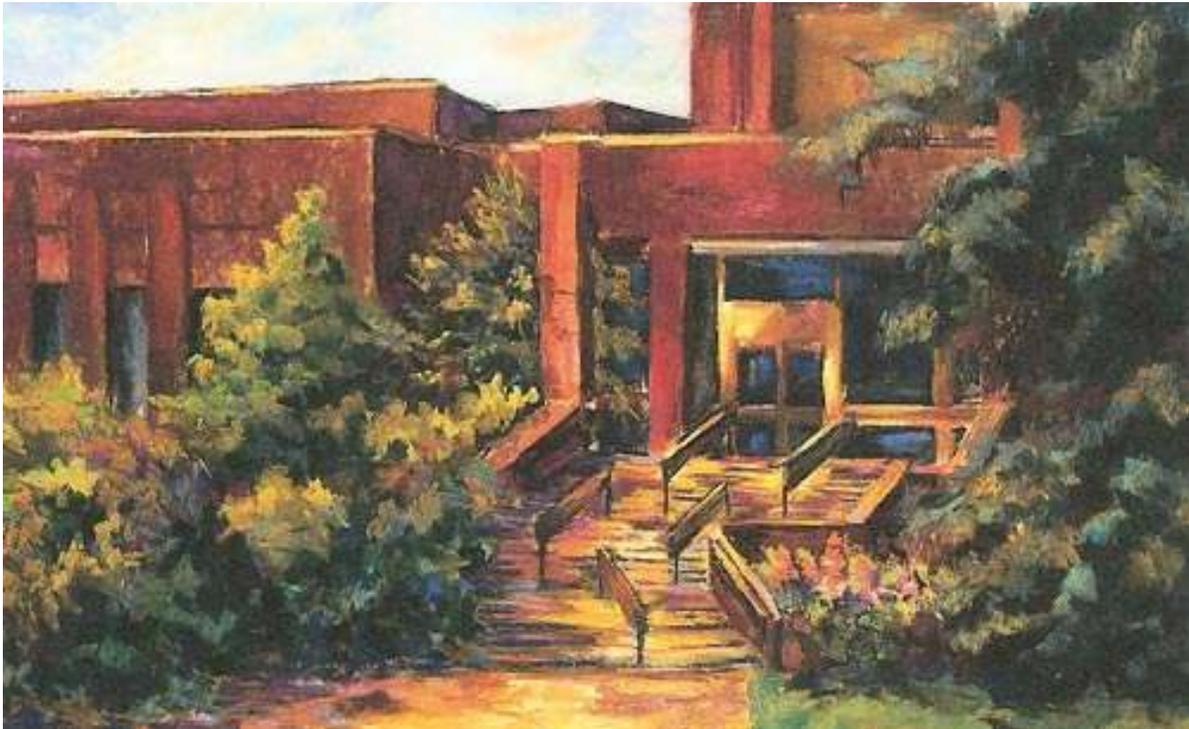


"LET OUR MINDS BE BOLD"

**FULFILLING A STATEWIDE MISSION
IN THE UNIVERSITY OF IDAHO'S
SECOND CENTURY OF LEGAL EDUCATION**



**PREPARED FOR THE BOARD OF REGENTS
March 19, 2008**

University of Idaho
College of Law

“LET OUR MINDS BE BOLD”

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IN THE UNIVERSITY OF IDAHO’S
SECOND CENTURY OF LEGAL EDUCATION**

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1. Conclave on Idaho Legal Education in the 21st Century – July 16, 2007 --177 pages, available in hard copy on request, or accessible on-line at:
<http://www.law.uidaho.edu/documents/Conclave%20Document.pdf&pid=101948&doc=1>
2. Moore Information, Inc. – Summary of College of Law Market Survey Study – October 15, 2007, and Summary of Internal College of Law Survey
3. Recommendation by the Academic Consultant – October 27, 2007
4. Recommendation by the College of Law Advisory Council – October 29, 2007
5. Letter from the State Bar/Foundation Visiting Committee – December 18, 2007
6. Review of Concept Statement by the Academic Consultant – March 19, 2008

EXECUTIVE SUMMARY

This document provides to the University of Idaho Board of Regents (State Board of Education) --

- An update on the strategic planning process, together with an analysis of the data gathered and alternatives considered, in developing a proposal to meet the state's future needs by fulfilling the University's statewide mission in legal education.
- An explanation of the concept of a statewide public law school providing opportunities at two locations, Moscow and Boise, with cost-effective unified administration and a curricular design that emphasizes ethics and professionalism while responding to needs and opportunities at each location.

Idaho's population has doubled, and its need for legal expertise has grown dramatically, in the 35 years since the Menard Law Building – home of the University of Idaho College of Law -- was designed and built. Needs for legal services have risen in response to an increasingly urbanized population, a rapidly expanding economy, and an expanding regulatory role of government. Moreover, the demand for legal education has been spurred by the diversity of career paths made available by the Juris Doctor degree.

Legal expertise is essential to a democratic society's mechanisms for civil dispute resolution, administration of criminal justice, protection of individual liberty, and promotion of economic development through ordered markets. Idaho's legal profession, which has a smaller per capita presence than the profession in adjacent states, is destined to grow. Idaho's legal education opportunities, as reflected in the ratio of law school seats to population, are similarly small in comparison to those provided in other states. The demand for legal education is especially acute in the Treasure Valley, one of the most underserved urban areas in the United States.

The response to this demand should come from public legal education. It is the state law school that keeps legal education affordable, thereby helping to assure that legal services are available, and justice is accessible, to Idahoans of ordinary means. It is the state law school, moreover, that has a special duty and ability to advance values now receiving a resurgence of interest in legal education circles – such as client-centered practice, professionalism, unselfish commitment to the public trust, and development of moral judgment. Idaho can become nationally distinctive by emphasizing these values in the design of a public law school that transcends geography in fulfilling a statewide mission.

As reported to the State Board last fall in Lewiston, the University has examined its statewide mission through an open process that occasionally generated controversy but assured that all perspectives would be heard and considered. In light of significant changes in the state and the legal profession, the College analyzed and rejected the "business as usual" option, finding that it would be injurious to the College and University, and would leave the statewide mission unfulfilled. The College also reviewed three broad approaches for the future: (a) focusing on Moscow with relatively little expansion in Boise; (b) relocating the J.D. instructional program from Moscow to Boise, while retaining an interdisciplinary research and outreach function in Moscow; and (c) preserving the Moscow program while expanding the College's presence in Boise through the phased development of a two-location model of legal education.

The College examined these alternatives in depth during a three-day Conclave on Legal Education conducted in cooperation with the Idaho State Bar, in July, 2007. The College also gathered data from marketing surveys, which showed that the College enjoys a strong academic reputation but also showed that a single-location law school in Moscow is unattractive to many would-be students and is not even preferred by most students enrolled at Moscow. After reviewing Idaho's needs in relation to the strengths and weaknesses of all three major approaches (including possible constitutional problems with the relocation approach), the College's academic consultant, the College's Law Advisory Council, and the University's administration all have agreed that a two-location model, with adequate resources, will be the best approach for Idaho. The Idaho State Bar has expressed its full support of the process leading to this conclusion. The College faculty has adopted the model in concept and has moved forward with developing a design to implement this concept.

Under the two-location model, the University of Idaho's statewide law school would deliver an integrated curriculum featuring basic offerings in Moscow and Boise, plus an array of differentiated and complementary emphases based on each location's needs and opportunities. Thus, Moscow would emphasize land grant-related interdisciplinary research in law and science, and would develop strength in natural resources and environmental law, American Indian law, and public lands. Boise would take advantage of its location at a center of commerce and government to develop business law and entrepreneurship, intellectual property, and international business transactions and trade. Both locations would feature small-scale teaching and learning environments with strong emphasis upon professional skills and values.

The two-location model would be developed in phases correlated with the availability of resources, the depth and quality of the student applicant pool, and the requirements of continuing accreditation. The phasing sequence, to be determined soon after the two-location concept has been approved, could begin either with a modestly sized first-year class followed by second and third years, or with a full third-year program that would be complemented thereafter by first- and second-year classes. In either event, the

University would move forward with the first phase as expeditiously as possible -- perhaps as early as the fall of 2009.

The University's statewide legal education initiative provides a once-in-a-generation opportunity to collaborate with the Idaho Supreme Court in the development of an "Idaho Law Learning Center" in Boise. The Center could be scaled to the needs of the legal education program while also serving other public purposes -- including shared use and improvement of the State Law Library, and cooperation with the judiciary and other branches of government in providing civic outreach on the rule of law in a democratic society. The Center would be unique and distinctive in national legal education. The Menard Law Building in Moscow also would be modernized at a cost that would be less than moving that portion of the law school to Boise.

This document is a concept statement, so it does not set forth detailed cost and revenue figures. Those will be contained in a Business Plan to be crafted upon approval of the two-location concept. Nonetheless, for the purpose of illustrating the scope of the concept, it can be estimated that the *eventual* operating cost of the fully developed two-location expansion would be roughly \$5-6 million over the current budget of approximately \$8 million. That amount could be covered by a proportionate increase in state funding, coupled with an increase in law student fees. By way of illustration, if the proportionately increased state investment were \$3.5 million per year, the student fee increase could be an average of \$4,000 per year per student -- over and above other planned fee increases -- thereby generating an additional \$2 million with 500 students. (Idaho residents currently pay approximately \$10,200 per year.) Private giving would provide a margin of academic excellence as well as a source of increased student financial aid. Grants and contracts also would contribute toward meeting the law school's operating expenses.

This is a turning point in the history of the College of Law and of the University. The state's needs are manifest, and the statewide mission in legal education must be fulfilled. Idaho needs a renewed investment in legal education. It is a time for bold minds and bold actions.

PART ONE: MEETING IDAHO'S NEEDS AND FULFILLING A STATEWIDE MISSION

*"If we would guide by the light of reason, we must let our minds be bold."*¹

The State Board has assigned to the University of Idaho the statewide mission for delivery of legal education.² A statewide mission "denotes that the institution is assigned by the Board to offer and deliver a program in order to meet a particular educational and workforce need in all regions of the state."³ As explained below, Idaho's law-related educational and workforce needs are growing and changing rapidly. The University has a special calling to address these needs and changes because high-quality public legal education serves the state and its people, promotes economic development and civic professionalism, and provides affordable entry into the legal profession -- thereby keeping legal services and access to justice within reach for Idahoans of ordinary economic means. The University's special high calling must be answered with bold action.

Idaho's Need for Legal Expertise Is Growing

The University's responsibility for legal education began in 1909, when the Legislature approved the Board of Regents' proposal to establish a public law school that would provide legally trained individuals to develop the rapidly forming legal fabric of a young state. The University of Idaho College of Law initially occupied space in the University's Administration Building, remaining there until the present Menard Law Building, designed for approximately 250 students, was constructed in 1972-73. At that time, the population of the state stood at approximately 750,000.

Today, as the College of Law approaches its second century in 2009, the population of Idaho has doubled to approximately 1.5 million. The state is one of the fastest growing in the nation -- indeed, the fourth fastest in recent years.⁴ Yet opportunities in Idaho legal education have remained nearly static. The current number of Idaho law students -- 296 in the spring of 2008 -- represents little change from the level contemplated for the Menard Law Building in the 1970s. (Even with this modest increase, however, the building is being stretched beyond its intended capacity.) The growth of demand for legal education is reflected in the fact that the College has received an average of 813

¹ Justice Louis D. Brandeis, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (dissenting opinion).

² Idaho State Board of Education Policies and Procedures, Section III (Post Secondary Affairs), Part I (Roles and Missions), Institutional Role and Missions -- University of Idaho. The assignment of law to the University of Idaho is also reflected in the State Board publication "2008 Higher Education in Idaho", at page 35.

³ State Board Policies and Procedures, Section III, Part Z.

⁴ "State of Idaho News," Governor's Website, March 3, 2008.

applications in the past five admissions cycles, for entering classes that averaged 105 students.

The doubling of Idaho's population is not the only force driving an increased demand for legal education. Additional pressure on the current legal education system arises from changes in the sources of demand for legal expertise:

- Idaho's population has become more urbanized, producing higher caseloads in the state and federal criminal justice systems and increasing the demand for prosecutors, defenders, and judges. (In Idaho state district courts, for example, criminal cases nearly quadrupled from 1982 to 2006.⁵) The judiciary has a special connection with the University of Idaho; more than half of the Supreme Court Justices, and more than half of Idaho's trial judges, are alumni of the University.
- Idaho's economy has expanded rapidly, with Idaho's gross domestic product increasing at an annual rate of 7.4 % (the fastest growth rate in the nation) between 2003 and 2006.⁶ Manufacturing has recently become the largest sector of the state's economy, and the most important manufacturing sector is science and technology. Indeed, Idaho recently ranked seventh nationally in the concentration of high-tech workers.⁷ This economic growth generates a demand for – and is dependent upon – a supply of lawyers and law-trained businesspersons with expertise in negotiations, civil litigation, mediation, arbitration, business formation and organization, commercial transactions, consumer protection, construction, real estate finance, business and estate planning, employment law, international business transactions, and other law-based private sector services contributing to economic development. For example, University of Idaho law graduates who have held state and national leadership positions in the business community include Dennis Johnson, president and chief executive officer of the United Heritage Financial Group; Steve Hanks, past president and chief executive officer of Washington Group International; Frank Shrontz, past chief executive officer of the Boeing Company; Lucinda Weiss, past associate general counsel of the Goodyear Tire & Rubber Company; and Dennis Wheeler, president and chief executive officer of Coeur, The Precious Metals Company.

⁵ Annual Reports of the Idaho Courts, 1982-2006.

⁶ "Idaho has been tops among states in economic growth since 2003. It has ranked high nearly every year since 1987, a run of good times unmatched by any other state. Even the recessions of 1991 and 2001 didn't stop growth.... Idaho's economy has clicked in every sector: farming, technology, tourism, construction, service industries. Big business has thrived, and small entrepreneurs have, too. The state has a 2.4% jobless rate, the lowest in the nation, and has added jobs every year since 1987." *USA Today*, Sep 26, 2007.

⁷ Idaho Department of Commerce website, March 16 , 2008.

- Idaho governmental regulation and public sector services also are burgeoning, as evidenced by a nearly three-fold increase in the budget of Idaho's state government from 1992 to 2007.⁸ This growth, combined with growth in federal agencies as well as county and city governments, creates a growing demand for legal expertise in land use, natural resources law and environmental protection, energy, health and human services, child protection, immigration, workplace safety, public utilities, and general government administration. The University of Idaho has produced lawyers in public service such as Idaho Senate Majority Leader Bart Davis; former U.S. Senator Jim McClure; U.S. Securities and Exchange Commission Secretary Nancy Morris; and Idaho Lieutenant Governor (and past Governor) Jim Risch.
- Moreover, demand is growing for law-trained individuals, often holding joint degrees in law and other disciplines, in diverse additional occupations, ranging from science and teaching to higher education administration and human resource management, where the rigorous analytical tools developed in a legal education provide a professional advantage. For example, University of Idaho law graduates include Jon Oliver, executive associate director of the Department of Athletics at the University of Virginia; Sally Savage, general counsel of Washington State University; and Georgia Yuan, general counsel of Smith College and immediate past president of the National Association of College and University Attorneys.

A quality legal education leads to a wide variety of careers. As noted in the College of Law viewbook: "You may become a transactional lawyer, a litigator, a judge, an administrator, a business entrepreneur, a teacher, a writer - - the J.D. degree can take you almost anywhere. Your Idaho legal education will sustain you wherever you go." Placement data for the legal profession confirm these opportunities. While most law school graduates find employment as lawyers and judges, graduates are prepared for the many positions that value critical-thinking skills. A 1993 study conducted by the Law School Admission Council⁹ indicated that nearly 10% of law school graduates were employed in business and industry as managers, executives and administrators, with others employed in sales and marketing, as college law teachers, and in science and health fields. Data compiled more recently by The National Association for Law Placement (NALP) showed similar employment patterns, with over 12% of 2006 graduates employed in business/industry, and a growing percentage in public interest professions.¹⁰ The growth of business and public interest law was evidenced nationally in the career choices of diverse categories of students:

⁸ Idaho Legislative Services Office, *Idaho Fiscal Facts 2007*.

⁹ Joe G. Baker, *Employment Patterns of Law School Graduates* (RR-00-01), LSAC Research Report Series (2001).

¹⁰ For further discussion and updates, see the National Association for Law Placement website: <http://www.nalp.org/content/index.php?pid=515>.

**National Data:
Initial Employer Types — Comparisons for the Classes of 1982, 1994, and 2006**

	Minorities and Non-minorities					
	1982		1994		2006	
	Non-minorities	Minorities	Non-minorities	Minorities	Non-minorities	Minorities
Private Practice	59.4%	43.5%	57.5%	46.2%	57.6%	54.5%
By Size of Firm*						
Solo	7.2	6.5	5.2	4.7	2.5	2.4
2-10	38.4	35.5	37.4	27.5	33.0	29.7
11-25	14.3	11.1	12.1	8.9	10.6	7.5
26-50	10.7	8.1	7.5	5.6	7.1	5.1
51-100	10.1	10.0	7.6	9.3	6.0	4.8
101+	14.5	21.3	22.7	34.0	34.8	48.5
Business/Industry	10.5	11.4	11.7	11.4	12.7	14.2
Government	12.8	21.0	12.4	20.8	12.0	12.6
Judicial Clerkships	10.9	9.6	13.3	11.6	11.7	8.3
Public Interest	1.7	7.4	2.2	5.4	4.8	7.4
Academic	1.3	1.8	0.9	1.8	0.6	2.1
Total # of Jobs	21,495	1,339	19,622	3,298	24,445	6,257

With varied backgrounds, interests, and skills, lawyers provide much of the human infrastructure of public health and safety, through their work in regulatory law and in the criminal justice system; through their civic leadership, they energize community and nonprofit organizations; and through their civil practices and transactional work, they resolve conflicts and play a crucial role in the operation of a rules-based market system that has made the American economy the most powerful in the world.

Legal Expertise Is a Vital Component of Economic Development

Legal expertise is essential to a democratic society's mechanisms for civil dispute resolution, administration of criminal justice, protection of individual liberty, and promotion of economic development through ordered markets. The role of the legal profession in economic development, and its resultant influence on the demand for legal education, is not always fully appreciated.¹¹ Economic data compiled by the US

¹¹ During the 1980s hysteria regarding the supposed rise of "Japan, Inc.", various studies attempted to explain Japan's superior growth rates by pointing to the differing levels of lawyers in the respective countries, with more lawyers equating to lowered growth rates. The subsequent weaknesses in the Japanese economy revealed the simplicity of this analysis, and later studies questioned both the methodology and conclusions of these earlier studies. See, e.g., Charles Silver and Frank B. Cross, *What's Not To Like About Being A Lawyer?* 109 Yale Law Journal 1443 (April 2000):

When it comes to debunking anti-lawyer myths, as good a place to start as any is the widely reported assertion that the United States has too many lawyers. An open-minded person with a modicum of respect for markets would presume against the accuracy of this claim. The legal

Department of Commerce's Bureau of Economic Analysis (BEA) demonstrate the positive impact of the legal profession to the nation's Gross Domestic Product. Using

sector is the fourth largest part of the service economy, with revenues in excess of \$140 billion. The most obvious explanation for its tremendous size is that clients want and are willing to pay for the services that lawyers provide. Moreover, the legal sector and America's economy have grown hand in hand. The correlation was especially clear in the 1990s when both the economy and the need for corporate legal services grew dramatically....

Michael Porter, the renowned professor at the Harvard Business School ... studied [in 1999] the per capita gross domestic product (GDP) in fifty-eight nations. Porter found a positive association between "adequacy of private sector legal recourse" and societal wealth. In size, the beneficial effect was comparable to those of infrastructure quality, public investment in research and development, quality of scientific research institutions, and financial market sophistication.

Moreover, the comparisons of numbers of lawyers in the United States to the numbers in Japan and elsewhere have long been recognized as flawed:

Japan may have more *law-trained persons* per capita than the United States. The trick is that the Japanese system defines the term "lawyer" far more narrowly than the American system does. Here are the facts behind the myth:

- In Japan, as in most countries, law is an *undergraduate* discipline. Only in the United States and Canada is law a graduate discipline requiring an undergraduate degree prior to enrollment in law school.
- In Japan, a great many undergraduates major in law. Graduates from these programs use their law training in a variety of ways. Only a few go on to be licensed to practice before the High Court of Japan. These few are the only ones who are officially called "lawyers." The vast majority of graduates who are law-trained are, in fact, involved in law-related employment and focus their careers on legal issues.... They are, for all purposes, lawyers.... Yet, in Japan, they are not called lawyers or counted in the lawyers census.
- Today, Japan is growing concerned about the quality of its legal training programs and is beginning to adopt the U.S. model of graduate legal education....

Rennard Strickland and Frank T. Read, *The Lawyer Myth: A Defense of the American Legal Profession* (Swallow Press/Ohio University Press 2008), at pages 25-26.

See also Ray August (known to many Idahoans during his lifetime as a revered teacher and business law professor in the College of Business at Washington State University), "The Mythical Kingdom of Lawyers," 78 American Bar Association Journal 14 (September, 1992) (explaining that if legal service providers were counted according to the legal education standards of their own countries, the United States would rank about 35th among the nations of the world in "lawyers" per capita).

BEA's estimates for 2005,¹² the legal services industry contributed \$180.9 billion in value to the Gross Domestic Product of the US. This is just behind the \$233 billion contributed by the mining industry and ahead of \$123 billion contributed by the "agriculture, forestry, fishing, and hunting" industry, the \$150 billion contributed by the publishing industry, and the \$175 billion contributed by the "food and beverage and tobacco products" industry.

A headline in a *New York Times* article from 2006 captures the role played by the legal profession in contributing to economic growth: "Step 1 in Starting a Small Business: Hire a Lawyer." The author concludes that "[d]espite the proliferation of both self-help books and Internet advice, when starting a business even the most sophisticated of business people find . . . that they need an individual lawyer to guide them through the most basic of decisions as well as the more complicated ones, like financing and property issues."¹³ The need for lawyers is especially acute as a result of the globalization of the U.S. economy. In a keynote address to the American Society of International Law in 2006, Brad Smith, the Senior Vice President and General Counsel for Microsoft concluded, "[T]he world does not have enough lawyers." The central point of Smith's keynote address was that international trade and development cannot thrive without the support of a vibrant legal profession and independent judiciary.¹⁴

The contribution of legal expertise to economic development represents one of the reasons for the increased number of persons seeking and obtaining a legal education. The number of people graduating from law schools has grown steadily for the past 25 years from approximately 35,600 in 1980 to 43,883 in 2005. Even with this increased supply of law-trained professionals, the U.S. Department of Labor estimates that the next decade (through 2016) will see steady growth in jobs for lawyers. The DOL reports that

[e]mployment of lawyers is expected to grow 11 percent during the 2006-16 decade, about as fast as the average for all occupations. The growth in the population and in the level of business activity is expected to create more legal transactions, civil disputes, and criminal cases. Job growth among lawyers also will result from increasing demand for legal services in such areas as health care, intellectual property, venture capital, energy, elder law, antitrust, and

¹² See, Thomas F. Howells III and Kevin B. Barefoot, Annual Industry Accounts: Advance Estimates for 2006 (May 2007), accessed at BEA website:

http://www.bea.gov/scb/pdf/2007/05%20May/0507_annual_industry_accounts.pdf.

¹³ Ellen Rosen, "Step 1 in Starting a New Business: Hire a Lawyer," *New York Times* (on-line), November 16, 2006.

¹⁴ Brad Smith, Address to American Society of International Law Second Century Dinner, November 3, 2006, accessed at <http://cc.msnsnscache.com/cache.aspx?q=72882347511503&mkt=en-US&lang=en-US&w=a8fcac97&FORM=CVRE4>.

environmental law. In addition, the wider availability and affordability of legal clinics should result in increased use of legal services by middle-income people.¹⁵

With its population growth and expanding economy, Idaho will provide opportunities for individuals with a legal education. Idaho currently ranks 47th nationally in the number of lawyers per capita. This means that there are relatively fewer lawyers in Idaho to draft wills, assist families with divorce or adoption, deal with real estate transactions, advise entrepreneurs regarding the start-up of new businesses, assist the state regulatory framework, advise businesses on regulatory matters, ensure the public safety by working in the criminal law sector, etc.

Idaho's legal profession will grow in response to all of these diverse sources of demand for legal expertise. Currently, there are approximately 6.1 lawyers – not all of whom are necessarily practicing – per 10,000 residents in Idaho. As the sources of demand for legal expertise continue to expand, this ratio is likely to rise toward the levels found in adjacent western states: Nevada (10.4), Utah (9.1), Washington (8.7), Montana (8.5), Wyoming (8.3), and Oregon (7.9).¹⁶ Idaho's legal profession, and the services it provides, will grow.

Legal Education Is Changing, Even as Demand for It Is Rising

Population increases and the expansion and diversification of the economy have reshaped the practice of law and, therefore, are changing the content and methods of legal education. In Idaho, as elsewhere, legal practice has become increasingly specialized and increasingly international and transnational. At the same time, Idaho still needs small town, "Main Street" lawyers – i.e., lawyers who practice solo or in small firms in communities throughout our nation" and whose "work touches many people at some of the most significant points in their lives – buying a home, writing a will, [or] settling an estate."¹⁷ This duality places elevated demands upon legal education. Moreover, legal employers increasingly demand law school graduates who are practice ready. Thus, some law students need to graduate prepared to enter a specialized, globalized practice while others must be ready for a small-town, main street practice.

¹⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, accessed at: <http://cc.msnsocache.com/cache.aspx?q=72907993473644&mkt=en-US&lang=en-US&w=1defbe9a&FORM=CVRE> (last modified December 18, 2007). This projection is probably conservative because it does not include the uses of a legal education to pursue or enhance nontraditional careers outside the law and judiciary.

¹⁶ Avery Index website (www.averyindex.com/lawyers_per_capital.php), March 16, 2008.

¹⁷ Michael S. Greco, American Bar Association President's Message, "America's Main Street Lawyers," ABA website, March 16, 2008: http://72.14.253.104/search?q=cache:65-DYzh_0kkJ:www.abanet.org/media/releases/opedmainstreet.html+Greco+Main+Street+Lawyers&hl=en&ct=clnk&cd=1&q=us.

As the state's only law school, the University of Idaho College of Law must consider the diverse practice paths our graduates will take. Some paths, such as those leading to careers in natural resources and environmental law, may start at the intersection of law and science in a multidisciplinary program. Examples include the University of Idaho's concurrent degrees (Juris Doctor and Master's degrees in accounting or environmental science at the University of Idaho, or J.D./M.B.A. in cooperation with Washington State University), as well as the University of Idaho's new joint degree (Juris Doctor and Master's or Ph.D. degrees) program in water resources – the unique and acclaimed "Water of the West" program. Other paths, such as business law or regulatory practice, might get a good start at a metropolitan center of state government and commerce such as Boise.

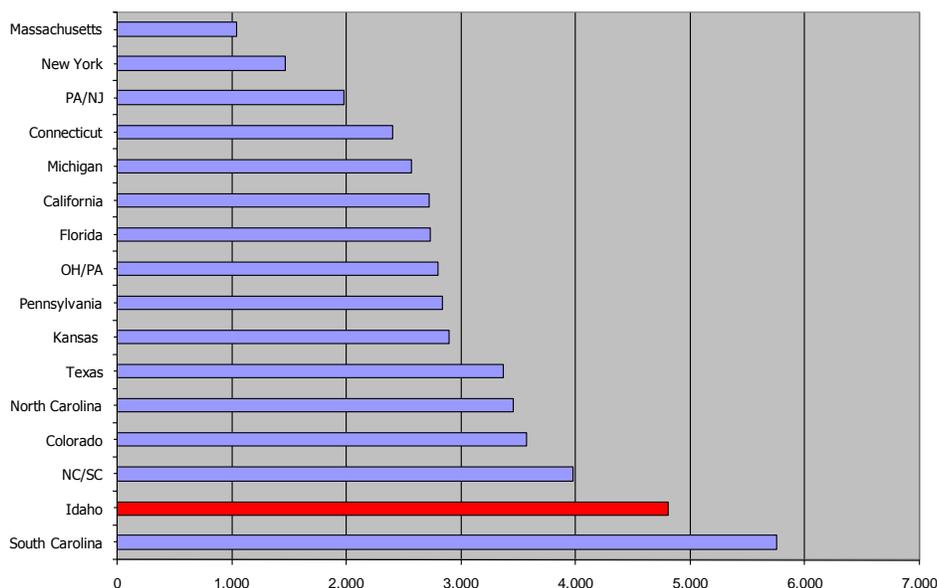
The College has additional responsibilities as a nearly century-old state law school. It must preserve the University's tradition of producing many of the state's legislators, judges, civic leaders, and business leaders. And, beyond producing graduates to fill these roles, the College must continue to provide – and even expand – the help rendered to other disciplines within the academic community and the help provided to state government in analyzing existing law and contributing to improvements in the law. Law and policy issues facing Idaho have been, and must continue to be, an important focus of legal research and outreach at the University of Idaho – befitting its identity as Idaho's statewide land grant institution.

Paying attention to Idaho's needs is especially important at a time of rapidly rising demand for legal education. Nationwide, twenty new law schools have been started in the past 25 years.¹⁸ Continuing growth may be expected in the future. If legal education opportunities in Idaho remain static at the level of the 1970s, Idaho will be at risk of trailing other economically vibrant states in terms of the number of in-state "seats" (in ABA-approved law schools) available to residents interested in pursuing a legal education. For example, California has 1 seat per 2,724 residents, and the high-growth states of Florida and North Carolina have 1 seat per 2,733 and 3,457 residents respectively, with new law schools planned in all 3 states. Idaho, meanwhile, currently has 1 seat per 4,812 residents, and this ratio is expected to erode to 1 seat per 6,000 residents over the next 20 years if no new opportunities are provided.

The table below compares the availability of law school seats in Idaho to the availability of seats in states that have metropolitan statistical areas the size of the Treasure Valley (or larger) that do not contain an ABA-approved law school. Only South Carolina has a worse ratio.

¹⁸ American Bar Association Report, "Enrollment and Degrees Awarded 1963-2005 Academic Years (<http://www.abanet.org/legaled/statistics/charts/enrollmentdegreesawarded.pdf>).

State Population per Seat in ABA-approved Law School



The importance of this ratio is underscored by the fact the number of graduates of the College of Law has remained essentially flat over the past 30 years (95 graduates in 1976, 89 in 2006, and 105 in 2007), while the state’s population – as noted earlier in this report -- has doubled.

This shortfall of opportunity will result in Idaho residents leaving the state to attend law school at higher cost. Many will not return to Idaho upon graduation or may return only to take jobs that pay more than Idaho’s public sector and small-town “Main Street” practice can provide. A related concern is that any failure of the University of Idaho College of Law to deliver a J.D. degree program in the Treasure Valley would greatly impact the accessibility of public legal education in the state. For many Idahoans, especially those with jobs and families in southern Idaho, relocating to Moscow for three years raises the total cost of legal education far above the threshold level of student fees and on-site living expenses.

The demand for more – and more accessible -- legal education is readily apparent. Indeed, as detailed in the Conclave on Legal Education document accompanying this report,¹⁹ there are only four Metropolitan Statistical Areas (MSAs) in the United States that are at least the size of the Treasure Valley (more than 600,000 residents) and do not have an ABA-approved law school within 100 miles. (The other three are El Paso, Texas; Mission, Texas; and Wichita, Kansas.) Of these four MSAs, only the Treasure Valley contains a state capital. Further, the residents of Kansas and Texas both have greater access to in-state legal education, with Texas having one seat in an ABA-

¹⁹ The Conclave document also can be accessed on the College of Law website: <http://www.law.uidaho.edu/documents/Conclave%20Document.pdf&pid=101948&doc=1>.

approved law school per 3,367 residents and Kansas have one seat per 2,895 residents – far below the Idaho level noted and depicted above. Idaho is under-investing in legal education opportunity.

Public Legal Education Brings Value (and Values) to Idaho

How should Idaho respond to this shortfall and the growing demand? Idaho has a stake in both the affordability and the excellence of public legal education. Legal education must be affordable in order for legal services and legal expertise to be accessible by all who need them. The affordability issue is underscored by the fact that legal education is increasingly financed by student debt; at private schools, the debt load approaches that of a home mortgage.²⁰ Student debt is a major factor determining whether students can afford to take public sector jobs or to work in private practice settings representing Idaho families and small businesses. Many law students with private school-level debts loads have difficulty taking jobs at Idaho salary levels.²¹ The state law school serves a vital role in making legal education more affordable than it typically is at private law schools, and a more affordable legal education enables law school graduates more easily to take jobs in the public sector and in law firms that serve people of ordinary means.

Affordability of legal education is a critical consideration for students. The general public sometimes assumes that lawyers are well-to-do, and that legal education can be financed with loans easily repaid with later earnings. That certainly is true for some members of the legal profession, but it is far from true for many. As noted in the foregoing paragraph and its accompanying footnote, there is an uneasy relationship between educational loan amounts and average entry-level salaries in the Mountain West, including Idaho. Moreover, in our state, many lawyers – especially those working the public sector or in small communities – never attain high personal incomes. In Idaho, a recent survey by the Idaho State Bar disclosed that 22% of all responding lawyers made less than \$50,000 per year, and another 26% made \$50,000 - \$75,000 per year. Only 9% made \$200,000 or more per year. The State Bar's survey is consistent with the State Board's own publication, *Higher Education in Idaho (2008)*, which does not list law among the "25 Highest Paying Jobs in Idaho."

²⁰ Among law students graduating in 2006, the national average debt – just for legal education (excluding other educational or personal debt) – was \$54,509 for students who attended public law schools and \$83,181 for those who attended private law schools. The average for University of Idaho College of Law graduates in 2006 was \$51,582. (Source: American Bar Association.)

²¹ For the University of Idaho College of Law graduating class of 2005, the median starting salary at all jobs in the public and private sectors was \$40,000 with a 25th/75th percentile range of \$37,000 to \$48,000. The national median salary for all jobs that year was \$60,000. The national median salary for jobs at firms with 2-10 attorneys was \$50,000. The median salary for the Mountain Region (Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Utah, and Wyoming) was \$52,000. (Sources: National Association of Law Placement and UI College of Law Career Development Office.)

For most Idaho attorneys, therefore, the law is a service profession, not a gateway to accumulation of great wealth. Nonetheless, the law remains attractive as a career – and demand for legal education is strong – because the Juris Doctor degree opens doors to professional opportunities that provide satisfactions and rewards other than pecuniary compensation. For these lawyers and lawyers-to-be, the quality of legal education is properly measured not only by its coverage of the substantive law but also by its development of professional skills and by its inculcation of career-sustaining professional values.

American law schools have long wrestled with their dual identity as graduate schools and professional schools. There is a growing recognition that law schools should devote more attention to the professional side by developing client-centered practice skills along with a greater sense of professional purpose and identity, civic responsibility, and moral judgment among future lawyers.²² Justice Louis Brandeis (whose call for bold minds appears elsewhere in this document), declared a century ago that “there is a call upon the legal profession to do a great work for this country.”²³ This call still echoes in two major reports on legal education, issued just last year, by the Clinical Legal Education Association²⁴ and by the Carnegie Foundation for the Advancement of Teaching.²⁵ A full discussion of these reports is beyond the scope of this document, but both are clarion calls for heightened emphasis upon professionalism in legal education and for transformational, rather than incremental, changes in the standard law curriculum. In their articulation of professional values that should underlie legal education, the reports reaffirm the reasons why public legal education is so important. They call for education that not only provides a store of knowledge and analytical ability, but also develops client-oriented practice skills together with good character, anchored in a systematically inculcated sense of public trust and professional purpose.

Public (state-supported) law schools provide value to the public not only through their graduates but also through their research and outreach. A state law school attracts professors whose research often focuses on issues of particular importance to the state. This research is disseminated through contacts between the professors and the state bench and bar, as well as the state legislature and state institutions of higher learning.

²² See, e.g., Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harv. Univ. Press 1993); Jerome Shestack, *President’s Message: Defining our Calling*, 83 A.B.A.J. 8 (1997). In a similar vein, the ABA Model Rules of Professional Conduct for Lawyers have been amended to emphasize the roles of lawyers as officers of the legal system and as public citizens with special responsibilities for the quality of justice, vis-à-vis their role as representatives of clients. See, e.g., Rules 1.6 (confidentiality and its exceptions) and 1.13 (duties of the lawyer for an organization). American Bar Association Center for Professional Responsibility, *Model Rules of Professional Conduct* (2004) (*hereinafter* the Model Rules).

²³ From the famous Brandeis address, “The Opportunity in the Law,” delivered to the Harvard Ethical Society, May 4, 1905, *reported in* American Law Review (July-August 1905).

²⁴ Roy Stuckey, et al., *Best Practices for Legal Education: A Vision and A Roadmap* (2007), available upon request by contacting the Clinical Legal Association at <http://cleaweb.org>.

²⁵ William Sullivan, et al., *Educating Lawyers: Preparation for the Profession of Law* (John Wiley & Sons, 2007).

Although many private law schools likewise have state-law scholars, public law schools appropriately give particular prominence to serving state needs. This is emphatically true of the University of Idaho College of Law, whose faculty – consistently with the University’s status as a land grant institution – engage in significant research and outreach to state institutions on matters of state law and policy, as detailed in the Conclave document appended to this document. The College’s record of service also reflects the reality that universities themselves are sources of demand for legal expertise, because law school faculties enhance interdisciplinary research – as exemplified in the University of Idaho’s acclaimed “Water of the West” program, in which the College of Law provides a vital role.

The University of Idaho now has an opportunity to design a statewide, public legal education curriculum that responds to needs and opportunities at more than one geographical location, while also makes a unifying commitment to civic responsibility and an ethos of service. The College of Law can become distinctive in its second century, not only in the breadth of its mission, but also in its focus on preparing students to serve clients and the public unselfishly, to seek justice, and to safeguard the rule of law.²⁶ Although all worthy law schools address these needs to some extent, the expectations for a state’s public law school are especially (and appropriately) high. Fulfilling these expectations is one of the College’s most valuable returns on the state’s investment in legal education.

***The University Has Conducted a Thorough Strategic Planning Process
to Address Its Statewide Mission in Legal Education***

The Conclave booklet accompanying this document provides a history of the strategic planning process up to the year 2007. The origin of the process may be traced to the report of a special advisory panel (sometimes called the “blue ribbon committee”) appointed in 1999. The panel’s report, entitled “Strategic Directions in Legal Education for Idaho,” completed in January, 2000, was published by the Idaho State Bar in the June, 2000, edition of *The Advocate*. The College then produced its “Report and Recommendations of the Faculty of the University of Idaho College of Law,” completed in June, 2000, and published by the Idaho State Bar in August. The faculty report laid the foundation for establishing the College’s Boise office, hiring a law instructor and director of external programs (Lee Dillion), and creating the current semester-in-practice program, which enables third-year law students to spend their final semester of

²⁶ The College already has a mandatory pro bono service program in which every student undertakes a law-related project to serve persons of modest means or to improve the administration of justice -- without any compensation or award of credit hours -- under the professional guidance of a lawyer or judge. The College also devotes each student’s first day of law school to professionalism, including small group dialogues with leaders of the Idaho bench and bar about the ethical and service expectations of the legal profession.

law school working in legal practice settings (externships) located primarily in the Treasure Valley.

In the eight ensuing years, the College has engaged in continued planning in relation to new curricular directions and evolving accreditation standards. In 2003, the faculty adopted a "Statement of Strategic Direction". In 2005 the faculty revisited strategic issues as part of a periodic accreditation self-study. In 2006 and 2007, the College received "clean bills" on accreditation from the Association of American Law Schools and the American Bar Association, enabling the College to return its strategic focus to the geographical dimensions of programs necessary to meet Idaho's legal education needs. As discussed above, these needs include responding to a growing demand for J.D. degree education – a demand that comes not only from individuals seeking to enter the legal profession, but also from individuals for whom the J.D. degree is a marketable asset for ancillary careers such as in business, higher education, or public administration. Moreover, universities themselves are sources of demand for legal education, because law school faculties enhance interdisciplinary research and provide valuable service, both on-campus and in outreach activities.

In 2007 the planning process intensified. It included regular meetings of a faculty committee and of the full faculty, open discussions with staff and students, conferences with senior University leadership, consultations with members of the State Board, a public information session with the State Board in Lewiston, and the three-day "Conclave on Idaho Legal Education in the 21st Century" co-sponsored by the College of Law and Idaho State Bar. The Conclave brought leaders of the Idaho legal profession and judiciary together with law faculty and University of Idaho President Tim White, to discuss in depth what approach to legal education would best serve the state and the University's students. Following the Conclave, the College examined "supply side" issues of cost, revenue, and academic quality in delivering legal education. In addition, the College engaged a market survey consultant to obtain "demand side" data on legal education needs in Idaho as well as a consultant to provide advice on academic and accreditation issues.

The College of Law considered three different expansion plans for the law school, not including the status quo (i.e., continuing to maintain the law school in Moscow with only a small presence, mainly internships and community relations activities, in Boise). The three broad alternatives were: (a) the "Moscow Plus" approach, in which the law school and its JD program in Moscow would be significantly enhanced through curricular revisions and implementation of inter-curricular programs and opportunities, while Boise-based activities would be limited to a third-year program and research or outreach centers; (b) the "Relocation" approach, in which the bulk of the law school – i.e., the J.D. instructional program -- would be moved from Moscow to Boise, while retaining only an interdisciplinary research and outreach function in Moscow; and (c) the "Phased, Dual Location" approach, in which, over time, the Moscow-based law school would develop a branch campus in Boise, so that the University of Idaho College

of Law would be able to offer a statewide J.D. program at two locations, with an overall curriculum enhanced by specialties appropriate to each location.

The College conducted an open inquiry into the relative strengths and weaknesses of all of these approaches, and variations of them. This process occasionally generated controversy, but it assured that all perspectives were heard and considered. For reasons set forth at length in the Conclave document, there was a broad consensus that continuing to do “business as usual” would not be viable for the future, would represent a failure to fulfill the University’s statewide mission, and therefore would be harmful to the University as well as to the College of Law.

***Market Surveys Have Confirmed the College’s Strong Reputation
But Also Have Shown That a Single-Location Law School in Moscow Is
Unattractive to Many Prospective (and Even Current) Law Students***

A summary of the market surveys, conducted in the fall of 2007 by Moore Information, Inc., is appended to this document. The surveys confirmed the strategic value of expanding the College of Law to include J.D. programs in both Moscow and Boise.²⁷ The results of the surveys indicated that the College of Law maintains a strong reputation with the practicing bar, despite its relative geographic isolation from the legal, financial and population areas of Idaho. “(M)ore than seven-in-ten lawyers (71%) rate the College of Law excellent or good and almost nine-in-ten (88%) would recommend applying to the University of Idaho College of Law.”

The College’s positive reputation notwithstanding, location is a very important factor when students choose a law school. The College’s single location in Moscow presents a challenge to enrolling the best students in the region.²⁸ A large portion of non-enrollees (persons admitted but who chose to not enroll at Idaho) surveyed said the Moscow location was a negative factor in their consideration of the College of Law.²⁹ An even

²⁷ Surveys were administered to three groups: (1) prospective law school applicants from Idaho, Utah, and Washington; (2) students admitted to the College of Law, but who did not enroll (“non-enrollees”); and (3) practicing attorneys in Idaho.

²⁸ According to the 2005 Law School Applicant Study conducted by LSAC, 72% of applicants listed Location as Important/Extremely Important. 57% gave the same answer for “Surroundings.” Only Job Success (84%), Reputation (77%), and Bar Success (73%) were rated as Important/Extremely important by more students.

²⁹ 43% of non-enrollees surveyed viewed the College of Law’s location in Moscow as a “Negative” factor. 34% viewed it as positive, and 23% said it was “no factor” in their consideration of the College of Law. Among Idaho residents who did not enroll, 59% viewed the College’s location in Moscow negatively, while only 17% viewed it positively and 24% as not a factor. Interestingly, virtually all Washington residents cited location as a factor, 56% seeing the sole location in Moscow as negative and 39% as a positive.

larger portion of potential applicants surveyed listed the Moscow location as a negative factor.³⁰

Both groups (non-enrollees and potential applicants) indicated enthusiasm for a University of Idaho College of Law presence in Boise. Almost two-thirds of non-enrollees (individuals who had been offered admission to the College but had chosen to go elsewhere) said they would have been more likely to attend the College of Law if they had the option to attend in either Moscow or Boise.³¹ Future law applicants were slightly more cautious than non-enrollees, with 47% of potential applicants indicating a two-location College of Law as more attractive than the current Moscow-located College of Law.³²

This preference, expressed by recent and soon-to-be law school applicants, to attend law school in a more urban environment was also found in current students, and from Idaho residents and non-residents alike. Of non-enrollees residing in Idaho, 79% indicated that they would have been more likely to stay in Idaho for their legal education had they been given an opportunity to enroll at a University of Idaho J.D. program in Boise, with 31% being "much more likely" to do so. In a survey of current College of Law students studying in Moscow, 57% indicated that they would prefer to attend a University of Idaho College of Law program in Boise over the existing one in Moscow.³³

The survey also indicated that the legal community would also welcome an expanded presence of the College of Law in Boise. According to the survey of Idaho lawyers, 53% of practitioners in the Treasure Valley felt they would directly benefit professionally from a College of Law programmatic presence in Boise.

³⁰ 48% of potential applicants surveyed viewed the College of Law's location in Moscow as a negative factor. 21% viewed it as a positive factor, and 31% said it was not a factor at all or did not know whether it was a factor. The percentage of potential applicants who viewed the Moscow location as a negative factor was consistent among all potential applicants surveyed – whether they resided in Idaho, Utah, or Washington -- although many more Idaho potential applicants viewed Moscow as a positive factor (31%) than did potential applicants from Utah (11%) or Washington (17%)

³¹ 17% of non-enrollees said they would have been "much" more likely to attend the UI College of Law if they had a choice of locations in Moscow and Boise, and another 47% said they would have been "somewhat" more likely to attend, given a choice of Moscow or Boise. 10% of non-enrollees said they would have been less likely to choose the U of I if they had a choice of a Moscow or Boise location, and 27% said it would not have made any difference. Going forward, the data indicate the existence of a pool of applicants we can tap in order to increase overall enrollment, provided we can increase our applicant pool accordingly.

³² 40% of potential applicants either did not know whether a choice of location would have had an impact on their decision to attend the U of I or felt it would have no impact. This high percentage of "neutral" feelings may reflect potential applicants' lower level of knowledge about law school relative to non-enrollees who had completed the admissions process.

³³ This is by no means an indication that students are unhappy with the current College of Law operation in Moscow. 43% of students would choose Moscow over Boise, which is a significant proportion.

The Strengths and Weaknesses of Each Strategic Approach Have Been Examined from Academic, Legal, and Public Policy Perspectives

The imperatives of excellence and affordability in public legal education are combined in Idaho with the need to serve a vast and diverse state. The growth of demand for legal expertise has occurred throughout Idaho, but the greatest concentration is in the Treasure Valley. More than 600,000 persons reside within the Boise metropolitan area. More than half of the state's gross domestic product is generated in the Treasure Valley. Boise is the center of state government, the principal location of the federal courts, and the site of approximately half of all of Idaho's legal practitioners. As noted earlier, Boise is the only city of its size in the United States that contains a state capital yet lacks a legal education program, either within its boundaries or in the vicinity.

Further, the purposes and pedagogies of legal education are changing. As explained in the Conclave document, small residential law schools like the University of Idaho College of Law in Moscow have their distinct advantages, but so do metropolitan schools. A metropolitan location provides students close contact with the legal profession. It also affords faculty an opportunity to conduct scholarship and outreach on matters of law and policy directly relevant to the business community, to the state legislature and the courts, and to a wide array of state and federal agencies.

These points, and others, have informed the evaluation of strengths and weaknesses of the three broad approaches. The strengths and weaknesses are summarized in the Conclave document, and the Conclave discussion largely reinforced these points of evaluation. Although the Conclave did not vote on any one approach, a concluding session – with reports from discussion roundtables – revealed some support for relocating the law school to Boise but a clear majority of tables favoring an expansion in Boise while retaining the Moscow program.

The Conclave participants were aware of an informal opinion of the Idaho Attorney General, requested by Senate Majority Leader Bart Davis and shared with the Conclave, expressing the view that Article IX, Section 10, of the Idaho Constitution would preclude relocating the law school to Boise. This opinion, appended to the Conclave document, stated the Constitutional provision "does not prohibit the establishment of branches of the University of Idaho outside Moscow; but it would prohibit closure of a college or department at the University of Idaho in Moscow and its relocation in whole to a branch of the University in another city." The opinion also observed that the University could not "offer so much of the College of Law's program in Moscow in another city so as to effect a de facto 'removal' of the College of Law from Moscow." In contrast, establishing a second J.D. location in Boise, while maintaining the J.D. program in Moscow, apparently would not contravene the Attorney General's opinion.

The College of Law Advisory Council, a group of leading lawyers and judges, met in the spring and fall of 2007 to consider the alternative approaches. The Council was chaired in the spring by Idaho Falls attorney Tim Hopkins (a non-alumnus). When the fall meeting occurred, the chair's responsibility had moved to the Hon. Linda Copple Trout (an alumna), former Justice and Chief Justice of the Idaho Supreme Court. At the fall meeting, which took place after the Conclave (in which many members of the Council also participated), the Council received the views of College's strategic planning academic consultant and of the University leadership including President White.

The Two-Location Concept Has Been Recommended by the Academic Consultant and the College of Law Advisory Council, and Endorsed by the University

The academic consultant, three-time law dean Richard J. Morgan,³⁴ recommended the "Phased, Dual Location" approach, stating as follows:

In my view, the law school should aspire, over the long-term, to operate one law school from two key locations in the state--Moscow and Boise. Moscow is key because it is the main campus of the University of Idaho, because it is an appropriate venue for service to northern Idaho, and because the history and traditions associated the Moscow campus are an important part of the law school's strength. Boise is key because of its large population and need for services, because it is the seat of Idaho government, and because it is an appropriate venue for serving southern Idaho.

Operating a state-wide law school from two separate campuses is a novel concept and an excellent opportunity. There are only a few law schools that have embarked on multi-campus programs, only one of which--Penn State--is a public law school and none of which has, as you do, the statewide franchise on public legal education. This novelty is both a challenge and opportunity. While the law school has the opportunity to be a pioneer in establishing a model for statewide education and services, it will be challenged by the lack of precedents and models to draw on.

To establish a single law school at dual locations will require a long-term plan, the implementation of which will depend on procurement of

³⁴ Dean Emeritus, William S. Boyd School of Law, University of Nevada/Las Vegas. Dean Morgan is an experienced legal educator, having served as dean at the Arizona State University College of Law, the University of Wyoming College of Law, and William S. Boyd School of Law. He has chaired, and continues to chair, the American Bar Association committee to review standards for approval (accreditation) of law schools.

substantial new resources. Such a plan should proceed when and to the extent that sufficient resources are available.

Dean Morgan found the dual location approach to be superior to the other alternatives. He noted that the "Moscow Plus" option would have attractive features as part of a larger plan to meeting the state's needs, but that it would not suffice as a stand-alone approach to fulfilling the University's statewide mission. He also rejected the "relocation" approach, giving the following reasons:

First, a single location in Boise does not expand the law school's statewide presence; a single location—in Moscow or Boise—is still a single location. In fact, relocating the entire operation to Boise lessens the law school's statewide presence, since the relocated law school would then operate out of one location (Boise) rather than the current two (Moscow and Boise). While the relocated law school would be in the state [capital] and population center, the law school's statewide service mission would not be enhanced by such a move.

Second, the law school is an integral part of the University of Idaho, which is located in Moscow. For the law school to leave the campus in Moscow for a remote location could do great harm to the university, since the law school is an important part of the teaching, scholarly, governance and service fabric of that university. For that reason, I am not surprised that your president and provost strenuously object to the relocation option. Indeed, as I stated at the Law Advisory Council meeting, if the law school were relocated to Boise, I can imagine a move a few years down the road to open another law school on the Moscow campus to fill the intellectual and disciplinary void created by the relocation of the current law school.

Third, for this planning process to succeed in substantially improving the law school for the 21st century, it must have the full support of key constituents in Idaho. Among those—indeed, at the top of the list—are your president and provost. Since they object, for good reason, to the relocation approach, it ought not go forward.

Fourth, the removal of the law school from the Moscow campus will generate very hard feelings on the part of some alums, legislators, other community leaders and citizens. Even if their views are in the minority, the feelings will still be very hard and the divisions created will be very deep (and probably quite enduring). In such circumstances, the support for the relocated law school would likely be at least somewhat impaired, perhaps substantially so.

Fifth, there are significant legal issues that may be raised in connection with the relocation alternative. Whatever the ultimate outcome, the legal battles will likely delay the implementation of the plans for the law school's new, 21st century role. And, those battles will fuel a continuing controversy that will

probably affect support for the law school.

The University of Idaho College of Law Advisory Council met in the spring and fall of 2007. After the fall meeting, the Council made the following findings and recommendations, essentially concurring with Dean Morgan's recommendation, and noting at the outset that the status quo for the College of Law was not an acceptable option for the future:

In order to continue fulfilling its statewide mission, the University must take account of rapid growth and changes in Idaho, as well as emerging trends in American legal education. The status quo will not be adequate in the "second century" of the College of Law, as it prepares its students to provide guidance, advice and knowledge in an expanding global and highly complex environment. Students at the College of Law need and deserve an education which will provide a solid basis from which they can face a vast array of career and life challenges in Idaho as well as throughout the country.

The College of Law is a critical part of Idaho's land-grant university and of the university community in Moscow. The University of Idaho's exclusive statewide mission in legal education, as prescribed by the Board of Regents/State Board of Education, is fundamentally important to - and an institutional responsibility of - the University. We are also mindful that the College of Law must continue to be responsive to the needs of the Idaho Bench and Bar as key members of our constituency. In order to continue fulfilling its statewide mission, the University must take account of rapid growth and changes in Idaho, as well as emerging trends in American legal education. The status quo will not be adequate in the "second century" of the College of Law, as it prepares its students to provide guidance, advice and knowledge in an expanding global and highly complex environment. Students at the College of Law need and deserve an education which will provide a solid basis from which they can face a vast array of career and life challenges in Idaho as well as throughout the country.

With these considerations in mind, and after extensive thought and discussion, the Law Advisory Council recommends that the College of Law and the University of Idaho create, and take to the State Board, a proposal that expresses a bold vision of high-quality legal education in Idaho. This education should be delivered by the University of Idaho at Moscow and at Boise, with courses of study leading to the J.D. degree at both locations. The locations may offer different emphases within an overall curriculum shaped by a unified faculty in the College of Law, and administered as an integral part of the University of Idaho. Planning for

the Boise location should include continued exploration of possible collaboration between the College and the Idaho Supreme Court in an "Idaho Law Learning Center."

In making this recommendation, the following conditions are critical to the Council's understanding and support:

- The University Administration has committed its best efforts to provide, and will vigorously support the College of Law in obtaining, the resources necessary to achieve high quality at both the Moscow and Boise locations.
- The College and the University will craft a business plan that addresses current and future needs of the College of Law at Moscow as well as needs at Boise.
- The Boise location will be developed as a satellite or branch in phases consistent with accreditation standards, the overall adequacy of resources, and the depth and quality of the student applicant pool.

The vote of Law Advisory Council members at the fall meeting was unanimous. The University leadership concurred with this recommendation, as did the Dean of the College. The law faculty voted to adopt the recommendation in principle, subject to the same conditions articulated by the Council. The Dean then appointed a "second century" committee to develop a vision of a statewide law school providing opportunities in two locations, subject to review by the State Board. The remainder of this document explains the two-location concept.

PART TWO: ONE STATEWIDE LAW SCHOOL, TWO PLACES OF OPPORTUNITY

A Statewide Law School with Two Locations Would Deliver an Integrated Curriculum Featuring Basic Offerings at Each Site Plus Differentiated and Complementary Emphases Reflecting Location-Relevant Needs and Opportunities

The two-location model would provide students an enhanced curriculum in substantive law and interdisciplinary perspectives. Moreover, the College would take a national leadership role – pursuant to the "Best Practices" and Carnegie reports -- by emphasizing at Moscow and Boise the development of practice skills and the values of civic professionalism, selfless purpose, and development of moral judgment.

Existing joint and concurrent degree programs would be strengthened on the Moscow campus, while new joint degree opportunities with Boise State University, Idaho State University, and other institutions in southern Idaho would be actively explored. Centers for business law and for state law, policy, and education would be developed at the Boise location, connecting faculty scholarship and outreach with needs and opportunities in the Treasure Valley.

Curriculum and Learning Environment. Both locations would be scaled to allow a personalized legal education in an collegial setting. The residential environment of the College in Moscow provides an educational atmosphere that is more inviting and collaborative, among both students and faculty, than at most other law schools. This allows us to instill a strong sense of civility and professionalism, as well as highlighting the public nature of the legal profession, in our students. As we create the complementary program in Boise, we would continue to emphasize these attributes as fully as possible in a metropolitan setting.

As noted previously in this document, the opportunity presented by the development of a complementary J.D. program in Boise comes at a propitious time. Law schools are being urged to place stronger emphasis on preparing law students to be “practice ready” upon graduation. With a greater emphasis on incorporating practice skills and professional values into the doctrinal teaching, the curriculum at the College is being reconsidered with an eye to creating a truly distinctive program.

In developing the curricular framework for complementary programs in Moscow and Boise, we anticipate streamlining the foundational curriculum – comprised of the first year and portions of the second year - so that it is more tightly coordinated and coherent. The reformation of the foundational curriculum will include the elimination of redundancies in doctrinal coverage in the first and second years, thereby freeing up faculty resources and student time for more specialized upper division coursework. In addition, this streamlining will reduce the unavoidable duplication of basic instruction and training that will be necessary in the first 3-4 semesters at each location. While the foundational curriculum will need to be provided in both Boise and Moscow, the curriculum will be redesigned to provide a progressive educational and training experience enabling students at each location to participate and benefit from a wider range of upper division-third year course offerings, including opportunities to participate in so-called “capstone opportunities” -- i.e., experiences that synthesize doctrine from multiple areas, employ the range of skills and values acquired over the course of the student’s legal education, and provide the student with a real-life exposure to the practice of law, whether through clinical, externship, or simulated experiences.

Reformation of the foundational curriculum will also feature greater coordination among doctrinal, clinical, and legal research and writing faculty. This faculty cooperation will allow the curriculum to be better coordinated so that basic concepts and skill sets can

be mastered by students in a progressive, context rich program. Students will develop the necessary knowledge, skills, and professional identity they will need to take full advantage of the third year capstone opportunities. For example, the curriculum will be reformed to integrate doctrinal coverage so that students see the interconnectedness of legal theories across subject areas. Further, doctrinal courses will include greater coordination with legal writing faculty, particularly in the first year, to provide an integrated educational experience that places doctrine in the context of legal skills such as written and oral communication. A model for this more integrative learning environment is close to home: the Integrated Business Curriculum currently being offered in the University of Idaho College of Business and Economics (www.cbehome.uidaho.edu/ibc).

The greater integration of the curriculum, and coordination among the faculty, will facilitate the development of shared and reinforced learning outcomes. The reformation of the curriculum in this integrated fashion will facilitate greater incorporation of writing throughout the curriculum through greater coordination among the doctrinal faculty, clinical faculty, and the legal writing faculty. This curricular reform will strengthen the College's preparation of lawyers, in both Moscow and Boise, for the general practice of law to serve the citizens of Idaho throughout the State. As noted earlier, one of the signature strengths of the College is its tradition of legal education that is personal and provided in a collegial, professional setting. The College, in both Moscow and Boise, will continue to provide a liberal education in the law to all of its students, inculcating the values of civic responsibility and professionalism for which it is rightly proud.

The increased integration and coordination of the foundational curriculum will improve the progressive mastery of important lawyering skills and values while also allowing the College to develop greater efficiencies in the delivery of these outcomes. These efficiencies will be necessary to reduce the level of duplication of faculty resources to provide the foundational curriculum in both Boise and Moscow. More importantly, this integrative and progressive approach will allow faculty to develop upper division capstone opportunities and course work unique to each location.

Specialization Opportunities in Moscow. It is anticipated that the Moscow campus will offer students and faculty opportunities for specialization in natural resources (including natural resources on public lands) and environmental law; and in American Indian law, tribal governance, and federal-state tribal relations. The first area of specialization reflects and capitalizes on the University's increasingly strong and interdisciplinary programs of teaching and research in natural resources and the environment. Faculty teaching and research resources in several Colleges on the Moscow campus will provide depth of expertise in these areas unavailable elsewhere in the State. The second emphasis area reflects and takes advantage of the University's unique location between two major tribes, the Coeur d'Alene to the north and the Nez Perce to the south, each of which is within 50 miles of the Moscow campus. These

emphasis areas will inform and enrich even the foundational curriculum, for example as the basic legal principles and concepts taught in criminal law or property law, are taught through crimes and property concepts involving natural resource and environmental concerns. By streamlining the foundational curriculum, and focusing the emphasis of the Moscow campus, the faculty will be enabled to enrich the upper-level curriculum with specialized courses and seminars, in-house clinical opportunities, expanded externship opportunities, and in the depth and quality of research and service provided to the State and region by faculty and students.

Specialization Opportunities in Boise. On the Boise campus, similar developments would occur in the creation of emphasis areas that take advantage of a location in the commercial and political center of the State. Of immediate consideration is the development of emphasis areas in business and entrepreneurship and in intellectual property. Such emphasis areas take advantage of the entrepreneurial business climate in the State's commercial center, and also allow the students and faculty to participate in the growing technology sector of the economy. Through development of specialized course work, clinical opportunities and externship placements, the College will better prepare our students to contribute to the commercial and economic growth of the State. As with development of the specialties in Moscow, the specialization in business and intellectual property in Boise will enable greater and more expert research and service to the State by students and faculty of the College of Law.

Relationships between Moscow and Boise. The main elements of the two-location model can be summarized as follows:

Moscow

- Small ("quality over quantity") residential law program; intimate teaching/learning environment
- Interdisciplinary connections to land grant research university in law, public policy, and science
- Emphases in natural resources and environmental law, American Indian law, and public lands
- Principal administrative offices, and service to academic community, on University's main campus

Boise

- Small (reinforcing "quality over quantity") metropolitan program with variable-time curriculum
- Emphases in intellectual property and business law, including international business transactions and trade
- State law-related research and service to judiciary, legislature, and city/state/federal agencies
- Enhanced access to readily available, high-quality affiliate faculty

Dynamic Connections at Both Locations

- Delivery of core Juris Doctor degree education, including clinical programs, advocacy, and dispute resolution, with curricular progressions and capstone experiences
- Emphasis on development of professional identity, skills, values, and a sense of public calling, concurrent with generating intellectual growth and a fund of knowledge, as recommended by the Carnegie Report and Clinical Legal Education Association "Best Practices" Report

- Differentiated and complementary upper-division offerings under integrated curricular plan
- Linkages of people and places through distance education and related technologies
- Outreach to the legal profession and judiciary, and to communities in Idaho and beyond
- Unique and innovative approach to legal education – transcending distance

"Ties that Bind" the Two Locations. The success of the "one law school, two locations" model will depend on the development of carefully designed linkages between the two locations. These linkages or ties will flow organically throughout the law school administration, curriculum, and outreach, and will include the following elements:

Curriculum. As described above, we will develop a program of instruction at each location that has three attributes: (1) The coursework will be progressive – so that work in later semesters successively builds on the knowledge, skills, and professional identity that students have developed over the course of prior semesters. The progression will culminate in 3rd-year opportunities for capstone experiences. (2) From day one we will provide experiential, context-dependent learning to help students learn the law in action and "on the ground." (3) The curriculum will be highly integrated, helping students to make connections among doctrinal areas as well as connections between the law and other disciplines; to learn doctrine; and to begin to develop a professional identity and professional judgment, through instruction in lawyering skills. Each location will offer unique skills and doctrinal learning opportunities, such that faculty and students interested in a particular emphasis area might find it useful to spend time at both locations. In view of these location-relevant strengths, the curriculum would be designed to facilitate such movement of faculty and students.

Administration and Services. The College would have unitary admissions, financial aid, and development offices. Videoconferencing will facilitate governance by faculty committees with members on each campus, while professional and administrative staff will collaborate as one unit. All such ties, of course, ultimately aim to create human ties and a sense of a shared mission.

Faculty. As additional measures to foster human ties and common purpose, we hope to provide incentives for faculty to spend time on each campus. For example, a faculty member could be encouraged to teach a course in the fall semester in Moscow and then teach the same course in the spring semester in Boise. We hope also to encourage collaboration in teaching and research between faculty and students in Boise and Moscow.

Students. We would also facilitate the movement of students between the two campuses and interaction of students on each campus with students on the other campus. For example, we might hold the final rounds of our internal moot court

competitions on different campuses in alternating years. We could plan to hold beginning-of-school-year convocations in a central location that would bring together students matriculating at each campus. Specialized short courses (e.g., winter intersession courses) at each campus could attract students from the other campus. Ultimately, we would expect most students to spend some time at each location, though none would be required to do so.

Development of the Boise Location Would Be Phased

As outlined below, and consistent with the recommendation of the Law Advisory Council, the College's second location in Boise would be developed in phases reflecting the availability of resources, the quality and depth of the student applicant pool, and adherence to all continuing accreditation requirements. Ultimately, the College would embrace two locations and would have approximately 38 full-time-equivalent (FTE) faculty – compared with 25 presently – including the dean, associate deans, clinical programs director, and law library director. The statewide law school would contain a total of approximately 500 J.D. students (counting all students in the first, second, and third years of the program at any given time), compared with 296 presently. The students and the teaching faculty would be represented approximately equally at the two locations.

The sequence of phases for establishing a complete three-year J.D. program in Boise will be determined in the Business Plan that will follow approval of the two-location concept. One sequence under consideration would entail admitting a modestly sized first year class, and adding second and third years in annual succession, and growing the J.D. program to the anticipated total enrollment of approximately 250 students in Boise. An alternative sequence would entail expanding the College's existing "semester in practice" program in Boise into a program that enables third-year law students to spend their entire third year – not just their last semester – in Boise. This third-year program would serve as a bridge to establishing a complete three-year J.D. program in Boise, and, in the meantime, it would represent a curricular enhancement and option for students who have completed their first and second years of law school in Moscow.

Under either sequence, the University would seek to move forward with the first-phase implementation step as soon as possible. If the start-with-third-year approach were taken, the College could go forward possibly as early as the fall of 2009, using space expected to be made available at the Idaho Water Center in Boise. With the addition of three or four doctrinal and clinical faculty, coupled with the judicious employment of adjunct faculty from the Boise area practicing bar, a rich array of upper-level courses, consistent with the goal of providing capstone opportunities, could be offered in the third-year program. In this way, the College could provide additional opportunities to our students, particularly those interested in business and intellectual property, while continuing to lay the groundwork for the full three-year J.D. program in Boise as

outlined above. The third-year program, eventually subsumed into the full three-year J.D. program, also would be beneficial to law students seeking to pursue concurrent degree programs, such as a J.D./Masters of Taxation program now being developed in cooperation with Boise State University.

As noted above, development of the three-year J.D. program at the Boise location will depend upon the availability of resources, the quality and depth of the student applicant pool, and continuing compliance with accreditation standards. The program likely would start – either as a first step as noted above or as a complement to the third-year program – with an entering first-year class smaller than the class size that ultimately would generate a total student enrollment of about 250 students in Boise. Growth would be managed in light of student quality and available resources. Moreover, operation of the full three-year program necessarily would await the availability of an appropriate facility (see “Idaho Law Learning Center” below).

The “Idaho Law Learning Center” Offers a Once-in-a Generation Opportunity for Collaboration between Higher Education and the Judiciary

The Idaho Supreme Court and the University of Idaho are mutually exploring the idea of re-locating the Idaho State Law Library (currently housed in the Supreme Court Building) into a new facility that could also house the final phase of the University’s legal education initiative in Boise. The facility, originally proposed and named the “Idaho Law Learning Center” by former Chief Justice Gerald Schroeder, would serve multiple purposes:

- Resolving a security issue posed by the law library within the Supreme Court
- Improving the law library collection and operations through cooperation with the College of Law
- Making room in the Supreme Court Building for efficient housing of an expanded Court of Appeals. (Legislation authorizing this expansion has been passed by the 2008 Legislature. The Court of Appeals will move from commercially rented space it has occupied since 1982.)
- Establishing a venue for intergovernmental cooperation
- Providing a unique center for legal education as well as for continuing judicial education and civic outreach on the rule of law in a democratic society

The “Idaho Law Learning Center” could be a new building east of the Supreme Court, or a remodeled improvement of the old Ada County Courthouse, or another alternative in the Capitol Mall area. The total cost of such a multi-purpose building has been

preliminarily estimated at roughly \$29 million if a wholly new facility is constructed. The Center could be completed as early as 2012 or 2013. The Supreme Court, under the current leadership of Chief Justice Daniel Eismann, has made the Center a budget priority. (The state judiciary has not had a major capital request since the Supreme Court itself was constructed approximately forty years ago.) Money for planning the Center has been recommended by the Department of Public Works. At the time of this writing, the planning fund (approximately \$176,000) is embodied in a legislative appropriation bill that carries the recommendation of the Joint Finance & Appropriations Committee.

The "Idaho Law Learning Center" is a visionary idea. It is well-scaled to the two-location concept for legal education in Idaho, with approximately 250 students at each location. For students and faculty in Boise, the Center would provide a superb location for teaching, learning, research and outreach. The Center would enable the College of Law to provide service to the public and to state government while fulfilling the University's statewide mission. The Center's synergy of purposes would be an efficient use of public funds, and the facility would bring distinction to Idaho.

Long-Term Facility Needs in Moscow Also Should Be Addressed, Bringing the Menard Law Building up to 21st Century Standards for Legal Education

The demands of legal education today include the use of technology for legal research and for instruction involving simulated cases and clients, collaborative drafting, digital presentations, and other forms of interactive learning that are fast becoming the norm at law schools throughout the country. To educate lawyers who are well prepared to fill the diverse social and professional roles that await them upon graduation from law school, the Menard Law Building must be aligned to the pedagogical, scholarly, and professional functions it is expected to serve. This will require updating of classrooms, the creation of three small- to medium-size classrooms, supplementing the current large classrooms that were designed for the lecture method of legal education extant during the 1970s. Faculty, staff, and student organization offices also need to be reconfigured for better functionality.

Improvements totaling more than \$1 million already have been made in the Menard Law Building during the past two years, using a combination of funds from private donations, student fees, and University allocations. Further modernization, to make the Moscow facility competitive with other law schools and attractive in comparison to the "Idaho Law Learning Center," is expected to cost approximately \$3-4 million. This expenditure will be in addition to the Center, but it is far less than the increased cost would be for a facility in Boise large enough to house an entire 500-student law school.

Under the Guidance and Direction of the State Board, Following Review and Preliminary Approval of the Two-Location Concept, the College Will Prepare a Business Plan Containing Detailed Timelines and Revenue/Expense Projections

Although this document explains the concept rather than providing operational details, a broad picture of the operating expenses can be painted. As noted, the two-location concept eventually would result ultimately in a statewide law school with an aggregate enrollment of approximately 500 students, divided approximately equally between Moscow and Boise. Phased development of the Boise location could begin, for example, with initial development of a full third year of education in Boise (to begin as soon as possible, as early as the fall of 2009), utilizing space and classrooms at the University of Idaho's Water Center location. The next phase – establishment of a full three-year course of study in Boise at a facility such as the "Idaho Law Learning Center" (ILLC) – would unfold in increments of new students along with faculty and staff. The transition from the third-year program in Boise into development of the full three-year course of study could begin as early as 2012, but in any event – as noted above – would occur only on a timeline consistent with accreditation standards, with the overall adequacy of resources, and with the depth and quality of the student applicant pool.

Multiple funding sources for investment in this proposal will include a combination of appropriated funds obtained and allocated by the University; appropriated funds obtained and allocated by the Idaho Supreme Court to the ILLC; revenues derived from student fees and tuition; endowment donations as well as recurring annual gifts; and government/foundation grants and contracts in support of clinical education and other program activities. Direct operating costs of the statewide two-location law legal education program are likely to be approximately \$5-6 million per year (above the current College of Law annual budget of approximately \$8,000,000). Of this direct annual expenditure, approximately \$750,000 to \$1 million would be needed during the first phase if the phasing sequence begins with a full third-year program in Boise, along with related scholarship and outreach.

Under the University's financial management system, appropriated funds now account for approximately \$5,000,000 of the University's annual direct support of the College of Law. If this support were adjusted in proportion to the eventual growth of the law student body – from the current level of 296 students to the eventual level of 500 – the resultant increase would be approximately \$3,500,000. The remainder of the needed \$5-6 million per year in additional, direct operating expenses could be covered through a student fee increase – on top of other planned fee increases – averaging approximately \$4,000 per student per year, which would generate \$2 million. The current level of law student fees is \$10,200 for Idaho residents and \$20,280 for

nonresidents.³⁵ (Of course, food, lodging, books, and other living and travel expenses contribute to the students' total annual cost of obtaining a legal education.) In order to preserve the affordability of public legal education, it is important to keep the average student fee contribution to the overall funding package as reasonable as possible. Additional funds from private giving, grants, and contracts would be invested in scholarships, programs, and clinical opportunities that create the margin between competence and excellence in legal education.

These figures are tentative and illustrative only, to aid in depicting the scope of the proposal. Costs and revenues will be the focus of more detailed analysis in the Business Plan to follow the conceptual review and discussion of this proposal.

"Let Our Minds Be Bold"

Public legal education is an investment in the infrastructure of Idaho's criminal justice system, of economic development, of fair and effective government administration, and of sound public policy. It is also an investment in opportunity for men and women to obtain the training needed for a broad array of useful careers (and, in some cases, second careers). Public legal education makes this training affordable, enabling lawyers to serve Idaho families of ordinary means, small businesses striving to create jobs, nonprofit entities dedicated to the public good, and government entities upon whose effective functioning our social fabric depends. Affordable legal education makes justice accessible, and problem-solving expertise available, for Idahoans.

Thirty-five years ago the State of Idaho took a bold step in expanding the legal education program at the University of Idaho and in constructing a new facility for it. Today, Idaho needs a renewed investment in legal education. It is time to be bold again.

³⁵ The College's fee structure might be characterized as "lower mid-range" when compared to the fees charged by other public law school in the region. Lower fees may be found at the University of Wyoming (\$8,491 for residents in 2007-08) and the University of Montana (\$9,991). The University of Nevada/Las Vegas currently charges \$9,800 but has announced a major increase for next year. Higher fees are charged at the University of Utah (\$12,852), University of Washington (\$17,846), and University of Oregon (19,956). Private schools presently range from \$27,000 at Willamette to \$29,250 at Gonzaga and \$29,880 at Seattle University. The J. Reuben Clark Law School at Brigham Young University has a hybrid fee structure analogous to the resident/nonresident distinction at public schools. It charges just \$8,700 for members of the LDS Church but \$17,400 for other students.