

Volume 1, Issue 2  
Summer 2007

**In this issue:**

Revision of Official Rules of the South Carolina Administrative Law Court	1
SCAARLA Awards Scholarships to Law Students	1
Legal Aspects of the Lake Murray B-25 Rescue by John A. Hodge	2
Gregory L. Ogden, Professor of Law Pepperdine University to Speak at Annual SCAARLA Meeting	3
SCAARLA 2006 Educational Seminar and Annual Meeting Highlights	4

Notes from the SCAARLA  
newsletter committee

On behalf of Linda McDonald, Neal Rashley and myself, we are pleased to provide the Summer 2007 issue of the SCAARLA Newsletter. John Hodge has contributed a fascinating look into the legal aspects of recovering a part of our aviation history. Linda McDonald provided a summary of the 2006 SCAARLA Educational Seminar. Also included is the biography of Professor Gregory L. Ogden, the keynote speaker, for our 2007 Educational Seminar and SCAARLA meeting.

Be sure to place on your calendar Friday, September 21, 2007 as the date of our next SCAARLA Educational Seminar and meeting. Further details and registration information will be forthcoming to the membership.

The first annual Southeastern Health Planning Symposium, sponsored by SCAARLA, will be held on October 9, 2007 at the Metropolitan Convention Center in Columbia, South Carolina. More information will be provided in the near future for SCAARLA members.

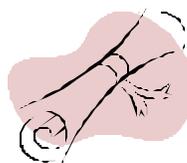
**REVISION OF OFFICIAL RULES OF THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT**

Official Rules of the South Carolina Administrative Law Court have been revised.

Nancy Riley, General Counsel of the South Carolina Administrative Law Court, has informed us that the official Rules have been amended, effective April 30, 2007. A copy of the Rules is available through the Court or through the SCAARLA website, [www.scaarla.org](http://www.scaarla.org). Changes to the appeal process and the presentation of evidence are major revisions to the Rules.

Scaarla Awards  
scholarships to law  
students

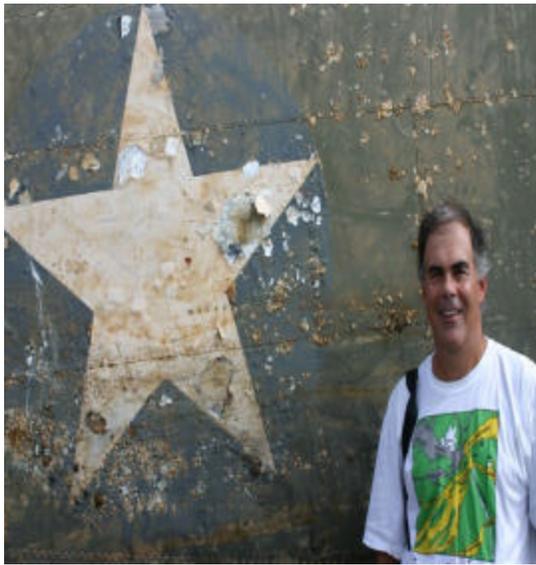
SCAARLA awards scholarships to law students with significant interest in Administrative Law.



Starting this year, the SCAARLA Board funded one thousand dollar scholarships to eligible students at both the public and private law schools in the State of South Carolina. Dean Pratt of the University of South Carolina School of Law indicated that Mr. Stephen Bennett, a rising third year law student, was awarded this scholarship.

The Charleston School of Law awarded its scholarship to Jolyn Oxford, an evening student who is currently studying for the Bar exam.

Legal Aspects of the Lake Murray B-25 Rescue  
By John A. Hodge



I was privileged to be contacted by Dr. Bob Seigler of Greenville, South Carolina, in the early 1990's about his effort to locate and recover a World War II era B-25 Mitchell Bomber from Lake Murray. I later served as co-principal investigator of the team that recovered the B-25 in September 2005. Our effort was featured in an hour-long documentary on the History Channel and we were also featured in several aviation magazines in the UK and Germany and are soon to be featured in the Air & Space Magazine. In addition to the planning, teamwork and execution of the project, there were many legal aspects of the B-25 recovery.

- "If we find it, who owns it?" was the initial question that Dr. Seigler posed when he asked me to assist him. The short answer is that under the South Carolina Underwater Antiquities Act, had the airplane been located in the flooded river course of the Saluda River, the State would have a property interest; if it were on lands acquired by SCE&G, it would have a property interest; or a third party would have a property interest if it was on their land.

**John Hodge After Recovery of the Airplane**

- The B-25 was flown by the Army Air Corps (now the USAF). The official accident report referenced that the aircraft could not be salvaged and was "condemned"; the Navy, unlike the Air Force, claims

title to all submerged artifacts. Several years back, the Air Force adopted the Navy policy for a year and thankfully reverted back to its former policy. The policy change raised an interesting question that if a claim of ownership had been waived, how could the government reassert title to an object to which it had previously relinquished possession? Fortunately, we did not have to deal with that question.

- Once the aircraft was located, it was determined to lie on land that SCE&G had acquired prior to flooding Lake Murray. In a lengthy series of negotiations, we negotiated an "Aircraft Salvage Agreement" with SCE&G and the Utility agreed to give Bob Seigler a quit-claim deed to the aircraft. Among other conditions, the aircraft was to be donated to a museum for public display. We formed the "Lake Murray B-25 Rescue Project, LLC."
- At the same time that we were looking for the aircraft, a Naval Reserve Dive Unit made the first sonar contact with the aircraft; however, our team was able to put the first divers on the aircraft to survey the condition of the plane. Dr. Seigler had documented that five B-25 aircraft had ditched or crashed in Lake Murray during the World War II years. As soon as the diver dusted the silt off of the skin and saw the "tail number" we knew exactly when the airplane had ditched, who was on it, and the general facts surrounding the accident. I filed a Freedom of Information Act request to obtain copies of the Navy's side scan sonar logs. Our team had also obtained sonar images of the aircraft resting on the bottom. After over six months, the Navy had not responded to our FOIA request. I contacted a JAG officer in Norfolk and explained that the Navy was overdue in producing the sonar logs and I threatened a FOIA lawsuit in South Carolina to obtain this information. I told the JAG officer, "Worse than the FOIA litigation, if we don't have the sonar logs by the end of this week, Dr. Seigler is going to contact Strom Thurmond!" The next day a FedEx package arrived with the sonar logs. The Navy had indicated publicly that it had found two aircraft and that it wanted to salvage one and the state could salvage the other. I am experienced in interpreting sonar images and upon reviewing their sonar logs, aircraft #2 was no airplane at all but two logs crossed in a channel.
- We worked closely with the State Archaeologist throughout the process. Once we had the first video of the B-25, we scheduled a meeting at the South Carolina Institute of Archaeology to present our findings. We were fortunate in that three Senators showed up to listen and support our work.
- The B-25 could have been recovered approximately seven years earlier but we did not have a suitable venue to display the aircraft. Members of our team contacted numerous aviation museums throughout the Southeast and in other parts of the country. We received lots of interest but many expectations were unrealistic. Some museums wanted to restore the aircraft to an airworthy status and fly it. Although our aircraft was a rare, early model B-25, **(Continued Page 3)**

some later production models are still flying. In order to make the Lake Murray aircraft airworthy, it would have to have been gutted and restored to the point that it would lose its entire World War II character. I drafted many aircraft donor agreements in the process.

- Fundraising was a major concern throughout the project. We received private funds and like kind contributions. Many South Carolina businesses were contacted, but few provided us with support. Ultimately, Dr. Seigler stepped up to cover the shortfall and the tax incentives allowed the project to proceed as a break even proposition. We had experienced tax counsel assist us.
- We were pleased that the History Channel was interested in filming the recovery. I was involved in negotiations and agreements with several parties involving media, film, and publication rights and copyright. I also negotiated film incentives with the South Carolina Department of Commerce and the South Carolina Department of Revenue.
- We knew the aircraft had a substantial amount of fuel on board when it ditched, and realized that there could be a release into the environment during the recovery. We discussed these matters with DHEC and agreed to be prepared to address any releases with personnel and absorbent materials. Once the aircraft “broke suction” in its muddy grave, aviation fuel began to appear on the surface. The environmental controls were successfully applied. Also, approximately 700 gallons of aviation fuel was pumped from the aircraft.
- In addition to the aforementioned, I found that I was practicing law on the barge on a regular basis, dealing with personnel issues, contractual matters involving members of the team, and dealing with the myriad of people that show up at the last minute and want to have a role in the project.

In the end, every one on the team had multiple roles and duties. Although I was a jack-of-all-trades, the legal aspects of the recovery were also very interesting and challenging. Recovering the Lake Murray B-25 was one of those rare opportunities that comes around only once or twice in one’s life. The members of our team were pleased to recover an important piece of history for the Midlands, South Carolina, and the nation. We did it not for personal gain, but to preserve our history.

- John Adams Hodge practices Environmental and Aviation Law with Haynsworth Sinkler Boyd, P.A. in Columbia, South Carolina. He, along with Dr. Bob Seigler and Dr. Bill Vartorella, were the principals involved in the rescue and recovery of the aircraft.

### Gregory L. Ogden, Professor of Law, Pepperdine

#### University to Speak at 2007 Annual SCAARLA Seminar



Gregory L. Ogden Professor of Law

#### Professor Gregory L. Ogden

Gregory L. Ogden is a professor of law at Pepperdine University where he has taught since 1978. He teaches administrative law, civil procedure, professional responsibility, and remedies. He is a graduate of UCLA, (BA, cum laude) UC Davis School of Law (JD, Law Review Editor), and he has two LL.M.s, one from Temple University in legal education, and one from Columbia University in administrative law. He has been an administrative law consultant to the Administrative Conference of the United States, and to the California Law Revision Commission. He has taught administrative law for over 25 years, and was the principal author of California Public Agency Practice, (three volumes, Matthew, Bender & Co., Inc. 1989), and California Public Administrative Law (two volumes, Matthew Bender & Co., Inc. 1997), the leading treatise on California administrative law. He prepares treatise updates five times per year and the treatise is available both in print version and online on Lexis-Nexis. In Fall 2005, he completed a major re-

vision of a chapter on State Administrative Law in California (200 pages) for a multi-volume treatise on California Environmental Law and Land Use Planning (Manaster & Selmi, Matthew Bender & Co.). **(Continued on Page 4)**

## OGDEN BIOGRAPHY (CONTINUED FROM PAGE 3)

He has authored several articles in the administrative law field, including most recently the following article in the Journal of the NAALJ: Ogden, Gregory L., The Role of Demeanor Evidence in Determining Credibility of Witnesses in Fact Finding: The Views of ALJs, @ 20 Journal of NAALJ 1 (2000). Professor Ogden was the 1999 NAALJ Fellowship recipient, and he presented his fellowship paper on demeanor evidence at the 1999 NAALJ Conference in Asheville, North Carolina.

Professor Ogden has been the faculty editor of the Journal of the NAALJ since the 2000-2001 academic year, when the Journal editorial responsibilities were taken over by Pepperdine University School of Law. He was on the planning committee for the Evidence for ALJs program hosted at Pepperdine Law School in May, 2001. Since 2000, Professor Ogden has spoken at numerous continuing judicial education conferences on current developments in administrative law, demeanor evidence and credibility determinations, and judicial ethics for ALJs. His topics have been presented at programs sponsored by the California Office of Administrative Hearings (OAH), the National Association of Hearing Officials (NAHO), the Association for Administrative Law Judges (AALJ), the National Association of Administrative Law Judges (NAALJ), and the Iowa and Arkansas NAALJ affiliate organizations. He has also presented programs on legal ethics for government attorneys for the SEC and for Administrative Law Section of the Arkansas State Bar Association. Ogden has been retained as a consultant to several law firms needing administrative law expertise. In 2006, Ogden was appointed Reporter for the Drafting Committee of the Model State Administrative Procedure Act revision project sponsored by the National Conference of Commissioners for Uniform State Laws (NCCUSL).

We look forward to his presentation at SCAARLA's 2007 Educational Seminar.



## SCAARLA 2006 EDUCATIONAL SEMINAR AND ANNUAL MEETING HIGHLIGHTS



### New Board Members

- JOHN FREEMAN
- DAVID SUMMER
- MIKE MOLONY
- MARY SHAHID
- WENDY CARTLEDGE
- KELLY RAINSFORD
- NEAL RASHLEY
- TOMMY LAVENDER

SCAARLA held its 2006 Educational Seminar and Annual Meeting on September 22, 2006 at the Columbia Conference Center at 169 Laurelhurst Drive in Columbia. The theme of the meeting was "New Developments in Administrative Law Practice."

The Honorable Marvin F. "Buddy" Kittrell welcomed attendees and made opening comments. John Hoefer served as moderator. The morning session included Attorney Tommy Lavender's explanation of the recent legislative changes to the Administrative Law Court appeals process brought about by Act 387 of 2006; SCDLLR's Counsel Sharon Dantzer's discussion of the General Assembly's approach to privacy and privilege issues; CPA Mark T. Hobbes' introduction to the process of valuing closely held businesses; and Richland County Tax Assessor John Cloyd, with Sandy Houck and Mike Horton of the S. C. Department of Revenue, discussing the Property Tax Act of 2006.

The new Dean of the USC School of Law, Walter F. "Jack" Pratt, was the luncheon speaker. Dean Pratt gave a "virtual tour" of the planned new law school facility for which funds are being solicited. Dean Pratt conveyed his excitement about the future of the Law School and the new facility, which is to be built in Columbia on the former site of the Columbia Art Museum.

The afternoon session included Office of Disciplinary Counsel Barbara Seymore's ethics segment on recent disciplinary rulings and new rules on attorney advertising; DHEC General Counsel Carl Robert's review of state agency rulemaking; a panel discussion on rulemaking versus contested case matters in which Attorneys Margaret M. Fox, Frank R. Ellerbe III, Carl Roberts and Charlie Terreni participated; and a "Wetlands Update" by John Adams Hodge, Esquire. The day ended with breakout sessions by a number of speakers addressing a variety of topics, including: attorneys Keith C. McCook and Elizabeth Crum discussing the recent amendments to the S. C. Consolidated Procurement Code; attorneys Susan B. Lipscomb, Ariail B. Kirk, Nancy Layman, and Cheryl Bullard discussing changes in the administrative review process for DHEC appeals brought about by Act 387; and Jana Shealy, Clerk of the South Carolina Administrative Law Court, reviewing important **(Continued Page 5)**

## SCAARLA HIGHLIGHTS (CONTINUED FROM PAGE 4)

rules and procedures.

The Conference Center provided a tasty buffet luncheon. The participants enjoyed the day, especially the opportunity to visit with colleagues and qualify for needed Continuing Legal Education credits.

New Board members were elected at the Annual Meeting, including the following individuals who were elected to new three year terms: John Freeman, David Summer, Mike Molony, Mary Shahid, Wendy Cartledge, Kelly Rainsford, Neal Rashley and Tommy Lavender.

Thanks to all who participated in making this conference a success, including the Board Committee Chairs who contributed to the program, the speakers, John Hoefler for serving as moderator, Malane Pike for making arrangements with the Conference Center, and Kelly Rainsford and Wendy Cartledge for assisting on the day of the conference.

Linda McDonald  
Education Committee Co-chair

South Carolina  
Administrative and  
Regulatory Law  
association

P. O. Box 7601  
Columbia, SC 29202  
Tel: 803-791-4181  
Fax:  
E-mail: info@scaarla.org

We're On the Web  
[www.scaarla.org](http://www.scaarla.org)



### Participation in scaarla committees



***SCAARLA offers its members opportunities to participate in committees dealing with specific areas of administrative and regulatory law. These committees are listed below. SCAARLA encourages its members to be active participants.***

***Health Law Committee***  
***Public Service Commission Committee***  
***Environmental Law Committee***  
***Membership Committee***  
***Insurance Law Committee***  
***Legislative Committee***  
***Taxation Law Committee***  
***Professional Licensing, Consumer Finance/OSHA Law Committee***  
***Accountancy Committee***  
***Ethics Committee***  
***Education Committee***  
***Workers' Compensation Committee***  
***Audit Committee***  
***Website Committee***  
***Awards & Scholarship Committee***