Excellence Through Diversity

UNIVERSITY OF IDAHO
COLLEGE OF LAW
2003 ANNUAL REPORT
Dean’s Message
Passion For a Special Place

The Idaho experience does intriguing things to people. Permit me a personal example. Recently, at the end of a law school get-together and fund-raiser in Pocatello, Doris M. Burnett, my 87-year-old mother (UI College of Business, Class of ’37) sat down at a grand piano and spontaneously played a spirited version of “Here We Have Idaho.” When the surprised and delighted onlookers stopped applauding, she said, rather sheepishly, “I didn’t really think I could do it. I haven’t played it in nearly 50 years.” She had remembered every note.

You never forget the things that define you. The University of Idaho experience is deeply imprinted in the minds and hearts of more than 70,000 UI alumni and alumnae, and of more than 3,000 law graduates, who understand that this intimate and vibrant place of learning and discovery is—in Rafe Gibbs’ immortal phrase—“a beacon to mountain and plain.” As I’ve traveled my native state (and beyond), sharing the news of progress at the College of Law, I’ve been greeted with stories, smiles, and support from men and women who came together here, not only to learn “thinking like a lawyer” but also to learn the meaning of a noble profession. We do not forget such things.

Today, despite issues and budget constraints facing higher education generally, the College is strong and growing stronger. As you will read in the pages of this Annual Report, our financial strength is sustained by private support and our “people strength” is enhanced by diversity. Our student body ranges from students who rocketed straight out of college with dazzling credentials to older students who brought us the wisdom of experience and the determination of folks who have overcome hardships in life. We have, in rising proportion, women and people of color who are destined to become successful practitioners, judges, and community leaders. As the students’ diversity has grown, so have their qualifications. The 2003 entering class, measured by LSAT scores, grade point averages, and prior achievements, was one of the most highly qualified—perhaps the best—class we have ever enrolled. Diversity and excellence go together.

We also are proud of growing diversity in our small faculty, with seven women teaching full-time in the classrooms and the clinic, and—this year—our first full-time tenure-track teaching faculty member of color, Douglas R. Nash, a member of Idaho’s Nez Perce Tribe. Doug has joined a hard-working community of teacher-scholars. In just this past year, for example, members of our faculty have anchored a national conference on the Endangered Species Act, started an international law symposium series, helped write international electronic commerce law, helped re-write corporate governance law, created a small business opportunities legal clinic in Moscow and Boise, served on national professional and academic boards and committees, and enabled clinic students to win a case that went to the U.S. Supreme Court and back.

As you’ll see elsewhere in this report, they also developed a statement of strategic direction on how to make the College the “nation’s best small state law school.” And while they were doing all this, they continued to engage, with collegiality and devotion, in the work of teaching, mentoring, conducting research, publishing, and rendering service to the University and the profession.

You can’t explain this level of energy by monetary incentive. Faculty salaries at the University of Idaho are modest (to treat the point lightly), and most have been static for two years. Rather, I think the faculty’s productivity comes from the same source that moved my mother suddenly to play the piano—the passion for a special place, and the sense of belonging felt by all who have shared the Idaho experience.

Please take time to peruse and enjoy this Annual Report. You’ll find much to reaffirm your bond for this place. If you would like to get regular updates on people and events at the College of Law, but have not yet subscribed to our monthly electronic newsletter, “First Monday,” simply send me an e-mail message at dburnett@uidaho.edu and we’ll connect you. Of course, if you have a concern, a kudo, or an idea for making the law school even better, please share that with me, too.

You are one of us, and we want to hear from you. Best wishes for personal and professional success, fulfillment and peace in 2004.

Daniel I. H. Burnett
Can Idaho be Among the Best?
Our Faculty Says “Yes”

In February, 2003, the law faculty made a remarkable statement about the future of the College of Law. Culminating a series of discussions that grew out of a strategic planning retreat when Dean Burnett arrived in the summer of 2002, the faculty’s statement identifies a set of strategic directions that can give the College a place of genuine distinction among small American law schools. Here is the faculty’s forward-looking “Statement of Strategic Direction.”

The University of Idaho College of Law provides a strong, comprehensive legal education in a unique environment. By making focused investments of additional resources in identified areas of excellence, the College can become a nationally recognized and regionally preeminent leader in legal education. To achieve these goals the College will:

- Strengthen basic foundations regarding instructional class size, the student body, and external communication.
- Broaden and deepen currently recognized areas of emphasis and expertise.
- Incorporate into the curriculum critical perspectives, skills, and values.

New resources, both public and private, will be needed to achieve these goals. The faculty and administration of the College of Law are committed to building upon and improving the existing program at the College.

THE FOUNDATIONS

The small student body and residential setting of the College of Law create a learning environment that enables our students to develop a special sense of professional calling and to fulfill their individual potential. To obtain national recognition and regional preeminence, the College will build upon this unique environment. By adding faculty, reducing instructional class sizes, and expanding the curriculum, the College will provide a distinctively rich and intimate learning experience. The College will be able to attract the best and brightest students from Idaho and elsewhere. The singular nature of the learning experience at Idaho also will attract students of diverse cultures and backgrounds, further enriching the education received by our students.

These developments, and the synergies created, must be made known to prospective students and external constituencies through expanded institutional communications. In sum, the College will strengthen its foundations by:

- Improving its faculty/student ratio through smaller class sizes and expanded curricular offerings.
- Attracting a more diverse and highly qualified student body.
- More widely publicizing the unique educational opportunities offered by the College.

AREAS OF EMPHASIS

The College’s existing principal areas of substantive focus—Advocacy and Dispute Resolution, Business Law and Entrepreneurship, and Environmental Law and Natural Resources—reflect areas historically considered to be strengths at the College. These areas match the needs of our state and region.

In expanding course offerings in the future, the College will build upon this base to take advantage of interdisciplinary opportunities with other University programs, notably in natural resources law and policy, but also with the College of Business and Economics, the Martin Peace Institute, and other colleges and universities in our region. The College will complement its program with urban experiences for its students in Boise and other metropolitan areas in the Northwest. Combining the residential study of law with innovative programming in urban settings will create signature educational experiences in the business, advocacy, and natural resource areas.

Building upon a solid base and taking advantage of unique opportunities presented by the University, state, and region, the College will leverage additional resources to develop depth and expertise in these areas:

- Advocacy and Appropriate Dispute Resolution
- Business Law and Entrepreneurship
- Environmental and Natural Resources Law and Policy

PERSPECTIVES AND VALUES

The College of Law is preparing its students to be lawyers and leaders in the 21st century. Law and legal training for the 21st century cannot be neatly compartmentalized.

Global perspectives pervade our society and, increasingly, our legal system. The College will prepare our students by providing international perspectives throughout the curriculum as an integral part of the law school educational experience.

Similarly, the ubiquitous presence of technology, not only as a part of the actual practice of law, but also as an influence on the development of the law and legal principles, necessitates a conscious inclusion of the impacts of technological developments in the curriculum. Whether through skills training in the use of courtroom technologies or through the recognition of how technology affects the analysis of established and seemingly settled legal doctrine, our students will be exposed to the myriad impacts of technology as part of their education.

Finally, as legal practitioners and scholars, our students must be firmly grounded in the skills and values of the profession, as well as the calling of public service and civic leadership that inheres in the legal profession. An ethos of service and commitment to the public good are touchstones of the legal profession, and will be reflected pervasively in the educational experience of our students.

To best prepare our students as 21st century lawyers and leaders, the College will inform the entire curriculum with:

- Global Perspectives.
- Impacts of Technological Developments.
- Professional Skills, Values, and Civic Leadership

CONCLUSION

By investing in foundations of excellence in legal education, by strengthening strategic areas of emphasis and expertise, and by exposing our students to the skills, values, and perspectives that will enrich their professional lives, the University of Idaho College of Law can achieve regional preeminence and national recognition. By doing so it can earn a distinctive place in legal education as the nation’s best small state law school.
With the participation of a pioneering jurist in the battle against gender discrimination, the College of Law hosted a panel discussion entitled, “Landmarks of Gender Jurisprudence: The Reed Case & Its Progeny” on September 18, 2003, in the College’s Law Courtroom. Those participating in the panel were Justice Ruth Bader Ginsburg; Professor Katherine Aiken, Chair, UI Department of History; and Jo-Ann Bowen, Deputy Attorney General for the state of Idaho.

Professor Elizabeth Brandt opened the discussion saying it was an “incredibly emotional and gratifying” experience to introduce Justice Ginsburg “who is the reason I went to law school, joined the ACLU, and is one of my personal heroines.” After being introduced by Jack Van Valkenburgh, Executive Director of ACLU of Idaho, Justice Ginsburg spoke on gender jurisprudence from the perspective of her own personal history.

As a volunteer lawyer with the ACLU in the late 1960s and early 1970s, explained Justice Ginsburg, she spent most of her “waking hours” working to put “women’s rights on the human rights agenda.” In 1972, she became the first director of the ACLU’s Women’s Rights Project, and from this vantage, led efforts to elevate the status of women by bringing about change in three areas: public understanding, the law, and judicial doctrine.

At this time, explained Justice Ginsburg, the law was seen as operating “benignly in women’s favor,” differential treatment on the basis of sex thus rationalized by an “attitude of romantic paternalism that set women not on a pedestal but in a cage.” While seeking to “educate people that something was wrong with their perceptions,” Justice Ginsburg and others involved in the Women’s Rights Project also sought equality through legislative and judicial reform, which explains her involvement with Reed v. Reed, an Idaho case now considered a landmark in gender discrimination law.

The 1971 decision in Reed v. Reed struck down, on equal protection grounds, an Idaho statute that had mandated a preference for the male whenever both a man and a woman applied for a court appointment to administer a decedent’s estate. The challenger to the statute, Sally Reed, was represented by Boise lawyer and UI law alumnus Allen Derr, who argued the case successfully to the U. S. Supreme Court. The Reed case marked the first time the U.S. Supreme Court struck down a state statute based on gender discrimination. Justice Ginsburg had written the brief for the case, a brief that Van Valkenburgh called “one of the primary legal documents of the women’s rights movement.” Before Reed, the Supreme Court had never acted favorably on a woman’s complaint that she had been denied equal protection by a state or federal law, but the decision in the case clearly showed that the Court was now willing to apply a heightened standard of review to gender classifications. Thus, said Justice Ginsburg, Reed v. Reed was the “turning point case for the Supreme Court and for lower courts throughout the nation.”

After examining other landmark cases in gender discrimination, such as the 1976 case, Craig v. Warren, Justice Ginsburg concluded her remarks by citing the recent Virginia Military Institute case as the “culmination of the 1970s endeavors to open doors so that women could aspire and achieve without artificial constraints.”

Following Justice Ginsburg was Professor Katherine Aiken, Chair of the UI Department of History, who spoke briefly on the history of the women’s right movement in the United States. Professor Aiken thanked Justice Ginsburg, saying “I have a personal debt to Justice Ginsburg and others who made it possible for me to have a career in the profession of my choice.” The last panelist to speak was Jo-Ann Bowen, Deputy Attorney General for the state of Idaho. Ms. Bowen, who serves as the legal staff for the Idaho Human Rights Commission, explained the mission of the agency and identified the advantages those seeking relief from discrimination now have as a consequence of the efforts of individuals like Justice Ginsburg. Ms. Bowen explained that victims now know they have rights, that states now have agencies to address and to implement redress, that there is a private bar to handle discrimination cases, and that judges and juries now recognize discrimination. Bowen identified four areas that are emerging as thorny areas of discrimination law: health insurance, wage differentials, sexual orientation, and immigration and citizenship. She said, “It is our challenge to work through the heated discussions of these cases, figure out what the law requires, and what it should require.”

The Reed case marked the first time the U.S. Supreme Court struck down a state statute based on gender discrimination.
Looking Beyond our Borders

Justice Ginsburg Presents 2003 Bellwood Lecture

Beginning her remarks as the 2003 Sherman J. Bellwood Lecturer with a quote from Deuteronomy, Justice Ruth Bader Ginsburg concluded with one from a mother to her son. In a lecture held on September 18, Justice Ginsburg argued the value of a comparative perspective in constitutional adjudication in a time of “increasingly porous borders” to an audience of nearly 1,300 people in the ballroom of the University of Idaho’s Student Union Building and at television viewing sites on campus and at the UI Boise Center. After being welcomed by Lieutenant Governor James Risch and Michael Bogert, the governor’s legal counsel, Justice Ginsburg was introduced by her friend and colleague, Boise attorney Allen Derr, with whom she worked on what has been called one of the most important cases of the 20th century, Reed v. Reed.

In response to Mr. Derr’s heartfelt introduction of his friend, whom he proclaimed to be an “American treasure,” Justice Ginsburg thanked Mr. Derr for his “most beautiful introduction” and praised him for his commitment to “moving our society on the right path.” With inspiration from Deuteronomy 16:20, “Justice, justice shall you pursue, that you may thrive,” Justice Ginsburg focused her lecture on one aspect of the pursuit of justice, judicial review for constitutionality, arguing that we Americans “should both lead and learn from others in that regard.”

Where once the United States was alone in submitting laws and official acts to judicial review, following World War II, “many nations installed constitutional review by courts as one safeguard against oppressive governments and stirred up majorities.” In an age of national, international, and multinational human rights charters and tribunals, “we are the losers if we do not both share our experience with, and learn, from others,” argued the Justice. From this premise, Justice Ginsburg defined herself as an “originalist,” explaining that the framers of the Constitution “looked to other systems and to thinkers from other lands for enlightenment, and they understood that the new nation would be bound by the ‘Law of Nations’ today called international law.” Other jurists, said the Justice, who also define themselves as originalists, “adhere to the view that a comparative perspective, though useful in the framing of our Constitution, is inappropriate to its interpretation.”

This view, suggested Justice Ginsburg, will become less common in the future. Where in the 1989 case, Stanford v. Kentucky, the Court had held that sentencing an individual to death for a crime committed at age 16 or 17 was not cruel and unusual punishment under the Eighth Amendment, in 2002, in Atkins v. Virginia, the Court held that executions of mentally retarded criminals are cruel and unusual punishments prohibited by the Eighth Amendment. “Within the world community,” noted the justices in the majority opinion, “the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”

Justice Ginsburg went on to suggest two areas of jurisprudence in which “we could do better. One concerns the dynamism with which we interpret our Constitution, and similarly, our common law. The other involves the extraterritorial application of fundamental rights.” Justice Ginsburg cited Alliance Bond Fund, Inc. v. Grupo Mexicano de Desarrollo, S.A. as an example of the “Court’s static conception of equitable remedial authority.” Dissenting from the majority decision that overturned a Second Circuit decision affirming an asset-freeze order, Justice Ginsburg noted that “federal courts, in their sometimes heroic efforts to implement the public school desegregation mandated by Brown v. Board of Education, did not embrace a frozen-in-time view of their equitable authority.”

Justice Ginsburg also cited examples to support her perspective regarding the application of rights specified under the Bill of Rights, “our nation’s hallmark and pride,” outside U.S. borders. In 1992, in United States v. Alvarez-Machain, the Court held that a “U.S. officer may abduct a foreigner and forcibly transport him to the United States to stand trial here.” Dissenting in a case heard when she was a judge in the U.S. Court of Appeals for the District of Columbia Circuit, Justice Ginsburg expressed the...
view that the United States should “act in accordance with the limitations imposed by the Constitution.”

On the other hand, said Justice Ginsburg, “our ‘island’ or ‘lone ranger’ mentality is beginning to change,” noting instances in which the Justices looked to United Nations Conventions in their opinions in the Michigan affirmative action cases. “A better indicator,” said Justice Ginsburg was Justice Kennedy’s opinion for the Court in Lawrence v. Texas, which overruled a Texas statute prohibiting certain types of consensual sex between two adults of the same gender. In the opinion, Justice Kennedy wrote, “As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.” In this ruling, the Court also looked to a 1981 decision of the European Court of Human Rights that affirmed the right to engage in voluntary sexual activity.

Realizing Ideals Through Service and Innovation

Neil Franklin Looks Ahead to New Challenges

After a quarter century of service to the College, Professor Neil E. Franklin will retire at the end of the 2003-04 academic year. “Neil is unselfish, unafraid, and undefeated,” says Dean Donald Burnett. He adds, “The legal profession worldwide owes him a debt of gratitude.” Echoing this sentiment is former Dean Sheldon Vincenti who describes Professor Franklin as “an enormously creative and remarkable man of the highest ethical principles.” In retirement, Professor Franklin will continue working toward the realization of ideals that inspired his choice of career nearly three decades ago.

“I was always interested in public interest law and using the law to effectuate change,” explains Professor Franklin who earned his bachelor’s degree in 1966 from the University of Oregon and served in the U.S. Army from 1966 to 1968. While working toward his juris doctor from the Golden Gate University School of Law, Professor Franklin clerked at the Prison Law Project in Oakland and the North-West Oakland Legal Aid Society. After receiving his J.D. in 1974, he served as an associate in the law office of San Francisco attorney Lawrence R. Horn until he became Managing Attorney for Idaho Legal Aid Services in 1976. In 1977, he became the organization’s Executive Director and was located in Boise.

Professor Franklin’s association with the College began during his tenure as Managing Attorney for Idaho Legal Aid Services in Lewiston when he served as attorney of record for the College’s legal aid cases. “Directing their cases, I found that I loved interacting with the students and realized that legal education, as a means of exposing people to the ideals of public interest law, would have a broader effect than anything I could accomplish as a practitioner.”

When the chance came for Professor Franklin to return to Moscow, he was ready. “I knew what I wanted to do and jumped at it.”

In 1978, Professor Franklin became the first full-time Director of the College’s Clinical Programs, and in this role, he was “truly innovative,” said former Dean Vincenti. Current Dean Donald Burnett notes that Professor Franklin’s acceptance of the director position was in keeping with “his willingness to take a risk.” He adds, “Professor Franklin left a salaried job to start our clinic on soft money, and the Clinic flourished.”

Professor Franklin’s innovations included establishment of professional skills courses and the development of a specialized litigation law program. Says Maureen Laflin, current Director of the Clinic, “Professor Franklin’s foresight, enthusiasm, and collaborative style helped lay the groundwork for the College’s current emphasis on advocacy and dispute resolution. The Trial Advocacy course he started is one of the College’s most popular and distinctive classes.”

As Director of Clinical Programs, Professor Franklin’s commitment to expanding access to legal services led him to forge relationships with under-represented constituencies such as members of Idaho’s tribes. Says Professor Franklin, “One of the things I feel best about is developing the Clinic as a resource for the tribes. We have learned a great deal about issues relating to the tribes, and through outreach, students have had a unique opportunity to gain insight into a culture other than their own.”

The principle of reaching out to different cultures, which Professor Franklin established as Clinic Director, is something he expects not just of his students but also of himself. Since the mid-1980s, Professor Franklin has helped establish clinical education programs in countries around the world. Encouraged by former Dean Cliff Thompson (an “old Africa
hand,” says Professor Franklin) to think about going to Africa. Professor Franklin applied for a Fulbright Scholarship to the Sudan for the 1984-85 academic year. When the scholarship was cancelled due to political unrest, Professor Franklin took advantage of his scheduled leave of absence to travel, spending four months in Europe, four in Africa, and four in Asia and Australia. The time he spent in Africa piqued his interest in the legal issues the continent faces, and during the 1988-89 academic year, he took a sabbatical in South Africa where he served on the law faculties of the University of the North, Pietersburg and Howard College, University of Natal-Durban.

In Africa, as in Idaho, Professor Franklin served as an advocate of clinical education. “I see clinical education as a means of advancing the rule of law. Better law schools produce better-trained lawyers who, in turn, provide more effective legal services.”

Besides teaching, Professor Franklin has also conducted workshops at various universities in South Africa and has served as a consultant for U.S. Information Service and American Bar Association projects in Africa and in Eastern Europe. In 1998, for example, he taught an international law and international relations extern course at the University of Sts. Cyril and Methodius in Skopje, Macedonia. “Through the establishment of professional legal standards and effective systems of legal education, the rule of law is advanced and access to justice is improved,” he explains. In January 2004, Professor Franklin, along with wife, Pat Engle, an art therapist, will travel to yet another continent, Asia, when he begins consulting on an American Bar Association project to establish legal mechanisms for the protection of human rights in Cambodia.

For his efforts in promoting and establishing clinical legal education programs, Professor Franklin has earned the highest respect of his colleagues, here and abroad. Yet, as former dean Vincenti points out, Professor Franklin is also recognized as an outstanding classroom teacher and “an incredibly successful” administrator. After serving as the Acting Associate Dean in 1989-90, Professor Franklin became the College’s Associate Dean five years later, serving from 1995 to 1999. During the 1999-2000 academic year, he acted as Interim Dean. “I have been very fortunate to be a part of the College and have enjoyed the opportunities that have come my way as a result of my involvement with the College. Administration is a way for me to give something back; not only is it a form of service to the College and its constituents, it is also something I find personally satisfying,” says Professor Franklin.

While Professor Franklin has found satisfaction in serving as an administrator, he says the “most important part of work for the College as always been working with students in the classroom.” He adds, “Our students are special. They’re not cynical; they’re receptive, eager to learn, and they work hard. Working with them in the classroom and the clinic has been the single most gratifying aspect of my work. I’m going to miss that.”

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**A Shining Example**

*by John Miller*

**When I became dean** in 1995 one of the first issues I faced was whom to ask to serve as my associate dean. Professor Neil Franklin was an obvious choice because of his experience as the Director of our clinic and as a Director of Idaho Legal Aid. But it was not clear at that time whether Neil would be available since for several years he had been spending about half of each year in Africa working to establish clinics in law schools there. Nevertheless I approached him about taking the job and, to my lasting good fortune, he agreed.

From the outset Neil committed himself to building on the successes of his immediate predecessors in the job, Art Smith and Monique Lillard, by refining our admissions and recruitment process. He retooled our scholarship program and successfully negotiated to obtain new funds for scholarships from the central administration. He traveled all over the western United States seeking good students. He founded our *Law by Day, Jazz by Night* minority recruitment program. At the same time that he was enhancing our outreach, Neil made a concerted effort to create a more student friendly environment in our building. To this end he was the guiding force behind the creation of the law school café. He worked to create our present carrel system that provides an Internet accessible carrel for every student. He contributed to the creation of our student recreation room. Most importantly he served tirelessly as counselor and advisor to any student who sought his guidance. It is important to note that Neil accomplished all this while remaining a highly regarded classroom teacher.

More than anyone I know Neil Franklin has lived his ideals. Even while he was serving as associate dean he continued to periodically travel the globe to help establish stable systems of justice in war-ravaged countries. At the behest of the American Bar Association he went to Macedonia while the battle in Kosova raged only miles away. He also returned to South Africa to continue his efforts to train others in the art of establishing legal aid clinics. Even now as he moves toward retirement he has accepted an appointment by the ABA to help establish a legal aid clinic in Cambodia.

Neil capped his administrative service to the law school by serving as acting dean in 1999-2000 while I was on sabbatical. By all accounts he did a splendid job in managing a complex and controversial debate concerning the future location of the law school. During the last couple of years Neil, serving as chair of our Appointments Committee, oversaw the hiring of some outstanding new professors including our first Native American teaching colleague.

Neil blends optimism with realism. He is both pragmatic and idealistic. Neil’s work ethic, his commitment to quality, and his world vision will always remain a shining example to those of us who have had the pleasure to work with him.
Douglas R. Nash: Using the Past to Brighten His Students’ Futures

After an eminent career as a practicing attorney, Douglas Nash is the newest member of the College of Law faculty. “Idaho law students will now have the opportunity to study water law with a veteran of Northwest water rights litigation; to explore issues in Western natural resource management with a key player in federal-state-tribal relations; and to learn civil procedure from a distinguished lawyer with nearly three decades of experience in federal and state courts,” says Dean Donald Burnett of Professor Nash’s appointment. Professor Nash also views his appointment as an opportunity, defining it, in fact, as an “opportunity arising” that will enable him to weave together several long-standing threads of interest. Most focus on his area of specialization: American Indian Law, tribal leadership, and tribal issues in management of natural resources.

Although born on the Duck Valley Reservation in Nevada, Professor Nash spent much of his youth in Idaho and graduated from Cottonwood’s Prairie High School. With the inspiration of his grandfather, Corbett Lawyer, who Professor Nash describes as a “self-schooled legal expert,” and the encouragement of a high school teacher and his stepfather, Professor Nash enrolled in the University of Idaho as a prerequisite to attending law school. After earning his bachelor’s degree in Pre-Law from UI in 1969, Professor Nash went on to the University of New Mexico School of Law, earning his J.D. in 1971.

From the Southwest, Professor Nash moved to the District of Columbia where he worked in the U.S. Interior Department’s Solicitor’s Office Honors Program. After serving as a staff attorney for the Native American Rights Fund in Boulder, Colorado, Professor Nash went into private practice in Pendleton, Oregon. Fourteen years later, he became Chief Counsel to the Nez Perce Tribe, serving the Tribe, of which he is a member, for 10 years. In 1999, he joined the law firm of Holland & Hart and headed their Indian Law Practice Group. Professor Nash is admitted to practice before the state and federal courts of Idaho, Oregon, Washington, and New Mexico, as well as the U.S. Court of Appeals for the Ninth Circuit and the United States Supreme Court.

As a private practitioner in Oregon, Nash represented the plaintiffs in Confederated Tribes of the Umatilla Indian Reservation v. Frohlke in their successful attempt to protect treaty reserved fishing rights and fishing sites on the Columbia River. The case was settled with the Corps of Engineers agreeing to conduct studies and construct improvements and protections for the treaty fishing sites, all having an approximate value of $5,000,000.00. As Chief Counsel to the Nez Perce Tribe and as of-counsel to Holland & Hart, Professor Nash argued cases concerning issues of treaty reserved fishing rights, jurisdiction, and gaming. In State v. Matthews, the Nez Perce Tribe participated as amicus curiae before the Idaho Supreme Court in a murder case to challenge a district court finding that the execution of a state search warrant for Indian-owned property within the Nez Perce Reservation did not constitute an infringement on tribal sovereignty. The initial decision in agreement with the Tribe’s position was withdrawn and replaced with an opinion holding that the search warrant was deficient. A third opinion denied the defendant’s position for post-conviction relief. Nez Perce Tribe v. Cenarrusa was an original action before the Idaho Supreme Court alleging that the procedures for amending the State Constitution were not complied with in an amendment defining the state’s policy on gaming. The Court held in a 3–2 decision that the required procedures had been followed.

Professor Nash’s service to the profession also reflects his experience and interest in Indian law and natural resources law. In addition to his numerous support activities with the Idaho State Bar and the Idaho Law Foundation, Nash is President-Elect of the National Native American Bar Association, Secretary-Treasurer of the Indian Land Tenure Foundation Board of Directors, and serves as a Judge for the Tulalip Tribe’s Court of Appeals. Nash’s high profile in the Native American community has caused Dean Burnett to call him “a national treasure with Idaho roots.”

Professor Nash is nearly as experienced an educator as he is a litigator; he has taught at the U.S. Indian Police Academy, at various law enforcement agencies, and during the 2000 Spring Semester, Professor Nash taught the College’s Indian law course, filling in for Professor Dennis Colson. As the first recipient of the James E. Rogers Fellowship in American Indian Law, Professor Nash sees his appointment as an opportunity to increase the College’s presence nationally in the field of Indian law. With Professor Colson, he is developing a second Indian law course that will focus on Indian law and natural resources and intergovernmental relations. With the College’s Director of Admissions, Erick Larsen, Professor Nash is working to increase the enrollment of students from Idaho’s tribes. "During my career,” he explains, “I found that young people from Idaho’s reservations had no vision of law as a career, and certainly no vision of working in a large firm. I want to show them that law is a real possibility.”

In addition to the new course in Indian law, Professor Nash will also teach Civil Procedure and Water Rights. In both courses, Professor Nash will use his experiences as a litigator to illustrate the concepts he is presenting in the classroom. He hopes this approach will help enliven the course in Civil Procedures, which he admits can be as “boring as heck.” While the first half of his water law course will focus on black letter law, the second will be devoted to an analysis of the Snake River Basin adjudication, with some of its participants being invited to the College. “The Snake River Basin adjudication has been the dominant general stream adjudication in the country for the past 15 years; it makes sense for students in Idaho’s College of Law to know what’s happening in this area.” He adds, “By bringing in the folks who are dealing with the issues day-to-day, I think there will be multiple benefits for the students and for the College.”

Professor Nash and his wife Phyllis, whom he met in high school, while settled in Moscow, are maintaining their home in Greencreek. They are the parents of two daughters, Mylie and Sasha; Mylie’s two sons and one daughter are a “source of great amusement,” says Professor Nash, adding, “When it’s grandpa time, my grandchildren know it’s fun time.”*
A Strong and Steady Influence:
Joann Henderson Honored With Shepard Professorship

The 2003-04 Alan G. Shepard Professorship has been awarded to Joann Henderson, who former dean Jack Miller describes as “an excellent teacher and an exacting scholar with a record of service within the college that is unparalleled.” Professor Henderson, who graduated summa cum laude from the College in 1973, joined the faculty in 1975. Professor Miller made the Shepard Professor designation while still serving as Dean in 2002.

Professor Henderson is an authority on bankruptcy, creditors’ rights, sales, contracts, community property, and gender law. Most recently, she has focused on bankruptcy issues, including the rights of Chapter 13 debtors with respect to collateral and questions arising from substitutions of collateral. Her article, “Bankruptcy Disaster Relief: A Chapter 13 Debtor’s Right to Use Insurance Proceeds to Repair or Replace Collateral,” was published in the Gonzaga Law Review, v. 35, no. 21, 1999-2000. Professor Henderson received the College’s Award of Legal Merit in 1987.

Professor Henderson’s excellence as an educator was recognized in 1985 when she was awarded the Peter E. Heiser Award of Excellence in Teaching in 1985 and with the Alumni Award for Faculty Excellence in 1999. For many years, Professor Henderson served with distinction on both the College’s Faculty Appointments Committee and the Admissions Committee, which Professor Miller describes as “our two hardest and most time-consuming jobs.”

Professor Miller adds, “Joann is a kind and supportive colleague who always displays quiet leadership. She well deserves the honor of serving as our Allan G. Shepard Professor.”

Glimpse of Faculty Scholarship
Voluntary Impoverishment to Obtain Government Benefits
by John A. Miller

For I have known them all already, known them all:
Have known the evenings, mornings, afternoons,
I have measured out my life with coffee spoons;
I know the voices dying with a dying fall
Beneath the music from a farther room.
So how should I presume?

As I began planning my return to teaching after seven years as dean, it occurred to me that perhaps I could use my tax and estate planning background to some advantage in a course on Elder Law. I felt this was an area where our curriculum could use some strengthening. My most recent article, Voluntary Impoverishment to Obtain Government Benefits, abstracted below, is an outgrowth of my efforts to teach myself some important aspects of Elder Law in preparation for teaching our students. JM

Increasingly, middle-class and upper middle-class elderly Americans voluntarily impoverish themselves in order to obtain the government benefit known as Medicaid. This widely discussed estate planning technique is known as “Medicaid planning.” It has several variations and is highly controversial. Congress was so incensed by the practice of voluntary impoverishment to obtain Medicaid that it made it a crime to engage in it and a crime for lawyers to advise their clients how to do it. The law aimed at the elderly quickly became known as the “Granny Goes to Jail” Act and Congress hastily reversed itself. The courts have since rejected the law aimed at counselors as well. But there remain a variety of moral, legal, and policy controversies surrounding the practice of voluntary impoverishment.

The primary reason for the emergence of voluntary impoverishment as an estate planning technique is the increasing likelihood that one’s life will end in a lengthy stay in a nursing home or similar facility or with the use of skilled nursing care in the home. The expense of these forms of “long-term care” has become so great that most persons unfortunate enough to need such care are likely to consume their entire life savings paying for it. This poses two problems for those persons. First, they may finish their lives utterly impoverished and completely dependant on the government and the generosity of their families for their support. In the case of a married couple this problem may be especially acute since a healthy spouse may be impoverished by the costs of caring for an unhealthy spouse many years in advance of the healthy spouse’s death. Second, after a lifetime of building an estate of some consequence, these elderly persons may die with nothing to leave to their loved ones.

Voluntary impoverishment can ameliorate both of these problems. By giving their fortunes to family members or by putting their property in specially designed trusts, the now impoverished persons can qualify for a means tested government subsidy of their long-term healthcare needs called Medicaid. The family members or the trust can provide additional support to the impoverished person out of the transferred resources to maintain a reasonable quality of life. For this reason, some commentators describe this as “artificial impoverishment.” Most of the voluntarily impoverished person’s assets eventually pass to his or her loved ones. Thus, planned successfully, voluntary impoverishment can preserve the disabled elderly person’s quality of life and preserve her estate by shifting much of the person’s long-term healthcare costs to the government.

“The expense… has become so great that most persons unfortunate enough to need such care are likely to consume their entire life savings paying for it.”
This article considers the practice of voluntary impoverishment to obtain government benefits from both practical and policy perspectives and describe some possible approaches to resolve the controversy surrounding it and to improve the situation for our nation’s elderly. In the end it advocates that Congress adopt a well documented middle path between present law and universal elder health care. This middle path would continue the practice of means testing eligibility for long-term healthcare subsidization by the government but limit the means testing to a set period in the neighborhood of two years after the person has entered long-term care. After the means testing period has expired all elderly persons in need of long-term health care would be eligible for government assistance without regard to their means. Under this approach, if not most, middle and upper middle-class persons would elect to keep control of their life savings while bearing substantial medical costs because they would be assured that a lengthy nursing home stay will not consume all of their income and savings and have the effect of impoverishing them and disinherit their survivors. The article posits that most persons would elect to bear the costs of their long-term care for a limited period because most people find the idea of voluntary impoverishment repugnant and shameful and because the practice imposes a high cost on personal financial security. The cost to the government of the middle path would be relatively modest since most nursing home stays do not last more than two and a half years and since the path would weaken the economic case for voluntary impoverishment. Moreover, the middle path would encourage the practice of purchasing bridging or mid-term health care insurance policies to cover nursing home costs for the means testing period. Mid-term care insurance is less costly than long-term care insurance and, thus, should be more successful in obtaining favor with the buying public. Finally, the middle path preserves the values of self reliance and self respect for many of our nation’s elderly without forcing them to sacrifice all of their life’s savings to do so. ✶

Law Faculty, International Scholars, and Students Inaugurate International Law Symposium Series

Transboundary Harms in the 21st Century: Lessons From the Trail Smelter Arbitration

Coeur d’Alene, Idaho – March 21, 2003
by Russell Miller

The United States and Canada share the longest open border in the world. This fact remains unchanged in spite of enhanced security measures implemented since the terrorist attacks of September 11, 2001. These peaceful neighbors are committed to the same democratic and free-market values; making the rare instances of international tensions between the two all the more noteworthy. The Trail Smelter Arbitration, one such U.S.-Canadian dispute involving claims of smoke-damaged crops along the U.S. portion of the Columbia River, a result of the massive smelting activity carried out in Trail, British Columbia, is widely viewed as having laid the foundation upon which all international environmental law is constructed. The Trail Smelter principles persist in international instruments, casebooks and scholarly footnotes as the “locus classicus” of international environmental law.

Under the guidance of Associate Professors Rebecca Bratspies and Russell Miller, the College of Law inaugurated, in March 2003, what is hoped to be an annual event: The University of Idaho College of Law International Law Symposium. The goal of the annual symposium is to emphasize the relevance of International Law to the Idaho community and the careers of University of Idaho law students by highlighting local cases or issues uniquely impacted by International Law. Considering its significance and truly local character, the Trail Smelter Arbitration was a natural choice for the first in this series of symposia.

The Trail Smelter Arbitration and the Idaho Connection

Trail, British Columbia was home to the largest lead and zinc smelting complex in the British Empire. The Trail smelter’s 400-foot high stacks sent plumes of noxious smoke down the Columbia River valley, justifying one travel guide’s description of Trail as “an outcrop of hell.” This smoke crossed the United States-Canadian border and caused damage to crops and forests in the state of Washington. American farmers and the Canadian smelting company locked horns over compensation for crop losses and measures to ensure smoke reduction. From this relatively common, private-law beginning, the dispute quickly escalated to involve the highest levels of the United States and Canadian governments, largely because a provision of the Washington State constitution prohibited foreigners from owning property, and thus “smoke easements,” in Washington State. The Trail Smelter dispute raised thorny issues of how international law should respond to transboundary air pollution. It took almost 15 years and a precedent-setting international arbitration to finally settle this question.

Along the way, the University of Idaho played an instrumental role in the dispute. Dean Francis G. Miller, the first dean of the University of Idaho’s School of Forestry, and Dean A.E. Howes of the College of Agriculture of the University of Alberta were appointed by the International Joint Commission in 1929 to aid in the Commission’s first round of efforts to settle the complaints of crop damage connected with the smelting facility in Trail, British Columbia. In its Brief Submitted on Behalf of his Majesty’s Government in Canada (Trail Smelter Reference, 1930), the Canadian government describes the Deans as “men whose qualifications as scientists and whose integrity were beyond criticism.” The Deans were given unrestricted authority to make a broad and

continued


Russell Miller
Transboundary Harms, continued

comprehensive investigation of past damages and damages arising in 1929, the year of their appointment. The letter of instruction to the Deans, from June 8, 1929, explained: “You will ascertain as nearly as possible the amount of damages which each claimant has suffered up to the present time and especially during the present year.”

Dean Miller’s archives, held by the University of Idaho, reveal the extensive scientific effort he and Dean Howes pursued, including: comprehensive soil and crop sampling across a broad area, gathering medical information regarding the residents of the affected region, and conducting interviews and meetings with individuals and whole communities. The Deans were also guided in their investigation by a lengthy legal memo, prepared by attorney John T. Raftis of Colville, Washington. Also to be found in Dean Miller’s archives, the Raftis memo is a sweeping, multi-jurisdictional and multi-national comparative law effort to bring clarity to the legal elements of the claims upon which the Deans’ scientific investigation was to shed light.

The Deans’ report, which can be read to favor the Canadian government, was attacked by the Americans in the oral arguments on the matter. First, the Deans suggest that they had too little time and inadequate information to reach conclusions on the matter of physical damage. Second, they identified a number of mitigating circumstances, including: (1) a number of non-smelter related conditions that contributed to the reported losses in the region; and (2) a number of conditions in the region that would have diminished the extent of the harms produced by the Trail Smelter smoke. As to the former, the most poignant is the concession, acutely expressed in Dean Miller’s notes from a presentation given at the “Kiwanis Club in January or February, 1930” that “[t]hese farms are occupied by good people but not good farmers…” The implication being that some of the lack of production allegedly associated with the smelter smoke was, in the opinion of the Deans, also the result of “cropped out” and over-farmed soils.

It wasn’t until the ongoing dispute was submitted by the two nations to an ad hoc arbitral tribunal for further consideration in 1938 and again in 1941 that the matter was finally closed. The ad hoc arbitral tribunal ruled in favor of the United States in the action, finding that Canada was responsible in International Law for the damage caused by the privately owned and operated smelting facility:

“The Tribunal, therefore, finds that … under the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, …”

The tribunal then ordered Canada to compensate the Washington State farmers for the damages to their crops:

“Considering the circumstances of the case, the Tribunal holds that the Dominion of Canada is responsible in international law for the conduct of the Trail Smelter. Apart from the undertaking in the Convention, it is, therefore, the duty of the Government of Dominion of Canada to see to it that this conduct should be in conformity with the obligation of the Dominion under international law as herein determined.”

Today, the conclusions reached in the Trail Smelter Arbitration decisions, (1) reiterating the rule that States have a duty to use their territory in such a way as to prevent the harm to the territory of another State, and (2) establishing the “polluter pays” principle, serve as the basis for resolving transboundary environmental disputes and remain the key underpinnings of international environmental law.

The Symposium

The symposium brought together a dynamic, international group of both established and emerging scholars in the intimate setting of the Coeur d’Alene Resort for a keynote address and the presentation and discussion of original scholarly comments on the Trail Smelter Arbitration in a series of panels. The group came from around the world, including Canada and Germany, and was particularly enriched by the contributions of a number of University of Idaho and local scholars and experts.

Professor Stephen McCaffrey of the McGeorge School of Law at the University of Pacific stirred the event to life with a keynote address that traced the deep-rooted and broad-reaching precedent impact the Trail Smelter Arbitration has had on international environmental law. Professor McCaffrey’s presence, alone, would have qualified the symposium as a success. He is the former Chairman of the International Law Commission, the extremely exclusive and highly prestigious body charged by the United Nations General Assembly with promoting the progressive development of international law and its codification. Professor McCaffrey has written extensively on water issues in international law and is the co-author of the leading international environmental law casebook.

The presentations of the first panel provided an interdisciplinary introduction to the Trail Smelter Arbitration. Alongside a number of presentations introducing the fundamental
international law principles upon which the Trail Smelter Arbitration decisions were built, there were presentations on the history of the case and the ecological/scientific issues in the dispute. The highlights of the first panel were the presentation of Canadian historian James Allum, Professor John Knox of Pennsylvania State University’s Dickinson School of Law, and Professor Mark Anderson of the University of Idaho College of Law. James Allum animated the day’s discussion with imaginative anecdotes culled from the research that led to his Doctoral Dissertation, including a reference to the “Trail Smoke-eaters,” the local hockey team. Professor John Knox was recently awarded the 2003 AJIL Francis Deák Prize honoring a younger scholar for publishing a ground-breaking article on transboundary environmental harms in the prestigious, peer-reviewed American Journal of International Law. Professor Anderson sharpened the discussion with a critical, economics-oriented challenge to the International State Responsibility/Liability regime upon which the Trail Smelter Arbitration depended.

The presentations of the second panel considered the relevance of the Trail Smelter Arbitration precedent to a broad range of contemporary transboundary environmental issues, including: global warming, genetically modified crops, and the Danube River dispute between Hungary and the Slovak Republic. The highlights of the panel included the presentation of Professor Gunther Handl of Tulane University School of Law and Professor Raúl Sanchez, the Special Assistant to the President for Diversity and Human Rights at the University of Idaho. Professor Handl, a world-renowned expert in International Environmental law, addressed the relevance of the Trail Smelter Arbitration to issues of atomic energy and human rights. Professor Sanchez, an experienced researcher and litigator in the field of International Human Rights Law, explored the challenging possibility that the Trail Smelter Arbitration might serve as part of the legal framework justifying a human rights claim to a healthful environment.

The presentations of the third panel undertook a more innovative project, daring to question whether the Trail Smelter Arbitration might hold lessons for international law’s approach to a number of transboundary challenges outside the environmental arena. Panelists considered whether the “polluter pays” principle might have application: in enforcing corporate social responsibility on transnational corporations; on the application of human rights regimes beyond the borders of the states signatory to the relevant treaties; with respect to refugee crises; in combating the global drug trade; in regulating the inherently transboundary Internet; to the International Law regime governing telecommunications satellites; and in the field of cross-border labor rights as secured by international agreements like NAFTA. The highlights of the third panel were the presentations of Nicola Vennemann of the Max Planck Institute for Comparative and International Law in Heidelberg, Germany, and Professor Monica Schurtman of the University of Idaho College of Law. Ms. Vennemann expressed doubts about the relevance of the Trail Smelter Arbitration in her examination of the Bankovic decision of the European Court of Human Rights. The Bankovic case involved an unsuccessful attempt by Yugoslavian victims of the NATO-led bombing campaign to apply the obligations of the European Convention on Human Rights to the military acts of the NATO Member States undertaken in Yugoslavia. Professor Schurtman’s remarks drew on her extensive International Human Rights litigation experience.

The event concluded with a daylong, chartered bus trip along the Columbia River to Trial, British Columbia, where the participants had the opportunity to tour the smelter facility. The collected papers from the symposium will be edited and published as a book. The symposium was made possible by a Dean’s Faculty Initiative grant, part of Provost Brian Picher’s programmatic support of Dean Burnett and the College of Law.

Special note should be made of the fact that two University of Idaho College of Law second-year students were invited to present papers alongside the distinguished scholars. Jennifer Peavey and James Jacobson had written their contributions for a law school course in Public International Law and both made impressive contributions to the proceedings. Ms. Peavey merits particular mention for having also provided invaluable assistance in the organization of the symposium.
Women in Law: Monique Lillard Oversees a New Initiative

When a “Blue Ribbon Panel” visited the College of Law in the year 2000, the panelists noted that our College had one of the lowest (perhaps the lowest) percentages of women students among all law schools in the United States. Since that time, enrollments have improved (40% in the incoming class of 2003). In the fall of 2003, the College decided to build upon that progress by undertaking a broader initiative to make the College more welcoming and interesting to current and prospective women students, as well as to women already in the law school community. Professor Monique Lillard chairs the College’s Diversity Committee and is in charge of the women’s initiative.

The College’s goal is to take steps to increase still further the number of women in the school, to increase the visibility of women in the legal profession, and to enhance appreciation for gender diversity. Plans include the following:

I) Events. These activities are valuable not only if they address women’s rights or gender issues, but also if the speakers are females talking with competence and authority on any topic. One of Professor Lillard’s colleagues recently told her that he was surprised at the depth of the gratitude expressed by his female students in response to his having a female speaker come to class. Our female students are hungry for role models and the attendant affirmation that they have made a good and viable choice in coming here.

A. Speakers so far have included:

Justice Ruth Bader Ginsburg, who did a morning session on Reed v. Reed, the first case to declare gender discrimination to be unconstitutional. (She was one of the lawyers on the case.) Also on the panel were Jo-Ann Bowen of the Idaho Human Rights Council and Professor Katherine Aiken of the UI History Department.

Justice Ruth Bader Ginsburg’s Bellwood lecture on the use of international authority by the American courts.

Virginia Sapiro, University of Wisconsin, who addressed the glass ceiling for women and presented a comprehensive paper summarizing studies of why, when and how people discriminate on the basis of gender and race.

Tamsen Leachman, Boise attorney with Hall Farley Oberrecht & Blanton, who addressed a variety of workplace law issues including spending considerable time on the law of sexual harassment.

Heidi Gudgell, Lapwai attorney for the Nez Perce Tribe, and Josephine Beeman, Boise attorney, who addressed water law.

Sandra Clapp, attorney, who addressed estate planning.

Three of the five adjunct professors in our lawyering process course were chosen for a variety of reasons, including that they would provide good role models to our female students, and because it benefits both male and female students to see highly competent counsel of both genders: Anne Dwelle, Colleen Harrington and Jennifer Ewers.

B. Future Speakers. These will include Jocelyn Larkin of the Public Impact Fund, a leading plaintiffs employment discrimination class action lawyer, who has recently begun coordinating what may be the largest class action suit in history, a gender discrimination case against WalMart.

C. Lunching with Leaders. This “brown bag” series highlights how successful people got where they are. The inaugural speaker was Tamsen Leachman. Future programming will include a discussion of leadership skills, including how gender affects leadership. The topics for the events are developed by The Women’s Law Caucus at the College of Law.

D. McNichols Moot Court Competition. The intramural moot court problem in 2003-04 will center on sexual harassment. It already has increased visibility and debate over this ever-present problem, which afflicts more women than men.

E. Diversity Workshop. The Minority Law Caucus and the Diversity Committee are at work planning a multi-day workshop on diversity for law students and possibly others.

Professional speakers and a trained facilitator are being lined up to make the discussion memorable.

F. Domestic Violence Workshop. Work has been undertaken in 2003 to conduct a domestic violence workshop the spring of 2004.

G. Recognition of Alumnae. We hope to honor our alumnae, perhaps in conjunction with a scholarship drive but certainly to highlight their contribution to the state and region.

II) Outreach.

A. Increased publicity for events will reach out to women’s centers and multicultural centers across the Northwest.

B. Creating a “Careers in Law” series for undergraduates throughout the region. In September two female law students, the Director of Admissions, and Professor Lillard conducted a Law Information” program at the UI Women’s Center, which was well attended.

C. The “personal touch.” For several years Professor Lillard and other faculty have been contacting women who may be interested in law school, talking to them about their situations, conducting a tour of the law school, inviting them to sit in on classes.

III) Systemic and Programmatic Issues.

A. Child Care.

(1) Professor Lillard is the “principal investigator” for a contract with the State of Idaho to study child care needs, to form focus groups, and possibly to start a pilot program whereby businesses and schools in the community contribute to child care services in order to subsidize the cost of child care for students and workers in the area.

(2) Possibility of launching a scholarship drive for alumni (and alumnae) support for students with children.

(3) Exploring ways to make the College of Law more affordable and more attractive to people with children who need child care. These people are primarily, but not uniquely, women. They can be single parents or couples where both parents are working or going to school.

B. Programmatic Changes. Professor Lillard hopes to broach, with her colleagues, some other ideas that might make our program more appealing to women. These ideas are currently in too embryonic a stage to make public, but they will bring diverse new perspectives to the curriculum and to the law school community.
Making a Difference: Immigration Clinic

In a panel discussion on September 18, 2003, in the College’s Courtroom, Justice Ruth Bader Ginsburg noted that one section of gender-based law that the U.S. Congress had not reformed was that concerning citizenship. At the same panel, Deputy Attorney General Jo-Ann Bowen identified immigration as an emerging issue in discrimination law. Later that day, Justice Ginsburg commented that she considered immigration to be a critical area of law demanding of greater attention.

Perhaps it is no surprise then that the faculty and students of the College’s Legal Aid Clinic have found that the need for skilled advocates to represent individuals seeking assistance with immigration issues has become acute. “The need is very great; with the exception of one attorney in Moscow who is developing an immigration practice, we are, as far as I know, the only immigration practitioners in northern Idaho,” says Clinical Professor Monica Schurtman. “Given the number of foreign-born students at the University of Idaho, and the prevalence of foreign-born workers engaged in the agricultural and forestry industries in Latah, Nez Perce, Kootenai, and Boundary counties, the need for immigration assistance in this region is great.” She adds that the need is even greater elsewhere in Idaho. “We are constantly getting calls from southern Idaho, either from attorneys needing guidance on immigration law issues or from immigrants themselves who have no one to represent them. There is a definite need for practitioners who can find creative ways to obtain lawful relief for their clients.”

Through its Immigration Clinic, the College of Law is responding to this need by providing student-practitioners and by educating advocates who currently work with immigrants, such as social workers, on issues of significance to immigrant populations. Third-year student Gregory Ferbrache explains that students in the Immigration Clinic “currently represent Idaho residents who are nationals of Mexico, Pakistan, Germany, Indonesia, Laos, Panama, and other countries in asylum claims, relative petitions, applications for adjustment of status, immigration relief under the Violence Against Women Act, deportation proceedings, and administrative and federal court appeals.”

An example of an immigration case handled by Clinic students is that of Ana Beltran-Gunderson. Third-year students, Val Alepuyo, Wayne Walterscheid, and more recently, Brandon Richards and Jennifer Peavey, under the supervision of Professor Schurtman, represent Ms. Beltran-Gunderson who was born in Mexico but moved to Latah County, Idaho to live with her father, a legal permanent resident when she was 12. In 2001, Ms. Beltran-Gunderson, who is now in her 20s, had been granted temporary permission to remain in the United States as the alien spouse of her husband, Rick Gunderson, a United States citizen and veteran of the U.S. Armed Forces. In 2001, she began the process of applying for permanent residency, but in the spring of 2003, at a routine visit to the Department of Homeland Security in Spokane, Ms. Beltran-Gunderson was arrested and told that a deportation order had been entered against her when she was a child. She was, therefore, subject to immediate deportation. Until then, Ms. Beltran-Gunderson hadn’t even known about the order.

As a result of the Clinic’s efforts on Ms. Beltran-Gunderson’s behalf, the Department of Homeland Security has granted her several stays of deportation, but the Clinic’s attempts to seek permanent relief through the immigration courts have been unsuccessful. Her administrative remedies exhausted, the Clinic filed a Petition for Review and a Motion to Stay Deportation with the Federal Court of Appeals for the Ninth Circuit in December 2003.

In addition to its legal efforts on behalf of individuals seeking immigration relief, members of the Clinic have also been involved in efforts to educate those who serve immigrant populations. For example, third-year student Jennifer Peavey and Professor Schurtman prepared and presented a workshop in September 2003 at a YWCA-sponsored event in Lewiston on immigration remedies available to immigrant victims of domestic violence. “Immigrants are often at greater risk of violence because they don’t know help is available…” Jennifer Peavey

“Immigrants are often at greater risk [of violence] because they don’t know help is available…” Jennifer Peavey

Through the work in the Immigration Clinic, says Clinic Director Maureen Laflin, the Clinic is doing more than meeting a critical need. “We serve people of diverse ethnic and cultural backgrounds. Diversity is not just an ideal in the Clinic; it is a reality, and we on the frontline are responding substantively to the unique situations in which immigration issues can place people.” Professor Laflin also notes that like diversity, immigration cases are often about breaking down barriers. “Traditional divisions in the law,” she says, “are no longer valid; it is difficult to distinguish between general clinic cases and immigration clinic cases. They are often one and the same.” Professor Schurtman echoes this observation, “For example, with our General Clinic clients who are not citizens, what would be a simple, easily resolved misdemeanor charge for a U.S. citizen can actually lead to deportation, even of a long-term legal permanent resident. Traditional legal tools and approaches that work well for U.S. citizen defendants can lead to catastrophic consequences for immigrant defendants and their families.”

Monica Schurtman

School, my experience with the Clinic has strengthened my belief of the necessity to work within the United States on issues relating to our international communities.”
Presentations:
- The Patriot Act, Moscow Rotary Club (December 1, 2003).
- The Patriot Act, KRLC-AM Call In Radio Show, Lewiston, Idaho (July 16, 2003)
- Attending to Family Matters, UI Enrichment Program (April 18, 2003).
- Privacy Rights and the Impact of War on Families and Children, Women: War and Peace, panel discussion, Washington State University Department of Women’s Studies and Pullman Chapter NOW (March 25, 2003).
- INS/FBI Questioning: Know Your Rights, workshop sponsored by University of Idaho ACLU Student Chapter (March 5, 2003).
- INS/FBI Questioning: Know Your Rights, workshop sponsored by the Washington State University International Students and Scholars Program (February 28, 2003).
- Service Projects:
  - National Board of Directors, American Civil Liberties Union
  - Editorial Board, ABA Family Law Quarterly

Dennis Colson
Subject Area Emphasis: Idaho Constitutional Law; Indian Law; Contracts
Scholarship and Publications:
- Special Legislative Edition of Idaho’s Constitution: The Tie That Binds published by the University of Idaho Press with support from the Cenarrusa-Eiguren Endowment
- Idaho’s Founders and Their Legislature, House of Representatives, Senate, Idaho Legislature, Boise, Idaho.

William H. Clagett - The Silver-Tongued Orator of the West, Westerners, Spokane, Washington

Subject Area Emphasis:
- Professional Responsibility, Law and Economic Analysis
Scholarly Works and Publications:

Presentations:
- Ethics Update: Multijurisdictional Practice and Selected Other Model Rule Changes, 45th Annual Idaho State Tax Institute, November 15, 2003

Service Projects:
- Chair, UI Diversity and Human Rights Steering Committee
- UI Executive Council
- National Board Member, American Judicature Society Professionalism Committee, ABA Section on Legal Education and Admissions to the Bar
- Idaho Supreme Court/Idaho State Bar Committee on the Bar Examination
- Board Member, Idaho Law Foundation, Inc.

Don Burnett

“Go Forth and Do Good”
The 2003 Commencement

J. Evan Goulding Delivers Commencement Address

A new site and a new Dean marked the 2003 Commencement. Led by Dean Don Burnett, faculty, graduates, staff, and honored guests walked together to the University’s Student Union Ballroom, the site of the 2003 Commencement ceremonies. Surrounded by friends and family along the way, flashbulbs popped and shouts of greeting floated through the air as the long procession moved through campus.

The Commencement speaker, J. Evan Goulding referenced much of his words to his work experiences with the public. The Idaho native, who was raised on a ranch in eastern Idaho and graduated from Ricks College, is Executive Director of the Special District Association of Colorado. As a practicing attorney and professional lobbyist he has held a number of

Mark Anderson receives the Peter E. Heiser Award for Excellence in Teaching from Tracy Crane.

J. Evan Goulding

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private and public positions, including serving as Colorado Commissioner of Agriculture from 1976 through 1982.

In his remarks, Mr. Goulding explained that while a legal education is preparation for a wide variety of career choices, all of which have the potential to provide very fulfilling and rewarding lives, he urged the graduates to assume a “mantle of truth, honesty, virtue, integrity, and ethical behavior.” He added, “If any group has the ability and the responsibility to be the conscience of the nation, it is those trained in the law.”

Citing his personal experience as a Deputy District Attorney in Los Angeles County, California, where he assisted Vincent Bugliosi in the prosecution of the Manson family in the Tate/Labianca murder case, Mr. Goulding spoke to the importance of developing a strong sense of traditional values. “Life is a test,” he said, “and we pass or fail based on how true we are to the values we live by.”

Mr. Goulding also advised the graduates to walk in the “sunlight of truth” and to “travel the path of integrity without looking back because there is never a wrong time to do the right thing.” His concluding words were simple and direct: “Go forth and do good.”

Following Mr. Goulding’s address, Idaho Supreme Court Justice Jesse R. Walter was awarded the College of Law’s Award of Legal Merit. Justice Walters, who received his L.L.B. and J.D. from the University of Idaho, was appointed to the Idaho Supreme Court in 1997. In May 1998, he was elected to a six-year term on the Court. Justice Walters received a Master’s Degree of Law in Judicial Process from the University of Virginia in 1990.

He was admitted to the Idaho Bar in 1963, the United States District Court of the District of Idaho, and the Ninth Circuit Federal Court of Appeals. From 1964 until 1997, Justice Walters maintained a private practice in Boise. In 1977, Governor John Evans appointed him to the district court bench for the Fourth Judicial District, where he served until 1982, also serving as the Administrative District Judge of the Fourth Judicial District from 1981 to 1982. In 1981, Governor Evans appointed him to the newly created Idaho court of Appeals. He was selected by the Chief Justice of the Idaho Supreme Court to serve as Chief Judge of the Idaho Court of Appeals for seven consecutive two-year terms from 1982 to 1997.

Justice Walters, who retired from the bench in July 2003, has taught the College’s Judicial Remedies course and regularly serves as judge in high school and law school moot court competitions. He is a current member of the College’s Law Advisory Council.

Concluding the ceremonies were the presentation of awards to faculty and students. Professor Mark Anderson received the student-voted Peter E. Heiser Award for Excellence in Teaching. Graduate Tracy Jack Crane was presented with the Faculty Award of Legal Achievement based on academic standing. Student Bar Association President Matthew D. Romrell presented the Outstanding Student Service Award to Christine V. Starr and Spirit of Class awards to Laura MacGregor Bettis and Cynthia Yee. In addition, the distinguished service of Professor Arthur Smith and Career Service Director LeAnn Phillips, who have retired this year, was recognized.  *}
Robert Harris: “...a law career seemed a logical place to apply the information I had learned.”

Two Women in Law: Stories of Sheer Determination and Family Commitment
Val Alepyuo and Portia Jenkins by Carol Spurling

University of Idaho law school students Val Alepyuo and Portia Jenkins, as single mothers in their 30s, bring several decades of real life experience to their classes. Although the paths they followed to Moscow began an ocean apart, they are alike in that the extra challenges of raising a family while also studying for a law degree haven’t discouraged them, but rather have helped them focus on success.

Alepuyo credits her mother for making it possible for her to concentrate on school despite the birth of her son three years ago.

“When I had my son, my mother decided she was going to quit her good civil service job to come out to help me. At first I thought she’d lost her mind,” Alepyuo said. “But she said, ‘I want to make sure that you succeed and I think the sacrifice is worth taking. If I don’t sacrifice for my kids, who will?’ That, to me, just paved the road. Quitting or failing was not an option.”

Alepuyo grew up on Saipan, part of the U.S. Commonwealth of Northern Mariana Islands in the West Pacific. There are two indigenous groups on Saipan: the Chamorro and the Carolinians. Alepyuo is a product of both groups, so she is considered a “Chamolnian.”

She joined the military in 1987 after graduating from high school, and worked as an aircraft electrician. Her tour of duty was mostly in Germany, with a stint in Saudi Arabia during the first Operation Desert Storm Shield.

After leaving the military, Alepyuo worked for a Department of Defense contractor for six years, modifying helicopters. Her work took her throughout the Southwest, and Asia, mainly Korea.

“When I decided it was time I quit messing around and concentrate on going to school,” Alepyuo said.

She moved to Salem, Oregon, where she had family, graduated with an A.A. degree from Chemeketa Community College, and then found that her military experience translated
into the most credits at Washington State University, which has an aeronautics program.

She graduated from Washington State in 2001 with a degree in Women’s Studies, and graduated with her University of Idaho law degree in December 2003.

Alepuyo applied to and was accepted at several law schools, including Hawaii, her first choice, but ultimately chose the University of Idaho after visiting, meeting admissions director Erick Larson, and feeling at home.

“Where I grew up is rural, so I really like the small town feel of Moscow and Pullman, and the law school reminded me of that. Even as a visitor I felt comfortable. I’ve spent time at other law schools and they just had a different feeling,” Alepuyo explained.

Despite being a “non-traditional” student, Alepuyo’s positive attitude has served her well.

“I’ve made some lifelong friends while I’ve been here. Differences are good if you can learn to respect them and to appreciate them, but if you dwell too much on the negative, it tends to hinder you. If I am different from the people around me, I try to learn from them,” she said.

She tends to keep her past to herself, because she thinks war stories should be left on the battlefield, not brought to the classroom. “But if I don’t agree with something I’m learning it’s probably because I’ve seen something or done something different from what I’m being told.”

Although Alepuyo has experienced battle, literally, law school challenged her more.

“I’ve known since high school that I’m not one of those very talented or gifted people. I have to try. But since I know my limitations, I always find ways to do the extra steps I need to do in order to succeed,” Alepuyo said.

Thinking about her son’s future, and her gratitude to her own mother, has kept her on track.

“My son’s father wrote a poem, which basically said, ‘Because of the blood and tears that my ancestors shed, I have the privilege of going to college and being educated.’ I want my son to be able to look at me and the sacrifice I’ve made, and be able to appreciate the opportunities he has,” Alepuyo said.

As she nears the end of her law school studies, Alepuyo points to Monica Schurtman as a role model.

“Her knowledge is phenomenal. She commands attention. But what I admire about her is that if she doesn’t know the answer it doesn’t bother her to call someone else who does,” Alepuyo said. Schurtman is the professor for the Immigration and Tribal Legal Aid Clinic, where Alepuyo has been working with the Nez Perce Tribe for much of her last year in school.

“It is so wonderful, because it is taking everything I’ve learned for the past two years and tying it all together,” she said.

Alepuyo is looking forward to studying for the bar, working under an attorney “who is graciously willing to teach me,” and eventually moving back home to Saipan, where her son’s father is already practicing as an assistant attorney general. They plan to be married and eventually practice together.

“I’ll need him to make all the money because I want to focus on pro bono work and public interest law,” Alepuyo said. “I’d like to help anyone who comes to my door. That would make me very, very happy.”

Second year law student Portia Jenkins moved to Moscow with her two daughters from Ashton, Idaho, a small farming community known for its seed potatoes and fly fishing.

“I have always had a love for the law; in fact, my name, Portia, comes from Shakespeare’s Merchant of Venice. Portia is the lead character who must masquerade as a male attorney to save her friend,” Jenkins explained.

She attended Idaho State University for one year before marrying and moving to Twin Falls, where she worked for the Nelson, Rosholt law firm. Then she worked as a paralegal at the Rigby, Thatcher firm in Rexburg.

A difficult divorce left Jenkins in need of a way to support herself and her daughters. Although she didn’t have a bachelor’s degree, she had accumulated some 20 college credits during her married life, and through persistence was able to earn her way into the University of Idaho law school’s “3/3” program, which allows the first year of law school to be counted back towards the last year of an undergrad degree.

“I compiled an experiential learning portfolio wherein I petitioned across four UI colleges and seven different departments to earn 15 additional credits. I challenged several classes, and was accepted into the 3/3 program, which is difficult to get into,” Jenkins said.

She graduated from the University of Idaho in May of 2003, after her first year of law school, with a degree in General Studies.

It was a risk, because if she’d failed, she would have been out of law school and lost her bachelor’s degree as well.

But raising two girls to the teenage years and having held down a full-time job for years gave Jenkins the discipline
The Examined Life: Wayne Walterscheid

At age 53, third year student Wayne Walterscheid is just months away from achieving a goal he set for himself five years ago. In 1997, Wayne found his life circumstances significantly changed; his children – all seven – were “of age,” as he puts it, and he had just divorced. Where once his children had helped him operate the very successful vending machine business he started a decade earlier, he was now working alone. Putting in 70 hours per week was not only grueling, but the work itself simply wasn’t “satisfying, it wasn’t fulfilling; it was just work,” says Wayne.

“Maybe it was a midlife crisis,” Wayne jokes, “but you know, I had always wanted to go to school and to get a law degree.” And beginning in 1998, that’s just what he did. Wayne sold his business, left his home state of New Mexico, and joined his son at Ricks College, now Brigham Young University-Idaho, where he earned an Associate’s degree. After transferring to the University of Idaho, Wayne earned a bachelor’s degree in Political Science in 2001.

“Going to school,” says Wayne, “led me to reexamine all my values. I came from a very conservative family, and I had just bought into their values. Studying political science and history changed my world view.” He adds, “Being able to hear different perspectives and points of view, learning about different cultures – the diversity was liberating.” He especially appreciated that his professors presented “both sides of the story; it was balanced because they were open to both sides. That’s how you learn; otherwise, it’s just force and intimidation.”

As a law student, Wayne has continued to examine his values and beliefs. “We are in a constant war to remain free,” he says, and “there are certain fields, such as the law and journalism, that can make more of a difference in that war. That’s the whole focus of my philosophy toward law school. I’m not interested in making money; I want to do what I can to help people and to make a difference.”

Of all his experiences in law school, perhaps nothing has so strongly influenced Wayne as his work in the Immigration and Tribal Clinics. He values the practical experience the Clinics provide. “I’m a hands-on type of guy. Until I can actually get involved, do the work, it doesn’t make that much sense to me. That’s why the Clinic was so appealing.” He adds, “The Clinic gives you more experience doing more things.” Wayne’s assessment of the Clinic as an essential part of his legal training includes praise for Clinical Professor Monica Schurtman. “She’s my hero,” he says. “She’s not just a talker; she’s a doer.”

Wayne handled his first immigration cases during the summer of 2003; it is work that appeals to him. He explains, “Most people in immigration cases are poor, and the current system is extremely harsh in the application of rules and regulations. These people need an advocate, and I would like to fill that role.” In addition to immigration cases, Wayne is also involved in the Tribal Clinic and has represented individuals appearing in the Nez Perce Tribal Court. He says he appreciates the Tribe’s approach to conflict resolution. “It’s not as formal, and the judges are more open to alternative sentencing that focuses on rehabilitation rather than retribution.”

The course of action Wayne began five years ago concluded with his graduation in December 2003, and as someone who values “doing,” it is not surprising he has already envisioned his life following graduation. Wayne would like to start a firm in Idaho with a number of other attorneys, each a specialist in a particular area. As for Wayne’s specialty, it’s basic: “My job will be to defend the Constitution and the rights of all people, who seem to be threatened by fear. I think of an early patriot who commented that those who sacrifice freedom for security deserve and will get neither.”
Patrick D. Costello  
Subject Area Emphasis: Clinical Legal Education  
Presentations:  
Idaho State and Court Rules Applicable to Parenting Coordinators, Friends of the Court Conference, Boise, Idaho (November 2003).  
Service Projects:  
Children and Families in the Courts Committee, Idaho Supreme Court  
Idaho ACLU Legal Panel

Lee B. Dillion  
Subject Area Emphasis: Clinical Legal Education  
Service Projects:  
Vice-Chair, Professionalism and Ethics Section, Idaho State Bar

Neil Franklin  
Subject Area Emphasis: Procedure, Clinical Education  
Service Projects:  
Board of Directors, Partners for Justice, Idaho State Bar  
Participant Balkan Law School Linkage Initiative, University of Sts. Cyril and Methodius, Macedonia as part of ABA Central and East European Initiative (CEELI)

Ruth Patterson Funabiki  
Subject Area Emphasis: Technical Services Law Librarianship; Advertising  
Presentations:  
Idaho Court Assistance is Library Assistance, 67 PNLA QUARTERLY 3 (Spring 2003).  
Service Projects:  
Li.Li Board  
LSTA Peer Evaluator for Valley Mountain Library Consortium

Dale Goble  
Subject Area Emphasis: Natural Resources Law  
Scholarship and Publications:  
Flames in Our Forests: Disaster or Renewal?, by Stephen F. Arno and Stephen Allison-Bunnell, WASHINGTON STATE MAGAZINE 54 (Fall 2003).  
Not-Quite Ad Law, ADMINISTRATIVE & REGULATORY LAW NEWS (Fall 2003).  
Presentations:  
Endangered Species at Thirty: Lessons and Prospects, Santa Barbara, California (November 11-14, 2003) [with J. Michael Scott, Frank Davis, & Geoffrey Heal].

Michael J. Greenlee  
Subject Area Emphasis: Legal Research, Law Librarianship  
Scholarship and Publications:  

Presentations:  

Service Projects:  
Chair, Intellectual Freedom Committee, Idaho Library Association

John J. Hasko  
Subject Area Emphasis: Law Librarianship, Legal Research  
Service Projects:  
Co-contributor to “Library Notes” column of THE ADVOCATE

Recognitions:  
Awarded Tenure, Spring 2003

Joann Henderson  
Subject Area Emphasis: Bankruptcy  
Service Project:  
Idaho Supreme Court Committee Fairness and Equity in the Courts

Maureen Laflin  
Subject Area Emphasis: Appellate Advocacy, Trial Advocacy, Appropriate Dispute Resolution and over skills training

Scholarship and Publications:  
Presentations:  
Lessons from South Africa, Northwest Clinical Conference (Oct. 12), The New York Grail Center (Sept. 203), Ray McNichols Inns of Court (April 2003), UI’s Women’s Center (March 2003), the College of Law (January 29 2003).  
The Use of Mediation in Criminal Cases, U.S. Courts District Conference, Lewiston, Idaho.

D. Craig Lewis  
Subject Area Emphasis: Evidence, Civil Procedure, Wrongful Convictions, Litigation Skills  
Scholarship and Publications:  
Lewis, IDAHO TRIAL HANDBOOK, (WEST), Supplement (2003).  
Presentations:  

Monique C. Lillard  
Subject Area Emphasis: Torts, Remedies and Workplace Law (common law employment at will, employment discrimination, and other employment matters)
Corporate Attorney Honored With UI Silver & Gold Award

The University of Idaho Alumni Association recognized College of Law alumna Lucinda “Cindy” Weiss, ’73, for her distinguished legal career during the 2003 Bellwood Lecture celebration in September. Weiss, who former dean Jack Miller, describes as a “vital, energetic person with a keen wit and intelligence,” accepted the award during a dinner gathering which included many of Weiss’ classmates. Joining the festivities were distinguished guests from around the state and region who participated in the Bellwood activities. Weiss noted the assembled dignitaries in her remarks, saying, “Words cannot express my gratitude for this honor. I am humbled to be among a constellation of brighter stars this evening.”

Throughout her career, Weiss has been a trailblazer. In 1972, she was the first woman at the University of Idaho to participate in Boise Cascade’s law internship program. In 1973, after earning her JD, Weiss was elected prosecuting attorney in Bonner County; at the age of 24, she was one of the youngest prosecutors in the nation and only one of three women nationwide elected that year. In 1976, when she joined the Goodyear Tire and Rubber Company in Akron, Ohio, she was the first female lawyer in the tire industry. During her career at Goodyear, Weiss has taken the lead in mentoring and promoting women in the corporate world and currently is focusing on global customs compliance and international trade issues.

“Alumni are meant to serve,” said Weiss in her acceptance remarks, and she has certainly heeded her own words. Weiss has expressed her support of the UI and the College with both financial and practical support. She served on the College’s inaugural Law Advisory Council, helping the council, as Professor Miller said, “become both an important force for sound educational policy and an effective fundraising organization.” Weiss is also involved in the affairs of her community, supporting the Multiple Sclerosis Society, United Way, and the Sojourner Truth Coalition.

Weiss expressed her appreciation for the award, saying thank you “for this very great honor, and for allowing me to be of some small service to the law school and University I love.”

Lucinda Weiss receives the Silver and Gold Award from Dean Don Burnett (left) and UI Interim President Gary Michael (right).
Class Reunions Bring Friends and Memories Together

For some it was their first trip back to the Moscow campus after graduation. For others it was a time to renew friendships that had taken a second seat to careers and families. And for those members of the College of Law Advisory Council it was a time to garner support for the institution that provided a passport to the legal profession. Whatever the reason, the classes of 1973 and 1978 enjoyed two days of activities filled with discussion, reflection, recreation and reminiscing.

The reunions were spearheaded by Class of 1973 committee members, Jim English, Don Farley, Joann Henderson and Jim Whistler and Class of 1978 members, Debrah Carnahan, Ford Elsaesser, John Hohnhorst, Pam Jacklin, and Cynthia Larsen. Classmates attended the Thursday morning Reed v. Reed panel discussion and the afternoon Sherman Bellwood Lecture featuring Justice Ruth Bader Ginsburg, followed by the College of Law dinner honoring Justice Ginsburg that evening. Friday included a law school sponsored CLE presented by former Idaho State Supreme Court Justice Jesse Walters and Dean Don Burnett. The afternoon featured a golf scramble with law students and a campus hiking tour led by Pam Jacklin. The reunion culminated with individual class dinners that evening organized by the committee members.

The reunion also provided a time for “giving back”. Through the combined effort of the committee members and their classmates, the groups presented the College of Law with special Class reunion gifts and pledges in excess of $18,000. These monies will be used to supplement scholarships and teaching projects. The College of Law would like to extend its sincere thanks to all members of the class of 1973 and 1978 for their gracius support. “I think that it was a great success,” confirmed Nels Mitchell, member of Class of 1978.

Class of 2003 Organizes first “Graduating Class Campaign”

Under the guidance of Laura MacGregor Bettis and committee members Jennifer Brun, Roger Kraft, Kelly Kuster, Cathy Guzman, Matt Romrell, Christine Starr, and Cynthia Yee, the Class of 2003 conducted the college’s first graduating class campaign. Their efforts raised gifts and pledges from 29% of the graduates. The invitation to make a class gift at graduation and invest in the future of the College of Law also gave the graduates an opportunity to choose how the funds would be allocated. The class designated career services, the library, scholarships, the Legal Aid Clinic, BSA, ACLU, The Innocence Project, and the student carrel/lounge fund as their priorities. The College of Law would like to thank the class of 2003 for their support of their alma mater. They have set an example for the future.
“I Want to Help You Get There”
James E. Rogers – A Profile in Philanthropy

James E. Rogers, named by Time Magazine as one of the top twelve private philanthropists in the nation, is helping the College of Law become America’s best small state law school. In 2003, Rogers, a resident of Las Vegas and Pocatello, and a member of the UI Law Advisory Council, has created a student scholarship challenge and a faculty fellowship in support of the College’s strategic vision of becoming America’s best small state law school. “I want to help you get there,” Rogers has declared.

At a gathering held in Boise in July, 2003, Rogers announced the “Rogers Scholarship Challenge,” a recruiting scholarship program for the 2004 and 2005 entering classes. The program will provide $7,000 per year for outstanding prospective law students who reside in Idaho or have other connections to the state. These scholarships are renewable during each student’s second and third years in law school and will cover the approximate amount of fees currently charged to Idaho residents. Rogers has authorized up to eight such recruiting scholarships in 2004. In addition, Rogers has pledged to create up to eight matching scholarships if the College of Law can find other donors who will create eight matching scholarships. Rogers explains, “Scholarships will help you attract the best students who in turn will make your school attractive to the best faculty.”

In another act of generosity, Rogers also created an annual “James E. Rogers Fellowship in American Indian Law.” This fellowship is a vital component of the College’s recent success in attracting Douglas R. Nash, a nationally recognized American Indian lawyer, to the faculty. The fellowship grows out of Rogers’ long-standing interest in tribal issues and institutions. At the University of Arizona, where his exceptional philanthropy has resulted in the law school being named for him, Rogers funded the creation of an LL.M. degree program in Indigenous Peoples Law and Policy.

Rogers is a 1956 graduate of Las Vegas High School. He has degrees in accounting and law from the University of Arizona and a Master of Law from the University of Southern California. He was a teaching fellow in the law school of the University of Illinois in 1963 and 1964. In 1998 he was awarded a Doctor of Law from the University of Arizona. He also holds honorary Doctorates from the University of Arizona, Idaho State University, Kentucky Wesleyan, Carroll College and the University of Nevada Las Vegas. He is also a member of the State Bar Associations of Nevada, Arizona and California. Rogers maintained active law practice in Las Vegas from 1964 through 1988, at which time he ceased practicing to devote 100% of his time to the development of the television and radio stations of Sunbelt Communications.

Rogers founded the Valley Broadcasting Company in 1971 and has served as Chief Executive Officer since 1979 when KVBC-TV, the NBC affiliate in Las Vegas, went on the air. Rogers owns 98% of the stock of Sunbelt Communications Company, which owns and operates the NBC affiliate television stations in Las Vegas, Reno, Winnemucca and Elko, Nevada; Yuma, Arizona; El Centro, California; Helena, Montana; Pocatello-Idaho Falls, Idaho; and Jackson, Wyoming; and the Fox affiliate in Twin Falls.

Strong supporters of education, Rogers and his wife, Beverly, have made more than a quarter-billion dollars in contributions and commitments to American colleges and universities, especially in the West. Their gift of $115,000,000 to the University of Arizona College of Law was the largest gift to any American law school. In November 1998, the Arizona Board of Regents renamed the University of Arizona College of Law “The James E. Rogers College of Law.”

Rogers is active in all the communities in which Sunbelt Communications has television stations. He serves as a member of the Dean’s Advisory Council of the University of Nevada, Engineering College in Reno, Nevada (to which he has given or pledged $750,000); is a member of the Dean’s Council of the UNLV College of Law in Las Vegas (to which he has given or pledged $28,500,000); and is a member and President-Elect of the Idaho State University Foundation in Pocatello, Idaho (to which he has given or pledged $20,000,000).

When Mr. and Mrs. Rogers are not in Las Vegas they may often be found at their horse ranch in Pocatello where they raise and ride Tennessee walking horses. *
A Family Legacy: 
The “Sullivan Scholars” Program

Steeped in the formative years of Idaho statehood are the roots of the Sullivan family. The progression of Sullivans in the legal profession began with Isaac N. Sullivan who, prior to Idaho’s statehood in 1890 was an active member of the Idaho bar and became the first chief justice of the Idaho Supreme Court. His sons, Willis E. Sullivan and L.L. Sullivan, together with William H. Langroise formed the highly regarded Boise law firm Langroise and Sullivan, now known as Holland and Hart. Thus the path was laid for five generations of Sullivans to make a career in the law. The second Willis E. Sullivan, born 1911, and Willis E. Sullivan, III, born 1941, followed that path and distinguished themselves in the legal profession in their community and throughout the state.

In keeping with this historic and prominent legacy, members of the Sullivan family have chosen to commemorate in perpetuity the Sullivan family’s love and respect for the law and their love of Idaho. Mrs. Willis E. (Jean) Sullivan and her family have created the Willis E. Sullivan, Sr. Memorial College of Law Scholarship and the Willis E. Sullivan, III, Memorial Study Abroad Scholarship in the College of Letters, Arts and Social Science. (The College of Law Sullivan scholarship fund has received an additional amount and now totals $250,000.00. Those monies came in after the beginning of the ’04 fiscal year.)

Willis E. Sullivan received his early education in Boise, Idaho, his B. A. in Philosophy at Stanford, and later earned his law degree at Harvard. But he never lost his love for Idaho and the Idaho way of life. He returned to Idaho and joined his father’s law firm, making his mark with distinguished service to his profession, his community and service to the public. Known for his integrity and honesty, Willis was recognized with the Idaho State Bar’s first Distinguished Lawyer Award in 1983. In his acceptance speech he spoke of his love of the law, describing it as the “greatest institution ever devised by any society for the protection, preservation and security of mankind.”

His commitment to and love of education was a flash point for his service to the people in Idaho. In addition to his many public service roles and service to his profession, he served for 25 years as a member and president of the Boise Public Library Board of Trustees and was instrumental in making the new public library in Boise a reality. Sullivan died in 1992. He and his wife Jean shared a love of reading and instilled in their children early on the value of education and their love of Idaho. Their son, Willis E. Sullivan, III, and daughter, Tuck, thus became the first “Idaho Vandals” in the Sullivan family.

Willis E. Sullivan, III, stayed true to the Sullivan legacy, earning his undergraduate and law degree at the University of Idaho. However, it was his love of other countries, other cultures and especially other languages that pulled him away from the law, and from Idaho for a time, to pursue that interest. He received a master’s degree in Spanish from Middlebury College in Vermont in 1974, and then taught Spanish language and history in Onate, Spain, through the first study-abroad program in the Basque country sponsored by Boise State University. His experience that year led to his support of the Basque community in Boise and he was instrumental in establishing the Basque Museum and served on the Basque Museum Board for several years. He held fast to his strong belief that the knowledge of another language and culture is extremely important to an individual’s education. Willis E. Sullivan, III, known as “Bill” to his family and many friends, continued his law practice in Boise, enjoying the traditional aspect of life in Idaho. He had a natural affinity for languages, related his sister Tuck, and he could travel to a country and easily pick up their dialect and accent. “Traveling with him was so much fun,” she reminisced. As his father before him, he was committed to working for the community he loved, and served on many boards and committees. In 1994, he was the recipient of the Idaho State Bar Professionalism Award and, in 1996, he was honored with the Gem State Award from the Nature Conservancy of Idaho. He managed very well to combine his love of the law and his love of other languages and cultures in his work for the public good. Willis E. Sullivan, III, passed away in 2001.

The combination of commitment to law and language is the cornerstone of the “Sullivan Scholars” who will be supported through the two Sullivan scholarships. The Willis E. Sullivan, Sr. Memorial College of Law Scholarship will be used to recruit and retain high-quality Idaho students and will provide yearly expenses to cover half or more of tuition costs, books and other fees. The Willis E. Sullivan, III, Memorial Study Abroad Scholarship will be awarded yearly to juniors and seniors enrolled full time at the University of Idaho and give selected students the opportunity to study a foreign language and culture intensively by living abroad. The scholarship will fund two or more students each year.

The tradition of Sullivan lawyers continues, as the fifth generation stands ready to take on the responsibility of upholding the values the family has embraced for more than a century. Meghan Sullivan, daughter of Willis E. Sullivan III, will earn her law degree from the University of Idaho in May, 2004. ❧

...he spoke of his love of the law, describing it as the “greatest institution ever devised by any society for the protection, preservation and security of mankind.”
Dear Law Graduates:

It is my honor to be the present Chairman of the College of Law Advisory Council. In meeting with Dean Burnett and listening to several of our outstanding professors during activities surrounding the Sherman Bellwood lecture held in September, it is apparent that our Law School is in good hands. Dean Burnett has a vision for the Law School which includes expanding the Law School’s principal areas of focus – Advocacy and Dispute Resolution, Business Law and Entrepreneurship, and Environmental Law and Natural Resources. In order to make the Law School one of the preeminent schools in the Northwest, the Dean’s goal is to improve the faculty/student ratio through smaller class sizes while expanding curricular offerings.

There is no question that there is much to be done to achieve Dean Burnett’s vision. The Law School is understaffed, behind in technology, crowded and underfunded. With your help, however, all of these deficiencies can be overcome and the Law School can continue to produce outstanding attorneys and community leaders.

This annual report reflects the benefits of your contributions to the University of Idaho and the Law School. All of us on the College of Law Advisory Council thank you for your help and encourage you to continue to support the Law School.

Jim English, ’73
English Law Firm

University of Idaho
College of Law Advisory Council
2003-2004

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English Law Offices
Hayden, Idaho

John Robert Alexander ’64
Benoit Alexander Harwood High & Butler LLP
Twin Falls, Idaho

Sally Geisler Bagshaw ’76
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Clark Mediation Services LLC and Hawley Troxell
Ennis & Hawley
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Holme Roberts & Owen
Denver, Colorado

J. Frederick Mack ’72
Holland & Hart
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McCann Law Office
Lewiston, Idaho

Briane “Nels” Nelson Mitchell ’78
Attorney at Law
Santa Monica, California

Bill Parsons ’88
Parsons Smith & Stone LLP
Burley, Idaho

James E. Rogers
Chairman & CEO
Sunbelt Communications
Las Vegas, Nevada

N. Randy Smith
Sixth Judicial District
Pocatello, Idaho

Continued on next page
“Join Us!” Annual Fund Donor Form

The University of Idaho College of Law is enriched by the generosity of our graduates and others who have supported our efforts this year. Their names are listed in this report as a way for us to show our appreciation of their support. If you have not yet joined our growing group of supporters we encourage you to consider doing so.

Your gifts make a difference to us in the level of scholarship dollars we can offer, the extra funds we can use to provide educational opportunities beyond the classroom, and the facilities and technology we can provide to our students and faculty. Preparing future leaders in law and continuing to provide a rigorous legal education are tasks that require us to be partners with you – the judges, practitioners, other practicing professionals, and friends who care about our goals and mission.

Please join this partnership of our alumni and friends by sending your gift to the College of Law, University of Idaho, PO Box 442321, Moscow, ID 83844-2321. If you have a question about making a gift to the College of Law, please contact Dean Don Burnett at (208) 885-4977 or dburnett@uidaho.edu.

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Faculty Notes, continued from page 22

Visiting Research Fellow, Max Planck Institute for Com-
The Importance of Being Honest: Exploring the Need for

Career and Minority Lawyers,
Indian Law, Civil Procedure, Water Law

Scholarship and Publications:
Career and Minority Lawyers, In Practice – Indian Law

The Indian Reorganization Act, Congresses and Bills, Book

Review for Great Plains Resource Center
Indian Gaming, www.findlaw.com

Indian Lands, www.findlaw.com

Tribal Court Benchbook, Tribal/State Court Judge’s Forum,
http://www2.state.id.us/judicial/tribal.pdf.
The Importance of Being Honest: Exploring the Need for

Tribal Court Approval for Search Warrants Executed in

in the 21st Century: Lessons from the Trail Smelter Arbitra-

– Coeur d’ Alene, Idaho, (March 21, 2003)

Visiting Research Fellow, Max Planck Institute for Com-

parative and International Law, Heidelberg, Germany

(June to August, 2003)

Co-Organizer, German Law Journal Annual Symposium


– Heidelberg, Germany, (August 1, 2003)

Chair, College of Law International Opportunities Com-

mittee (2003-2004)

Coach, College of Law Inter-American Human Rights

Moot Court Competition (2003-2004)

Douglas Nash

Subject Area Emphasis: Indian Law, Civil Procedure, Wa-

ter Law

Scholarship and Publications:
Career and Minority Lawyers, In Practice – Indian Law

(Fall 2003)

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in the 21st Century: Lessons from the Trail Smelter Arbitra-

– Coeur d’ Alene, Idaho, (March 21, 2003)

Visiting Research Fellow, Max Planck Institute for Com-

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Tribal Court Benchbook, Tribal/State Court Judge’s Forum,
http://www2.state.id.us/judicial/tribal.pdf.
The Importance of Being Honest: Exploring the Need for

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During the fiscal year ending June 30, 2003, the College of Law received $580,309 in gifts and pledges, including a record amount of $239,205 in the Annual Fund. The total also included $168,244.59 received for endowments designated specifically to the College of Law. As of June 30, 2003, the endowment principal at market value (all endowments combined) was $7,941,955, up from $7,766,207 the previous year. From endowment earnings, $321,129 (up from $299,055 the previous year) was distributed to the College for scholarships, lectures and visiting legal academicians and practitioners.

All of the endowments and funds listed provide for a specific program or scholarship. They were established to pay tribute to a family member or honor an accomplished practitioner or judge, a friend or a professional associate. And they were created for the same reason—the honoree and/or donor held a love and an appreciation for the College of Law and the legal education Idaho provides. If you are considering establishing an endowment or recurring fund—our preferred minimum for an endowment is $25,000—it can be set up over time or with a one-time gift. If you are interested in contributing to an existing endowment or fund, please consider those listed below:

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We also have named scholarships, fellowships and programs that are not endowed, but are supported each year by annual gifts. This source of funding is also a valuable way to help provide the College of Law with the means to offer a quality legal education.

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- College of Law Library
- Law Class of 1971 – Challenge Scholarship
- Law Class of 1973 – Challenge Scholarship
- Law Class of 1978 – Challenge Scholarship
- Copple/BSU Law Scholarship Fund
- Law Dean’s Fund for Excellence
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- Idaho Law Review Patron’s Program
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- Lucinda Weiss College of Law Fund
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If you have a question about setting up a fund or about contributing to existing funds, or if you have any questions about College of Law funding, please contact Don Burnett at (208) 885-4977 or email dburnett@uidaho.edu.
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† indicates deceased

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Zeller, Leeland Ralph ’99

Facility Notes, continued from page 28

Monica Schurtman, cont.

for International Human Rights Clinics at U.S. Law Schools.

Presentations:

- Immigrants and Domestic Violence, YWCA and Lewis and Clark State College, Lewiston, Idaho (September 26, 2003).


Service Projects:

Immigration cases and international humanitarian law projects

Recognitions:

Human Rights Watch, Osher Fellowship

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Every effort has been made to ensure accuracy in this report. Unfortunately, mistakes are sometimes made despite care and good intentions. If your name was omitted or misspelled, or if you are included in the wrong giving category, or if your gift was made in co-operation with your spouse and he or she is not recognized, please call or write Elaine Kempton, College of Law, ekempton@uidaho.edu.

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Smith, Richard King

Class of 1959
Hansen, John D.
Harrington, Andrew M.
Snow, Peter G.

Class of 1960
Church, P. Kent
Elam, Frank T.
Nungester, William L.
Thornock, John R.

Class of 1961
Arnold, J. Kelley
Newhouse, M. Neal

Class of 1962
Faucher, J. Dennis
Nelson, Thomas George
Powers, Charles H.
Underwood, Roger H.

Class of 1963
DeJean, Richard F.
McNichols, Michael E.
Walters, Jesse R.

Class of 1964
Alexander, J. Robert
Brown, Robert P.

Class of 1965
Boyd, William F.
Hanson, Jay M.

Class of 1966
Gjording, Jack S.
Johnson, George W.

Class of 1967
Dial, Thomas F.
Kennedy, Faye Collier
Manning, D. James
McAdams, Ronald K.

Class of 1968
Anderson, Stephen C.
Baggs, Sylvia A.
Bithell, Walter H.
McDermott, Peter D.
Morton, William R.
Risch, James E.
Sellman, John R.
Westberg, Paul Larry

Class of 1969
Board, Dwight V.
Fredericksen, Eugene D.
Hyde, David W.
McCann, William V.
Nelson, Wilbur Thayne
Waldrop, Carleton B.

Class of 1970
Ahrens, Edward D.
Clark, D. Blair
Mulberry, William Harvey
Schilling, Ronald D.
Varin, John Foy

Class of 1971
Boyle, Larry M.
Crookston, Wayne G.
Harden, Quentin F.
Henderson, Clinton J.
Mack, J. Frederick
Meuleman, Wayne V.
Sanchez, Ernesto G.
Sanders Williamson, Darla
Thomas, James S.

Class of 1973
Cole, Richard T.
Cook, Linda Jean
English, James M.
Farley, Donald J.
Fields, James R.
Henderson, Joann H.
Kline, Barton L.
Weiss, Lucinda
Whistler, James E.

Class of 1974
Ashenbrener, Chris R.
Ayers, Stephen M.
Bevis, James A.
Duskin, David E.
Greenwood, Val D.
Harwick, Dennis P.
Herndon, Steven L.
Howe, Jeffrey G.
Nye, Marcus W.
Platts, William R.
Poole, Bradley B.
Pratt, Eugene F.

Class of 1975
Bjorkman, H. Ronald
Nisson, Boyd I.
Rassier, Phillip J.
Reinhardt, George R.
Scheibner, Frank Scott
Stoker, Randy J.
Stucki, Marvin Rodney

Class of 1976
Bagshaw, Sally G.
Bayless, Michael L.
Bend, Richard Hadden
Cole, Melvin Charles
Gerhardt, Kathryn M.
Gibler, Fred M.
Hart, Ronald Merlin
Justh, Carolyn Kay
 Larson, Craig Steven
McDaniel, Terry Robert
McLaughlin, Michael R.
Petrie, Gordon Wayne

Class of 1977
Davis, Dennis M.
Eiguren, Roy Lewis
Griffin, Michael James
Hobson, Mary Stiles
Mather, Susan
Miller, Leo Edward
Pappas, Jim D.

Class of 1978
Aguirre, Jose
Belodoff, Howard Aye
Chaloupka, Susan Kay
Elsaesser, John Ford
Fitzsimmons, Rickey A.
Goins, Larry L.
Hohnhorst, John C.
Jacklin, Pamela Leslie
Leaverton, Jack D.
Mitchell, Brieane Nelson
Scrivner, Wesley Landon
Young, Patricia Gay

Class of 1979
Aguirre, Barbara Marie
Anderson, Donald Ray
Argyle, Theodore Everette
Cordell, Frank Thomas
Hoffman, Ricky L.
Johnson, Dennis Lane
Julian, Brian Kenneth
Peterson, Philip A.
Riposta, Anthony J.
Stone, Laird Bruce

Class of 1980
Beeson, Christopher James
Berrett, Joel Don
Desdich, Bruce Edward
Galbraith, Allan Lee
Hicks, George Gregory
Hokom, Helen Dee
Kotyk, Frank Paul
Luker, Lynn Michael
McCabe, Thomas James
Wiley, Dorothy L.

Class of 1981
Dickinson, Jim Ken
Ducharme, David Roger
Fouser, Trudy Hanson
Garcia, Janet L.
Goodman, Alan C.
Harper, Steve Kent
Loveland, Kim Bayly
Melanson, John Michael
Rippel, Paul B.
Simeone, Robert Alan
Stanford, Penny Jo
Timblin, Brian Edward
Wiggum, Karen Beth
Woods, Jennifer Lee
Woods, Ricky Dale

Class of 1982
Blewett, Ronald Terry
Campbell, Jean H.
Cieslewicz, Stanley Jerome
Clark, Stephen James
Dale, Candy Wagahoff
Dale, James Christopher
Dunn, Robin Dwan
Fuhrman, William Alex
Garcia, Robert James Kalani
Giommetti, Gregory Raphael
Hutchinson, Keith Edward
Jones, Rory Rolland
Menard, John Tappan
Porter, John Fred
Robinow, Lisa Sara
Stegner, John Robert
Stevens, Susan Fisher

Class of 1983
Anderson, Kurt David
Bieter, Christopher M.
Buchanan, Barbara Ann
Campbell, John William
Cervenka, Patricia Ann
Clark, Thomas Warren
Clynch, Cecilia Marie
Dougherty, Ann M.
Edelblute, William Dee
French, Randal Jay
Gilgen, Martha Anne
Lyons, Marc A.
Mack, Mona Lynn
Manweiler, Mark Howard
Morriss, Nancy Marie

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