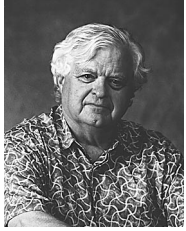


### Three Scholars to Retire



**Julian McDonnell**

In April, Sibley Professor of Corporate Business Law Julian McDonnell taught his last class at Georgia Law.

Specializing in contracts, commercial paper and secured transactions, he joined the faculty in 1972.

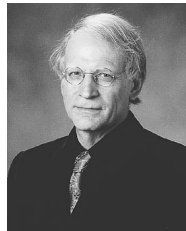
His scholarship includes five books: *Uniform Commercial Code: Analysis of Revised Article 9; Secured Transactions Under the Uniform Commercial Code* (principal author and editor-in-chief with Coogan, Hogan & Vagts), a five-volume treatise which is revised tri-annually; *Commercial and Consumer Warranties* (with Coleman), a three-volume treatise which is revised annually; *Common Law & Equity Under the Uniform Commercial Code* (with Hillman and Nickles); and *Commercial Transactions: Payment Systems, Sales, Secured Finance* (a three-volume set). In addition, McDonnell was the principal drafter of the Georgia Financial Institutions Code, enacted in 1974 as the code for Georgia state banks, and the Georgia Article Nine Revision, enacted in 1978. In retirement, McDonnell will continue to update his commercial law treatises and participate in some "less technical projects."

Well-respected by his students, McDonnell has been selected by members of the graduating class to receive the Faculty Book Award for Teaching Excellence on five occasions and has also been presented the Professional Responsibility Award. This summer, he will receive the Law School Association's Distinguished Service Scroll Award for his commitment and service to the School of Law.

McDonnell says he will miss seeing "the glim of understanding" in the eyes of his students. However, the hours of preparation for class will be a task gratefully relinquished.

He earned a bachelor's degree from Spring Hill College and a law degree from the University of Virginia. He served two years in Vietnam after graduation from law school, then taught at the University of Alabama School of Law. In 1970, he joined Hansell, Post, Brandon & Dorsey in Atlanta and worked with the firm for two years before joining the UGA law faculty.

McDonnell will maintain an office at the law school when he is not traveling to "attractive big city locations" with his wife Paula.



**Thomas Schoenbaum**

Dean and Virginia Rusk Professor of International Law Thomas Schoenbaum will retire from the School of Law after 20

years of teaching and service. During his tenure, he served as executive director of the Dean Rusk Center for International and Comparative Law and UGA's Institute for European Studies in addition to being a professor of political science.

Schoenbaum's areas of expertise are international trade law, environmental law and admiralty. The author of well over 100 publications, his scholarship includes the books, *The World Trade Organization: Law, Practice and Policy*; *Environment Policy Law* (4th ed.); *Admiralty and Maritime Law* (3rd ed.) and *Japanese International Trade and Investment Law* (with Matsushita).

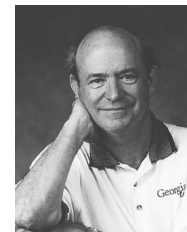
Of his time at UGA, he is most proud of the opportunity to work with Dean Rusk in organizing a series of Rusk Center conferences on issues facing the U.S. at the end of the Cold War. He also recalls when the center's work was lauded by Georgia Senator Sam Nunn in the *Congressional Record* during 1994 as a major reason why he and some of his colleagues voted to approve the North American Free Trade Agreement.

Upon retiring from UGA, he plans to continue to teach and write at various universities around the globe. For 2004, he has

accepted an invitation to be the Distinguished Visiting Professor of Maritime Law at the University of Singapore.

Schoenbaum says he will always treasure the memory of his Georgia students. "They were wonderful in every way. Some of them are now my good personal friends," he said.

Schoenbaum earned a bachelor's degree from St. Joseph's College and his law degree from the University of Michigan Law School. He then performed graduate studies in German law and the law of the European Economic Community during a post-doctoral fellowship from the Universitat Munchen in Germany. He holds a Ph.D. in international and comparative law from the University of Cambridge, and earned the D.E.S.S. (diplôme d'études supérieures spécialisées) from the University of Leuven (Belgium).



**Edward "Ned" Spurgeon**

After a decade of service to the School of Law, Professor Edward "Ned" Spurgeon will retire. He joined the school's faculty in 1993 as dean and professor. He served as the school's leader for five years.

Spurgeon specializes in law, public policy and aging; taxation of gifts, estates and trusts; and estate planning. His recent scholarship includes *Federal Taxation of Trusts, Grantors and Beneficiaries* (3rd ed. with Peschel, supplements 1998-2002) and "Lawyers Acting as Guardians: Policy and Ethical Considerations" in the *Stetson Law Review* with Mary Jane Ciccarello. In addition, he has helped organize national conferences on the legal and ethical aspects of dementia at UGA, legal ethics at Fordham University and dispute resolution in managed care in Washington, D.C.

He offered the following as highlights during his deanship: the creation of the civil clinical program, increased student body

## **Mercer Law Review Dedicates Issue to Sentell**

One of the early pages of the 54th volume of the *Mercer Law Review*, *Annual Survey of Georgia Law*, reads: "All law reviews should aspire to publish contributions from authors who are knowledgeable and prestigious in their fields. The *Mercer Law Review* has been privileged to have had just such an author in Professor R. Perry Sentell Jr. ... Literally, generations of lawyers in Georgia have benefited from Professor Sentell's scholarship and guidance." This fall 2002 issue of the *Mercer Law Review* was dedicated to Sentell for his ongoing contributions.

Since 1963, every volume of the *Mercer Law Review* has featured a contribution from Sentell beginning with his article "Cities and Towns: A Distinction with a Difference" in 14 *Mercer Law Review* 385 (1963). His first installment of the "Annual Survey of Georgia Local Government Law" was also published in 1963. Subsequently, he has contributed this article annually for 40 years to the law review. In addition, Sentell has authored another 22 articles for this publication.

The *Mercer Law Review* is not the only beneficiary of Sentell's scholarship. He has written articles for the *Georgia Bar Journal*, *Georgia Journal of International and Comparative Law*, *Georgia Law Review*, *Georgia State University Law Review*, *Vanderbilt Law Review* and *Case Western Reserve Law Review*. He has completed over two-dozen treatises on subjects such as Georgia local government law and municipal liability.

diversity, the expansion of the faculty by seven, the construction and dedication of Dean Rusk Hall and the participation in new international programs including the London Law Consortium, King's Inn Moot Court Exchange and the five-year exchange program with the Universidad del Salvador (for more information, see page 17). In addition, he mentioned the success of the school's advocacy teams, which won several national championships during his leadership.

Spurgeon practiced law for 16 years, including 12 years as a partner with Paul, Hastings, Janofsky and Walker in Los Angeles, CA, before beginning his career in legal education. He taught as a member of the faculty of the University of Utah College of Law where he also served as dean. He earned his undergraduate degree in English from Princeton University, his law degree from Stanford University and a LL.M. from New York University.

His primary residence will be in Salt Lake City where he will remain active with the University of Utah College of Law, the Borchard Foundation Center on Law and Aging, the firm Moyle and Draper and several national and community nonprofit organizations. Spurgeon will also travel with his wife Carol and spend more time with his children and two grandchildren.

## **Faculty Notes**

The following will briefly summarize the School of Law faculty's scholarship activities for the past 16 months starting from January 2002.

**Peter Appel** published two articles "Federalism in Environmental Protection" in 23 *The Justice System Journal* 25 (2002) and "Intervention in Roman Law: A Case Study in the Hazards of Legal Scholarship" in 31 *Georgia Journal of International and Comparative Law* 33 (2002). He presented and produced papers for conferences hosted by the University of Montana and the Widener Law School as well as the Law and Literature Association of Australia in Melbourne. Appel participated in the School of Law's annual Red Clay

Conference and the School of Environment and Design's briefing for journalists regarding water issues under legislative review last fall. In addition, he moderated a panel at the biannual Georgia Water Resources Conference.

**Milner Ball** wrote a book review of *Christian Perspectives on Law for Theology Today* (October 2002) and a short article to be published in the *Cardozo Law Review*. He gave presentations at the Colorado College William Jovanovich Symposium, the University of Connecticut School of Law, the Cover Public Interest Retreat and a land use conference as well as several presentations to ongoing group research projects at Princeton University's Center of Theological Inquiry and Emory University's Law and Theology Program.

**Randy Beck** completed "*Ring v. Arizona*" in *La Ley* (2002) (case comment in an Argentine legal journal), "Race and the Georgia Courts: Implications of the Georgia Public Trust and Confidence Survey for *Batson v. Kentucky* and Its Progeny" in the *Georgia Law Review*, and "The Heart of Federalism: Pretext Review of Means-End Relationships" in the *University of California-Davis Law Review*. He also participated in the Christian Legal Scholars' symposium.

**Larry Blount** finished the 2002 update for the 50-state guide to state taxes published by *Tax Analysts* and the article "Employer's Affirmative Duty of Religious Accommodation."

**Daniel Bodansky** contributed a chapter on trans-Atlantic environmental relations that will appear in *Europe, America and Bush* later this year. He wrote "Symposium on the ILC's [International Law Commission's] State Responsibility Articles: Introduction and Overview" in 96 *American Journal of International Law* 773 (2002), "US Climate Policy after Kyoto: Elements for Success" for a Carnegie Endowment for International Peace Policy Brief, and two white papers for the Pew Center on Global Climate Change.

Bodansky gave presentations at the University of Wisconsin; University of California–Berkeley; New York University School of Law; Ohio University's Contemporary History Institute; the European University in Florence, Italy; the Centre International de Recherche sur l'Environnement et le Développement in Paris, France; the American Association of Law Schools Annual Meeting and a workshop sponsored by the French Center on the United States and Resources for the Future.

**Lonnie Brown** wrote "Racial Discrimination in Jury Selection: Professional Misconduct, Not Legitimate Advocacy" in *The Review of Litigation* and spoke on this topic at a University of Texas School of Law symposium. He completed the "Foreword" to the Ethics 2000 and Beyond: Reform or Professional Responsibility as Usual? symposium issue of the *University of Illinois Law Review*, the live portion of which he moderated and co-organized. Brown assisted Professor Ron Ellington with the Problems in Discovery and Professionalism Conference hosted by Georgia Law in the fall of 2002.

**Ron Carlson** published two books, *Evidence: Teaching Materials for an Age of Science and Statutes* (5th ed. 2002) that he coauthored with professors Ed Imwinkelried, Ed Kionka and Kristine Strachan and *Dynamics of Trial Practice: Problems and Materials* (3rd ed. 2002) that he coauthored with Imwinkelried. He finished supplements to *Successful Teaching for Civil Trials* and *Trial Handbook for Georgia Lawyers* and co-wrote the articles "Bruton v. United States: A Basic Guide for Georgia Trial Practitioners" and "'Over the Top' Final Arguments: How Far Is Too Far?" In addition, Carlson made nine presentations at continuing legal education programs, bar association meetings and other venues.

**Kellie Casey** participated in the 7th Annual Jury Trial Seminar conducted by the Atlanta Volunteer Lawyers Foundation.

**Dan Coenen** wrote "The Rehnquist Court, Structural Due Process, and Semisubstantive Constitutional Review," in *75 Southern California Law Review* 1281 (2002), "Congressional Power Over Presidential Elections: Lessons From the Past and Reforms for the Future" in *43 William and Mary Law Review* 851 (2002) with Professor Ed Larson and "Means/Ends Analysis in Copyright Law: *Eldred v. Ashcroft* in One Act" in *36 Loyola of Los Angeles Law Review* 99 (2002) with Professor Paul Heald. He presented "What Makes the Rehnquist Court Tick – Reflections on the Supreme Court's Overarching Philosophies and the 2001-02 Term" at the Institute of Continuing Legal Education's Annual Supreme Court Update Program in Atlanta and delivered the keynote address at the *William & Mary Law Review* banquet. He also served on UGA's Teaching Academy Executive Committee in 2002.

**Alan Cook** delivered "Successful Prosecution of a Child Sexual Abuse Case" at the Building Successful Teams: Investigation & Prosecution of Serious Injury and Fatal Child Abuse Seminar sponsored by the Georgia Department of Social Services and the Georgia Bureau of Investigation and "Major Felonies" to the Northeast Georgia Police Academy. He also participated in the 7th Annual Jury Trial Seminar conducted by the Atlanta Volunteer Lawyers Foundation.

**Anne Dupre** published a casebook, *Children and the Law: Cases and Materials*, which was coauthored with Professor Martin Gardner. She spoke on education law issues at a variety of symposia including the American Association of Law Schools Annual Meeting in Washington, D.C., the State Bar of Georgia Annual Meeting, UGA's Annual Conference on Higher Education and the Law, North Georgia College's Spring Faculty Symposium and the Georgia Bar Section on Women in the Profession. Dupre also served as chair of the American Association of Law Schools Section on Law and Education.

**Tom Eaton** finished *Constitutional Remedies, A Reference Guide to the United States Constitution* that was coauthored with Professor Mike Wells. He presented "The Effect of Seeking Punitive Damages on the Processing of Tort Claims," coauthored with professors Susette Talarico and David Mustard, to two legal audiences and "Non-Textual Sources of Constitutional Rights: The Remarkable Persistence of Substantive Due Process" at a roundtable in Oxford, England. In addition, he participated in the 7th Annual Jury Trial Seminar conducted by the Atlanta Volunteer Lawyers Foundation. Eaton served as chair of the Governor's Advisory Commission on Workers' Compensation and became the first Georgia Law professor to receive an UGA Creative Research Medal for his work with Talarico on tort reform (see page 3 for more details).

**Ron Ellington** organized the University of Georgia Conference on Problems in Discovery and Professionalism at which he presented the results of a large-scale empirical survey of Georgia lawyers regarding discovery abuse. He presented some of the survey's findings at an Institute of Continuing Legal Education program and a Southern District of Georgia Court Advisory Committee meeting. He also spoke to this meeting of federal judges and lawyers on the proposed amendments to Federal Rule 23 on class actions. Other presentations include participating on a panel discussion on "Ethics and Professionalism in Education: Agreeing to Disagree — Civilly!" at UGA. In addition, Ellington served as reporter for the Transition into Practice Program of the State Bar of Georgia's Committee on Standards of the Profession.

**Russell Gabriel** served as a member of the State Bar of Georgia's Indigent Defense Committee.

**Paul Heald** published two symposia articles, "The Rhetoric of Biopiracy" in *10 Cardozo International & Comparative Law Journal* (2002) and "Means/Ends Analysis

in Copyright Law: *Eldred v. Ashcroft* in One Act" in 36 *Loyola of Los Angeles Law Review* 99 (2002) that was coauthored with Professor Dan Coenen. He gave three invited lectures titled "Mowing the Playing Field: Addressing Information Distortion and Asymmetry in the TRIPS Game" (which will be published in the *Minnesota Law Review*), "The Quantum Mechanics of Patent Valuation" and "The Rhetoric of Biopiracy." In addition, he published his first novel, *No Regrets*.

**Walter Hellerstein** revised chapters 17, 18, 21 and 22 of *State Taxation* and completed cumulative semiannual supplements for Volumes I and II of *State Taxation*. He wrote five articles that were printed in *The National Bureau of Economic Research* (July 2002), *CES IFO Forum: A Quarterly Journal on European Issues* (Winter 2002), *State Tax Notes* (Nos. 7 and 11), *Tax Notes International*, *Journal of Taxation* (No. 5) and *Multistate Tax Reporter* (2002) as well as one that was commissioned by the National Governors Association on the role of state sovereignty in the federal system. He spoke at the Multistate Tax Commission Forum on Federalism at Risk in Washington, D.C.; the World Trade Organization Seminar on Revenue Implications of E-Commerce for Development in Geneva, Switzerland; the Georgetown University State and Local Tax Institute; the European Tax College, Katholieke Universiteit Leuven in Belgium; the 2002 Conference on Integrating Tax Planning with Business Strategy in New York City; the 2002 Great Issues Conference in Squaw Valley, CA; the American Trucking Association's Tax Conference in Alexandria, VA; and the Institute on State and Local Taxation, NYU School of Continuing and Professional Studies in New York City.

**Lorie Johnson** completed her article "Employee Interests in Bankruptcy: Lessons for Enron" that has been submitted for publication. A shortened version of this article was published in the fall 2002 issue of the *Advocate*. She also presented this paper at the annual meeting of the

Southeastern Association of American Law Schools.

**Paul Kurtz** finished the 2002 teachers' supplement to *Family Law: Cases, Text Problems* (3rd ed.). He completed two articles "Annual Survey of Periodical Literature" in 35 *Family Law Quarterly* 775 (2002) and "Introduction, 'Custody Symposium in Honor of Professor Robert J. Levy on His Retirement'" in 36 *Family Law Quarterly* 1 (2002). Kurtz was the primary author and presenter of the Georgia Supreme Court's Commission on Indigent Defense Reform Report. In addition, he provided testimony to the Joint House-Senate Judiciary Committee on Indigent Defense Reform. He participated in the Georgia Tech Executive Roundtable at its annual Student/Faculty/Industry Conference and the Panel on Publication with University Presses at the Southeastern American Association of Law Schools Annual Conference.

**Edward Larson** revised the 1985 edition of *Trial and Error: The American Controversy Over Creation and Evolution* and included additional chapters. He contributed chapters to *Science and Religion: A Historical Introduction*, *Oxford Companion to American Law*, *Oxford Companion to American History*, *Encyclopedia of the Midwest*, and *Dictionary of American History*. Larson authored three articles: "Congressional Power Over Presidential Elections: Lessons From the Past and Reforms for the Future" in 43 *William and Mary Law Review* 851 (2002) with Professor Dan Coenen, "The Meaning of Human Gene Testing for Disability Rights" in 70 *Cincinnati Law Review* 1 (2002) and "Origin Was Just a Beginning" in 297 *Science* 1812 (2002). In addition, he published three articles in popular newspapers and magazines. He also spoke at 14 different educational venues nationally and internationally.

**Sarajane Love** presented "The Constitution, Women and Military Service" to the Athens Chapter of the Daughters of the American Revolution and "Georgia

Case Law Update" to the Institute for Continuing Judicial Education's Probate Judges Spring Seminar. She also served on the State Bar of Georgia's Rule Against Perpetuities Study Committee.

**Julian McDonnell** updated chapters 2, 2B, 3, 4 and 20 in *Secured Transactions Under the Uniform Commercial Code* (release numbers 72 and 73) and chapters 12 and 16 of *Commercial and Consumer Warranties* (release number 15). He also wrote a general supplement for the latter title. He published "Secured Credit and Insolvency Law in Argentina and the United States: Gaining Insight from a Comparative Perspective" in 30 *Georgia Journal of International and Comparative Law* 393 (2002) with Professor Guillermo A. Moglia Claps. McDonnell also spoke at the Coastal Bankruptcy Law Institute in Savannah.

**Curtis Nessel** drafted a memorandum concerning the liability under federal and state laws of a current tenant for environmental contamination of property caused by a prior tenant. He also presented "The History and Impact of *Gregg v. Georgia*" at a Conference on the Death Penalty at Georgia College and State University in Milledgeville.

**Ray Patterson** completed "The DMCA: A Modern Version of the Licensing Act of 1662" in 10 *Journal of Intellectual Property Law* 33 (2002), "Copyright in 1791: The Founders' View of Copyright Power They Granted to Congress in Article I, sec. 8, cl. 8" with Professor Craig Joyce to be published in the *Emory Law Journal* and "What's Wrong With Eldred? An Essay in Copyright Jurisprudence" to be published in the *Journal of Intellectual Property Law*. He served as a panelist at the University of Georgia Conference on Problems in Discovery and Professionalism. In addition, Patterson gave presentations at Georgia Tech University's Copyright Law Program, the Copyright Society of the U.S., the Georgia Health and Science Librarians Association and Duke University.

**Ann Puckett** maintained the national staffing for law school computing services survey that includes data from 164 law schools. In addition, she continued the weekly updates of her bibliography of law review articles on disability law. Both of these resources can be found on the School of Law's Web site at [www.lawsch.uga.edu/faculty/epuckett](http://www.lawsch.uga.edu/faculty/epuckett). Puckett also made a presentation to the Atlanta Legal Aid Parent Leadership Support Project regarding basic legal research and spoke at the American Bar Association Bricks, Bytes and Continuous Renovation Conference and the Southeastern Association of Law Libraries Annual Meeting.

**Margaret V. Sachs** authored *Securities Litigation and Enforcement: Cases and Materials* with professors Donna Nagy and Richard Painter. She was elected to a three-year term on the executive committee of the American Association of Law Schools Securities Regulation Section. She presented on panels regarding the relevance of socio-economics to the teaching of securities regulation at the 2002 and 2003 AALS annual meetings. In 2002, she also served as moderator. She was a discussant on a panel on securities law doctrines and emerging technology and business trends at the 2002 Law and Society Association Meeting.

**Alexander Scherr** completed the 2002 update of *Georgia Law of Evidence*, "Lawyers and Decisions: A Model of Practical Judgment" in 47 *Villanova Law Review* 161 (2002) and "Daubert and Danger: The Fit of Expert Predictions of Danger in Civil Commitments" that will be published in the *Hastings Law Journal*. He also organized the Clinical Legal Education Committee's Conference of Best Practices, led a discussion on *Twelve Angry Men* at the Public Service: Reel-to-Reel, A Film and Discussion Series hosted by the Carl Vinson Institute of Government and presented at the Catholic University Conference on Externships and the American Association of Law Schools Clinical Section Conference. In addition, he assisted with

the creation and initial structuring of the School of Law's newest clinical program, the Land Use Clinic, and three new Public Interest Practicum programs. Scherr was elected to three-year terms on the boards of the Executive Committee of the AALS Section of Clinical Legal Education and the Directors of the Clinical Legal Education Committee.

**Tom Schoenbaum** published *Environment Policy Law* (4th ed. 2002) and *The World Trade Organization: Law, Practice and Policy*. He authored three chapters: "Environmental Damages in the Common Law: An Overview" in *Environmental Damage and International Law: Problems of Definition and Valuation*, "Trade and Environment" (chapter 13) in *The International Law of the Environment* (2nd ed.), and "Seaman and the Law: Introduction" in *Seafarers and the Law*. Schoenbaum delivered presentations to the British Institute for International and Comparative Law in England, the International Center for Environmental Management of Enclosed Coastal Seas in Japan, the Japan Graduate Research Institute, the Kagawa University in Japan, the Waseda University in Japan and the Admiralty Law Institute of Tulane University.

**Perry Sentell** authored "Dissenting Opinions: In the Georgia Supreme Court" in 36 *Georgia Law Review* 539 (2002), "A Six-Member Civil Jury In Georgia: The Trial Judges Weigh In" in 54 *Mercer Law Review* 67 (2002), "Georgia Local Government Law" in 54 *Mercer Law Review* 417 (2002), "Foreword" in *The Georgia League Report* (vol. VIII, April 2002), "Lightening the Load: In the Georgia Supreme Court" in 37 *Georgia Law Review* (2003) and the monthly feature "Towns and the Law in Georgia" in *Georgia's Cities*, the official publication of the Georgia Municipal Association of Atlanta. He presented "Recent Judicial Developments in Georgia Local Government Law" to the Annual Institute for Georgia City and County Attorneys. In

## Students Honor Professors

Each year, the graduating class has the honor of recognizing three faculty members who have done an outstanding job. This year, Hosch Professor of Law Tom Eaton was honored with the Student Bar Association Faculty Book Award for Excellence in Teaching. Cleveland Chair of Legal Ethics and Professionalism Ron Ellington won the Student Bar Association Professionalism Award and Associate Professor Randy Beck succeeded in getting the John C. O'Byrne Memorial Award for Furthering Faculty-Student Relations for the fourth consecutive year.

## Eaton Serves on Governor's Workers' Compensation Commission

Hosch Professor Tom Eaton is near completing his tenure as chair of the Governor's Workers' Compensation Review Commission. In 2001, the commission began compiling the first fact-based summary of the state's workers' compensation system as a whole, addressing how it works, what the average cost and number of claims is, and how it compares to the systems in other states. While the final report will be released later this year, Eaton said, "Overall, Georgia's workers' compensation system is in good health. However, the commission will identify areas that merit further attention."

The commission is comprised of 17 members and seven advisory members. It includes major stakeholders in the workers' compensation system such as employer groups, insurance companies, organized labor unions, legislators, claimant and defense attorneys, and medical representatives.

## Faculty Accomplishments

addition, the *Mercer Law Review* dedicated its fall 2002 edition to Sentell for his 40 years of contribution to the journal (see page 20 for more details).

**David Shipley** served as discussion leader for the 31st Annual Deans' Workshop, participated in the 7th Annual Jury Trial Seminar conducted by the Atlanta Volunteer Lawyers Foundation and chaired the ABA/AALS Site Inspection of the University of Maryland School of Law. In addition, he spoke to the Hall and Fayette county bar associations, addressed the Institute of Continuing Judicial Education's seminar for law clerks and served as a member of the Law School Admissions Council's Minority Affairs Committee.

**Jim Smith** published three books coauthored with Professor Robin Malloy. They are *Real Estate Transactions* (2nd ed. 2002), *Documentary Problem Supplement* (2nd ed. 2002) and *Teacher's Manual* (2nd ed.). He produced cumulative supplements nos. 4 and 5 to *Friedman on Contracts and Conveyances of Real Property* (6th ed.). Smith completed "Modernizing the Law of Secured Transactions: Non-Uniform Provisions of Georgia's Revised Article 9" in 37 *Georgia Law Review* 205 (2002) and three Center for Computer-Assisted Legal Instruction lessons on property law. He also lectured on "CALI Authorware" at the American Association of Law Schools Annual Conference in Washington, D.C.

**Edward Spurgeon** wrote "Lawyers Acting as Guardians: Policy and Ethical Considerations" in 31 *Stetson Law Review* 791 (2002) with Mary Jane Ciccarello. He presented "An Overview of the Revised Estate and Gift Tax Law and How to Protect Your Estate Against the Risks of Incapacity" to the UGA Gerontology Center, the Athens Community Council on Aging and the Borchard Foundation Center on Aging.

**Erwin Surrency** completed *History of the Federal Courts* (2nd ed.) and the articles "The Federal District Court Judges and the History of Their Courts" in *Federal Rules*

and *Decisions* (April 2003) and "From Colonialism to the Constitution" which will be published in the *American Journal of Legal History*. The article on federal judges will also be published as an independent title.

**Alan Watson** published *Authority of Law; and Law, Legal History and a Common Law for Europe and Society and Legal Change* (2nd ed.). He finished "Three Texts for Jop" in *Viva Vox Juris Romani: Essays in Honour of Johannes Emil Spruit*. Watson delivered 10 lectures and presentations to various audiences at Washington and Lee University School of Law; Trinity College in Dublin, Ireland; the University of Glasgow in Scotland; the University of Pretoria in South Africa; the University of South Africa; the University of Palermo, Italy; and the University of Manitoba, Canada. He also received an honorary Doctor of Political Science from the University of Palermo, Italy.

**Camilla Watson** presented a paper at a national conference on tax compliance sponsored by the *Kansas Law Review*. This paper, "Legislating Morality," along with the other conference papers will be published by the journal. In addition, she spoke to business law classes at Clarke Central High School in Athens on the Alvarez case and its implications.

**Michael Wells** wrote *Constitutional Remedies* that was coauthored with Professor Tom Eaton. He completed "Article II and the Florida Election Case: A Public Choice Perspective" in 61 *Maryland Law Review* 711 (2002) that he coauthored with Professor Jeffrey Netter and "Proximate Cause and the American Law Institute: The False Choice Between the 'Direct Consequences' Test and the 'Risk Standard'" in 37 *University of Richmond Law Review* 389 (2003).

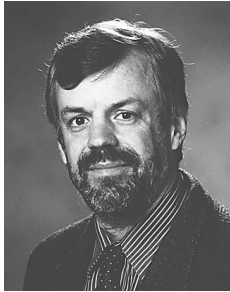
**Rebecca White** published the *International Encyclopedia of Labour Law and Industrial Relations* she coauthored with Professor Alvin Goldman, *Employment Discrimination* (3rd ed.) she coauthored with professors Charles Sullivan and Mike

Zimmer, 2002 *Case Supplement, Cases and Materials on Employment Discrimination* (5th ed.) she coauthored with Zimmer, Sullivan and Richards, and *Cases and Materials on Employment Discrimination* (6th ed.) she coauthored with Sullivan and Zimmer. She presented to two sections of the State Bar of Georgia, the Individual Rights Section and the Labor and Employment Law Section, in addition to the UGA Foundation Fellows. White is currently serving as an UGA interim associate provost for academic affairs.

**Eugene Wilkes** finished his fourth book, *Federal Postconviction Remedies and Relief Handbook* and a two-volume supplement to his book *State Postconviction Remedies and Relief* (2001). His short essay "The Writ of Habeas Corpus" was published as an entry in the four-volume treatise *Legal Systems of the World: A Political, Social and Cultural Encyclopedia*, edited by Professor Herbert Kritzer. In addition, Wilkes published 10 articles in magazines and professional journals such as *Flagpole Magazine*, *The Georgia Defender*, and the law school's alumni magazine *Advocate*. He also gave three presentations on the topics of civil liberties and criminal procedure.

**Gabriel Wilner** gave over 20 lectures to international and national audiences in Brussels, Belgium, and Buenos Aires, Argentina. The topics of these lectures included international law and economic development, comparative private international law, international arbitration, legal aspects of international terrorism, and alternative dispute resolution. He presented a paper "The Regimes of Arbitration on the Americas" at the American States Seminar in Nassau, Bahamas. In addition, Wilner organized and co-chaired the Conference on International and National Alternative Dispute Resolution Settlement at the Universidad del Salvador, Buenos Aires, Argentina. He also directed the Trans-Atlantic Relationship - Aviation Policy: Clearing the Way to a More Open Market Conference at the School of Law in the spring.

## Daubert & Danger: The "Fit" of Expert Predictions in Civil Commitments



By Director of the Civil Clinic and Assistant Professor of Law Alexander Scherr

Excerpted from 55 Hastings Law Journal (forthcoming November 2003)

Never make predictions, especially about the future.

But in civil commitments, courts predict future behavior all the time. Judicial action here has severe results for the individual: deprivation of liberty, potentially unwanted and intrusive treatment, and the stigma of mental illness. Judicial inaction can also do harm: erroneous release can lead to injury of the person or others. Resolving these risks requires courts to find the person poses a danger to him/herself or others because of a mental illness.

The opinions of experts in prediction should help these courts, but over 30 years of scientific and judicial opinion argue that predictions of danger do little better than chance or lay speculation. Even the best predictions leave substantial room for error about individual cases.

One would expect the rules of expert evidence, especially the reliability standards of *Daubert*, to require the exclusion of predictive expertise from the civil commitment process.<sup>1</sup> *Daubert* displaced the *Frye* standard<sup>2</sup>, replacing it with a test focused in part on scientific reliability. To be sure, federal evidence law does not bind the states: some follow *Daubert*, some *Frye* and some (like Georgia) follow their own path. But the test should not matter. Given the notorious unreliability of prediction, and deep division in the professional community, we would expect no court to admit predictive opinions under *Daubert*, *Frye* or any evidentiary standard.

Yet, no appellate court has ever ordered exclusion of expert psychiatric testimony about danger in a civil commitment case.

To the contrary, courts welcome these opinions, and do so with their eyes open: judicial opinions regularly refer to, and explicitly accept, the imperfections of predictive testimony. What is going on? How can such unreliable opinion survive *Daubert*'s stress on scientific reliability?

The answer is simple: *Daubert* requires more than scientific reliability. It also requires assessing how the expertise "fits" the demands of the case. Even without validation, a court may still use an opinion if it has a sufficiently strong fit to fact-finding. The example of predictive expertise helps both to develop a methodology for assessing fit and to find factors for determining fit.

The methodology appraises civil commitment as a case type: its substantive and constitutional dimensions; its burdens of proof; the characteristic patterns of proving danger, including expert testimony; and the legal definition for a finding of danger. The resulting factors for assessing fit include: how thoroughly the substantive law of the case has absorbed concerns over the reliability of a given expertise in shaping the case process; the prevalence of the particular experts as witnesses in the case; the inherent difficulty of fact-finding on the issue and the extent to which the expertise eases that difficulty; and the similarity of the inferential process embodied in the opinion to those required for fact-finding. These factors explain why courts have so readily accepted the deep uncertainties of predictive testimony.

The argument thus suggests a revised model for assessing expertise, which reframes *Daubert* from a test of reliability to an assessment of the demands of judicial fact-finding. The model assumes courts will find ways to admit even risky opinions in a given case, when the fit is strong enough. The model matters in at least three distinct ways:

- For mental health law, the model allows us to conclude that courts have consistently gotten it right about predictive testimony.

It thus aligns current doctrine with decades of consistent judicial opinion. Predictive testimony should be admissible in civil commitment cases under *Daubert*.

- The model raises useful questions for evidence scholars. With predictive expertise, the twin concerns of reliability and fit act in inverse proportion. The strength of the fit overcomes weaknesses in the reliability of predictive testimony. But that may not work in all cases, and may in fact reflect features unique to predictive testimony in civil commitments. The contextual methodology described above can guide future research about the limits of expert evidence in other areas.
- The model has practical consequences for federal courts and for states that have adopted *Daubert*. Trial judges can assess not only the standard of rigor experts in a field might require, but also the fit to which that standard bears to the rigor of fact-finding on difficult issues. As trial and appellate courts settle how a given opinion fits within a given case, the frequency and disparity in rulings on admissibility should abate.

More generally, the *Daubert* cases deal not solely with science or the reliability of expertise. Rather, these cases focus on how courts can use advances in knowledge to satisfy the judicial imperative to decide cases. The cases set the terms on which fact-finders borrow from other disciplines. They also require the courts to retain the discipline and pragmatic judgment acquired while resolving previous disputes. Judicial decision-makers must ask not only whether new knowledge can be justified in its own terms, but also whether, when and how new knowledge has a role to play in advancing the just and expedient resolution of conflict. ■

<sup>1</sup> *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)

<sup>2</sup> *Frye v. United States*, 293 F. 1013 (D.C. App. 1923) ("Sufficiently established to have gained general acceptance in the particular field in which it belongs.")