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Dean Donald Burnett  
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Dear Don:

Thanks for the opportunity to consult with the University of Idaho College of Law as it plans for Idaho Legal Education in the 21<sup>st</sup> Century. Thus far in this engagement, I have reviewed the “Consultant Draft” and appendices contained in the binder entitled “Idaho Legal Education in the 21<sup>st</sup> Century”; participated in two conference calls involving you and your faculty; visited the University of Idaho College of Law to meet with faculty, staff, students and university administrators; reviewed the materials that were prepared for the Law Advisory Council Meeting on October 22, 2007; and attended and participated in that meeting.

As I stated at the Law Advisory Council meeting, this is an exciting and important time in the life of a well-established law school with an excellent reputation for serving its state and region over the last century. While I very much respect the decision of the faculty to reject the status quo in favor of greater aspirations of service and excellence, it is important to remember that any new initiatives of the law school will rest on a strong foundation established over the last century. This is a strong law school with an appropriate desire to become stronger and better in the future, and the process that you have put in place—engaging the faculty, staff, students, university administration, alums, bar and community leadership in a dialogue about goals and directions for the next century—is likely to further that desire.

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Among the law school's many strengths are its reputation among the lawyers of Idaho, as reflected in the survey materials considered by the Law Advisory Council; its reputation in the legal academy as a well-established and very good law school that aspires to serve the needs of its state and region; its relationships with the Idaho bench and bar, whose leaders include numerous alums of the law school; and its relationship with the University of Idaho, whose president and provost view the law school as a very important part of the university. These reputations and relationships are the product of the work of people at the law school, who are the law school's greatest strength. By assembling excellent faculty, administrators, staff and students the law school is able to serve the state and educate future leaders in ways that produce beneficial relationships and reputation.

Two other strengths are worthy of special note. The first is that the University of Idaho College of Law is supported by the State of Idaho, which has given the law school an exclusive, state-wide franchise on public legal education, scholarship and service. The second is that the law school has chosen to be a small school, one that values the benefits of an intimate educational setting in which to teach law, produce scholarship and instill and model professionalism.

While the law school is concerned about the possibility of future competition from other law schools that might locate in Idaho, I believe that the law school should proceed from a positive position of strength and optimism—rather than out of fear of competition—as it plans for the 21<sup>st</sup> century. As noted above, there is plenty of strength on which to build and which will give this good and existing law school many and substantial comparative advantages over any newcomers to the field. In addition, it is impossible to predict when or how the anticipated competition will, or will not, emerge, although it is very clear that Boise is a very attractive location in which to situate a new law school. More importantly, it is impossible to predict the effect that any such competition will, in fact, have on the law school. While the planning documents project negative consequences, it is very possible that increased competition will have the opposite effect, since competition often brings out the best in both competitors. Rather than speculate about future competition and its effects, the law school should do what it is now doing—developing a plan to better fulfill its statewide mission and beginning the conversations that will result, over time, in the resources to implement that plan.

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In developing that plan, it is important not to bite off more than the law school can chew. While it is appropriate (and, I think, desirable) to articulate bold long-term goals, those goals must be conditioned on the acquisition of sufficient resources to attain them. The outcome of this long-term process must be to improve legal education in Idaho, not to harm it.

Also, the law school and its constituents must realize that it cannot do everything that is done by someone, somewhere in legal education. The University of Idaho College of Law has chosen to be a small law school, which means that it has far fewer faculty than many of this country's larger law schools. This, in turn, means that the curriculum cannot be as rich, or specialization as readily available, as in larger law schools. But even a small school must provide fundamental instruction in legal analysis, writing, professionalism, skills training, core substantive courses and at least some electives, at the same time that the faculty who provide that instruction are charged with substantial governance, service and scholarly responsibilities. Thus, in a small law school the faculty can be stretched thinly, particularly if the school aspires to do everything in its curriculum that Harvard does.

In my view, the law school has made wise choices in resource deployment. For example, the planning materials reflect that the school ranks highly in availability of clinic and externship opportunities per student. This is important, I believe, for these opportunities provide practical skills and professionalism training, while providing valuable community service in Idaho. Also, I very much agree with the decisions of the faculty to stress appropriate dispute resolution and to try to instill comparative and international law across the curriculum. I am less concerned about the school's relative paucity of elective courses and opportunities for specialization. While a well-trained professional can become a specialist after law school, it is harder for a person with specialized knowledge to become a lawyer after law school, if he or she leaves law school without a fundamental understanding professionalism and legal skills and values.

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As the planning process continues, decisions on resource deployment will continue to be necessary. It is imperative not to overburden people by trying to emulate other law schools that may have very different missions and much greater resources.. Rather, the law school should seek to fulfill its own mission and should tailor that mission to the availability of the resources to support it.

The planning documents describe three different expansion plans for the law school, not including the status quo (i.e., continuing to maintain the law school in Moscow with a small presence, mainly internships and community relations activities, in Boise). These alternatives are the “Moscow Plus” approach, in which the law school and its JD program would remain in Moscow, but Boise-based activities would expand substantially to include a third-year program and a number of centers or institutes; the “Relocation” approach, in which the entire law school would be moved from Moscow to Boise; and 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 its J.D. program at two locations in the state. These three approaches are discussed in appropriate detail in the planning document, which provides comprehensive listings of the respective pro and con arguments at pages 70-71, 72-74, 81-83 and 88-90. I will not repeat that discussion or those arguments here, although my views (set forth below) have certainly benefitted from them.

## RELOCATION

In my view, relocating the law school to Boise is not a viable alternative. There are several reasons for this.

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 capitol and population center, the law school’s statewide service mission would not be enhanced by such a move.

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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 21<sup>st</sup> 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, 21<sup>st</sup> century role. And, those battles will fuel a continuing controversy that will probably affect support for the law school.

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## PHASED DUAL CAMPUSES RESULTING IN A STATEWIDE LAW SCHOOL.

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

Among other resource issues, two deserve special mention. The first, of course, is money, both to support an appropriate operating budget for the multi-campus school and to provide the capital that will be necessary to build the facilities of the new campus and to upgrade the facilities of the existing campus. The second is future law students, who must be present in sufficient numbers to support the two campuses.

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With respect to money, your president is quite optimistic that a bold new law school initiative—for serving the entire state from Moscow and Boise—will receive additional legislative and philanthropic support. He also envisions working with the law school to develop an enrollment strategy (which might increase the number of non-resident law students, so long as all well qualified Idahoans have been served) and a tuition/fee structure that will bring new money to the state-wide law school.

With respect to potential law students, I think that there is a need to enlarge and strengthen the current applicant pool. The new campus should be helpful in this regard, since it will provide another (and for some, more attractive) location at which to study law. In addition, the new campus may also provide (depending on the outcome of faculty curricular discussions) a different sort of program—perhaps one that features part-time legal education and a curriculum that differs from that of the Moscow campus. This sort of program and location differentiation should help in deepening the applicant pool.

Also of assistance in deepening that pool will be more aggressive marketing and branding by the College of Law. There is great potential for significant progress in this area, since survey data indicate that most of the law school's students and applicants were not reached, prior to applying, by any of the law school's outreach efforts. To try to rectify this situation and tap into this marketing potential, you indicated at the Law Advisory Council meeting that you will consider adding a marketing director for the law school.

Success in deepening the pool will be essential, since the current pool is insufficient to support the expanded, multi-campus law school. Success in developing additional funds for operations and capital needs is also essential, since the current budgets are barely adequate to cover the needs of the existing law school. Indeed, any plans to expand the law school's presence must include funding to strengthen the Moscow campus as well.. For the expansion into Boise to be successful, the Moscow campus must be—and remain—strong.

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#### MOSCOW PLUS.

Until the resources—both monetary and human—are available to open a JD program at a second campus in Boise, I believe that the law school should continue to strengthen the Moscow-based program and expand its presence in Boise. One way to accomplish this is through the “Moscow Plus” approach outlined in the materials, which contemplates new resources for both Moscow and Boise. However, if the ultimate goal is to locate a JD program in both Moscow and Boise, the Moscow Plus approach should be reexamined to determine if it is an appropriate interim step towards this long-term goal. Since the Moscow Plus approach was intended to be a stand-alone approach, it may not work as a part of a different goal.

While I think that the Moscow Plus approach is thoughtful and well conceived, I do not think that it is as good as the Dual Location approach in facilitating the state-wide mission of the law school. For that reason, and because of the enthusiasm of your president, provost and advisory council for the Dual Location approach, I recommend that approach to you, subject to the availability of resources.

#### ACCREDITATION MATTERS.

As I said at the Law Advisory Council meeting, while accreditation matters are important, they should not drive the planning of 21<sup>st</sup> century legal education for the state of Idaho. Whatever challenges accreditation presents, your school will certainly meet them. However, you should know what the issues are, so that you can plan to meet them as you develop your long-term plan. Hence, let me close with a few paragraphs on American Bar Association Accreditation.

Because the University of Idaho College of Law is an ABA-accredited law school, before making any “major change” in its program or structure it must receive the ABA’s acquiescence. Standard 105 provides:

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“Before a law school makes a major change in its program of legal education or organizational structure it shall obtain acquiescence of the Council for the change. . . [A]cquiescence shall be granted only if the law school establishes that the change will not detract from the law school’s ability to meet the requirements of the Standards.

“ . . .If the proposed major change involves instituting a new full-time or part-time division . . . or opening a Branch or Satellite campus, the law school must also establish that the law school is in compliance with the Standards or that the proposed major change will substantially enhance the law school’s ability to comply with the Standards.”

Interpretation 105-1 provides that the sorts of major changes that require ABA acquiescence include starting a new full- or part-time JD program (as is contemplated in the “Dual Location” approach); opening a Branch or Satellite campus (to be discussed more fully below, but which the Dual Location and Moscow Plus approaches contemplate); or relocating the law school in a way that could result in substantial changes in the faculty, administration, student body or management of the school (which is certainly possible under the “Relocation” approach.). These matters are dealt with in subsections 1, 13, and 15, respectively, of Interpretation 105-1.

The procedure for obtaining the ABA’s acquiescence to a proposed major change is set forth in Rules 20(d) and 21 of the ABA’s Rules of Procedure. Among the requirements are the completion of a major change questionnaire, the submission of the school’s most recent self-study, an analysis of the effect of the proposed major change on the school’s compliance with the standards, and a site visit by the ABA to evaluate the school. In addition, Rule of Procedure 20(b)(3) sets forth additional requirements when seeking the ABA’s acquiescence in the opening of a “branch” campus, including a business plan for the new branch.

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In addition to seeking ABA acquiescence in a major change, it may also be necessary to seek provisional and then full accreditation from the ABA for a new program, depending on the circumstances. The relevant rules for this analysis are Interpretation 105-2, Standards 106(4) and (15) and Rule of Procedure 20. These rules will be discussed, in turn, in connection with each of the possible approaches.

1. Dual Location Approach. Under this approach, a new JD program would be established in Boise. Under Standard 106(4), this would constitute a “branch” campus, since a student can earn all of the credit hours for a JD degree there. Under Interpretation 105-2 and Rule of Procedure 20(b)(3), the opening of a branch campus creates a new law school (in addition to the existing one), requiring provisional and full accreditation by the ABA for that new campus. Rule of Procedure 4 governs applications for provisional and full approval, requiring, among other things, financial statements, a site inspection questionnaire, a self-study, a feasibility study that addresses resource, programmatic and applicant pool sufficiency, and a site evaluation by the ABA.

2. Moscow Plus Approach. Under this approach, the law school would offer a full third year program in Boise. Assuming that it would be possible for a student to earn sixteen credit hours there, this would constitute a “satellite” campus under Standard 106(15). A satellite campus offering a third-year program is subject to the requirements of Interpretation 105-4, which specifies the sorts of resources and support that the satellite campus must provide. A satellite campus is not usually required to apply for provisional and full approval, as branch campuses are.

3. Relocation Approach. Under the relocation approach, the whole law school would move to Boise. While the ABA-acquiescence would be necessary under Standard 105, set forth above, it is possible that the law school could retain its existing accreditation, even though it has moved to a new location. Assuming that the faculty, student body, administration and academic program remained substantially the same, it is at least possible that the school would not be required to seek new accreditation.

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However, Procedural Rule 20(b) allows the Accreditation Committee to determine, based on factors listed in Rule 20(b)(2), that the relocation of a law school, or the opening of a branch campus, or the opening of a satellite campus, is in reality the closure of the existing law school and the opening of a whole new enterprise. If the Accreditation Committee were to make such a determination, the existing University of Idaho College of Law would be regarded as closing, to be replaced by a new relocated or multi-campus enterprise. In this circumstance, the whole new law school would be required to seek accreditation, as provided in Rule 20(b)(c).

If the Moscow campus remains substantially intact as the Boise enterprise is developed, I doubt that the Accreditation Committee would invoke its Rule 20(b) authority. However, as the process unfolds, it will be necessary to be in regular contact with the ABA's Consultant on Legal Education to ensure that he and his office provide support, rather than surprises. Knowing the Consultant as I do, I am sure that he and his staff will be very helpful to you as you move forward.

I hope that this letter is responsive to your needs. If not, or if you have questions or concerns, please let me know.

Best regards.

Very truly yours,

Richard J. Morgan