

## Legal and political philosophy scholar speaks on the concept and the Rule of Law



**W**hat should the relationship be between the Rule of Law and the concept of law? This was the question addressed by New York University School of Law University Professor Jeremy Waldron in Georgia Law's 103rd Sibley Lecture held in March.

Waldron, a legal and political philosophy scholar who lectures frequently around the globe, said the Rule of Law is a normative ideal that arises directly out of the morally-laden description that we give of what law is.

"Grammar [and] words suggest that we need to understand the concept of law before we can understand the Rule of Law," he said.

To explore this relationship further, Waldron discussed casual positivism and the modern positivist's understanding of the law. He argued that a positivist conception of law, which is based on determinacy, certainty and settlement, results in a narrow conception of the Rule of Law, while a richer conception of law would lead to a richer conception of the Rule of Law.

"Just as the conception of law would be impoverished if it only emphasized the existence and the mechanical application of rules, so a conception of the Rule of Law would be impoverished if it emphasized only the virtues of clarity, determinacy and settlement and neglected the value we should give to law's procedural, rational and argumentative aspects," Waldron said.

He also pointed out that the conception of what law is serves as our best guide to what matters about law, and a full understanding of how the legal system matters to us is our best guide to what is distinctive about the legal system as opposed to other modes of government.

"The alternative, I fear, is a vanishingly thin conception of positive law that emphasizes nothing more than the existence of rules and an impoverished account of the Rule of Law that treats court proceedings, hearings, reasons and arguments as though they didn't matter," Waldron said.

The author of numerous books and more than 100 articles and essays, Waldron has written and published extensively in the areas of jurisprudence and political theory. His work has been published in the *Yale Law Journal*, the *Harvard Law Review*, the *Columbia Law Review* and the *Georgetown Law Journal*, and several of his works on theories of rights, constitutionalism, democracy, property, torture and homelessness are well known, as are his works in historical political theory.

Waldron graduated with degrees in philosophy and law from the University of Otago in 1978 and then earned his doctorate in legal philosophy from Oxford University, where he taught as a Darby Fellow of Lincoln College. He has served as a professor at the University of Edinburgh, the University of California at Berkeley, Princeton University and Columbia University. In 2006, he joined the New York University School of Law.

Additionally, Waldron was elected to the American Academy of Arts and Sciences in 1998 and has received honorary doctorates in law from the University of Otago and the Catholic University of Brussels.

*Established in 1964 by the Charles Loridans Foundation of Atlanta, the Sibley Lecture Series honors the late John A. Sibley, a 1911 graduate of the University of Georgia School of Law. The series hosts renowned legal academics known throughout the country for their exceptional scholarship.*

## Hellerstein receives 2007 Latcham Award



BNA Tax Management has awarded Walter Hellerstein, the Shackelford Distinguished Professor of Taxation Law at Georgia Law, the

2007 Franklin C. Latcham Award for Distinguished Service in State and Local Tax Law.

The award was presented in December at a meeting of the BNA Tax Management State Tax Advisory Board in New York City and is named for Franklin C. Latcham, former Advisory Board chair and founder of BNA Tax Management's Multistate Tax Portfolio Series.

"For four decades Professor Hellerstein has been a leader, an educator and an inspiration to the state tax world," Paul H. Frankel, chairman of BNA Tax Management's State Tax Advisory Board, said. "His treatise, his analyses and his contributions to academic excellence have made us all better at what we do."

Hellerstein has published widely on the topic of state and local taxation, has practiced extensively in the state tax field and has been involved in numerous state tax cases before the U.S. Supreme Court. He has also consulted with the Organisation for Economic Co-operation and Development, the United Nations and the World Trade Organization on tax issues.

Prior to joining the Georgia Law faculty, Hellerstein clerked for Judge Henry J. Friendly of the U.S. Court of Appeals for the 2nd Circuit.

He earned his bachelor's degree from Harvard, graduating *magna cum laude* with Phi Beta Kappa honors, and his law degree from the University of Chicago, where he was editor in chief of the *University of Chicago Law Review*.

## Former U.S. Secretary of Education questions use of Guantanamo Bay

*“These people have not been convicted of any crime. It is time for us to speak up as members of the United States to ask Congress to reconsider this legislation that was passed in the [wake of the] 9/11 attacks.”*



**S**hirley Mount Hufstedler, the first U.S. Secretary of Education and one of the first women to serve on the federal bench, spoke out against the lack of availability of federal judicial review for prisoners incarcerated at Guantanamo Bay during the University of Georgia School of Law’s 26th Edith House Lecture held in March.

In her address, titled “Freedom and Justice for Some,” Hufstedler said deeply troublesome constitutional questions have arisen from the imprisonment of hundreds of people in the facilities located at Guantanamo Bay, and the nation’s reputation of fairness is suffering by confining those people “as if they were livestock.”

While most Americans probably think the people confined at Guantanamo are terrorists, Hufstedler said that is not the case.

“The 9/11 attacks were terrible, but there is no basis on any of the evidence produced so far that the hundreds of men that have been confined without trial in Guantanamo had anything to do with those attacks, that they had anything to do with Al Qaeda or with the Taliban or that they are citizens or even residents of Afghanistan,” she said.

In fact, according to Hufstedler, a very large number of those being held were actually captured by bounty hunters and handed over to the military authorities in

Afghanistan for a monetary reward.

“For years these men have not had access to counsel. They have not had access to federal trial courts or to any other remedy that can successfully challenge their confinement,” she said.

While the Detainee Treatment Act of 2005 set up military tribunals to handle the cases of people detained at Guantanamo Bay, it also simultaneously deprived any court justice or judge jurisdiction to consider a habeas corpus application on behalf of any of the prisoners at Guantanamo.

According to Hufstedler, the military tribunals are a poor substitute for habeas corpus for a number of reasons.

One is that the military commission can exclude the accused and their civil counsel from any part of the court proceeding. Also, almost all detainees are not allowed personally selected counsel and are instead appointed military counsel. And, the introduction of any evidence – including hearsay and evidence obtained through coercion – is allowed if the commission’s presiding officer deems it would have probative value to a reasonable person.

Statements extracted by torture or other inhumane treatments are inherently unreliable, and using evidence obtained by cruelty corrupts the judicial system, Hufstedler said.

“I am one of 10 former federal judges, both trial and appellate, who have filed an amicus brief to the United States Supreme Court arguing that the review permitted by the current Detainee Treatment Act is an inadequate substitute for habeas corpus because the court is not authorized to determine the extent to which the [Combat Status Review Tribunal] has been relying on statements obtained by torture and other impermissible coercion,” she said. (At the time of her lecture, the court had yet to make a ruling on this brief.)

Hufstedler also stressed how vitally

important it is for anyone who cares about the administration of justice to let their representatives in Congress know they deeply disapprove of the confinement of prisoners at Guantanamo Bay, and that they also disapprove of the removal of jurisdiction to entertain petitions for writ of habeas corpus.

“These people have not been convicted of any crime. It is time for us to speak up as members of the United States to ask Congress to reconsider this legislation that was passed in the [wake of the] 9/11 attacks.”

Considered a trailblazer for women in the field of law, Hufstedler has held positions at the highest levels of legal and public service in our country. She began her legal career in private practice in Los Angeles during 1950. Eleven years later, she was appointed as judge of the Los Angeles County Superior Court and, in 1966, she was named an associate justice of the California Court of Appeal. President Lyndon B. Johnson appointed her judge of the U.S. Court of Appeals for the 9th Circuit in 1968, where she served for 11 years before President Jimmy Carter named her the first U.S. Secretary of Education.

In 1981, Hufstedler returned to private life, teaching and practicing law. At that time, she was a partner in the Los Angeles firm Hufstedler & Kaus, now Morrison & Foerster.

Hufstedler earned her law degree from Stanford University and her bachelor’s in business administration from the University of New Mexico. She is also the recipient of 20 honorary doctoral degrees from various American universities.

*The Edith House Lecture Series is hosted annually by the Women Law Students Association (WLSA) in honor of one of the first female graduates of the University of Georgia School of Law. House, a native of Winder, Ga., was co-valedictorian of the law class of 1925, the first class to graduate women.*

## Climate change focus of annual Red Clay Conference

**C**an Red Clay Go Green? Adapting Law and Policy in the Face of Climate Change” was the topic of the 20th Annual Red Clay Conference, hosted by the University of Georgia School of Law’s Environmental Law Association.

The April conference included panels on topics such as the international climate change regime, the environmental impacts of climate change, how cities and states nationwide are tackling climate change, the potential of an alternative renewable source of energy in Georgia and the Southeast, and new opportunities in the private sector generated by climate change.

“We got really great feedback from all of the participants,” conference organizer and second-year law student Elizabeth M. Long said. “Climate change is one of the most up and coming areas of law, and I think it is important to do everything we can to advance the knowledge of both the general

community and Georgia attorneys.”

The day-long symposium also included keynote speeches by climate change specialist David Hunter, American University assistant professor of law, as well as by David D. Caron, the co-director of the Law of the Sea Institute and University of California at Berkeley Maxeiner Distinguished Professor of Law.

Other panelists were: Georgia Law Woodruff Chair in International Law Daniel M. Bodansky, Southern Alliance for Clean Energy Renewable Energy Coordinator Mary Carr, Athens Mayor Heidi Davison, Georgia Forestry Commission Staff Forester Josh Love and Radical Energy Ventures Founder and President James Marlow.

Sponsored by the ELA, the Red Clay Conference is an annual environmental law event established to increase public awareness of environmental issues of regional, national and international significance through a



*David Caron, the co-director of the Law of the Sea Institute and University of California at Berkeley Maxeiner Distinguished Professor of Law, delivered the morning keynote speech titled “Law and Adaptation to Climate Change” during the 20th Annual Red Clay Conference.*

series of educational presentations and open forum discussions. The conference is entirely student organized and supports the ELA’s mission to advance sound environmental policy, to encourage discussion and to raise awareness among attorneys and lawmakers in Georgia and throughout the Southeast.

## Solving poverty through the law



*As part of the moot court on Civil Gideon, Southern Center for Human Rights Staff Attorney Gerry Weber (J.D.’89) argues his case to a panel of “judges” during the third annual Working in the Public Interest Law Conference. The “judges” included: (l. to r.) Attorney Sherry Jackson (J.D.’87), Georgia Court of Appeals Chief Judge Anne Barnes (J.D.’83) and Athens-Clarke Probate Court Judge Susan Tate (J.D.’75). Georgia Law Associate Professor and Director of Civil Clinics Alex Scherr (far left) argued against Weber for the defense. The participants were introduced by second-year law student Elizabeth Taxel (far right).*

**T**he third annual Working in the Public Interest Law Conference explored practical approaches to solving poverty through

the law with notable speakers from across the country, including Yale University’s Steven Wizner and prominent Atlanta attorney and *Fulton County Daily Report’s* 2007 “Newsmaker of the Year” B.J. Bernstein (J.D.’87).

The two-day conference covered a variety of issues such as: civil liberties; race and the criminal justice system; decriminalizing mental illness; funding public defender systems; the media’s role in the law; immigration; lesbian, gay, bisexual and transgendered youth in state-sponsored institutions; environmental justice and women’s reproductive rights.

There was also a moot court exposition on Civil Gideon, which explored whether the Constitution requires a lawyer for poor people in civil cases involving fundamental legal needs, such as shelter.

Key panelists for the various sessions included: Georgia Court of Appeals Chief Judge Anne Elizabeth Barnes (J.D.’83), Southern Poverty Law Center’s Director of

the Immigrant Justice Project Mary Bauer, Georgia Public Defender Standards Council Mental Health Advocate Sabrina Rhinehart (J.D.’94) and Southern Center for Human Rights Staff Attorney Gerald R. “Gerry” Weber (J.D.’89).

Wizner, Yale’s Douglas Clinical Professor of Law and supervising attorney, and Bernstein, who specializes in criminal law, delivered the opening and closing keynote addresses, respectively.

Also during the conference, Phyllis J. Holmen, executive director of Georgia Legal Services and member of the American Bar Association’s Presidential Task Force on Access to Civil Justice, was honored with the 2008 WIPI Lifetime Achievement Award. Emory University School of Law second-year students Terri Porter and Stephen Weyer were jointly presented with the 2008 WIPI Student Achievement Award for their work on the Emory Public Interest Committee Student Board Inspiration Awards.



## Symposium explores the complexities of the U.S. patent system



*Eli Lilly and Company Senior Vice President and General Counsel Robert Armitage presents as part of the patent law conference's second panel, Reactions from Industry. Other speakers for this panel included: (l. to r.) Cisco Systems Vice President for Intellectual Property Mallum Yen, Goldman Sachs Chief Intellectual Property Counsel John Squires, Cornerstone Research Senior Advisor Cecil Quillen and International Nutraceutical Company Chief Operating Officer and Georgia Law Adjunct Professor Russell Denton (J.D.'01), who moderated the panel. Authors James Bessen and Michael Meurer also participated in the panel discussion (not pictured).*

**A** recent symposium co-hosted by the University of Georgia School of Law has added to the growing consensus that the U.S. patent system is in desperate need of reform.

The day-long event brought together experts from academe, industry and the economic sector to explore *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk*, a new book authored by James Bessen and Michael J. Meurer.

"*Patent Failure* is a stunning new work of undeniable importance to anyone interested

in intellectual property," Georgia Law Post Professor and Conference Co-convenor Paul J. Heald said.

"This conference explored the authors' claims that the patent system has fallen short in providing predictable legal boundaries and examined the implications of those claims along with the authors' suggested solutions."

These include having patent claims that are transparent so innovators can obtain predictable information on boundaries as soon as possible, making patent claims and their interpretation clear and unambiguous,

and improving the feasibility of clearance searches.

Key panelists who participated in the conference were: Robert A. Armitage, senior vice president and general counsel for Eli Lilly and Company; Robert M. Hunt, senior economist for the Federal Reserve Bank of Philadelphia; Mark A. Lemley, Neukom Professor of Law at Stanford Law School; F.M. Scherer, Aetna Professor Emeritus at Harvard University Kennedy School of Government; and John A. Squires, chief intellectual property counsel for Goldman Sachs.

Heald said one of the unique things about this conference was that it brought together notable speakers from a variety of sectors involved in and affected by patent law.

"I think all of the participants appreciated getting to hear each sector's point of view," he added.

"It allowed for great discussion and a more complete picture of the problem."

As for a solution, Heald said everyone basically agreed the reforms mapped out by the authors in *Patent Failure* had a lot of merit and that change would take time.

Other sponsors of the March symposium included the Terry College of Business, the Terry College of Business Department of Economics and the University of Georgia Research Foundation.

## Roseboro named director of diversity programs



**G**regory L. Roseboro (J.D.'87) was recently named director of diversity programs at the University of Georgia School of Law. This position represents an expansion of Roseboro's current duties, as he will remain the associate director of admissions, a post he has held since 2000.

In his new role, Roseboro will focus his attention on the various diversity issues facing the law school as well as legal education in general. He will also be involved in student affairs, academic support, alumni relations and community outreach.

Key areas include helping to increase the diversity of students,

faculty and staff in addition to developing new initiatives to support diversity and cultural differences at the law school as well as coordinating efforts with the university's Office of Institutional Diversity.

Roseboro said this new position was created so he could dedicate more time to diversity related tasks, many of which he has aided with in the past.

"Our goal is to build upon what has already been established at the law school while simultaneously working to increase our involvement both campus-wide and in the legal community," he added.

Roseboro initially joined the law school's staff in 1994 as assistant director of admissions, student affairs and legal career services.

Roseboro earned both his bachelor's degree and his law degree from UGA.

## Ponsoldt retires from the School of Law



**A**fter 30 years of service, Lumpkin Professor James F. Ponsoldt retired from Georgia Law on July 1.

He began teaching at the law school in 1978 and specializes in the areas of antitrust, corporations, business crime, criminal procedure and communications law. In 1997, he was appointed the Joseph Henry Lumpkin Professor of Law.

From day one, Ponsoldt said he always sought to combine academics with outside practice activities.

He believes the best way to teach law reliably is to bring into the classroom relevant current issues from the outside legal world and to use that to fuel discussions, examples and questions. He also believes students should always be reminded of the human element in the cases they read and that every case is a non-fiction story in which lives have been affected.

To accomplish this, he acted as both a consultant and a litigator throughout his teaching career at Georgia Law, which proved to be no small task.

For example, in the 1980s, Ponsoldt served as counsel when UGA and the University of Oklahoma brought suit against the National Collegiate Athletic Association, resulting in the U.S. Supreme Court ruling that NCAA regulations limiting college football television rights constituted an antitrust violation (*NCAA v. Board of Regents*).

He also represented a group of Georgia Law graduates in *Palmer v. BRG of Georgia*,

a class action suit claiming that certain bar review companies violated antitrust legislation. The U.S. Supreme Court ruled in the students' favor, allowing cost reductions for bar review courses and more competition in the area.

Ponsoldt said most of his outside work, however, resulted in negotiated solutions that did not seriously harm either party in the dispute while still achieving his clients' goals.

Additionally, he has consulted for a number of public corporations and their boards on corporate governance issues in the wake of recent Wall Street scandals.

On the academic side, Ponsoldt was named editor of a special, highly influential volume of the "Antitrust Bulletin" devoted to a retrospective on the Reagan Administration and was an invited participant in the Airlie House institute's decennial meeting to address revisions to antitrust laws. His articles on criminal, antitrust and constitutional law in such journals as the *Harvard Civil Rights-Civil Liberties Law Review*, the *Cornell Law Review*, the *New York University Law Review*, the *Northwestern Journal of International Law & Business* and the *Notre Dame Law Review* have been cited widely.

"What I will miss the most [about teaching] is talking 'big cases,' politics and sports with students," he said. "I have always advised students at the beginning of each semester that all law is politics, and all politics is power. That observation is not cynical. It is the job of lawyers to use their power wisely and ethically."

Ponsoldt added that he feels one of his greatest teaching accomplishments has been retaining his enthusiasm for current events and positive change and for interacting with students who shared that same enthusiasm.

Once he retires, Ponsoldt said he may still teach a course or two, beginning this fall, and will continue public interest consulting, but on a much smaller scale. He also plans to continue to write fiction, poetry, screenplays and editorials, and to pursue the production of short films and photography. Additionally, he will stay involved in politics and travel.

Over the past 20 years, Ponsoldt has contributed numerous editorials to *The New York Times*, *The Atlanta Journal-Constitution* and local publications on a variety of legal and social policy issues. He has also been invited on numerous occasions to testify as an expert witness on antitrust matters before the U.S. House of Representatives Judiciary Committee.

Prior to joining the law school, Ponsoldt was a senior trial attorney at the U.S. Department of Justice during the Ford and Carter administrations. He also worked in private practice in New York and Washington, D.C., served as appellate counsel for the Justice Department in *United States v. AT&T* and *United States v. IBM* and served as a judicial clerk for Judge Donald S. Russell of the U.S. Court of Appeals for the 4th Circuit.

Ponsoldt earned his bachelor's degree from Cornell University and a commercial photography certificate from the Germain School of Photography as well as received a fellowship for graduate work in literature at Brandeis University. Afterward, he earned his law degree from Harvard University.

## Mathis receives service award



Lisa Mathis (left) was presented with the 2007 Emma P. Terrell Employee of the Year Award by Cindy Wentworth, Law School Staff Council chair. This honor is awarded annually to recognize staff members who demonstrate an outstanding work ethic and a commitment to service at Georgia Law.