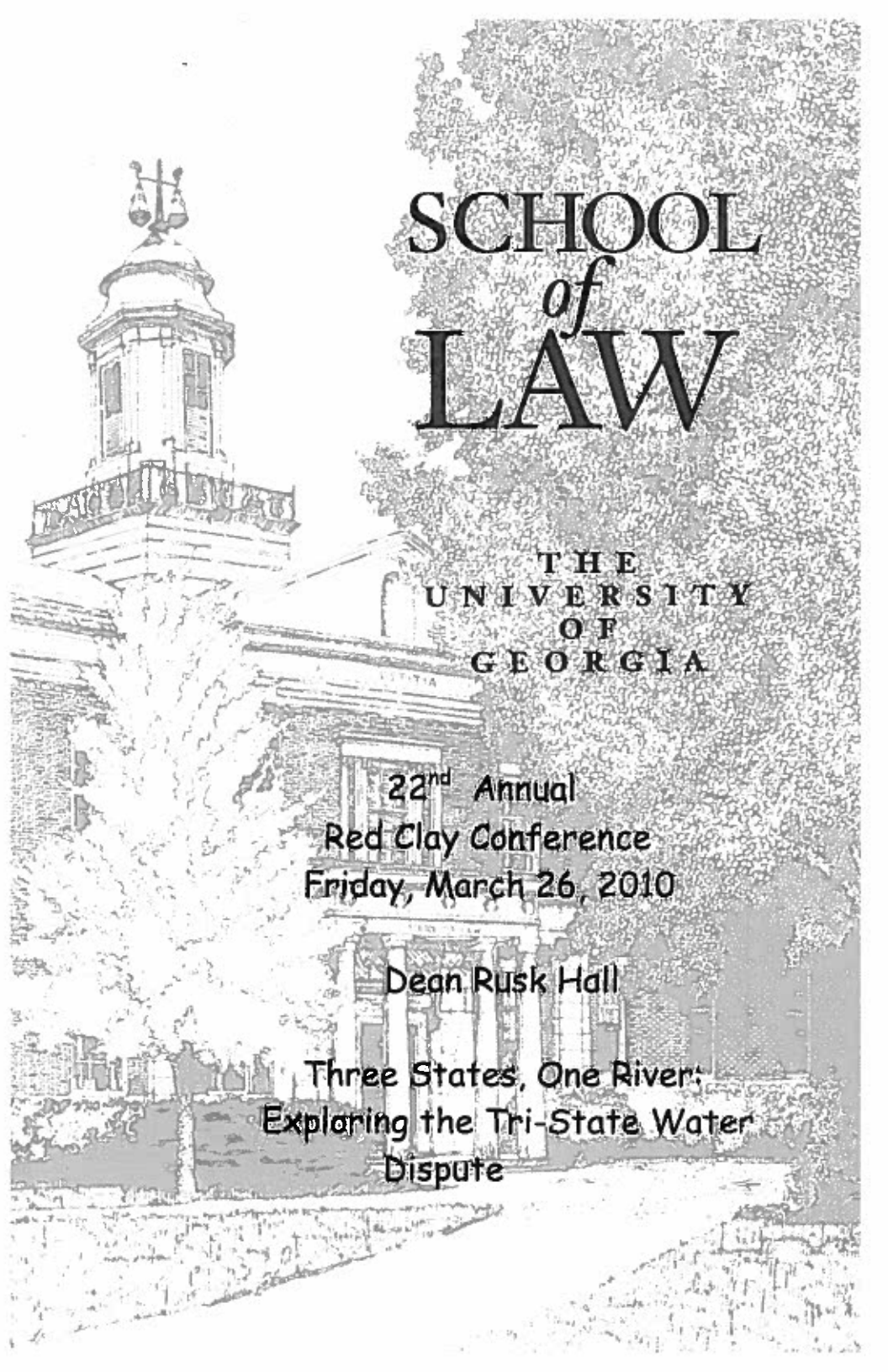
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SCHOOL *of* LAW

THE
UNIVERSITY
OF
GEORGIA

22nd Annual
Red Clay Conference
Friday, March 26, 2010

Dean Rusk Hall

Three States, One River:
Exploring the Tri-State Water
Dispute

22nd Annual Red Clay Conference

Three States, One River: Exploring the Tri-State Water Dispute

Friday March 26, 2010
Dean Rusk Hall
9:00am-4:45pm

Presented by:

The Environmental Law Association

University of Georgia School of Law



Sponsored by:

Professor Bertis Downs

R.E.M.

Westlaw

LexisNexis

&

The University of Georgia School of Law

Agenda

- 8:30-9:00:** Registration & Coffee
- 9:00-9:10:** Welcome by Dean Rebecca H. White
- 9:20-10:20:** “Are We Tapped Out Yet?: Think Globally, Act Locally”

Keynote Speaker:

Rutherford Seydel—Davis, Pickren & Seydel, LLP

10:20-10:30: Break

10:30-11:30: A Tri-State Perspective

Moderator:

Professor Peter Appel—University of Georgia School of Law

Panelists:

1. *Billy Houston*—Alabama ACF Stakeholder (Tri Rivers Development Association)
2. *Wilton Rooks*—Georgia ACF Stakeholder (Lake Lanier Association)
3. *Dan Tonsmeire*—Florida ACF Stakeholder (Apalachicola Riverkeeper)

11:30-11:45: Break

11:45-12:45: Is Atlanta Really the 800 Pound Gorilla?

Moderator:

Professor Jamie Baker Roskie—University of Georgia School of Law

Panelists:

1. *Bruce Brown*—McKenna, Long & Aldridge, LLP
2. *Lewis Jones*—King & Spalding
3. *Craig Pendergrast*—Seyfarth Shaw, LLP
4. *Gil Rogers*—Southern Environmental Law Center

12:55-1:55: Lunch “The Tri-State Water Dispute: Is There A Way Forward?”

Keynote Speaker:

Joseph Dellapenna—Villanova University School of Law

2:00-3:00: Water Wars in the Year 2060*

Moderator:

Professor Christian Turner—University of Georgia School of Law

Panelists:

1. ***Braye Boardman***—Governor’s Savannah River Committee of Georgia and Savannah-Upper Ogeechee Regional Water Council
2. ***Jim Kundell***—UGA Odum School of Ecology
3. ***David Moore***—Balch & Bingham, LLP

3:00-3:15: Break

3:15-4:15: Potential Resolutions

Moderator:

Professor Laurie Fowler—University of Georgia School of Law

Panelists:

1. ***Brad Carver***—Hall, Booth, Smith & Slover, PC
2. ***Jeff Minear***—United States Supreme Court
3. ***Todd Rasmussen***—UGA Warnell School of Forestry and Natural Resources

4:15-4:45: Question & Answer Session

Moderator:

Rob McDowell—Carl Vinson Institute of Government

4:30-4:45: Closing Remarks by Professor Peter Appel

***Notes Blue Card Event for UGA undergraduate students**

is an Advisory Board member of the National Parks and Conservation Association and Land Trust Alliance. Mr. Seydel is an officer of United Nations Foundation, Turner Foundation, and Turner Endangered Species Foundation and involved with numerous other organizations.

Joseph W. Dellapenna: Mr. Dellapenna is Professor of Law at Villanova University, in Villanova, Pennsylvania. He has taught at law schools in the United States and abroad for 42 years. He has practiced, taught, and written about water, both in the United States and internationally, for this entire period. He teaches a course on Managing the Water Environment and has also taught courses on Admiralty, Chinese Law, Environmental Law, Natural Resources Law, Ocean and Coastal Management Law, as well as other courses. Professor Dellapenna has served as a consultant to governments on three continents regarding water law reform and on transboundary water disputes. In particular, he prepared four "White Papers" for the Comprehensive State Water Plan Joint Study Committee of Georgia in 2001 and 2002.

Professor Dellapenna also represented the Connecticut Water Works Association in *City of Waterbury v. Town of Washington*, 260 Conn. 506, 802 A.2d 1102 (2002), persuading the Connecticut Supreme Court to adopt a significant reinterpretation of Connecticut water law. He serves as Director of the Model Water Code Project of the American Society of Civil Engineers and served as Rapporteur of the Water Resources Committee of the International Law Association. He serves as chair of the Water Regulatory Standards Committee and served as Chair of the Standards Development Council of the Environment and Water Resources Institute of the American Society of Civil Engineers. He contributed nearly half of the treatise *WATERS AND WATER RIGHTS*, the standard reference on water law in the United States, as well as authoring numerous other books and articles.

Professor Dellapenna received a B.B.A. with distinction from the University of Michigan in 1965, a J.D. *cum laude* from the Detroit College of Law in 1968, an LL.M. in Public International and Comparative Law from the George Washington University in

1969, and an LL.M. (Environmental Law) from Columbia University in 1974.

Panelists

A Tri-State Perspective

Wilton Rooks: Mr. Rooks is Chairman of the Executive Committee for the ACF Stakeholders and Vice President Technical Programs of Lake Lanier Association, graduated from Georgia Tech with a Bachelor and Masters in Aerospace Engineering. After spending time in the Air Force assigned to NASA's Saturn Apollo program, he entered the computer industry and served various roles, culminating as President of his own company. During his career he has served on various community organizations including Leadership Atlanta, Harvard Conservation Trust, St. Augustine Lighthouse Board, Scenic Florida and Scenic Georgia boards. He is active with the Adopt-a-Lake Program and provides technical consultation on water related issues for the Lake Lanier Association. Currently his time is spent on the ACF Stakeholder initiative, Lake Lanier Association's agenda of a full and clear lake, and Scenic Georgia. These activities have a common thread - working to protect valuable resources of the state of Georgia's citizens and businesses.

Dan Tonsmeire: Mr. Tonsmeire has served as Riverkeeper for the Apalachicola River since February 2004. Prior to that he worked for 15 years as a water resource planner with the Northwest Florida Water Management District where he was the principal planner for the development and implementation of the Northwest Florida Surface Water Improvement and Management (SWIM) Program on the Apalachicola Bay and River. In prior years Mr. Tonsmeire was resident manager for the 1,250-acre Jeff Lewis Wilderness Preserve on Dog Island, Florida where he facilitated and coordinated research and Program Development for The Nature Conservancy. In addition he has had hands-on experience as a backcountry guide in Idaho, a commercial fisherman in Alaska, and an owner and operator of a small marine construction company in Alabama and Florida. Mr. Tonsmeire graduated in Civil

Engineering from Auburn University and currently holds a USCG Ocean Operators license and Florida Real Estate license.

Billy Houston: Mr. Houston is a graduate of Auburn University and the LSU School of Banking. After a career of 34 years with Compass Bank, a 5 billion dollar Sun Belt Holding Company headquartered in Birmingham, AL, the last 14 of those years serving as City President -- Eufaula, AL, he worked as Economic Development Manager for the Eufaula/Barbour County Chamber Of Commerce. In 2006 he was recruited to be the executive director of Tri Rivers Waterway Development Association. In this capacity, he became involved with The Coalition of Alabama Waterways (CAWA) and now serve CAWA as its President. In April 2009 he was appointed to the Alabama Commission Office of Water Resources.

Is Atlanta Really the 800 Pound Gorilla?

Bruce P. Brown: Mr. Brown, a partner with McKenna Long & Aldridge LLP in Atlanta, represents the State of Georgia in the "water wars" cases against the States of Alabama and Florida and the United States Army Corps of Engineers. He is a 1979 graduate of Davidson College, and a 1984 graduate of the University of Georgia School of Law. After graduating from UGA Law, Mr. Brown clerked for Edward A. Tamm on the United States Court of Appeals for the District of Columbia Circuit, and then for Chief Justice of the United States Warren E. Burger.

Mr. Brown has represented the State in the water cases since 1999 and, in the course of that representation, has appeared before district courts in D.C., Alabama, Georgia and Florida; the Eleventh Circuit; the D.C. Circuit; and, on petitions for (and against) writs of certiorari, the United States Supreme Court. In addition to his work on the water cases, he represents clients in a variety of commercial and constitutional litigation.

Lewis Jones: Mr. Jones is a counsel on King & Spalding's Tort & Environmental Litigation Practice Group. His practice concentrates on water resources as well as general environmental

litigation. He has extensive experience in the areas of water supply and water allocation, wetlands permitting, the Endangered Species Act, as well as, other environmental statutes such as the Clean Air Act and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Mr. Jones counsels clients seeking to obtain permits from state and federal agencies and defends them in litigation. Of relevance to this conference, Mr. Jones represents the metropolitan-area water supply providers in the long-running dispute between Alabama, Florida and Georgia over the waters of the ACF and ACT River Basins. Mr. Jones holds a J.D. from Harvard Law School, an M.S. in Land Resources from the University of Wisconsin-Madison, and a B.S. from the University of the South in Sewanee, Tennessee.

Craig Pendergrast: Mr. Pendergrast is a partner in the Atlanta office of the national law firm of Seyfarth Shaw LLP and leads its environmental practice in that office. He is a lifelong Georgian and a 1984 graduate of the University of Georgia Law School. Mr. Pendergrast received his undergraduate degree from the University of North Carolina at Chapel Hill. His environmental practice spans most sectors of environmental law, he has a particular love for and expertise in water law. His writings include a treatise on the Fundamentals of Water Law in Georgia, which is housed in the UGA library's Draper Collection on Water Law and Policy.

Mr. Pendergrast presently serves on the Georgia Advisory Council of the Trust for Public Land, the Metropolitan Atlanta Chamber of Commerce's Environmental Policy and Sustainability Committee, and on the board of Keep Atlanta Beautiful. He previously served as the sole attorney on the committee of the Metropolitan North Georgia Water Planning District, which developed its integrated water management plans and related model ordinances. He also served for seven years on the board of the Georgia Conservancy, where he led its successful effort to restore river flows through Tallulah Gorge.

Gil Rogers: Mr. Rogers is a senior attorney with the Southern Environmental Law Center in Atlanta. SELC is a regional

nonprofit legal organization dedicated to protecting natural resources and special places throughout the Southeast. He is a native of Birmingham, AL, and graduated from Princeton University in 1998 with a degree in ecology and evolutionary biology, and a certificate in environmental studies. He went on to Harvard Law School, where he graduated in 2002. Mr. Rogers work at SELC focuses on water management and water quality issues in both Georgia and Alabama. In 2005, he was named Water Conservationist of the Year by the Georgia Wildlife Federation.

Water Wars in 2060

Braye Boardman: Mr. Boardman currently serves on the board of directors of the Southeastern Natural Sciences Academy, Augusta Tomorrow, the CSRA Alliance for Fort Gordon, the Tuttle-Newton Home, the Nature Conservancy (Georgia Chapter), the Episcopal Day School, Georgia Bank and Trust, and the Community Foundation for the Central Savannah River Area. He graduated from the College of Charleston with a degree in Political Science, and from the Institute for Georgia Environmental Leadership. In 2001 Mr. Boardman formed Beacon Blue, LLC, a holding company involved in real estate development and management.

Mr. Boardman been involved with various civic organizations over the years including, the Central Savannah River Land Trust, and the Georgia Conservancy. In addition, he serves as a member of Governor's Savannah River Committee of Georgia and the Savannah - Upper Ogeechee Regional Water Council.

James E. Kundell: Dr. Kundell is Professor Emeritus at the University of Georgia where he served as the Director of the Vinson Institute of Government's Environmental Policy Program and Professor of Environmental Policy in the Odum School of Ecology. For 30 years Dr. Kundell served as Science Advisor to the Georgia General Assembly. He has conducted a wide variety of policy studies on water and other environmental issues and is the author of over 150 books, articles and policy monographs. He is currently working on a book on the evolution of environmental

policy in Georgia and serves as Chairman of the Environmental Advisory Board to the Chief of Engineers of the U.S. Army Corps of Engineers.

David Montgomery Moore: Mr. Moore practices environmental and renewable energy law, assisting clients in permitting, enforcement, litigation, and compliance. As a biologist and attorney, formerly with United States Environmental Protection Agency offices in Atlanta, Washington D.C., and New York, Mr. Moore brings a multidisciplinary, problem solving approach to the practice of law. His work has included representing clients on high profile environmental matters, including: Everglades restoration, the Alabama-Florida-Georgia water issues, and precedent setting cases under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Safe Drinking Water Act, Clean Water Act, and many others.

Mr. Moore is a leading renewable energy lawyer, and has assisted with legal issues under the Federal Power Act, Energy Policy Act of 2005, and more recent renewable energy incentives and credits. He has extensive experience in all aspects of carbon and other greenhouse gas emissions regulation, trading, accounting and development.

Potential Resolutions

Maj. William Bradley Carver: Maj. Carver is a practicing attorney at Hall Booth Smith & Slover, P.C. in Atlanta, focusing on energy, utilities, environmental and local government law specializing in electric, natural gas, and telecommunications regulation. He is a 1994 graduate of Duke University (A.B.) and 1999 graduate of the University of Georgia (M.B.A. and J.D.). Maj. Carver represents clients before the Georgia Public Service Commission, Georgia Environmental Protection Division ("EPD"), and the Georgia General Assembly. He specializes in Clean Water Act issues, particularly water and wastewater permitting issues with Georgia EPD.

Maj. Carver continues to actively serve in the U.S. Army Reserves in the rank of Major. During law school, Brad deployed with the Army to Tuzla, Bosnia from May 1996 to January 1997 as the Commander of a Detachment of the 341st Adjutant General Co. and was awarded the Meritorious Service Medal. In September 2003, Brad returned to Atlanta from a 14-month tour of duty in Kuwait and Iraq where he supported 3rd Army as the Deputy Chief of Staff for Personnel. He was awarded the Bronze Star Medal for exceptionally meritorious service during combat operations in Afghanistan and Iraq during Operations Enduring Freedom and Iraqi Freedom.

Jeffrey P. Minear: Mr. Minear is currently Counselor to the Chief Justice of the United States. He previously served as Senior Litigation Counsel and Assistant to the Solicitor General of the United States. His responsibilities in that position included oversight of the federal government's participation in Supreme Court original actions. Mr. Minear has argued 56 cases before the Supreme Court, including 11 cases involving original actions. He received his law degree from the University of Michigan, a master's degree in resource policy and management from the University of Michigan, and a bachelor's degree in chemical engineering from the University of Utah.

Dr. Todd Rasmussen: Dr. Rasmussen received his B.S. degree (1976) in Forest Resources at the University of California, Berkeley. He then spent over two years in the Peace Corps (Honduras) working on watershed protection. He returned in 1979 to the University of Arizona, Tucson, where he completed his M.S. (1982) and Ph.D. (1988) degrees in Hydrology. His research focused on flow and transport in fractured rock related to waste disposal. Since coming to the University of Georgia in 1992, Dr. Rasmussen has taught a wide range of water resources classes, and has been instrumental in establishing the UGA Water Resources Faculty, a collaborative effort of over 70 faculty from over a dozen academic units on campus. He is also an organizer of the Georgia Water Resources Conference, and is currently a member of the Georgia Science and Engineering Advisory Panel.

Moderators

Peter A. Appel: Mr. Appel joined the University of Georgia School of Law faculty in 1997 and is currently an Associate Professor of Law, teaching courses in property, environmental law, natural resources law, and animal law. He holds his undergraduate and law degrees from Yale University. Before coming to UGA, Appel clerked for Chief Judge Gilbert S. Merritt of the U.S. Court of Appeals for the Sixth Circuit and served for over six years in the Environment and Natural Resources Division of the U.S. Department of Justice. Mr. Appel's scholarship focuses on the three principal areas: 1) the law of sustainable commerce, 2) empirical research into wilderness policy and judicial treatment of wilderness decisions, and 3) the intersection of environmental and natural resources law and other areas of law such as civil procedure and constitutional law, as well as doctrinal developments in these areas. Appel has also published in such far-ranging fields as Roman law and traditional rules of the law of private property. Mr. Appel has been a frequent presenter to several federal agencies, including the Arthur Carhart National Wilderness Training Center in Missoula, Montana, and as an instructor for the United States Army Corps of Engineers.

Laurie Fowler: Laurie Fowler leads a growing number of law students at the University of Georgia in interdisciplinary projects connecting law and the environment. She first joined Georgia Law as an adjunct professor in 1991 and now serves as a UGA public service associate, teaching both in the law school and in the Institute of Ecology. Her research and service concentrates on federal, state and local environmental protection laws and policies; watershed protection strategies; environmental justice; growth management and solid waste reduction; land preservation including the use of conservation easements; citizen participation; and service learning.

Professor Fowler oversees service learning projects involving ecology, law, environmental design and other graduate students working with stakeholders in specific Georgia river basins to

protect critical natural resources. Before joining Georgia Law, Fowler served as co-director and attorney for The Legal Environmental Assistance Foundation of Georgia (1983-90) and had her own environmental law practice (1987-92). From 1993 to 1997, she served as executive director of the Georgia Environmental Policy Institute. Fowler earned her bachelor's degree from the University of the South, her law degree from UGA, and a Master of Laws in marine affairs from the University of Washington.

Rob McDowell: Mr. McDowell is the director of the Vinson Institute's Environmental Policy Program. His primary interests are geology and society and the role of science in the development of public policy. Before coming to the Institute, Mr. McDowell was assistant branch chief in the Georgia Environmental Protection Division Watershed Protection Branch, working principally on implementation of the Georgia State-wide Water Management Plan.

Mr. McDowell developed the Flint River Basin Water Development and Conservation Plan, the first of its kind in Georgia, which focused on agricultural water use and its impact on streamflows in southwest Georgia. He is a registered Professional Geologist and a member of the Geology, and Public Policy Committee of the Geological Society of America. Mr. McDowell has a Ph.D. in geology from the University of Kentucky, an M.S. in geology from West Virginia University, and a B.S. in geosciences from Penn State University.

Jamie Baker Roskie: Ms. Roskie joined the faculty of UGA in 2002 as managing attorney of the Land Use Clinic, a joint venture of the School of Law and the College of Environment and Design. As managing attorney, she supervises students in a variety of projects assisting local governments with regulatory solutions to help preserve the environment while promoting quality growth. Along with students of the clinic, she co-authored the first comprehensive Transferable Development Rights (TDR) ordinance in Georgia, designed for the Chattahoochee Hill Country.

Before joining the University, Ms. Roskie worked as an associate in the law firm of Shaw Pittman, LLP in Washington, D.C., where she represented clients in various land use and immigration matters. She is currently a policy and legal analyst for the UGA River Basin Center, which integrates science and policymaking to protect water resources and habitat. In addition, she is a member of the Georgia Planning Association's Legislative Advisory Committee and the Etowah Habitat Conservation Plan Advisory Committee. She is a graduate of the university's Institute for Georgia Environmental Leadership (IGEL), a training program for environmental leaders in Georgia. Ms. Roskie obtained a B.A. in International Affairs from Lewis and Clark College in 1989. In 2001, she graduated *magna cum laude* from the University of Georgia School of Law, where she was inducted into the Order of the Coif.

Christian Turner: Mr. Turner is an Assistant Professor of Law at the University of Georgia School of Law where he teaches courses in property and land use law. Before coming to UGA in 2007, Mr. Turner taught as a visiting professor at Forham University School of Law. His interest areas are property law, natural resources law, and the regulation of knowledge and information. Much of his scholarship focuses on applying his mathematical training to legal theory. He previously served as an associate at the Wiggin and Dana law firm in Connecticut, as a judicial clerk for Judge Guido Calabresi of the U.S. Court of Appeals for the 2nd Circuit, and as an intern at the White House Council on Environmental Quality. Turner graduated *magna cum laude* from the University of South Carolina with a B.S. in mathematics in 1993, earned his Ph.D. from Texas A&M University in 1999 and then earned his J.D. in 2002 from Stanford University where he served as the president of the STANFORD LAW REVIEW and was inducted into the Order of the Coif.

Rebecca H. White: Dean White, J. Alton Hosch Professor of Law, became the permanent dean of the University of Georgia School of Law on October 1, 2004, after serving as interim dean for 14 months. Previously, she served as associate provost and associate vice president of academic affairs for the University of

Georgia. She specializes in the areas of labor law, employment discrimination, employment law, and labor arbitration. In 2000, Dean White received the Josiah Meigs Award, UGA's highest honor for teaching excellence. She has been selected by law graduates six times as the recipient of the Faculty Book Award for Excellence in Teaching and has also received the John C. O'Byrne Award for Contributions Furthering Student/Faculty Relations. She served as a UGA Senior Teaching Fellow in 2000-01 and was inducted into UGA's Teaching Academy. In 2002, she was selected as a senior faculty fellow for the university's Foundation Fellows program.

Dean White received her undergraduate degree from Eastern Kentucky University and graduated first in her class from the University of Kentucky College of Law, where she was the editor in chief of the KENTUCKY LAW JOURNAL. She served as a judicial law clerk to Chief Judge George C. Edwards of the U.S. Court of Appeals for the 6th Circuit, then practiced labor and employment law at the law firm of Dinsmore & Shohl in Cincinnati, Ohio, for seven years before beginning her teaching career at UGA.

