Evidencing Excellence
2004 Annual Report
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Measures of Excellence: Shaping Our Future

This has been a year of introspection and renewal at the University of Idaho. Chastened by budget realities, but animated by a new president’s leadership, the university community is grappling with a fundamental question: What should be the future shape of this historic institution? The university cannot be all things to all people. It must identify the programs that are central to its mission or distinguished by high quality – or both – and invest in those programs. Other programs must be reduced, realigned, or eliminated.

Legal education has been central to the university’s mission since the College of Law was founded in 1909. The State Board of Education has assigned “law” as a “primary” mission emphasis to the University of Idaho. The College of Law is expected to fulfill this responsibility with quality. How are we doing? Here are several measures of excellence, and evidence of the College’s performance:

Faculty Scholarship and Recognition. During the period covered by this Annual Report, the faculty – consisting of just 14 permanent full-time teachers plus visitors, clinical faculty and teaching administrators – published 13 articles in law reviews or interdisciplinary academic journals; 6 articles in bar journals or similar professional publications; and 6 books, chapters, or revisions. In addition, the faculty co-edited an international electronic law review, convened an international law conference, co-convened a regional conference on American Indian law, and made presentations in 15 other conferences outside the state. In addition, 5 members of the faculty and administration served on boards or committees of national or international organizations.

Student Selectivity. Admission to the College of Law has become increasingly competitive. In the 1999 admission cycle, the College received 479 applications; in 2004 it received 948. In selecting an entering class of slightly over 100 students, our admissions committee evaluates many factors, including LSAT scores. In 1999 the median LSAT score of the entering class was 153 (approximately the 57th national percentile of LSAT takers); by 2004 the median had risen to 156 (approximately the 64th national percentile). Remarkably, the College’s 25th percentile score (153) in 2004 rose as high as the median in 1999.

Diversity. A diverse educational environment prepares students for the world in which they will work, making our College attractive to the best and brightest students as well as faculty. In the 1999 admission cycle, only 28% of the entering class were women, and 7% were people of color. In 2004, the figures were 40% and 16%, respectively. The College also has maintained or improved diversity in our faculty and professional staff. Women now represent 6 of our 14 permanent full-time teaching faculty, and 4 of our 5 professional staff. In 1999 there were no people of color on the full-time faculty or professional staff. Today, the full-time teaching faculty includes a Native American professor and a Latino visiting faculty member. The library faculty also includes a Latino faculty member, and the professional staff includes a Latino director of admissions and student services.

Bar Examination Success. Although no top-rate law school “teaches to the bar exam,” graduates of a quality program should enjoy their share of success. More than half of our law graduates take the Idaho bar examination. Over a five-year period extending from 1998 to 2003, the overall first-time pass rate averaged 72% while the UI rate averaged 74%. This trend continued in the recently graded summer 2004 exam, in which the overall first-time pass rate was 77% and the UI rate was 81%.

Student Employment after Graduation. The most recent employment survey by the National Association of Law Placement (NALP) disclosed that 95% of UI law graduates were employed and no longer looking for jobs, or were engaged in further graduate study, six months after graduation. The UI figure was significantly better than the NALP-reported average of 89% for all law schools. Moreover, the NALP survey disclosed that 26% of our graduates accepted judicial clerkships, compared with a NALP-reported average of 11% at all law schools.

Endowed Lectureships, Symposia and Other Academic Enhancements. The annual Sherman J. Bellwood Memorial Lecture has featured three Justices of the United States Supreme Court as well as other national figures. This year our Bellwood Lecture focused on public service and featured the national president of the Legal Services Corporation. During the past two years, the College also has convened an international law symposium series, focusing on trans-boundary environmental harms (2003) and on war crimes and post-conflict justice (2004). Participants have included international scholars and policymakers such as the United States Ambassador-at-Large for War Crimes Issues. The College also sponsors students in regional and national moot court and professional skills competitions (winning the national bankruptcy competition in 2001 and the regional mediation advocacy competition in 2003).

External Rating. This is a criterion to be examined cautiously. Rankings influenced by mail-in surveys of reputation (e.g., “U.S. News & World Report”) have been heavily criticized by the American Bar Association, the Association of American Law Schools, and the Law School Admissions Council. Quality ratings are useful when based on objective criteria. Crittenden Magazines, Inc., uses objective information gathered by the American Bar Association to determine “best values” in legal education. Crittenden evaluates the cost of attendance along with faculty-student ratio, law graduate employment rates, bar passage rates, median student scholarship grants, and clinical education student “slots” available. Upon the most recent (2003) data, Crittenden has rated the UI College of Law an “excellent value” – the highest rating accorded to any public or private law school in the Northwest.

These measures of excellence are vital to the continued prominence of the College of Law as the University of Idaho shapes its future. To the generous alumni and friends who have sustained the College’s commitment to excellence, I offer a heart-felt “thank you” on behalf of our faculty, staff, and students. And to every UI law graduate, we extend our warmest wishes for personal and professional fulfillment in 2005.

[Signature]
2004 BELLWOOD

A Lawyer’s Calling to Public Service

_Distinguished Panel Examines Lawyers’ Commitment to the Public Good_

With Dean Donald Burnett as moderator, the College of Law hosted a panel discussion on the question of a lawyer’s call to public service on Thursday, October 21, as part of the College’s 2004 Sherman J. Bellwood Lecture. Those participating in the discussion, which was held in the Law Courtroom, were 2004 Bellwood Lecturer Helaine Barnett, President, Legal Services Corporation; Linda Copple Trout, Justice, Idaho Supreme Court; Lawrence Wasden, Idaho Attorney General; Debora Kristensen, Incoming President, Idaho State Bar; Howard Belodoff, Idaho Legal Aid; and Ken Howard, Practitioner, Coeur d’Alene, Idaho.

The discussion began with each panelist responding to Dean Burnett’s request to describe his or her single most important personal experience in providing public service. For Ms. Barnett, it was her decision to support the aspirations of a reformed offender. Ms. Barnett described the personal fulfillment of having helped to “salvage and redeem a worthy life” by hiring this individual to serve as an outreach paralegal, having helped to “salvage and redeem a worthy life” by encouraging his decision to earn a law degree, and by advocating for his admission to the New York State Bar by Mr. Wasden, the young man finally acknowledged his addiction and thanked Mr. Wasden for his vigilance in prosecuting the offenses. “You got me to stop,” the young man said.

With much emotion, and within the context of a career spent in public service, Mr. Belodoff identified the _Jeff D._ case as his most important. _Jeff D._ was a class action that

in response to the increasing number of un-represented litigants involved in civil matters. Justice Trout explained that the program, which now has a presence in all 44 Idaho counties, has successfully addressed the problems of _pro se_ litigants and the frustrations of court personnel.

For Attorney General Wasden it was, ironically, a word of gratitude from a young man he prosecuted and convicted when serving as Canyon County Prosecutor that made him feel he had “made a difference and touched a life.” After being convicted for more than one drinking-related offense by Mr. Wasden, the young man finally acknowledged his addiction and thanked Mr. Wasden for his vigilance in prosecuting the offenses. “You got me to stop,” the young man said.

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With Mr. Howard’s second question addressed the issue of public ambivalence toward lawyers and the legal profession. In this context, he asked the panelists to suggest how legal educators might change this perception. Attorney General Wasden stressed the importance of recognizing professional ethical responsibility despite the political landscape, citing an example of a First Amendment case concerned involuntary guardianship in which an elderly woman, with his help, was able to rebuff efforts to remove her from her home. In conclusion, Mr. Howard commented on the rewards of public service: “I promise you will be fulfilled, and you will be well paid – it just may not be in money.”

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While acknowledging that passion is difficult to teach, Mr. Belodoff advised, “You gotta have passion to get people to do public service.” He urged the faculty to integrate course work with examples of the “good lawyers have done” in the past; doing so, he suggested will help students understand their duty as lawyers. Mr. Howard stressed the importance of teaching both values and practical skills, especially those that enable lawyers to deal with their “emotions and intellect in the arena of
conflict.” He suggested that the concepts of honesty and honor should be more fully addressed in the classroom.

Ms. Kristensen stressed the importance of education as a means of combating unfavorable perceptions. She cited as an example the Idaho State Bar’s Citizens’ Law Academies, which are designed to assist the public in understanding the law, what lawyers do, and how the judicial system works.

One student in attendance, Mark Cornelison, Class of 2007, could personally relate to the value of education as a means of changing public perception about attorneys and the work they do. In a letter to Dean Burnett, Mr. Cornelison expressed a wish that his family could have been present at the discussion. He wrote:

“As the country that is supposed to exemplify justice for all, we can and must do better in providing civil legal assistance to the poor.”

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“I come from a small farming community in southeast Idaho where education is not emphasized. I’m the only member of the family to graduate from college, let alone continue on for graduate studies. As I announced plans of coming to law school, many of the family were less than pleased. In small, less-educated communities, lawyers seem to wear the black hats in town. Many of the family members have even felt an embarrassment when others ask about what I am now doing. Needless to say, there has not been much encouragement from close friends and family. However, in listening to the panelists’ discussion, I wished that I had brought a tape recorder to send back home. What a relief! Please keep up the good work.”

SHERMAN J. BELLWOOD 2004 LECTURE

Justice for All: Are We Fulfilling the Pledge?

Helaine M. Barnett, President of the Legal Services Corporation, presented the 2004 Sherman J. Bellwood Lecture on Thursday, October 21, 2004. Gathered to hear Ms. Barnett was an audience of legal educators, law students, practitioners, and interested citizens in the ballroom of the University of Idaho Student Union Building and at television viewing sites on campus and at the UI Boise Center. After being welcomed by College of Law Dean Donald Burnett, University of Idaho Provost Brian Pitcher, and Michael Bogert, representing Governor Dirk Kempthorne, Ernesto Sanchez, Executive Director, Idaho Legal Aid, introduced Ms. Barnett.

Describing Ms. Barnett as a visionary who has “devoted three decades of unselfish public service to the poor,” Mr. Sanchez added, “We are blessed to have Helaine guiding the delivery of legal services in the country.” For 37 years, Ms. Barnett, who received her bachelor of arts from Barnard College in 1960 and her law degree from New York University School of Law in 1964, worked for the Legal Aid Society of New York City, the oldest and largest legal aid organization in the nation. Ms. Barnett managed the Society’s civil division from 1994 until the end of 2003; she is the only legal services attorney to serve on the American Bar Association’s Board of Governors.

Following Mr. Sanchez’s introduction, Ms. Barnett spoke to the issue of “achieving access to civil legal assistance for all as an essential element of securing justice.” While the judicial system protects individual rights, she said, “The rights and protections imbedded in law are not self-enforcing.” Individuals must not only “secure or defend their rights,” they must do so within a complicated legal system that makes access to the specialized skills of a lawyer “almost always necessary.” Citing Powell v. Alabama, Ms. Barnett said that the “right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”

“Yet, despite the efforts of Legal Services Corporation and the nearly 200 independent public services organizations operating throughout the nation, Ms. Barnett said

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there remains a “justice gap,” which she defined as the “huge national gulf between the need for legal assistance and available resources.” Citing a national survey of legal needs conducted by the American Bar Association in 1994, Ms. Barnett said that, “only 20% of the poor’s legal needs were being met.”

To shrink the “justice gap,” Ms. Barnett offered several suggestions, including expanding coalitions and partnerships “to support funding for civil legal services by working with the public, the courts, the private bar, and law schools.” She added, “We need to work on developing relationships with the business community, religious institutions and faith-based communities, who should be our natural allies in helping and meeting the variety of needs of the disadvantaged.” She also addressed the problem of the “enormous growth in the number of pro se litigants,” pointing out that while over 111,000 attorneys now provide pro bono service through public service programs, “there is capacity to do so much more. We are a nation that has one million lawyers. Most are not engaged in organized, documented pro bono work. That means we have the potential to bring in hundreds of thousands of lawyers to help expand access to justice.”

Ms. Barnett went on to urge lawyers to treat the professional responsibility of pro bono work as a duty rather than an aspiration. “Just as lawyers do not merely aspire to avoid conflicts of interest or simply try to maintain client confidentiality, lawyers should consider it their duty to provide assistance to indigent clients.” She also urged law students to take advantage of pro bono opportunities, commenting that some law schools have made such service a requirement of graduation. Another tool to increase access to legal advice and information, she said, is the “effective use of technology.” An example of the innovative use of technology, she said, is a project of Idaho Legal Aid Services. In this project, which was funded with a grant from Legal Services Corporation, over 300 court-approved legal forms have been developed and will soon be available to pro se litigants in both English and Spanish from Idaho Legal Aid websites.

Another means of building support for public service programs, explained Ms. Barnett, is to “increase the visibility of our programs and improve our ability to tell client stories to demonstrate the meaningful differences we make in our clients’ lives.” To this end, Ms. Barnett shared three personal examples of her work as a public services attorney. In the first case, she successfully advocated for three “elderly, frail, indigent” nursing home residents who challenged the closing, without the appointment of a receiver, of the facility in which they had resided for many years. As a result of this case, in the State of New York, a receiver must be appointed to “oversee the orderly transition and to ensure the adequacy of patient care” for all future closings of nursing homes.

The second case addressed the “devastating plight of destitute and needy children and their families who were homeless in New York City.” In response, Ms. Barnett created a Homeless Families Rights Project that assumed direct responsibility for providing advocates for the homeless and responded directly to the needs of individual families. One result of this project was the requirement that emergency housing for homeless families meet minimum standards of sanitation, decency, and safety.

The final example Ms. Barnett shared was the response of public service lawyers to the tragedy of September 11, 2001, who, said Ms. Barnett, “provided very valuable services to affected New Yorkers and became an important part of the City’s recovery.” Attorneys from the New York Legal Aid Society, said Ms. Barnett, “staffed the City’s disaster centers in lower Manhattan seven days a week for more than ten months.” They helped over 8,000 individuals by providing legal assistance with housing, employment, family, and consumer issues. “It was a shining hour for legal aid staff, and I was never more proud of them or of the work we do or of the difference we made for those New Yorkers whose lives were so profoundly changed by the World Trade Center disaster of 9/11.”

As important as building support for public service efforts is the commitment to ensuring program quality, which Ms. Barnett described as the “primary emphasis” of her tenure as president of Legal Services Corporation. “It is not enough,” she said, “for a low-income person to have access to a lawyer if that access does not result in high quality service. Access to a lawyer is not, in and of itself, access to justice.” She added that by making quality a focus, she is not implying “in any way that the representation provided by lawyers and other advocates in legal services programs have not been or not now of high quality.” Rather, the purpose of stressing quality is “to make the delivery of services by programs to their clients even better.”

In conclusion, Ms. Barnett stated, “As the country that is supposed to exemplify justice for all, we can and must do better in providing civil legal assistance to the poor.” Reflecting upon her 37-year career as a legal aid lawyer, she said, “We have the privilege not only of living in this great democracy, but of serving the profession that enables us to preserve and improve that democracy. We must embrace the responsibility that comes with those privileges to ensure that justice truly is not just for some, but for all.”
Outstanding Faculty Recognized

Elizabeth Brandt, Maureen Laflin, and John A. Miller are the 2004-05 recipients of the College’s three named professorships.

The College’s newest professorship, the James E. Rogers Distinguished Professorship in Law, was awarded to Elizabeth Barker Brandt. This annually funded, renewable professorship was created by philanthropist Jim Rogers (profiled in last year’s report) for the purpose of recognizing a tenured full professor with “an exceptional record of teaching, scholarship, and service.” Professor Brandt is a graduate (with honors) of the College of Wooster (Ohio) and of the Case Western Reserve University School of Law where she earned membership in the Order of the Coif. She also holds a Ph.D. in history from Case Western. She is an acclaimed classroom teacher, having won several teaching awards. Her scholarly works have appeared in such publications as the BYU Law Review, the Idaho Law Review, and the American Bar Association Family Law Quarterly (of which she is a national editorial board member). She also has published numerous handbooks and practice manuals for family judges and practitioners. Professor Brandt manages the official listserv of the Section on Family Law of the American Bar Association. She has also been on the editorial board of the Idaho Appellate Handbook and writes a column for the Idaho Law Review. She has authored numerous articles focusing on family law. She is a founding member of the Idaho State Bar and Idaho Supreme Court Rules Committee on alternative dispute resolution. As a member of the American Bar Association’s Standing Committee on the Operation of the Federal Courts, she has served on the American Bar Association’s Task Force on the Federal Courts and as a member of numerous court-appointed committees on alternative dispute resolution.

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Maureen Laflin echoes Professor Brandt’s sentiments on the significance of her selection as the 2004-05 Allan G. Shepard Professor. She says, “I am honored to be selected as the Allan G. Shepard Professor of Law. I appreciate the recognition and support from the dean and my colleagues.” The Shepard professorship, traditionally awarded on a yearly basis, is an endowed professorship named for the late Chief Justice of Idaho and funded, in part, by the estate of Muriel Kirk. It was established by Donna Shepard to recognize a professor who enhances the mission and the reputation of the College through “distinguished service to legal education, or his or her area of expertise.”

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Professor Laflin is a graduate (with honors) of the University of Dayton and the St. Louis University School of Law. She teaches in, and is the director of, the clinical education program at the University of Idaho. Under her direction the Clinic provides appellate and trial advocacy, legal aid, tax law assistance, representation in the Nez Perce tribal court system, and federal immigration law. Professor Laflin is the founding director of the Northwest Institute for Dispute Resolution. Her scholarly works have appeared in such publications as the Notre Dame Journal of Law, Ethics & Public Policy, and the Idaho Law Review, as well as the Idaho Appellate Handbook. She has served as a federal and state court civil mediator and as a member of numerous court-appointed committees on alternative dispute resolution.

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Like the Shepard Professorship, the Weldon Schimke Distinguished Professorship is awarded to an individual with “a record of distinguished service to legal education or to his or her area of expertise.” The Schimke Professorship, however, is a multi-year emolument. Effective in 2004, the Schimke Professor is former dean John A. (“Jack”) Miller. The Schimke Professorship was originally bestowed upon Professor Craig Lewis and became eligible for redesignation under the terms of Professor Lewis’s phased retirement contract. Upon receiving the award, Professor Miller acknowledged his colleague, who will continue in half-time service through academic year 2006-07. “The award of the professorship is a great tribute. I am honored to follow in the footsteps of my friend and colleague Craig Lewis. His exemplary teaching and scholarship and his outstanding service to the legal profession have set a high standard for all members of our faculty. I will do my best to be worthy of this honor.”

Professor Miller is a graduate of the University of Kentucky (Phi Beta Kappa) and the University of Kentucky College of Law, with an LL.M. degree in tax law from the University of Florida. His excellence as an educator has been recognized with several teaching awards. His scholarship has been published in the Cornell Journal of Law and Public Policy, the Virginia Tax Review, and the Washington Law Review, to name a few. He also has written monographs published by Commerce Clearing House, and he is currently co-authoring a major textbook, Fundamentals of Federal Taxation, to be published by Carolina Academic Press. Professor Miller serves on the American Bar Association’s law school accreditation Standards Review Committee, and he has received outstanding service awards from the Idaho State Bar and the Idaho Law Foundation. ♦
Scholarship and Service are Hallmarks for New Faculty

Barbara Cosens and Richard H. Seamon are the newest members of the College of Law faculty. Professor Cosens, formerly an Assistant Professor in the Environmental Studies Program at San Francisco State University, will teach Water, Environmental, and Property Law. Professor Seamon, who will teach Civil Procedure, Administrative Law, and the Lawyering Process Seminar, comes to the College from the University of South Carolina School of Law.

Professor Cosens is professionally trained in both law and science. After earning both her undergraduate degree (University of California-Davis, 1977) and a master’s (University of Washington, 1982) in Geology, she did applied research in the exploration and development of geothermal energy. In 1990, she earned her J.D. from the University of California, Hastings College of Law, and in 2003, her L.L.M. from the Northwestern School of Law of Lewis and Clark College. Her thesis topic, the use of settlement to resolve major issues of water allocation and management in multi-jurisdictional basins, reflects her interest in alternative methods of dispute resolution. In fact, as Professor Cosens begins her first academic term at the Idaho College of Law, she is also mediating efforts to settle water distribution disputes on the Walker River in California and Nevada.

Following law school, Professor Cosens clerked for Justice George E. Lohr of the Colorado Supreme Court, and then in 1991, joined the legal staff of the Montana Reserved Water Rights Compact Commission. She served as chief legal counsel for water rights negotiations between the Commission and the National Park Service, which resulted in protection of the hydrothermal system within Yellowstone National Park. She also served as chief legal counsel to Montana on negotiations with the U.S. Fish and Wildlife Service, the Chippewa Cree Tribe of the Rocky Boy’s Reservation, the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, and the Blackfeet Tribe.

As a scholar, Professor Cosens finds that her experience as a mediator has informed her research. “In practicing mediation,” she says, “I found that there was no systematic approach to settlements, both in process and in substance. I hope to develop a systematic approach to large basin settlements.” Among Professor Cosens’s current publications are *A New Approach in Water Management or Business as Usual? The Milk River, Montana*, 18 J. Envt’l. L. & Lit. 1, 2003, and *Water Dispute Resolution in the West: Process Elements for the Modern Era in Basin-wise Problem Solving*, 33 Env. L. 949, 2003.

It is likely, too, Professor Cosens’s experience in dispute resolution will become a part of her methodology as a legal educator. “I will probably try to integrate both science and dispute resolution with the casebook method, and Water Law should provide an opportunity to examine the use of various settlement techniques,” she explains.

Professor Cosens, who holds professional licenses in Montana, Colorado, and California, explains what attracted her to the Idaho College of Law. She says, “With my interest and experience in environmental law and mediation, and the faculty’s strategic plan, with its emphasis on natural resources law and dispute resolution, I felt the position at Idaho was tailor-made for me. And once I visited the College, I loved it.”

Professor Seamon shares his colleague’s appreciation for the Northwest, even though “Idaho is almost entirely new” for him and his wife, Holly Dawkins, not to mention, their three-year-old daughter Maggie. While both he and his wife are “East Coasters,” Professor Seamon is pleased to be in Idaho. “I am incredibly fortunate and excited to be here,” he says, “My wife and I not only wanted to relocate to a small town in a rural setting, but I wanted to continue serving at a state university. I think the element of service that is part of the mission of state land-grant universities is absolutely necessary,” he explains.

A native of Baltimore, Professor Seamon attended Johns Hopkins University where he earned both undergraduate and graduate degrees in Creative Writing; for his M.A., Professor Seamon concentrated on the short story. His training in writing prepared him well for his law career. “Much of lawyering,” he explains, “is telling a story, and mastering the narrative structure was one of the real values of my education.” After leaving Johns Hopkins, Professor Seamon taught English at Calvert Hall College High School in Baltimore from 1981 to 1983.

In 1986, Professor Seamon earned his J.D. with High Honors from Duke Law School. That same year, he clerked for Kenneth W. Starr on the U.S. Court of Appeals for the District of Columbia Circuit, and from 1987-1990, he worked as an associate at the Washington, D.C. law firm of Covington & Burling. In 1990, he moved to the U.S. Department of Justice, working as an Assistant to the Solicitor General of the United States. While at the Justice Department, Professor Seamon presented oral argument before the U.S. Supreme Court in 15 cases.

In 1996, Professor Seamon joined the faculty of the University of South Carolina College of Law where he taught administrative law, civil procedure, constitutional law, and criminal procedure. He received the student-selected Outstanding Faculty Member Award in 1997-1998, 1998-1999, 1999-2000, and 2000-2001. In 2001-2002, he was a visiting professor at the Washington & Lee Law School.

At the University of South Carolina College of Law, Professor Seamon was faculty advisor to several student organizations, including the Black Law Students Association, and was actively involved in the College’s outreach programs; he hopes to serve the Idaho College of Law in this same manner. “The real challenge to reaching out,”

*continued on page 15*
Estate Planning, Wills, and Probate in Indian Country

This year, the University of Idaho College of Law was awarded a grant in the amount of $653,026.00 from the Indian Land Tenure foundation to develop and implement an Indian Estate Planning Project on Indian Reservations in Idaho, Washington, and Oregon. The grant is for a two-year term. The award was based upon a proposal written by Idaho College of Law Professors Douglas Nash and Dennis Colson, longtime colleagues in the area of Indian Law.

Through the Indian Estate Planning Project, Professors Nash and Colson, law students from four regional law schools, and native legal services attorneys are attempting to serve Indian peoples by helping them navigate the maze of jurisdictions that have authority over the transfer of their property upon death. As many as three different governments—tribal, state, and federal—can be involved in the distribution of an Indian person’s property, and the transfer of land from one generation to the next is of particular concern.

Professor Nash, project director and a member of the Nez Perce Tribe, explains, “From the earliest days to the present, Indian people have struggled to retain ownership of their homelands. Today, much of this struggle is with those parts of the homelands held in trust by the U.S. for individual tribal members. When tribal members die without a will or other provisions, these trust lands pass to the next generation according to the law of the state where the land is located, often passing out of Indian ownership.” He adds, “The goal of the project is to empower tribal members by informing and educating them about estate planning and will writing, to provide them with legal counsel to aid them in planning their estates and in obtaining healthcare directives. Without the ability to hire an attorney, many tribal members are unable to obtain the healthcare services they wish at the end of their lives or to avoid fractionization of their property, but with an attorney’s assistance, they can take care of many of these end-of-life issues. For that reason, the project was of enormous help to our tribal members.”

Just as the project has had a positive impact on tribal communities so has it provided an exceptional practical opportunity for the law students serving as Probate Clerks. Says Idaho College of Law student Daniel Malouf, “I worked with people of a variety of ages from 30 up, writing about a dozen wills, but meeting with many more to discuss their options.”

As a pilot program, the Indian Estate Planning Project is designed to establish a working model that can be duplicated in each and every state having reservations within their borders with a minimum of adjustment. In fact, the project’s potential includes its expansion to other states and reservations at the conclusion of its initial two-year term. Says Professor Nash, “Expanding the program into Montana, Nevada, Utah, and Wyoming seems a logical next step, but the work we’re doing with this project is never-ending. So long as there are reservations, Indian Tribes and Indian people, there will be a need for estate planning, wills, and probate.”

Although it is too early for a complete evaluation of the project’s first year, Professor Nash says the program has been well-received by tribal members. Alix Foster of the Swinomish office of the Northwest Justice Project, who served as Cecelia Burke’s supervising attorney, says, “The project directly assisted tribal members by providing them with legal counsel to aid them in planning their estates and in obtaining healthcare directives. Without the ability to hire an attorney, many tribal members are unable to obtain the healthcare services they wish at the end of their lives or to avoid fractionization of their property, but with an attorney’s assistance, they can take care of many of these end-of-life issues. For that reason, the project was of enormous help to our tribal members.”

Professor Nash, who is also a member of the Nez Perce Tribe, says, “It has been a fantastic project, and it was an honor to be a part of it.”

Douglas Nash
The Indian Probate System
by Dennis C. Colson
James E. Wilson Professor of Law

Indian people live in a complex culture, and Indian citizens live in a complex legal world. Indian probate – the disposal and distribution of an Indian decedent’s estate – makes the point. While the estates of non-Indian citizens are typically probated in a single legal system - the state of domicile at death, the estates of Indian citizens are typically probated by two or even three legal systems – the tribe to which the decedent belongs, the federal government and the state of domicile at the time of death.

The central principles of every probate system regulate the making of wills, the distribution in the absence of a will and a process for the paying of debts. For Indian citizens, a more fundamental question overlays these relatively straightforward provisions: Which sovereign has the power to decide? Because three separate sovereigns have some power over an Indian estate, there are inevitable differences in the systems relating to the execution of a valid will or the distribution of an intestate estate and the complexities of Indian probate continue to multiply. This legal labyrinth creates a difficult and frustrating path for Indian citizens and their advisors to follow. This essay proposes to help those travelers in the states of Idaho, Washington and Oregon by pointing out the important signposts along the way.

As with all of Indian law, knowledge of the historical development of Indian probate law provides a better understanding than a logical array of the current rules.

States are probated by the Secretary of Interior (Bureau of Indian Affairs) pursuant to statutory authority granted to the Secretary in 1910. In recent years Congress has authorized tribes to probate these properties under contract with the federal government and has authorized tribes to adopt probate codes to regulate the process.

There is a fork in the road regarding non-trust assets in the Indian estate. When the property is outside Indian Country, states have the same jurisdiction they would have over any other person and property. While states do not generally have jurisdiction over Indians in Indian Country, states have the same jurisdiction they would have over any other person and property. While states do not generally have jurisdiction over Indians in Indian Country, Congress in 1954 passed Public Law 280 which conferred upon some states jurisdiction in Indian Country, (Oregon, for example), and authorized other states to assume jurisdiction within Indian Country. Idaho has assumed a limited jurisdiction which does not include probate matters. Washington has assumed a similar limited jurisdiction in much of Indian Country, but by agreement with the Tribes has assumed complete civil jurisdiction, including probate, on some reservations.

In the beginning tribes had complete and exclusive jurisdiction over the probate of Indian estates where the property was located within Indian Country. Jurisdiction over the allotments and other trust assets was taken from the Tribes by Congress. In those states that have taken jurisdiction pursuant to Public Law 280, Tribes have concurrent jurisdiction with the states. If there is no state jurisdiction, the Tribes retain complete and exclusive jurisdiction, except for allotments and other trust assets.

The estate of Raylen Voorhees provides an example of this triple probate system. Voorhees was a Paiute Indian residing on the Walker River Indian Reservation in Nevada at the time he died intestate. Land on the Reservation held in trust were probated by the Department of the Interior. A car, some money, and other personal property located on the Reservation were administered by Tribal Court. And, $1,954.66 in a bank account off the Reservation in Fallon was probated by the Nevada courts.

A tripartite probate system for Indian citizens is illogical, complex, and often contradictory. But, as Justice Oliver Wendell Holmes observed, “The life of the law has not been logic: it has been experience.” Holmes explained, “The law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.” He offered this advice: “In order to know what [the law] is, we must know what it has been, and what it tends to become.” Indian law in general, and Indian probate law in particular, evidence the point being made by the Justice.

In the beginning (i.e. 1787 and the United States Constitution), Indian probates were entirely a matter of tribal law and custom. The United States recognized tribal governments as domestic dependent nations with complete sovereign power over tribal members. The principal legal tool regulating legal affairs between the tribes and the United States was the treaty. The Supremacy Clause of the Constitution vested the power to conduct Indian affairs with the Congress, excluding the states entirely. Congress passed legislation regulating trade and intercourse between whites and tribal members as early as 1790, but made no effort to legislate regarding the relations between tribal members.

The Supreme Court sustained the general policy leaving intra-tribal matters with the Tribes in 1883 in Ex parte Crow Dog by dismissing a federal indictment against Crow Dog for the murder of another member
of the Sioux Tribe. In response Congress passed the Major Crimes Act in 1885. For the first time, Congress made an act of one tribal member towards another a federal crime subject to prosecution in federal court. Other legislation soon followed taking jurisdiction over intra-tribal matters, most notably the General Allotment Act in 1887. The General Allotment Act provided for the assignment of an allotment to each tribal member; the remaining “surplus lands” were then to be sold to the United States and opened for settlement by non-Indians.

A central provision of the General Allotment Act bears directly on the probate of Indian estates today. Section 5 provides that the patents issued to the allottees “shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years for the sole use and benefit of the Indian to whom such allotment shall have been made.” The same section also provides that “the law of descent and partition in force in the State or Territory where such lands are situated shall apply thereto after patents therefor have been executed.” In addition to specifically subjecting allotments to state law of descent and partition, the General Allotment Act more generally provided that Indians “to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside.”

Congress soon began to retreat from the forced assimilation policy driving the General Allotment Act and in 1906 amended the Act so that Indians were subject to state laws at the time the fee patent was issued, rather than at the outset when the trust patent was issued. Soon thereafter in 1910 a federal system was created to probate Indian allotment interests. The Secretary of Interior was charged with the responsibility of ascertaining the legal heirs of any Indian decedent with an interest in an allotment. At the same time Congress authorized allottees “to dispose of such allotment by will, in accordance with rules and regulations to be prescribed by the Secretary of the Interior.” An Indian will is void and without legal force or effect until approved by the Secretary. The will may be approved before or after death.

Many of the allotments remain in trust today. The initial twenty-five year trust period was extended in the Indian Re-organization Act passed in 1934 “until otherwise directed by Congress”. These allotments continue to be probated under the authority of the 1910 Act, according to procedures established by the Secretary of Interior. The probate process begins when the probate specialist or probate clerk at the agency or tribe where the decedent was a member learns of the death. The specialist or clerk prepares a probate package in consultation with the probable heirs or beneficiaries who can be located. Once the probate package is prepared, the specialist or clerk makes a determination whether the estate should be referred to

### The General Allotment Act provided for the assignment of an allotment to each tribal member; the remaining “surplus lands” were then to be sold to the United States and opened for settlement by non-Indians.

Decisions of the OHA are appealed to the Interior Board of Indian Appeals (IBIA), which is required to issue written findings of fact and conclusions of law. The opinions and a survey of the decisions are available on-line. The decisions of the Secretary are reviewable in federal court. For many years decisions approving wills under 25 U.S.C. 373 were more liberally reviewed than those decisions relating to the determination of intestate heirs under 25 U.S.C. 372, which made the Secretary’s decisions “final and conclusive.” However, in 1990 § 372 was amended to provide for the same judicial review as available under § 373.

In addition to creating a system for the probate of allotments and Individual Money Accounts held in trust, Congress has determined who may inherit the trust assets. The 1887 General Allotment Act provided that the allotments were to go “according to the laws of the State or Territory where such land is located.” State and Territorial statutes typically provided that a share of the estate go to the surviving spouse, with the remainder divided equally amongst the children; all to be divided equally if there was no surviving spouse.

Over time, Congress began to recognize the harm caused by the loss of Indian-owned lands precipitated by the General Allotment Act. The Indian Re-organization Act of 1934 broadly prohibited any “sale, devise, gift, exchange or other transfer of restricted Indian lands.” There were several exceptions to the prohibition. Lands could be transferred to the tribe within whose reservation the land was located; and the lands could “descend or be devised...to any member of such tribe...or any heirs of such member.”

Many Indian estates are intestate. As the allotments pass from generation to generation, ownership continues to divide and divide - fractionate. Allotments may have many owners; individual tribal members may own fractions in many allotments. Congress in 1983 passed the Indian Land Consolidation Act to address the problems arising from fractionization. Section 206 further limited the assignment of an allotment to each tribal member; the remaining “surplus lands” were then to be sold to the United States and opened for settlement by non-Indians.
ed lands within that tribe's reservation.” A nonmember or non-Indian in the intestate estate was entitled to a life estate in the trust or restricted property. A devise to a nonmember or non-Indian would be voided if the Tribe paid the fair market value for the interest; if voided the devisee could elect to retain a life estate in the property.

Section 207 of the Act provided that any interest representing 2 or less per cent of the total acreage in the tract and earning less that $100 during the preceding year was to escheat to the Tribe rather than descend to the heir. There was no provision for compensation to the heir. Four years later the Supreme Court held in *Hodel v. Irving*30 that the escheat provision was a taking without just compensation and in violation of the Fifth Amendment. According to the Court, the section abrogated “one of the most essential sticks in the bundle of rights that are commonly characterized as property;” the right to pass a certain type of property—the small undivided interest—to one’s heirs. This could not be tolerated because “the right to pass property—to one’s family in particular—has been part of the Anglo-American legal system since feudal times.”

Congress in 1984 amended the section 207 escheat provisions in several ways.31 An interest escheated to the Tribe if it failed to earn $100 in any one of the five years after the date of death; if the interest failed to earn $100 in any one of the of the five years before the date of death a rebuttable presumption arose that the interest was incapable of earning that much in any one year after the date of death. Devise of the fractionated share to anyone else holding an interest in the same parcel was permitted. And, Tribes were authorized to override the provisions of 207 by passing their own Probate Code.

The validity of these amendments did not arise in *Hodel v. Irving*, but were presented to the Court in *Babbitt v. Youpee* (1997)32. The Court held that the amendments were insufficient to cure the constitutional problems. Like the original language, the amendment focused on income generated and not upon the value of the interest, which were not di minimis. Permitting devise to any party with an interest in the parcel likewise failed to rehabilitate the statute. The Amendments still drastically shrank the universe of possible successors, considering that it would be very unlikely for any linear descendent to be in the limited group. Finally, no Tribe had accepted Congress’ invitation to adopt a Tribal Code causing tribal members’ interests to escheat to itself.

In addition to amending the section 207 escheat provisions in 1984, Congress amended the section 206 provisions limiting passage to nonmembers and non-Indians. While the 1983 Act authorized tribes to adopt probate codes that would prevent passage, the 1984 Amend-

Congress found in 2000 that fractional interests “often provide little or no return to the beneficial owners of those interests and the administrative costs borne by the United States for those interests are inordinately high.”

ments authorized a broader power to “adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe’s reservation.” Just as importantly, the right of a nonmember or non-Indian to receive a life estate was limited to a spouse or child who “would have inherited an ownership interest of 10 per centum or more in the tract”33 or a spouse or children “who occupied the tract as a home at the time of the decedent’s death.”34

Some observers were critical of *Irving* and *Youpee*;35 others praised them.36 But, the fractionization problem remained. Congress made another stab at the problem by again amending the Land Consolidation Act in 2000.37 Congress abandoned the attempt to cause very small interests to escheat to the Tribe, and took a different approach to the problem by changing the form of ownership. In the absence of express language in the devise to the contrary, any devise to more than one person shall be “presumed to create joint tenancy with the right of survivorship in the land involved.” In the intestate estate, any interest passing to more than one person that constitutes five percent or more of the undivided interest shall be held as tenants in common; if the value is less that five percent of the undivided interest it shall be held by the heirs with the right of survivorship. Congress also authorized agreements among heirs that would consolidate interests in trust lands and estate planning assistance to Indian allottees. In addition to replacing the escheat provisions with a new form of ownership, the 2000 Amendments further elaborated upon the power of tribes to adopt probate codes, and to prevent the passage of interests in trust lands to nonmembers and non-Indians by purchase from the estate.

Congress found in 2000 that fractionated interests “often provide little or no return to the beneficial owners of those interests and the administrative costs borne by the United States for those interests are inordinately high.” It is unclear whether the new Amendments will cure the problems that concern Congress, and it is unclear whether the Amendments will meet with approval in Indian Country, but it is certain that the maze the Indian citizen and their probate planner must navigate has become exponentially more complex. And, the worst is yet to come. The monstrous American Indian Probate Reform Act of 2004 passed the Senate on June 2, and is pending before the House.

The same complexities and policy shifts that underlie the federal probate of trust assets underlie state jurisdiction to probate Indian estates in Indian Country. In the beginning all power in Indian affairs was vested in the federal government; states were excluded.38 Tribal members were also not citizens of the United States. The Fourteenth Amendment granted citizenship to “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof” and according to the Supreme Court tribal members were “not subject to the jurisdic-
tion thereof” and therefore not citizens. The General Allotment Act departed radically from the traditional principle in 1887. When the allotment assignment was made and the trust patent issued, allottees were to “have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside.” The Act was amended in 1906 to provide that allottees were not to be subject to state law until “the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee.” According to the Supreme Court, “Congress, in granting full rights of citizenship to Indians, believed that it had been hasty.”

Congress indefinitely postponed the day when allottees became subject to state laws under the General Allotment Act when the existing periods of trust were “extended and continued until otherwise directed by Congress” in the 1934 Indian Re-Organization Act. However, only twenty years later, Congress decided that it was again time to experiment with making Indians subject to state law and passed Public Law 280. By its terms, Public Law 280 extended to five states jurisdiction over offenses committed by or against Indians and civil actions to which Indian are parties. In the remainder of the states, Congress consented to the assumption of criminal and civil jurisdiction “at such time and in such manner as the people of the State, shall, by affirmative legislative action, obligate and bind the State to assumption thereof.”

Public Law 280 and the jurisdiction to probate on-reservation Indian estates has played out differently in the three northwestern states. The Act conferred upon Oregon criminal and civil jurisdiction over “all Indian country within the state, except the Warm Springs Reservation.” Idaho accepted the Congressional invitation to assume jurisdiction in 1963. However, it was willing to assume jurisdiction for the civil and criminal enforcement of state law over seven matters and purposes. The list of matters did not include probate. In addition, Idaho expressed a willingness to assume any further jurisdiction with the consent of the governing body of the tribe occupying the Indian country affected. Such an assumption becomes effective upon transmission of the resolution to the Attorney General. All jurisdiction assumed by Idaho would be concurrent with the jurisdiction of the tribes or the federal government.

Washington also was willing to assume only partial jurisdiction, but with a more complicated scheme. Washington assumed all criminal and civil jurisdiction in Indian Country. However, the assumption did not apply to “allotted lands within an established Indian reservation and held in trust by the United States.” On the allotted lands, Washington assumed jurisdiction over a limited number of matters. Tribes could request Washington to assume more jurisdiction; such jurisdiction became effective sixty days after a proclamation by the Attorney General that the request had been received.

While Public Law 280 made it possible for states to assume probate jurisdiction over on-reservation, non-trust assets (“actions to which Indians are parties”), it did not subject Indian estates to state inheritance taxes. California attempted to impose inheritance taxes on real property owned in fee on the Hoopa Reservation by tribal member Frank Johnson, and upon a pension fund and life insurance benefits accrued by a lifetime of employment within the reservation. California relied upon section 6 of the General Allotment Act and section 4 of Public Law 280 to justify the tax.

The First District Court of Appeal refused to sustain the tax. The Court began by noting that the policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation’s history and that legislation affecting Indians should be liberally construed in their interest and doubtful expression resolved in their favor. With these principles in mind, the Court looked at the General Allotment Act and concluded that “the policy of allotment of lands to individual Indians and sale of surplus reservation land to non-Indians had been repudiated in 1934 by the Indian Reorganization Act.” In more recent legislation, Congress had eschewed checkerboard jurisdiction on reservations, instead emphasizing the territorial integrity of the reservations. In a similar manner, Public Law 280 had been “narrowly construed in light of the modern trend to reaffirm the Indians’ semi-autonomous status as a separate people with the power of regulating their internal and social relations subject to diminution only by express Congressional enactment.” Because inheritance taxes were not criminal, nor civil actions to which Indians are parties, there was no power to tax in the Public Law 280 jurisdiction.

While many principles governing Indian probate have changed over the years, one has been certain from the beginning. Absent some special federal statute or treaty, Indians and Indian lands outside of Indian Country are subject to state jurisdiction the same as any other resident. This would include both the power of probate and the power to tax. The Supreme Court said in Mescalero Apache Tribe v. Jones that tribal activities outside the reservation presented different considerations than those on the reservation, and that “absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state.”

In the beginning, Indian tribes in the Northwest had exclusive jurisdiction over the probate of Indian estates in Indian Country. It is looking more and more like in the end the Indian tribes in the Northwest will have exclusive jurisdiction over the probate of Indian estates in Indian Country. Congress took from the tribes probate power over allotments and trust assets in 1906, but since 1983 has been authorizing and encouraging tribes to take it
Indian Probate; continued from previous page

back. Congress gave consent to the assumption of probate jurisdiction by the states, who for the most part have declined. Furthermore, just as Congress has consented to the re-assumption of jurisdiction over trust properties, it has provided for the retrocession of any probate jurisdiction taken by the states.57

It will take time for Tribes to re-assert their aboriginal powers over the probate of on-reservation Indian estates. These developments will be bolstered by several modern Supreme Court opinions which re-affirm the aboriginal sovereignty of the Tribes. The Court in United States v. Wheeler sustained the aboriginal power of tribes to impose criminal sanctions upon their members, commenting that “unless limited by treaty or statute, a tribe has the power to determine tribe membership...to regulate domestic relations...and to prescribe rules for the inheritance of property.”58 Three years after Wheeler, the Court again stated that “Indian tribes retain their inherent power to...prescribe rules of inheritance for members.”59

Each person, Indians included, has a will. If they have not authored a will for themselves, the government (governments in the case of Indian citizens) provides a statutory will scheme that would be more at odds with the wishes of Indian people.

Congress has for twenty years been trying to address the problem, but matters have simply gotten worse. Congress has not yet learned that when you’ve dug yourself into a hole, the first thing to do is stop digging. A more promising solution might lie with Indian people themselves. Perhaps more Indian citizens should, or would create their own wills, substituting their own distribution scheme for that of the federal and state governments.

The Bureau of Indian Affairs offers some estate planning counsel to Indians, but the funding is limited and the Bureau will assist with only the devise of the trust assets. To date the private bar has not provided the counsel that enables Indian citizens to write wills and their own distribution schemes. There are no doubt many reasons, including the reluctance of Indian people to seek help in the off-reservation communities, the complexity of the subject matter, malpractice liability concerns by attorneys and the reluctance of Indians to embrace will-writing as practiced by the European newcomers. While these factors are important, our experience with the claims cases and Indian gaming make it clear that when there is enough money at stake, Indian clients can easily find help. The fact that Indian people are among the poorest in the country explains a great deal about the state of Indian probate practice.

Congress has not yet learned that when you find you’ve dug yourself into a hole, the first thing to do is to stop digging.

Felix Cohen, “the Blackstone of American Indian law,” wrote in the original edition of the Handbook of Federal Indian Law (1942) of the beliefs which formed the intellectual equipment of his generation. That intellectual equipment included “a belief that confusion and ignorance in fields of law are allies of despotism” and “a belief that it is the duty of the Government to aid oppressed groups in the understanding and appreciation of their legal rights.” With regards to Indian probate, confusion and ignorance continue to flourish at a pace which far outruns our modest efforts to aid Indian citizens in the understanding and appreciation of their legal rights. Unless we have abandoned the beliefs so dear to Cohen, more needs to be done.

Footnotes:

1 Indian Country generally means all lands within reservations, notwithstanding the issuance of any patents, dependent Indian communities and allotments. 18 U.S.C. §1151.
3 Oliver Wendell Holmes, Jr., The Common Law (1881).
4 Jones v. Mehan, 175 U.S. 1, 20 S.Ct. 1 (1889); United States v. Cox, 18 How. 100, 15 L.Ed. 299 (1865).
5 Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 8 L.Ed. 25 (1831).
8 1 Stat. 137.
9 109 U.S. 556 (1883).
13 Id.
19 25 CFR § 15.1 et. seq.
20 Hearings Division, Office of Hearings and Appeals, Department of Interior.
21 43 CFR § 4.312.
22 Decisions of the Interior Board of Indian Appeals.
24 104 Stat. 211.
25 For example, Idaho provided for an equal share between the surviving spouse and a single child. If there was more than one child, the surviving spouse took one-third and the remaining two-thirds were divided equally between the children. 1887 Id. Revsd. Stat. § 3702.
29 96 Stat. 2519.
31 98 Stat. 3137...
32 519 U.S. 234.
33 Section 206(b)(1).
34 Section 206(b)(2).
38 Worster v. Georgia, 6 Pet., 515 (1832).
he explains, “is assuring students of a comfort level, an environment where they do not feel threatened. We need to have the sensitivity to understand how intimidating a new educational challenge can be.”

As a legal scholar, Professor Seamon’s publications have built upon his experience, as a judicial clerk and a lawyer, with administrative, civil, and criminal litigation involving the federal government. His most recent book is a casebook on administrative law with Professor John Reese, Administrative Law: Principles and Practice (Thomson-West 2d ed. 2003). He is also co-author, with Professor William Funk, of Administrative Law: Examples and Explanations (Aspen 2000). Professor Seamon has also written on governmental immunity, civil and criminal procedure, legal education, and the U.S. Supreme Court. He is currently writing an analysis of the Patriot Act, examining the possibly dysfunctional consequences of the traditional separation between intelligence and law enforcement.

### Transactional Lawyering:

**Lee Dillion Opens Small Business Legal Clinic**

In the Fall of 2004, the College of Law continued to expand and strengthen its offerings in business and entrepreneurship law by creating the Small Business Legal Clinic (SBLC) under the direction of Lee Dillion, Instructor and External Programs Director. The SBLC is a “live client” clinic in which third-year students gain real-life experience handling transactional legal problems and provide assistance to business owners and entrepreneurs in Idaho.

**Why Clinical Training?**

For many practicing attorneys, the law school experience did not include client contact or training in the actual practice of law–time was devoted to learning theory and doctrine, with the introduction to the actual practice of law coming only during paid summer jobs or during the first job following graduation from law school.

This division of training—what some saw as an unfortunate disconnect—between the theory and practice of law was the subject of study and debate by the law profession and the academy, with the profession complaining that new attorneys fresh out of law school “can’t draft a contract, they can’t write, they’ve never seen a summons.” In 1992, the ABAs Section of Legal Education and Admissions to the Bar issued the MacCrate Report (Legal Education and Professional Development: An Educational Continuum (Robert MacCrate, ed.)) which discussed the need for skills and values education in the law school curriculum.

The MacCrate Report set forth ten fundamental lawyering skills and four professional values “which new lawyers should seek to acquire.” The identified skills include problem solving, legal analysis and reasoning, communication, negotiation, counseling, and recognizing and resolving ethical dilemmas. The SBLC has been designed to allow students to work on these identified skills within the framework of a structured law school program.

**Client Representation**

Following an initial pre-screening by Mr. Dillion, potential clients are interviewed by the students, with the objective of identifying and resolving conflicts and identifying the scope of engagement for work to be performed by the SBLC. Clients who are accepted by the SBLC are then required to sign a formal engagement letter. The most common assignments involve the formation of an appropriate business entity; preparation and review of confidentiality and employment agreements; review of commercial leases; and, in the case of nonprofit organizations, the preparation and handling of applications for tax-exempt status. Clients have included a decorative tile company, a day-care facility, a hair salon, a non-profit arts group, a condominium association, and a gunsmith.

Client work is done by the students under the close supervision of Mr. Dillion. If the client elects to have the SBLC undertake one or more of the items outlined in the engagement letter, the student does all of the required research and drafting under faculty guidance and supervision. Students are required to maintain timesheets, calendar all future events, develop case management plans, communicate with the client, and prepare weekly status reports on all open cases. Once a week all student participants meet as a group with Mr. Dillion to review the accomplishments and challenges of the prior week and to discuss matters of common interest.

**Student Satisfaction and Learning**

The value to students of working with actual business clients as part of their law school education cannot be underestimated. In describing their experience with the SBLC, one student wrote “I knew about the different business entities but didn’t truly understand the information until I actually formed an entity and drafted all of the related documents for a client.” Another wrote that “it was great to see how and what steps are undertaken in actually carrying out some of the concepts we learned in Business Associations.”

In one or two semesters, SBLC students learn that being a business lawyer doesn’t involve simply knowing the law – through their clinical experience they come to understand that a successful business lawyer must think creatively about a client’s business interests, communicate quickly and clearly to the client, involve other professionals in meeting a client’s needs, and understand the professional and ethical obligations they owe to their client and others.
Visiting Faculty Expand the Curriculum

Two visiting associate professors with diverse backgrounds have joined the full-time law faculty for the academic year 2004-05.

Raúl Sánchez is a graduate of the Harvard Law School, with a masters degree from Stanford and a baccalaureate degree from Princeton. He practiced with the firm of Simpson, Thatcher & Bartlett in New York before joining the faculty of St. Mary’s University School of Law in San Antonio, where he was Director of the Inter-American Legal Studies Program. From 2000 to 2004, he served as the University of Idaho’s Special Assistant to the President for Diversity and Human Rights, and he provided adjunct instruction at the College of Law. This year he will teach courses in real estate finance, employment law, civil rights, and international business transactions.

Malla Pollack is a graduate of the Benjamin N. Cardozo School of Law at Yeshiva University in New York, with a masters degree from the City University of New York and a baccalaureate degree from the State University of New York at Albany. She clerked for the Honorable Ruth Bader Ginsburg when Justice Ginsburg was a Judge of the U.S. Court of Appeals for the D.C. Circuit. Professor Pollack was a Bigelow Teaching Fellow at the University of Chicago, and she practiced with the firm of Kirkland & Ellis in Chicago. She recently served as a visiting law faculty member at the University of Oregon. She will teach both sections of the year-long course in torts along with an intellectual property seminar.

A Community of Scholars
Faculty Notes 2003-04

Mark Anderson
Subject Area Emphasis: Business Associations, Trademarks and Unfair Competition, Antitrust
Scholarly Works:

Recognitions

D. Benjamin Beard
Subject Area Emphasis: Electronic Commerce and Commercial Law
Presentations:

Service Projects:
Delegate to Working Group, 42nd Session, Vienna, Austria, (November 17-21, 2003).

Elizabeth Barker Brandt
Subject Area Emphasis: Family Law, Community Property, Children and the Law, Trusts and Estates, Real Estate & Civil Liberties
Scholarly Works:

The U.S.A. Patriot Act: The Devil is in the Details, 46 THE ADVOCATE 24 (December 2003) [with Jack Van Valkenburgh].
Community Property Treatment of Pensions in Idaho, 19th Annual Family Law Institute, New Mexico Bar Foundation (October 2003).
Presentations:
Balancing the Interests of Unwed Fathers and the Need for a Stable Adoption System, Children in Need of Parents Conference, Brigham Young University Law School (October 8, 2004).

Service Projects:
Member, Law Faculty Advisory Committee, Family Law Reform Project, American Family and Conciliation Courts Association.
Secretary and Member, Editorial Committee, Family Law Council of the Family Law Section, Idaho State Bar Association.
Member, Idaho Supreme Court Family and Children in the Court’s Committee.
Member, Idaho Supreme Court Child Protection Committee.
Member, Second Judicial District, Family Court Services Program Advisory Committee.

Recognitions:
Founder’s Award for Distinguished Service, ACLU of Idaho (November 2003).

Don Burnett
Subject Area Emphasis: Professional Responsibility Scholarship and Publications:
To Discountenance the Haughty and Lawless: The Ethics of Dealing with Bad Clients, THE ADVOCATE, 47(9) (September 2004).

Presentations:
Multijurisdictional Practice and Selected Other Model Rule Changes, Idaho Legal Aid Annual Conference, Boise, Idaho (May 14, 2004).

Media Coverage of the Courts – A Pressing Question of Judgment, Bench-Media Workshop for Idaho Federal and
State Courts, Boise, Idaho (May 13, 2004).

Service Projects:
National Board of Directors, American Judicature Society.
Center for Judicial Independence Task Force, American Judicature Society.
National Chair, Section of Legal Education and Admissions to the Bar Professionalism Committee, American Bar Association.
Joint Committee on Lawyer Regulation, American Bar Association.
Bar Examination Review Committee, Idaho State Bar Association.
Governing Council, Indian Law Section, Idaho State Bar Association.
Governing Council, Professionalism/Ethics Section, Idaho State Bar Association.
Board of Directors, Idaho Law Foundation.
J. Ray McNichols Inns of Court, Moscow-Lewiston, Idaho [American Inns of Court].

Recognitions:
Outstanding Faculty Service Award, Class of 2004 (May 2004).

Dennis Colson
Subject Area Emphasis: Idaho Constitutional Law, Indian Law, Contracts
Presentations:
The History of Federal-Tribal Relations, Natural Resources Conservation Service Workshop, Colville, Washington.

Service Projects:
Co-Director, Indian Probate Project, University of Idaho College of Law [with Doug Nash].

Barbara Cosens
Subject Area Emphasis: Water Law, Alternative Dispute Resolution
Scholarship and Publications:


Presentations:
Yellowstone Controlled Groundwater Area: A Reserved Right to Protect the Hydrothermal System, Dividing the Waters, Science Workshop, April 2003 [invited Speaker and Organizer].
Native American Water Rights, Environmental Studies Seminar, SFU (Spring 2003).
Participant, Water Negotiation Workshop, University of Colorado (Summer 2003) [invited].
Panel Moderator and Speaker, Western Water Law, (September 2004) [invited].

Presentations:
Member, Planning Committee, Annual Water Law conference, American Bar Association (Fall 2004-present).
Water Mediation (January 2003-present).
Mediator, Walker River water allocation dispute among the United States, Nevada, California, the Walker River Paiute Tribe, Mono County, Lyon County, Mineral County and the Walker Lake Working Group.
Committee Member, Dividing the Waters, Science and the Law Workshop, (2002-2003) [organization for education and information exchange among judges and special masters handling water disputes].

Patrick D. Costello
Subject Area Emphasis: Clinical Legal Education
Service Projects:
Children and Families in the Courts Committee, Idaho Supreme Court Delivery of Legal Services Committee, Idaho State Bar Association
Legal Panel, Idaho ACLU Judicial Council, University of Idaho Foundation Board, Idaho Public Television President, Friends of KUID-TV

Lee B. Dillion
Subject Area Emphasis: Clinical Legal Education, Business Law and Externships
Presentations:
New Ideas in the Teaching of Professionalism, Annual Jack Rabbit Bar meeting in Big Sky Montana (June 3-5, 2004).

Ruth Patterson Funabiki
Law Library Faculty
Subject Area Emphasis: Technical Services
Law Librarianship; Advertising
Service Projects:
Member, LILL (Libraries Linking Idaho) Board.
Member-At-Large, OBS, SIS Board.
Member, TS/OBS Joint Research Grant Committee.
Chair, University of Idaho Information Technology Committee.

Dale Goble
Subject Area Emphasis: Natural resource law and policy (particularly public lands and wildlife law) and American legal and environmental history
Scholarship and Publications:
The Property Clause as if Biodiversity Mattered, ELEVENTH IRA C. ROTHGERBER, JR. CONFERENCE: CONSTITUTIONAL CONFLICTS ON PUBLIC LANDS (January 30, 2004) [invited paper].
Flames in Our Forests: Disaster or Renewal?, by Stephen F. Arno and Stephen Allison-Bunnell, WASHINGTON STATE MAGAZINE 54 (Fall 2003) [book review].

continued next page
Presentations:
Endangered Species Act at Thirty: Preliminary Findings, Staff of Senate Committee on Environment and Public Works, Washington, D.C. (June 1, 2004) [with Mike Scott].

Service Projects:
Endangered Species Act at Thirty Project. (The objective of the Project has been to engage fully with the policy makers and implementers in identifying ways to improve the effectiveness of the ESA)

Michael J. Greenlee
Law Library Faculty
Subject Area Emphasis: Legal Research, Law Librarianship
Scholarly Works:
Service Projects:
Chair, Intellectual Freedom Committee, Idaho Library Association.
Recognitions:

John J. Hasko
Subject Area Emphasis: Law Librarianship, Legal Research, Scholarship and Publications:

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

Maureen Lalin
Subject Area Emphasis: Clinical Legal Education and ADR
Scholarship and Publications:
Presentations:

D. Craig Lewis
Subject Area Emphasis: Evidence, Procedure
Scholarly Works:
Lewis, IDAHO TRIAL HANDBOOK, (WEST), Supplement (2004).
Presentations:
Ethics Rules in the New Millennium, Idaho State Bar Annual Meeting, Sun Valley, Idaho (July 2003) [panelist and presenter].
Ethics Rules in the New Millennium, An Overview, 2nd District Bar Association. CLE, Moscow, Idaho (October 2003) [with Tom High].


Service Projects:
Idaho State Bar Ethics 2000 Committee.
Idaho Supreme Court Evidence Rules Committee.
Idaho Supreme Court Civil Jury Instructions Committee.
United States District Court Local Rules Committee.

Monique C. Lillard
Subject Area Emphasis: Torts, Remedies and Workplace Law (common law employment at will, employment discrimination, and other employment matters)

Presentations:
On sabbatical 2004-2005

Chair and Program Planner, Employment Discrimination Section, AALS (2003-2004).
Councilor, University of Idaho Faculty council (2001-present).

James Macdonald
Subject Area Emphasis: Constitutional Law, Federal Courts, Securities Regulation, Jurisprudence, Accounting and the Law, Sports Law
Scholarship and Publications:

Report to the Idaho Legislature On Corporate Code Amendments (Comments in the Code on such amendments).

Presentations:

Recognitions:
Councilor, University of Idaho Faculty council (2001-present).

John J. Hasko
Subject Area Emphasis: Law Librarianship, Legal Research, Scholarship and Publications:

Co-Chair, Borah Foundation Committee (2003-2004).
Co-Chair, Student Computing Advisory Committee.
Member, Board of Trustees, Latah County Library District (2003-2004).
Deborah McIntosh
Subject Area Emphasis: Legal Research and Writing

Presentations:

Service Projects:
Co-chair, Committee on Corporate Code, Idaho State Bar Association
Chair, University of Idaho Administrative Appeals Hearing Board

John A. Miller
Subject Area Emphasis: Federal Taxation, Estate Planning, State and Local Taxation, Business Planning, Elder Law
Scholarly Works:
Fundamentals of Federal Taxation (casebook in progress) CAROLINA ACADEMIC PRESS [with Jeffrey Maine].

Presentations:

Service Projects:

Laurie O’Neal
Subject Area Emphasis: Constitutional and Intellectual Property Law
Scholarship & Publications:

Presentations:

Robert Pikowsky
Law Library Faculty
Subject Area Emphasis: Law of Telephone Wiretapping and Interception of Electronic Communications

Malla Pollack
Visiting Faculty
Subject Area Emphasis: Constitutional Law
Scholarship & Publications:

Presentations:

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**Service Projects:**
- Member of Panels on Dastar and Moseley, in program The Supreme Court in IP Law: Three Recent Cases, Summer IPL Conference, ABA Section of Intellectual Property Law, San Diego, CA. (June 20, 2003).

### Raúl M. Sánchez

**Visiting Faculty**

**Subject Area Emphasis:** International Business Transactions, Public International Law, International Human Rights, Contracts, Environmental Law, International Environmental Law, Employment Law, Latin American Studies, Diversity in Higher Education

**Scholarship and Publications:**
- Diversity and Human Rights at the University of Idaho: a Comprehensive Plan for Action and Accountability, (co-contributor) University of Idaho, Office of the President.

**Presentations:**
- Diversity and Human Rights (Moscow, Coeur d’Alene, Boise, and Rupert Idaho).

**Service Projects:**
- Member, Board of Directors: Idaho Humanities Council, (2001- present).
- Member, Advisory Board: Center for Economic and Social Rights, (New York, New York)
- Member: City of Moscow Fair and Affordable Housing Commission (2000-2004).

**Recognitions:**
- ASUI Service Award.

### Monica Schurtman

**Subject Area Emphasis:** Immigration, International Human Rights and Humanitarian Law, Tribal Advocacy

**Scholarly Works:**
- Los ‘Jonkeados’ and the NAALC: The Autotrim/Customtrim Case and Its Implications for Submissions under the NAFTA Labor Side Agreement.

**Presentations:**
- Responding to FBI and Homeland Security Questioning Post-9/11, American Civil Liberties Union and the Islamic Center of Boise, Boise, Idaho (September 14, 2004).
- Panel discussant, Brothers and Others, (film documenting Post-9/11 discrimination against Muslims in the United States) University of Idaho School of Law, Moscow, Idaho (November, 2003).
- Immigrants and Domestic Violence: Diminishing the Divide, CLE sponsored by YWCA and Lewis and Clark State College, Lewiston, Idaho (September 26, 2003).
- Immigration Consequences of Crimes; and Detention and Interrogation of Immigrants Post-9/11, CLE sponsored by the Idaho Association of Criminal Defense Lawyers and the American Civil Liberties Union, Boise Idaho (July 25, 2003).

**Service Projects:**
- Know-Your-Rights trainings for Immigrants.
- Trainings for pro-bono attorneys representing Muslim, Arab, Middle Eastern, and South Asian immigrants in FBI and Department of Homeland Security interviews.
- Moscow Junior/Senior High School Future Problem-Solvers Unit on Immigration.

**Recognitions:**
- Special Recognition Award Courage and Service in the Cause of Human Rights, Latah County Human Rights Task Force (January 17, 2004).

### Richard Henry Seamon

**Subject Area Emphasis:** Administrative Law, Appellate Advocacy, Civil Procedure, Constitutional Law, Criminal Procedure, and Dispute Resolution focusing on disputes involving the government.

**Scholarship and Publications:**
- Slaying the Dying Dragon of State Sovereignty (a review of Narrowing the Nation’s Power: The Supreme Court Sides with the States, by John T. Noonan, Jr.), forthcoming in UNIVERSITY OF PITTSBURGH LAW REVIEW (Spring 2005).

**Administrative Law: Principles and Practice, with John H. Reese (Thomson-West 2d ed. 2003).**

**Presentations:**
- Next Battles in the War Over Affirmative Action, Lecture, Black History Month Program, South Carolina State University, Department of History and Political Science, Orangeburg, SC (Feb. 25, 2004).

**Service Projects:**
- Taught 5th Graders at Satchel Ford Elementary School, Columbia, SC, about the U.S. Constitution (Sept. 12, 2003). Published in S.C. Lawyer magazine an article reviewing U.S. Supreme Court decisions from the most recent Term (Sept. 2003).
- Gave Update on U.S. Supreme Court Decisions from the October 2002 Term, South Carolina Court of Appeals, Continuing Legal Education Program, Columbia, SC (July 18, 2003).
- Participated in television interview on South Carolina public television news program about new affirmative-action decisions of U.S. Supreme Court (June 26, 2003).

**Recognitions:**
- Outstanding Faculty Member Award (elected by law students), University of South Carolina School of Law (2003-2004).
- Faculty Scholarship Award, University of South Carolina School of Law (2003-2004).
Professionalism: First Step in Law School

Through the College of Law’s Professionalism: First Step in Law School program, ethics and professionalism are the dominant themes of every student’s first day of legal education. Inaugurated in 2003, the program strives to impress upon future lawyers—during their very first day of school—the importance of ethics, civility, and professionalism. The program brings students together with outstanding members of the bench and bar from throughout the state. In small groups, these lawyers and judges use carefully crafted discussion scenarios to help students understand that (notwithstanding some negative stereotypes found in popular culture) the legal profession has clear expectations of acceptable conduct and that the most respected members of the profession have achieved their success through unselfish service to clients and the public.

This year, the scenarios created by Dean Burnett were designed to elicit thoughtfulness and introspection on such topics as civility, truthfulness, and fairness in litigation; fiduciary obligations to clients; reasonableness of attorney fees; conflicts of interest; the duties of lawyers for organizations; and pro bono service for the poor.

Response to the program has been so positive that it is becoming one of the “signature” events in Idaho legal education. Says Judge Karen Lansing, Idaho Court of Appeals, who participated in the 2003 and 2004 programs, “The College of Law is to be congratulated for adding this excellent new component to its orientation program for entering students. It is an innovative approach that places at the very forefront of students’ law school careers a recognition of the standard of ethics and professionalism that govern lawyers. The fact that lawyers and judges are willing to travel from across the state to participate ought to impress upon these new students that ethics and professionalism are, indeed, a high priority for members of the Idaho Bar.” Judge Lansing adds, “I was very impressed with the sophistication and insight of the students as we grappled with the issues presented in the discussion scenarios. They demonstrated to me that the future of the legal profession is in good hands.”

One of the students participating in this year’s program was Megan Yeates of Fruitland, Idaho. She says, “I thought the program was really appropriate because the rest of my legal education will now be within the context of ethics and professionalism. I realized just how important it is to take professionalism seriously, and I was impressed by the scope of the program because it provided both theory and practical information. For example, although it may sound trivial, I now understand the importance of timeliness and have changed my behavior to make sure I am on time.”

In addition to the Judge Lansing, the bench was represented in the 2004 program by Judge Sergio Gutierrez, Idaho Court of Appeals; Judge Michael Oths, Ada County Magistrate Court; Judge Larry Boyle, U.S. District Court; and Judge John Stegner, Latah County.

Attorneys participating in this year’s program were Bob Alexander, Twin Falls; Ken Anderson, Lewiston; Ted Burton, Lewiston; Scott Cleere, Boise; Nick Crawford, Boise; Dennis Davis, Coeur d’Alene; Lee Dillion, Boise; Allyn Dingel, Boise; Robin Eckmann, Moscow; Richard Fields, Boise; Kent Foster, Idaho Falls; Tom High, Twin Falls; Bill Hollifield, Twin Falls; Tim Hopkins, Idaho Falls; Ken Howard, Coeur d’Alene; Larry Hunter, Boise; John Judge, Moscow; Carolyn Justh, Coeur d’Alene; Emile Loza, Boise; Cindy Miller, Moscow; Stephen Rice, Lewiston; Stephen Smith, Sandpoint; and Michael Wasko, Nezperce.

“The College of Law is to be congratulated...It is an innovative approach that places at the very forefront of students’ law school careers a recognition of the standard of ethics and professionalism that govern lawyers.”

Indian Probate: footnotes continued from page 14

40 Stat. 390.
44 67 Stat. 590. The provision was repealed in 1968, without affecting any jurisdiction taken before the repeal. 67 Stat. 590.
45 California, Minnesota, Nebraska, Oregon and Wisconsin.
46 Some states, like Montana, have not depended upon Public Law 280 for their jurisdiction, but rather assume jurisdiction unless the exercise thereof would interfere with reservation self-government or unless the tribal court is exercising jurisdiction in such a manner as to preempt state jurisdiction. Estate of Standing Bear v. Belcourt, 631 P.2d 284 (Mont. 1981).
47 I.C. 67-5101.
48 The list included compulsory school attendance; juvenile delinquency and your rehabilitation; dependent, neglected and abused children; insanities and mental illness; public assistance; domestic relations; and the operation and management of motor vehicles upon highways and roads maintained by the country or state.
49 RCW 37.12.010 et seq.
50 The Washington list is similar to the Idaho list, but adds adoption proceedings.
52 Id. at 827.
53 Id. at 828.
55 411 U.S. at 149.
57 Fn. 18, 435 U.S. 313, 322.
58 340 U.S. 344, 364.
North to Alaska!
Law Students Take Tax Assistance to Distant Places

A partnership between the Idaho College of Law and the Alaska Business Development Center (ABDC) was inaugurated in March 2004 with one faculty member and two students traveling to the remote Bristol Bay area of the 49th state. Professor John A. Miller, whose areas of expertise are tax law and estate planning, and students Nneka Harrison and Clint Goodman, Class of 2005 and members of the student-organized Volunteer Income Tax Assistance (VITA) program, participated in this unique (and adventurous) public service opportunity.

The ABDC Volunteer Tax and Loan Program was created in 1996 in collaboration with the University of Alaska, the Alaska Division of Investments, and the Internal Revenue Service to bring rural fishing communities into compliance with tax laws by providing free tax-preparation services. In this program, student volunteers and tax professionals travel to isolated Alaskan villages to assist residents, primarily self-employed Native American fishermen, in preparing and filing their tax returns. After ABDC invited the Idaho College of Law Clinic to participate in the program, Clinical Professor Pat Costello passed on the invitation to students. Nneka Harrison, who has “always wanted to be a tax attorney” and was then assistant director of VITA, accepted the offer with enthusiasm. Next on board was Clint Goodman, a native of Phoenix, Arizona, and a former police officer, who signed on “to see if I liked tax and have an experience I knew I would never forget.”

The week-long adventure began in Anchorage with a day of training led by program coordinator Andrei Chankine. In addition, Professor Miller, Ms. Harrison, and Mr. Goodman were introduced to Judy Masteller, who not only coordinated the logistics of the trip, but also traveled with the group. The next day, the team flew by twin-engine bush plane to their first destination, Chignik Lagoon on the Alaskan Peninsula.

From this westernmost location, the team traveled eastward by boat and plane to five more villages: Chignik Lake, Port Heiden, Pilot Point, Egiigik, and Levelock. Mr. Goodman recalls being “left dazed and confused” as to how the pilot who flew the team into Chignik Lagoon managed landing on an outcropping of land approximately 100 feet by 1600 feet. Travel across the water also was an amazing experience. Professor Miller explains that the boats were actually two-person, open skiffs; he clearly recalls the crunching sound one skiff made as it broke through the ice skimming the surface of the water.

Typically, the team traveled to the villages in the morning where they were greeted by community representatives and then taken to the site (generally a community center) where they met with residents for the remainder of the day. Often, at day’s end, Professor Miller, Ms. Harrison, and Mr. Goodman were honored with a meal prepared by members of the community and then invited to participate in village social activities. In Chignik Lagoon, for example, Ms. Harrison won a sweatshirt playing bingo, and Professor Miller and Mr. Goodman enjoyed the 160-180 degree temperatures of the community bathhouse.

The significance of the project can be measured in the 67 returns the participants prepared and filed and the approximately $41,000 in refunds the taxpayers received. What cannot be as easily quantified is the significance of the experience for the participants. As a legal educator, Professor Miller explains that the trip provided the students with the experience of seeing what the tax system means in the real world, especially for the working poor. It also, he adds, gave them an appreciation for the benefits of public service.

So rewarding were their experiences of participating in the program that Mr. Goodman and Ms. Harrison have been inspired. Ms. Harrison, who is now applying to LLM programs in taxation, suggests that the “program could easily be instituted in the University of Idaho Law School. There are many rural areas in Idaho, including reservations, which could probably use the help from a program like this.” Mr. Goodman, who is also considering LLM programs in taxation, as well as opportunities in the military and in the private sector, is currently organizing a second trip to Alaska for, funding allowing, two teams of students. He explains, “ABDC has asked that the College send two teams, which is quite an acknowledgement of the quality of the work of the first team.”

The two students also share Professor Miller’s assessment of the value of their participation in the program. For Mr. Goodman, the trip was “an experience of a lifetime,” and for Ms. Harrison, it “changed my life and experience in a huge way.” ✦
Integrating the past with the present, the College’s 2004 International Law Symposium, *Post-Conflict Justice: From Malmédy to Halabja*, brought together a select group of International Law scholars to explore the various manifestations of, and the significant themes common to, the administration of post-conflict justice. From the war crimes trial of German soldiers accused of perpetrating the Malmédy Massacre during World War II to the deaths of 5,000 people in the Kurdish village of Halabja in Iraq during the regime of Saddam Hussein, the participants explored the nexus between central imperatives of post-conflict justice and the diverse forms of administration it has taken.

College of Law Professor Russell Miller, who coordinated the symposium with the assistance of former Idaho College of Law colleague Rebecca Bratspies, provides historical context for the symposium’s topic. He says, “On the international level, the post-World War II era has been remarkably peaceful, if not free of violent conflicts. A bloody wave of more than 250 armed conflicts, mostly domestic but with a few localized international clashes, has cost more than 86 million human lives. With regard to both international and internal conflicts, law has sought its relevance as a mechanism for building peace, nurturing reconciliation, and holding the perpetrators of humanitarian crimes accountable.”

Since Nuremberg, attempts to achieve contemporary post-conflict justice, have “taken on as many distinct forms as the diverse and complex conflicts to which post-justice has been applied,” explains Professor Miller. He adds, “Although very little post-conflict justice has been meted out in the half-century since Nuremberg, and with few tangible results, there has nonetheless been a surprising proliferation and diversity of attempts to pursue post-conflict justice over the last 15 years.” Examples are “truth and reconciliation” commissions in Argentina, Guatemala, and South Africa, as well as domestic criminal prosecutions, such as reunified Germany’s prosecution of the former leaders of the German Democratic Republic; ad hoc tribunals for Yugoslavia and Rwanda; and the fledgling International Criminal Court.

In keeping with a chief aim of the symposium series, the program emphasized the relevance of International Law to the Idaho Community and the careers of UI law students through the dedicated lecture highlighting the legal fallout of the Malmédy Massacre during World War II, over which Idaho College of Law alumnus Col. Burton F. Ellis presided as Chief Prosecutor. Professor Emeritus James J. Weingartner, author of the definitive histories of the massacre, *Crossroads of Death*, and its subsequent prosecution, *A Peculiar Crusade*, presented the lecture.

In addition to Professor Weingartner, Professors Miller and Bratspies also garnered the participation of three high-level governmental officials. The Honorable Pierre-Richard Prosper, U.S. Ambassador, Office of War Crimes Issues, presented the keynote address, and David Hodgkinson, Director of Transitional Justice, Office of Human Rights and Transitional Justice, Coalition Provisional Authority, Iraq, spoke on the composition of an Iraqi Special Tribunal. From the Kurdistan Regional Government, Mohammed Ihsan, Minister of Human Rights, participated in the panel on transitional justice in Iraq.

The other presenters were Rebecca Bratspies; Michigan State University-DCL; Frank Fountain, First Chief of Prosecutions, Special Court for Sierra Leone; Florian Hoffmann, Catholic University of Rio de Janeiro; Peggy McGuinness, University of Missouri Law School; Frédéric Mégret, McGill University Faculty of Law; Russell Miller, Idaho College of Law; Madeleine Morris, Duke University School of Law; Carole O’Leary, School of International Service, American University; Katherine O’Sullivan See, James Madison Honors College; Linda Racipaggi, James Madison Honors College; Anja Seibert-Fohr, Max Planck Institute for Comparative and Public International Law; James W. Smith III, Florida A&M University College of Law; and Judith Wise, Chapman University School of Law.

In a feature unique to International Law symposiums, among the presenters were three students, all from the Idaho College of Law: Alycia Feindel, now a 3L and Vice-President of the Student Bar Association, and Brady Hall and Angela Kircher, Class of 2004.

The symposium concluded with the Malmédy Film Series, a viewing of two films about the Malmédy Massacre, the 1993 documentary, *Massacre at Malmédy* and the award-winning 2003 feature, *Saints and Soldiers*, at the Kenworthy Theatre in Moscow.
Looking Back at Justice: Malmédy Massacre and Burton Ellis ’33
by Robert Gibson (Class of 2005) and Russell Miller

Colonel Burton F. Ellis left an indelible mark on international law and post-conflict justice. In the years immediately following World War II, the Idaho College of Law alumnus served as a prosecutor in the cases of over 1,600 accused war criminals whose trials were held in Dachau, Germany. Most notable among those cases, in which Colonel Ellis was the Chief Prosecutor, involved the German perpetrators of what came to be known as the “Malmédy Massacre.”

Burton Ellis was born on September 13, 1903, in Troy, Idaho. Shortly after his birth, his family moved to Spokane, Washington where his father worked with the railroad as an engineer. When Ellis was eight-years-old, the family moved to Iowa to escape the “big city” lifestyle of Spokane. In Iowa, Burton attended a one-room schoolhouse where he absorbed the lessons of his elder classmates, enabling him to take and pass a high school entrance exam at the age of eleven. The land boom in the west lured the Ellis family back to Idaho in 1918. Upon his return to his native Idaho, the 15-year-old Ellis was a freshly-minted high school graduate.

Humphrey, Idaho, is located in the high country of the continental divide on the Idaho side of the Idaho/Montana border. The Ellis family took up ranching on their return to Idaho, and Burton quickly realized that he wanted nothing to do with the lifestyle. After a year of ranching, he spent a year working on road construction for a western entrance to Yellowstone National Park. Still determined to avoid having to return to the family ranch, Ellis secured an appointment to attend West Point, but the initial physical examination exposed an irregular heartbeat, and he was denied admission. Higher education still held the allure of escaping the ranch, so on his seventeenth birthday, in 1920, he enrolled at the University of Idaho.

At registration, new students were required to put the first four letters of their hometown on their registration form; hence, Burton acquired the lifelong moniker “Hump” or “Humpy.”

At registration, new students were required to put the first four letters of their hometown on their registration form; hence, Burton acquired the lifelong moniker “Hump” or “Humpy.” Ellis would attend the university sporadically during the following decade, often taking a few years off at a time to work in the oil fields of southern California and return to the ranch in Humphrey to help harvest the hay crop. In 1929, he received his bachelor’s degree from Idaho in Political Science, and in 1933, he received his Juris Doctorate from the Idaho College of Law.

Ellis returned to the oil fields around Long Beach, California, where his experience and knowledge of the oil rigs assured him of work even amidst the Depression. While searching for a job on the oil rigs, Ellis was directed to the Texaco headquarters and hired immediately to handle the company’s gas tax problems. While working there, he became the company’s miscellaneous excise tax expert, and was transferred to Texaco’s main office in New York City in 1938. From there, he volunteered for the Army to become a commissioned officer in 1942. Upon commissioning, Lieutenant Ellis was tasked to serve as an instructor to new officers in the subject of military law. He was then sent to India where he began his experiences as a trial lawyer, serving both as a defense and prosecuting attorney for military personnel.

Near the end of the war, the destinies of Ellis, now wearing the rank of Lieutenant Colonel, and 74 of Hitler’s Waffen-SS troops would begin to converge. While Ellis was enrolling in the Judge Advocate General Advanced Course at the University of Michigan, the bodies of the massacred U.S. soldiers were being uncovered in an open pasture near Malmedy.

The massacre had occurred on December 17, 1944, during Germany’s last major offensive of the war. The Germans were pushing hard toward Antwerp, Belgium, in an attempt to split the Allied forces that were gaining strength and coordination since their landing on Normandy about six months prior. This last offensive effort of Germany is now known as the “Battle of the Bulge,” and it required a fast attack by the Germans to assure its effectiveness. Hence, prisoners of war posed a logistical dilemma for units whose orders were to advance quickly.

With this context in mind, several competing theories have arisen concerning the massacre. One posits that the orders given to the lead units were to “take no prisoners.” Another theory holds that the prisoners were being shuttled to the rear of the advancing German column, and that a chaotic, tense scene led to a regrettable accident of war. In any case, there is no doubt that after...
the assembly of Americans was shot en masse, individual German executioners walked among the dead and dying and shot at point blank range those who showed any signs of life. Seventeen Americans survived the massacre, either by feigning death or escaping into the nearby woods. Several survivors returned to Dachau to testify at the trial against those accused of firing the shots.

On May 1, 1945, about a week before the war in Europe officially ended, Lt. Col. Ellis reported to the War Crimes Group in Europe where he was initially assigned to the investigation section. Shortly thereafter, he was named Chief of War Crimes Investigations, holding that billet for approximately one year. Toward the end of 1945, Lt. Col. Ellis was named the Chief of Operations and placed in charge of trials and investigations. As the Chief of Operations, Lt. Col. Ellis supervised the assembling of the alleged perpetrators of the Malmédy Massacre and the gathering of evidence.

Later, Ellis would say that “all the legitimate tricks, ruses, and stratagems known to investigators were employed – stool pigeons, witnesses who were not bona fide.” Ellis also acknowledged the use of “mock trials,” wherein an accused would be brought into a darkened room where men posing as judges would be sitting behind a table. Centered on the table would be a black cloth with a crucifix on it, all of which was flanked by two candles, providing the only light in the room. There would be a “prosecutor” and a “defense counsel,” and the “mock trial” would use false evidence, false testimony and threats in order to secure confessions from the prisoners. In February 1946, Ellis specifically requested and was appointed Chief Prosecutor of the trial.

The trial began on May 16, 1946. The accused were tied together, with numbers hanging from their necks to identify them. As accused war criminals, as distinct from the status of “prisoners of war,” they did not receive typical due process protections. Nonetheless, they challenged the use of evidence procured through the “mock trials.” Ellis advised the court in his opening statement that “mock trials” had indeed been used to gain confessions, but he said no physical abuse or torture had occurred. The court allowed the evidence and Ellis prevailed. In all, 73 of the 74 accused were convicted. (The seventy-fourth was extradited to France, tried there with the same evidence, and acquitted.) After the trial, Ellis resumed his position as Chief of Operations at Dachau.

Almost immediately after the trial, and in the years that followed, the Chief of the Defense Team, Colonel Willis Everett, brought a quixotic series of protests. Everett’s tenacity in challenging the methods used by the prosecution eventually spawned a Senate investigation at which Senator Joe McCarthy of Wisconsin played a dramatic, if not decisive role, and a petition to the U.S. Supreme Court. In response to Everett’s campaign for justice, and partially due to the desire to see stability in West Germany in the emerging Cold War, military review boards eventually pardoned all of those convicted for the massacre. At the same time, however, Ellis and the prosecution team were fully exonerated by the Senate investigation.

Although there are important lessons to be learned from the Malmédy prosecution, preeminent Malmédy author and historian James Weingartner has noted the difficulty of evaluating the Malmédy prosecution in the light of today’s standards: “Burton Ellis did his duty in an atmosphere approaching hysteria with personnel ill-suited to the task assigned him and according to legal standards which had received the highest sanction. His career and reputation suffered when those standards rightly came under attack.” (James J. Weingartner, Crossroads of Death, p. 260, University of California Press 1979).

Burton Ellis retired from the Army as a Colonel in 1958. He continued to practice law in Merced, California, where he and his wife Dee also maintained a 170-acre almond orchard. Colonel Ellis died on December 29, 2000, preceded in death by his wife on May 23, 1998. As a war crimes prosecutor, but also as a transitional figure in the evolution of legal standards, Burton Ellis left an important legacy to the University of Idaho College of Law and to the international legal community at large, which again finds itself on the verge of prosecuting alleged war criminals.
2004 Graduation Puts Spotlight On Excellence in Diverse Settings

Commencement Address Challenges Students to Improve Access to Justice

The Honorable Linda Copple Trout, then-Chief Justice of the Idaho Supreme Court, told a total audience of approximately 900 that public service would be the new graduates’ highest calling and, for many, the source of greatest satisfaction. The audience included 93 graduating students who, together with 13 graduates from the preceding fall semester, comprised the College
of Law Class of 2004. The Chief Justice, noting the increasingly diverse membership of the American bench and bar, congratulated the College on improving the recruitment of women and students of color. As the legal profession comes more closely to resemble the society it serves, she said, each lawyer should seek out opportunities for service that will enhance public respect for the profession and give true meaning to the phrase “equal justice under law.”

During the Commencement ceremonies, J. Dennis Faucher ’62, received the Award of Legal Merit, voted by the law faculty in recognition of distinctive achievements and service to the legal profession. Mr. Faucher, who practices in Philadelphia, is one of the nation’s leading class action litigators, having secured nine-figure awards for clients in major securities and antitrust cases. He also has undertaken public interest cases including pro bono capital punishment litigation and the representation of Nazi-era slaves and forced laborers who recovered $5 billion from the Federal Republic of Germany and from German industry. Also recognized was James E. Rogers who was awarded an honorary doctorate from the University of Idaho for his philanthropy, and advocacy for excellence, in higher education. Mr. Rogers, a lawyer and telecommunications executive with homes in Las Vegas and Pocatello, is a proponent of devoting private wealth to the public good. Named by “Time Magazine” as one of America’s twelve most important philanthropists, he has given approximately $300 million to higher education institutions, principally in the West. He also has devoted his time, raising money for colleges and universities, and recently agreeing to serve, at virtually no compensation, as interim chancellor of the Nevada higher education system.

Reginald Reeves ’52 was recognized as the recipient of an Alumni Hall of Fame Award from the University of Idaho for his personal generosity toward needy persons. Mr. Reeves gathers and provides food for community food banks, clothing for distribution to the poor, and books and computers for schools in Idaho as well as impoverished communities of Latin America. As an African American student at a time when racial exclusion existed in varsity athletics, and discrimination could be found in many of the shops and businesses of Moscow, Mr. Reeves demonstrated his generosity by spearheading a blood drive to benefit the whole community. In remarks to the 2004 graduates, he told today’s students to make a similar commitment to community service. “No matter how modest your circumstances,” he said, “there is always someone less fortunate than you, and that person needs your help.”

Graduates also received honors voted by faculty and by fellow students. Danielle J. Hunsaker received the faculty-established “Award of Legal Achievement,” presented to the graduating law student with the highest cumulative grade point average. Patrick J. Geile received the “Spirit of the Class Award,” presented by graduating students to a colleague who demonstrates values of the class that go beyond academic performance. Tiffany Joy Jensen received the “Outstanding Student Service Award,” given in recognition of unselfish efforts on behalf of the law school community. Ms. Jensen, who served as vice president of the Student Bar Association, delivered the student address at commencement.

The graduates also conferred awards upon members of the faculty. For the fourth time in the last five years, Professor Mark B. Anderson received the “Peter E. Heiser Award for Excellence in Teaching.” The students presented an “Outstanding Faculty Service Award” to Professor Joann Henderson for her commitment to academic excellence, and to Professor/Dean Don Burnett for his dedication to student concerns. ✦
Recognizing Excellence in Legal Teaching: William and Joan Boyd

In 2004 William (’65) and Joan Boyd created the Excellence in Legal Teaching Fellowship at the University of Idaho, College of Law. The intention of the fellowship is to help the College recognize and reward faculty who demonstrate exceptional teaching effectiveness, a deep commitment to student learning and professional growth, and an interest in creative and innovative teaching methods. Each fellowship recipient shall be selected on the basis of faculty activity reports, memoranda on teaching, class visits, student evaluations, and other information on teaching performance.

The Boyd family has a distinctive lineage of professional educators. Joan’s grandmother and mother, Corey, were both school teachers, as were Bill’s grandmother and mother. Corey received her Masters in Education and taught Spanish and English before taking time off to raise her children. Bill’s mother taught English, Spanish and French at both the college and high school levels. She concluded her career as the foreign language supervisor for the State of Idaho Department of Education. Joan received her B.A. in English from the University of Idaho, taught English for 25 years in the Silver Valley before retiring, and currently supervises student teachers in the Coeur d’Alene area for the University.

After graduating in forestry and then in law from the University of Idaho, Bill spent more than 25 years in the private practice of law in Kellogg (Brown, Peacock, Keane and Boyd). He then he became Vice President-Corporate Counsel for Coeur d’Alene Mines Corporation for seven years, and currently practices law in his own office in Coeur d’Alene.

The Boyds have established this fellowship with the strong belief that excellent teachers greatly impact students’ lives. In Bill’s words, “we are all indebted to great teachers. We are confident that this special recognition for outstanding teachers at the University of Idaho, College of Law is well deserved.”

Inspiring Others through Example: The Odyssey of Mia Bautista ’02

Some shun the mantle of being a role model, but not Mia Bautista, Class of 2002. “I feel I have a responsibility to share of myself and help others,” she explains. “There were no role models and no good influences, when I was growing up, and I want to show young people that they have a choice and that they can overcome their hardships.”

Born in 1976 in Chisholm, Minnesota, to a 15-year-old single mother, Ms. Bautista’s childhood and youth were the stuff of nightmare. She was abused physically and emotionally by her stepfather, and sexually by a cousin. Her mother was a drug addict, and her stepfather was eventually imprisoned for child molestation. When Ms. Bautista was 11, her mother was arrested for dealing drugs, and she and her siblings were placed in foster care. She says, “My foster parents were wonderful. I was used to taking care of children and doing housework, so when my foster mother told me to go out and play, I didn’t know what to do.”

But foster care was not permanent, and Mia’s nightmare resumed. Each time their mother was released from prison, Mia and her siblings would be returned to her care. Finally, on her sixteenth birthday, Mia decided she could not longer tolerate the “complete chaos and fear at home” and moved in with her grandparents. Doing so was a turning point for Mia. In a stable environment, she was able to concentrate on her education, and even became a beauty queen, winning the title of Miss Teen Minnesota.

During the last two years of high school, she participated in a program in which she not only graduated from high school but also earned an associate’s degree. With financial assistance from the Horatio Alger Association, which awarded Mia their Alumnus of the Year Award in October 2004, Ms. Bautista attended Concordia College in Moorhead, Minnesota, graduating in 1997 with a bachelor of science in Psychology. She was 20-years-old.

For Mia, her baccalaureate degree was the stepping-stone to her career goal: becoming a lawyer. She says, “I had felt the judicial system had let me down on so many occasions. I wanted a career that would allow me to help victims of abuse.” Once her legal education began, she knew she had made the right decision. “I loved the atmosphere of the College, she says,” “The professors took an interest in me and genuinely cared about my success. They helped convince me I was headed in the right direction.”

Knowing she would work in prosecution following the completion of her education, Mia began an internship in the Latah County Prosecutor’s Office in the second semester of her second year and stayed with the office until she graduated. “It was a great opportunity,” says Ms. Bautista. “It proved that all the hard work in law school was worthwhile.” After graduating, Mia accepted a position as deputy prosecutor with the Nez Perce County Prosecutor’s Office where she remains today. She handles one-third of the department’s felony caseload but also specializes in domestic violence cases. While Mia’s long-term goal is to be a judge, she is very happy working as a prosecutor. “I feel

Example:
IN MEMORIAM

Philip E. Peterson:
A Life of Selfless, Committed Service

On December 29, 2003, Professor Emeritus and former Dean Philip E. Petersen passed away from complications arising from pneumonia in Lewiston, Idaho. With his passing, the College of Law lost a long-time, revered colleague, the Idaho State Bar lost a respected and trusted member, and the legal community lost a selfless, committed citizen.

Phil was a professor at the Idaho College of Law from 1952 until his retirement in 1990 and served as Dean from 1961-1966. Phil’s impact on the State of Idaho has been enormous – 38 years of teaching students who became the leaders of the bench, bar, and legislature, over 50 years service to the bench, bar, and legislature, and over 50 years of service to his clients as a skilled and respected lawyer.

Says Joann Henderson, a former student who went on to join the College of Law faculty, “Phil Peterson was a great example of the courage and dedication to family and country characteristic of the Greatest Generation. He was brilliant, hard-working, compassionate, and a good friend.”

Phil, a native of Illinois, served with the Army Air Forces as a navigator on a B-29 flight crew during World War II. Serving in the Pacific, Phil flew bombing missions over Japan, provided transport for Chinese Nationalist Leader Chiang Kai-Shek, and was even shot down over the Pacific during the war. The recipient of the Distinguished Flying Cross, the Silver Star, and the Purple Heart, Phil remained in the Air Force Reserves, attaining the rank of Lieutenant Colonel before retiring in 1966.

While stationed in Japan following the war, Phil met his wife Jeanne, and they were married in 1947. Following the service, Phil returned to Illinois and received his Juris Doctorate from the University of Illinois College of Law in 1952. Phil and Jeanne and their young family moved to Moscow following law school, and Phil began his long teaching career at the College of Law. Phil returned to Harvard Law School as a Ford Fellow in 1957-58 and received an advanced degree in tax law and estate planning.

Even before returning to Harvard, Phil established himself as the expert on tax law in the State of Idaho. Phil wrote a letter to the editor of the local newspaper criticizing a proposed sales tax law that caught the attention of a local state representative. The representative invited Phil to Boise to write a better law. Phil accepted the invitation, beginning a long working relationship with the Idaho State Legislature and the Governor’s Office. Under the direction of the Governor’s office and the legislature, Phil authored many of Idaho’s sales and income tax laws that remain in force today. Phil also co-authored the Uniform Probate Code, which standardized the probate laws among the states adopting it.

Idaho was the first of 18 states to adopt this important piece of legislation. In addition to his legislative drafting accomplishments, Phil participated in five arguments before the U. S. Supreme Court. During the course of Phil’s career, his reputation as an expert in tax and estate planning extended beyond the borders of Idaho, becoming truly national in scope.

Throughout his teaching and practice career, Phil was involved actively in the Idaho State Bar, the Idaho Law Foundation continuing legal education program, and other community organizations. Always available to his students and former students, Phil would answer questions from lawyers around the state. Always the teacher, Phil simply could not refuse to answer such inquiries. He volunteered his time to numerous community organizations, including service on the Board of Trustees for St. Joseph Hospital in Lewiston. Phil’s commitment to the service of others extended to many facets of his community and continued throughout his life.

Phil Peterson’s devotion to the law was second only to his devotion to his family. His life stands as a tribute to the highest ideals of the legal profession – integrity, service to others, and commitment to the rule of law. For over 50 years, Phil Peterson was a strong and positive influence in the State of Idaho – as teacher, scholar, legislative draftsman, lawyer and counselor, advisor and friend.

Mia Bautista

“...the challenges in our lives are there to strengthen us and prepare us for greater challenges, greater happiness, and greater accomplishments.”
Dear Law Graduates:

I encourage all alumni to invest in the value of their own diplomas by contributing to the growing success story at the College of Law. The College has declared its ambition to become “America’s best small state law school.” Already, the College is setting new records in the credentials and diversity of its incoming students. The professional and academic qualifications of new faculty hires are exceptionally competitive by national standards. The College’s clinic repeatedly has earned published praise from judges who see the work of students first-hand. The College’s new annual symposium on international law has attracted scholars and policy-makers from around the world. The College is partnering with the bench and bar with innovative programs on ethics and professionalism. The reasons abound for us to be proud of our law school.

However, there is still much to be done to accomplish our goals. Additional faculty staffing, improved technology and increased classroom facilities top the list. Your contributions to the College of Law are most appreciated and I urge you to continue your support.

Best regards,

James E. Whistler ’73

---

James E. Whistler, ’73, Chair
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San Diego, California

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Benoit Alexander Harwood
High & Valdez, LLP
Twin Falls, Idaho

Sally Geisler Bagshaw, ’76
King County Prosecuting Attorney’s Office
Seattle, Washington

Laura MacGregor Bettis ’03
Holland and Hart LLP
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Allen Derr Law Office
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English Law Offices
Hayden, Idaho

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Lewiston, Idaho

Briane “Nels” Nelson Mitchell, ’78
Attorney at Law
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Nixon Law Office
Coeur d’Alene, Idaho

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Hon. John Stegner, ’82
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Supreme Court
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Paul Larry Westberg, ’68
Dennis E. Wheeler, ’67*
† denotes deceased
* Indicates Past Chair
New Faces, New Strengths: College Gains Professional Staff

Two alumnae of the University of Idaho College of Law and a recent graduate of the University of Texas School of Law have joined the College’s professional staff. Michele R. Bartlett is the Director of Development; Anne-Marie Fulfer, Director of Career Services; and Stephen Perez, Director of Admissions/Student Services.

Prior to joining the College as Director of Development, Ms. Bartlett, Class of 1996, served as a Deputy Attorney General in the Consumer Protection Unit, Civil Litigation Division, of the Idaho Attorney General’s Office. During her tenure there, Ms. Bartlett volunteered much of her free time to local charities by serving on their governing boards and raising funds. She says, “I see the position of Development Director as a bringing together of two worlds that I really enjoy, the law and the non-profit world. Hopefully, by raising funds for the law school, I can make a difference in the quality of the legal education provided to law students in Idaho.” From her office in the University of Idaho Boise Center, Ms. Bartlett, who is also the president of the Fourth District Bar Association, says she looks “forward to continuing the excellent work that has been initiated by those that have come before me.” She adds that she also hopes to strengthen the College’s ties with its alumni.

Like Ms. Bartlett, Anne-Marie Fulfer is a graduate of the University of Idaho College of Law. A native of California, Ms. Fulfer earned a Bachelor of Arts degree in Comparative Literature from the University of California-Davis in 1986 and then went on to establish a career in import management in Sonoma, California. Ms. Fulfer left California to marry Sunil Ramalingam, Class of 1997, now a partner in the firm of Knowlton and Miles, Lewiston. After earning her J.D., Class of 1999, Ms. Fulfer joined the staff of the Law Library, serving as Acquisitions and Information Specialist until assuming the directorship of Career Services.

Formerly a half-time position, the directorship has been expanded to full-time, enabling Ms. Fulfer to focus more attention on students and their needs and to initiate greater outreach to potential employers. To better serve students, Ms. Fulfer is making information about career opportunities accessible through the College’s new electronic intranet. She is also expanding the number and type of workshops and lectures on job-hunting skills and is in the process of developing a new series on methods of integrating professional service values with the demands of a career. “My goal,” she says, “is to help students acquire or hone the tools they need to begin their careers. I also want to help students decide what they want their careers to be and to show them how to achieve those career goals.”

Stephen M. Perez, Director of Admissions/Student Services, joined the professional staff at the start of the 2004-05 academic term. A native of Falfurrias, Texas, a small town south of San Antonio, Mr. Perez graduated from the University of Texas School of Law in May 2004. As a law student, he was a member of the second-year interscholastic mock trial team and an officer with the Chicano/Hispanic Law Students Association. In addition, he was actively involved with admissions and recruitment, serving as Chair of the Student Recruitment and Orientation Committee. He says, “I knew I enjoyed the work I did recruiting and counseling future law students at U.T., so following graduation, I decided to pursue a professional position in admissions. I am grateful to Dean Burnett and everyone here at the College of Law for giving me that opportunity.”

To maintain the quality of the College’s admissions program, Mr. Perez says he plans to build new relationships in order to broaden the College’s applicant pool. For example, he will speak at a law school preparation program at the University of Texas-El Paso. He explains, “I want to tell students who aren’t familiar with Idaho just how much the College has to offer and show them why the University of Idaho should be on everyone’s short list of law schools.”

Several members from the class of 1979 and 1984 assembled during the Bellwood activities in October. Pictured left to right: front row - Tony Riposta, Professor Craig Lewis, Jim Siebe. Back row - Paul Reilly, Dennis Johnson, Tom High, Jim Meservy, Mike Burkett.
New Entering Class Raises the Bar for Quality and Diversity

This August the College of Law welcomed one of the most talented and diverse classes in its history. The 114 matriculating students came from a pool of 948 applicants, and the new 1L students brought with them a median LSAT score of 156 (64th national percentile), which is believed to be the highest ever recorded at the College of Law. The entering class also brings a median undergraduate grade point average of 3.39.

Women comprise 40% of the class, and minority students represent 16% (another record figure). Students qualifying as Idaho residents constitute 60% of the entering class, demonstrating the College’s ongoing success in attracting many of the state’s best and brightest.

Hiring Idaho Grads: Class of 2003

Employment by Location, six months after graduation

<table>
<thead>
<tr>
<th>Location</th>
<th>Graduates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Idaho</td>
<td>53</td>
</tr>
<tr>
<td>Montana</td>
<td>2</td>
</tr>
<tr>
<td>Washington</td>
<td>11</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1</td>
</tr>
<tr>
<td>Total graduates</td>
<td>95</td>
</tr>
</tbody>
</table>

Employment by Type

<table>
<thead>
<tr>
<th>Employment Type</th>
<th>Graduates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time student/Studying for Bar</td>
<td>11</td>
</tr>
<tr>
<td>Unemployed/Seeking/Not seeking</td>
<td>3</td>
</tr>
<tr>
<td>Total graduates</td>
<td>95</td>
</tr>
</tbody>
</table>

Employment Location in Idaho

- Boise/Caldwell area: 27
- Pocatello/Idaho Falls area: 6
- Twin Falls/Burley area: 7
- Salmon/Hailey area: 2
- North Idaho area: 10

*Includes university support.

**Financial aid; $157,825 from Law School Endowment income, $6,435 from $206,280 from Law Student Fees, $60,000 from non-resident tuition waivers, and $72,892 from other University unrestricted funds.
Funding for Excellence:  
Annual Fund and Endowments Grow

During the fiscal year ending June 30, 2004, the College of Law received $905,222 in gifts and pledges. This amount is the highest figure attained by the College of Law in a year when giving totals were not dominated by single large gifts or bequests such as the Bellwood, Schimke and Ellis endowments. As of June 30, 2004, the endowment principal at market value (all endowments combined) was $8,902,782, up from $7,941,955 the previous year. From endowment earnings, $291,064 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 of the College of Law and the legal education Idaho provides. If you are considering establishing an endowment or recurring fund (our 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;

Endowments:
Judge J. Blaine Anderson Memorial Scholarship Endowment
Bernice Bacharach College of Law Endowment
Bernice Bacharach College of Law Scholarship Endowment
Leland D. Beckman Foundation Law Scholarship Endowment
Sherman J. Bellwood Lectures Endowment
Herbert A. Berman Memorial Scholarship Endowment
Laurence S. Bogert Memorial Lecture in Law and Business
Justice Alfred Budge Visiting Jurist Endowment
Cenarrusa Eiguren Endowment
William H. Clagett Memorial Endowment
Robert H. Copple Memorial Law Endowment
John S. Cushman Scholarship Endowment
Charles H. Darling Law Scholarship Endowment
Burton F. “Humpy” Ellis and Dee H. Ellis Academic Excellence Endowment
Paul Ennis Memorial Scholarship Endowment
Felton Family Law Scholarship Endowment
William and Carolyn Folz Scholarship Endowment Fund
Chester and Blanche Carrel Graham Scholarship Endowment
Judge Alfred C. Hagan Memorial Law Endowment
C. J. and Janice O. Hamilton Law School Endowment
Peter E. Heiser, Jr., Memorial Scholarship Endowment
H.F.C. Scholarship
Idaho Law Review Endowment
Langroise Law Scholarship Endowment
College of Law Centennial Endowment
MacLane Law Scholarship
Howard I. Manweiler Memorial Law Scholarship
Judge Ray C. McNichols Memorial Fund
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L. Edward Miller College of Law Scholarship Endowment
Richard B. Minas Law Scholarship
Anthony A. Nelson Scholarship
Nixon Family Law Endowment
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A. J. G. Priest Law Scholarship Endowment
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John A. Rosholt Roundtable Endowment for Visiting Professionals
Judge Harold L. Ryan Law Scholarship Endowment
Judge Charles and Audrey Scoggin Memorial Scholarship Endowment
Allan Shepard Visiting Jurist Program Endowment

Frank A. Shrontz College of Law Scholarship Endowment
J. Lael Simmons Law School Endowment
Nick Speropulos Memorial Scholarship Endowment
Willis E. Sullivan, Sr., Memorial College of Law Scholarship
Randall Wallis Law Scholarship Endowment
George T. Warren Law Scholarship
Whittenberger Foundation/Dean E. Miller Law Library Memorial Endowment
James E. Wilson Memorial Endowment Fund

Named scholarships, fellowships and programs that are not endowed, but are supported each year by annual gifts:
American Indian Law Initiatives
College of Law Innocence Program
College of Law Library
Copple/BSU Law Scholarship Fund
Eberle Berlin College of Law Scholarship
L.E. Elam Memorial Law Fund
Holland & Hart LLP Idaho Law Scholarship
Idaho Law Review
Law Class of 1973 Fund
Law Class of 1978 Fund
Law Dean’s Fund for Excellence
Law Public Interest Fellowship
Minas-Hansen-Slavin Memorial Law Fund
NNU Scholar College of Law Scholarship
James E. Rogers Distinguished Professorship in Law
James E. Rogers Fellow in American Indian Law
James E. Rogers Scholarship Challenge
Schreck Professionalism Fund
Stoel Rives Law Scholarship
Fred M. Taylor Memorial Law Fund
Douglas VanderBoegh Memorial Law Scholarship
Lucinda Weiss College of Law Fund
Dennis E. and Jacqueline R. Wheeler College of Law Scholarship
College of Law
Donor Roll

The contributions from friends and alumni support our efforts to attract and educate highly qualified students. The following list honors those who have generously donated to the College of Law only, throughout the fiscal year July 1, 2003 through June 30, 2004.

† indicates deceased

University of Idaho

Gem Society
Law alumni and friends, corporations and/or law firms whose cumulative giving to the University of Idaho and/or the College of Law totals $1,000,000 or more.
Burton F. ’33† and Dee H. Ellis†
William E. and Carolyn A. Folz†
George T. Warren ’17 †
L. Weldon’31† and Margaret Wilson Schimke†

University of Idaho

Syringa Society
Law alumni and friends, corporations and/or law firms whose cumulative giving to the University of Idaho and/or the College of Law totals $500,000 or more.
Sherman J. Bellwood † ’38
Idaho Power Company
James E. and Beverly B. Rogers
Jean A. Sullivan

University of Idaho

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Law alumni and friends who have cumulative giving to the University of Idaho and/or the College of Law of $100,000. Corporations, Foundations and/or law firms who have cumulative giving to the University of Idaho and/or the College of Law of $250,000 or more.
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Bacharach, B. Bernice ’42
Rogers, James E. and Beverly B.
Sullivan, Jean A.

Alumni and friends who made annual gifts or pledged $10,000 to $19,999, FY04, to the College of Law. Corporations, Foundations and/or law firms who made annual gifts or pledged to the College of Law of $20,000 to $49,999, FY04.
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Elsaesser, John Ford ’78 and Jean M.

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Holland & Hart LLP, Denver, CO
Sunbelt Communications, Las Vegas, NV
Stoel Rives LLP, Boise, ID

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Mitchell, Brieane Nelson “Nels” ’78 and Suzanne H.
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Simmons, June V.
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Wheeler, Dennis E., ’67 and Jacqueline R.

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Jones, L. Lamont ’58 and Susan H.
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Killen William Michael ’76
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How to Reach Us
Visit us on the World Wide Web, our address is: www.law.uidaho.edu

Mailing Addresses: University of Idaho College of Law PO Box 442321 Moscow, Idaho 83844-2321 UI Boise Center 800 Park Blvd., Ste 200 Boise ID 83712

Main Fax: (208) 885-5709
Dean's Office & General Inquiries: (208) 885-4977
Sande Schlueker, sandes@uidaho.edu

Business Manager: (208) 885-6208
Linda Kiss, kiss@uidaho.edu

Development/UI Boise Center: (208) 364-4044
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Fax: (208) 364-4078

Faculty Members: (208) 885-2256
First Floor: Susan Troyano, susant@uidaho.edu
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