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Cover painting: “Upper Creek/Silver Creek,” pastel, Jim Palmersheim, Moscow
Seeing Beyond Boundaries

The German philosopher Arthur Schopenhauer once observed, “Everyone takes the limits of his own vision for the limits of the world.” To Schopenhauer’s nineteenth-century pessimism, however, there was an antidote in the twentieth-century optimism of Louis Brandeis. Modern universities, Justice Brandeis believed, could dissolve limits and empower bold minds. “The aim must be high,” he said, “and the vision broad.”

Legal education, at its best, expresses broad visions. Great law schools, like the great universities that sustain them, look beyond the horizon of the familiar. They provide, of course, a thorough education in the discipline of law; but they also undertake to enrich the law itself with interdisciplinary perspectives and to improve the performance of legal institutions with innovative research and outreach. They are restless places; they do not stop, with smug satisfaction, at comfortable boundaries.

At the University of Idaho College of Law, we are crossing boundaries as we perform our mission of service to Idaho and the American West. Here are three examples:

* No challenge could be more important to the viability of human communities and natural ecosystems in the West than managing our surface and groundwater resources effectively. Neither could any challenge more plainly surpass jurisdictional or academic boundaries. The College of Law, in cooperation with six other colleges and thirteen departments at the University of Idaho, is creating a “Water of the West” program that will combine science and law in the examination of water resource issues. As explained elsewhere in this Annual Report, the program is one of five new initiatives selected for strategic investment in UI President Timothy White’s “Plan for Renewal.”

  Popularly (and unabashedly) known as “WoW,” this distinctive program will undertake collaborative, holistic research projects on water resources in specific geographic basins. In addition, it will augment the curricular offerings available to J.D. degree students, and it will enable interested students to combine their law degrees with M.S. or Ph.D. degrees in water resources law, management, and policy. These “WoW” graduates will find there is an extraordinary demand for their analytical and problem-solving capabilities.

* Every year the College of Law crosses boundaries in another way, reaching across national borders to present a symposium on an international law topic that resonates with issues in Idaho and the West. Since 2003, the symposium series has addressed transboundary environmental disputes, illustrated by the Trail Smelter controversy in British Columbia and the Pacific Northwest; post-conflict justice, exemplified by efforts to bring legal accountability to violent struggles in places as diverse as Iraq, Sierra Leone, and the Basque Country of Spain (where many southwestern Idahoans trace their heritage); and frameworks for international organization, symbolized in a modern context by the classic debate over internationalism in the 1930s between Harvard scholar Manley Hudson and Idaho’s legendary senator William E. Borah.

  In 2006, as explained elsewhere in this report, our international law symposium recently featured the human rights of indigenous peoples, utilizing as a case study the Western Shoshone land claim and the personal saga of charismatic Shoshone leader Carrie Dann. In 2007 our attention will shift to international trade, focusing on the Canada-U.S. softwood lumber dispute. At that symposium, like every symposium to date, global scholars and policymakers will come to Idaho, discovering our state’s natural beauty while subjecting their ideas to collegial scrutiny in a rigorous, cross-disciplinary forum.

* This year the College of Law has constructed a bridge spanning yet another boundary – the traditional divide between the academic and professional dimensions of legal education. With high levels of support from the bench, bar, faculty, and students, the College has established a universal pro bono program that will engage every student admitted in 2006 and thereafter in a substantial, law-related work of donated public service. The program, described more fully elsewhere in this publication, will deepen our students’ understanding of every lawyer’s professional obligation to provide pro bono service. Equally important, it will provide an opportunity for all students to apply their knowledge outside the classroom, under professional supervision, to projects in Idaho and elsewhere, enhancing access to justice or otherwise improving our legal system. The students will have reason to be proud of their work, and we to be proud of them.

None of these boundary crossings would be possible without the generosity of alumni and friends of the University of Idaho. To everyone whose gift of money or time has underwritten a new program or has sustained the ongoing commitment to excellence at the College of Law, I offer the heartfelt thanks of our faculty, staff, and students. To all the readers of this report we extend our warmest wishes for a happy and fulfilling new year in 2007. May it be a time when you, too, command a broad vision and transcend old boundaries.

Dean and Foundation Professor of Law
2006 BELLWOOD LECTURE

National Security and the Constitution

Crowning a series of programs constituting the 2006 Sherman J. Bellwood Lecture was a dialogue between former U.S. Senators Gary Hart of Colorado and Alan Simpson of Wyoming, held in the University of Idaho Student Union Building Ballroom on Thursday, October 12. The topic of the discussion was national security and the Constitution in an age of terrorism.

After welcoming guests and members of the audience on what he called the “one of the most noteworthy days of the academic year,” University of Idaho College of Law Dean Don Burnett introduced the members of the Platform Party: Senators Hart and Simpson; Timothy White, President, University of Idaho; Douglas Baker, Provost, University of Idaho; David Hensley, Legal Counsel to Idaho Governor James Risch; C. Timothy Hopkins, Chair, Law Advisory Council; Laird Stone, Chair, Board of Regents; Terry White, President-Elect, Idaho State Bar; Russell Miller, Professor, College of Law; Richard Seamon, Associate Dean for Administration and Students, College of Law; and Pele Peacock, President, Student Bar Association, University of Idaho.

Following greetings from President White and David Hensley, on behalf of Governor James Risch, College of Law Professor, and dialogue moderator, Richard Seamon introduced Senators Hart and Simpson. Senator Hart represented Colorado in the U.S. Senate as a Democrat from 1975 to 1987. In 1984 and 1988, he was a candidate for his party’s nomination for president. He was a member of the Select Committee to Study Governmental Operations in Respect to Intelligence Activities (the Church Committee) and also served on the Armed Services Committee, the Senate Environment Committee, Budget Committee, and Intelligence Oversight Committee. During his Senate years, Senator Hart played a leadership role in major environmental and conservation legislation, military reform initiatives, new initiatives to advance the information revolution, and new directions in foreign policy.

Since retiring from the Senate, Senator Hart has been extensively involved in international law and business, as a strategic advisor to major U.S. corporations, an educator, author, and lecturer. He currently is Wirth Chair Professor in the Graduate School of Public Affairs at the University of Colorado at Denver and is Distinguished Fellow at the New America Foundation. Senator Hart co-chaired the U.S. Commission on National Security for the 21st Century, a bipartisan committee charted by the U.S. Department of Defense. The Commission performed the most comprehensive review of national security since 1947, predicted the terrorist attacks on the U.S., and proposed a sweeping overhaul of American security structures and policies for the post-Cold War era and the age of terrorism. Senator Hart resides with his family in Kittredge, Colorado.

Senator Simpson, an accomplished lawyer and former assistant attorney general of Wyoming, began his political career in 1964 when he was elected to the Wyoming House of Representatives. A Republican, he served for the next 13 years, holding the offices of majority whip, majority floor leader, and speaker pro-tem. In 1978, Senator Simpson was elected to the U.S. Senate. Following his first term there, he was elected by his peers as assistant majority leader, serving in that role until 1994. During his tenure in the Senate, Senator Simpson chaired the Committee on Veterans’ Affairs and the Judiciary’s Subcommittee on Immigration. He completed his final term in January 1997.

Following his service in Washington, D.C., Senator Simpson was a visiting lecturer in the John F. Kennedy School of Government at Harvard University, where he also served two years as Director of the Institute of Politics. In 2000, he returned to his alma mater, the University of Wyoming, as a visiting lecturer in the political science department. There, he co-teaches with his brother Peter (also a former state legislator) a course entitled “Wyoming’s Political Identity: Its History and Politics.” Senator Simpson is a partner in the firm of Simpson, Kepler & Edwards in Cody (a division of the Denver firm of Burg Simpson Eldredge Hersh & Jardine). He is a member of the American Battle Monuments Commission and numerous other corporate and non-profit boards. He resides with his family in Kittredge, Colorado.

“We must insist on due process for all those we accuse. We do not protect ourselves by descending to the level of our enemies.”
family in Cody, Wyoming.

In response to Professor Seamon’s first question, Senators Hart and Simpson agreed that international terrorism is completely different from threats the nation has experienced in the past. Senator Hart explained the nation is currently using 20th century methods to attack and defend against an 11th century type of warfare. The methods used by jihadists and stateless nations follow “no rules [of recognized warfare]. Civilians are targeted, and the Geneva Conventions are not obeyed.” Senator Simpson concurred, providing examples of the difference, such as the use of suicide bombings and public beheadings. “These people [terrorists] are not interested in military targets, only in attacking innocents,” he said.

Senator Simpson responded first to Professor Seamon’s question about the Bush administration’s determination that legal combatants should not be entitled to prisoner of war protections and other international protections. The Wyoming statesman urged those present to read the Executive Order that President George W. Bush issued authorizing the detainment of individuals at the Guantánamo Bay Naval Base, which addresses, “human rights, trials, the recognition of religion, and proper food, shelter and clothing” for the detainees. Senator Simpson implied that outrage concerning the treatment of people in the camp stemmed, not from actual conditions nor the treatment of detainees, but from hatred for President Bush and Vice President Dick Cheney. “A lot of this [indignation] is pure disgust, pure hatred of these two people,” said Senator Simpson, referring to President Bush and Vice President Cheney.

“People need to drain themselves of hatred,” he added, to which Senator Hart replied, “People also need to drain themselves of hatred for Bill and Hillary Clinton,” a response that garnered both laughter and applause. Senator Hart added, “We do not have Constitutional guarantees of due process to protect criminals. We have them to protect our own civilization. Erosion of due process protections harms us. We must insist on due process for all those we accuse. We do not protect ourselves by descending to the level of our enemies.”

“Are we in fact at war,” asked Professor Seamon, “when there has been no congressional declaration?” Said Senator Simpson after expressing his opinion that the War Powers Clause of the Constitution is ambiguous, “We may well be because we’ve never had an enemy like this.” Liking contemporary terrorist organizations to organized crime, Senator Hart explained that conventional warfare would not work against 21st century jihadists. “What is needed is intelligence and special forces,” he said.

Professor Seamon’s next question concerned the concept of national sovereignty. In an age of international terrorism, do we need to rethink what it means to be a nation? “National sovereignty,” said Senator Hart, “is the greatest political issue of our day. Most problems today, such as north-south migration, are international in scope. We cannot solve them ourselves, and they do not lend themselves to military solutions.” Senator Simpson agreed, using his personal experience as a member of a panel studying the war in Iraq to demonstrate his point. He explained that the search for solutions to problems involving Iraq must include talks with leaders from Syria and Iran.

“If we are indeed at war, one that appears to be indefinite in duration,” asked Professor Seamon, “how do we gauge limits on presidential power?” By avoiding a declaration of war, said Senator Hart, Congress has abdicated its constitutional responsibility and allowed the executive branch to assume power beyond its constitutional authority. Senator Simpson agreed, saying that President Bush and Vice President Cheney have “gathered a lot of power in the executive [branch].” To Professor Seamon’s follow-up question, both senators agreed that Congress has not been effective in keeping the executive branch accountable.

Professor Seamon’s final question addressed the environment in which public debate occurs. He asked, “Is there more extremism and less civility in Congress?” “Yes,” said Senator Simpson but added that the “breakdown of civility did not start in Congress.” Using a variety of examples, ranging from the Little League to the entertainment industry, he said that the absence of civility is “deep-seated and everywhere.” He also derided the tendency of contemporary legislators to forsake “real” issues, such as the status of Social Security and the handling of nuclear waste, for “hot button” issues such as abortion and stem cell research. Senator Hart observed that political behavior does appear to have “moved beyond” values traditionally associated with the Republican and Democratic parties.

The dialogue concluded with Senators Hart and Simpson responding to questions from members of the audience, ranging from ways to reinvigorate congressional oversight of presidential power, to deal with security threats that originate domestically, to help young journalists better cover political events, and to reduce voter apathy. After Dean Burnett adjourned the dialogue, members of the Platform Party greeted the public at a reception in the lobby of the Student Union Building. *
Democracy and National Security: Contemporary Issues

On Wednesday, October 11, a panel of distinguished experts discussed current issues all related to the difficult task of preserving the balance between fulfilling the security interests of the nation and preserving the civil liberties and privacy of its citizens. Joining Senator Alan Simpson (R-WY) were David Adler, Professor of Political Science, Idaho State University; Elizabeth Brandt, Associate Dean for Faculty Affairs, University of Idaho College of Law; Michael Greenlee, Access Services/Reference Librarian, Assistant Professor, University of Idaho College of Law; Monica Schurtman, Associate Professor of Law, University of Idaho College of Law; and Russell Miller, Associate Professor, University of Idaho College of Law. Associate Dean Elizabeth Brandt moderated the discussion.

Adler, Professor of Political Science, Idaho State University; Elizabeth Brandt, Associate Dean for Faculty Affairs, University of Idaho College of Law; Michael Greenlee, Access Services/Reference Librarian, Assistant Professor, University of Idaho College of Law; Monica Schurtman, Associate Professor of Law, University of Idaho College of Law; and Alan Williams, Associate Professor, University of Idaho College of Law. Associate Dean Brandt moderated the discussion.

Professor Adler, a constitutional scholar who has written on the presidency, the war powers, and the governance of American foreign relations, spoke specifically on presidential authority as commander-in-chief. Adler argued that President George W. Bush has interpreted the commander-in-chief clause of the Constitution as granting him “illimitable and unaccountable executive power.” No executive in Anglo-American history, he said, has held such expansive authority since Oliver Cromwell. Supporting his argument through the use of historical examples, Adler concluded that the assumption of unlimited power by the executive is not only contradictory to the intent of the constitutional framers but is also a threat to democratic values.

Professor Williams argued for the enactment of “specific intent” legislation that would address the use of the Internet to aid terrorist organizations. citing the unsuccessful prosecution of former University of Idaho student Sami Omar Al-Hussayen under the federal Providing Material Support to Terrorist statute. Williams argued that the nation is in a de facto state of war, with several theatres of combat, including cyberspace. To conclude his argument that certain actions related to the use of the Internet by terrorist organizations should be criminalized, Williams urged the nation to address the threat of terrorism in a legal manner.

Professor Schurtman spoke on efforts since September 11, 2001, to place restraints on the Freedom of Information Act. Noting that 2006 marks the 40th anniversary of the Act, Schurtman cited recent actions taken by both the legislative branch and the executive branch that represent “a movement away from openness.” She concluded with a call to be watchful of attempts to place increasing constraints on access to government information in the name of national security.

Professor Greenlee presented a brief history of national security letters as an “excellent example of trying to balance privacy and First Amendment interests with national security interests.” Greenlee explained that national security letters are a type of administrative subpoena. Once used only by the Federal Bureau of Investigation, they are now available to any federal agency conducting an investigation or analyzing foreign terrorism. He also described two recent court cases that found the lack of judicial review and the broad application of permanent gag orders common to all national security letters to violate the Fourth and First Amendments of the U.S. Constitution. Greenlee concluded by questioning whether the recent amendments made to national security letters in the USA Patriot Improvement and Reauthorization Act had corrected these constitutional deficiencies.

Associate Dean Elizabeth Brandt examined Supreme Court decisions regarding the freedom of association. She argued that such recent actions as federal sanctions against targeted groups, rather than countries or individuals, and the use of data-mining techniques by the National Security Agency, are “worrisome” and “chilling of associational rights.” To presume and target an investigation based on association, with no consideration of intent and no factual development, is a threat to First Amendment rights, Professor Brandt argued. In conclusion, she spoke to the dangers of assuming that an individual supports an organization’s policies and actions simply because he or she is a member, citing the McCarthyism of the 1950s as an example of the consequences of such behavior.

Professor Russell Miller also used historical events to illustrate his discussion of “militant democracy,” opening with a description of the 1933 Reichstag fire that began the rise of Adolph Hitler to power. Adopted in Germany following the defeat of Nazism, a militant democracy, explained Professor Miller, is a type of democracy that is constitutionally authorized to act antidemocratically in response to threats against the democracy itself. The constitution of a militant democracy may include measures to prohibit subversive groups or to establish political police for the control of anti-
The Idaho Connection: The Church Committee and Its Relevance Today

The legacy of the distinguished Idaho statesman, Frank Church, and the Senate committee he chaired in the 1970s to investigate the nation’s intelligence services, was the focus of a panel discussion held on Thursday, October 12. Senator Church (1924-1984), who represented Idaho in the U.S. Senate from 1957 to 1981, was Chairman of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (1975-1976), what came to be known as the Church Committee.

Senator Church led the first independent examination of the American intelligence community’s Cold War activities; his determination to expose and correct abuses of civil liberties and violations of the law by the Central Intelligence Agency and the Federal Bureau of Investigation resulted in the publication of 14 volumes of reports, the Foreign Intelligence Surveillance Act and the Foreign Intelligence Surveillance Court.

Following Dean Don Burnett’s welcome, and his expression of thanks to University of Idaho College of Law Professor Russell Miller for his leadership in coordinating the events of this year’s Bellwood Lecture, Professor Miller introduced the members of the panel: Kathy Aiken, Professor of History and Dean, University of Idaho College of Letters, Arts & Sciences; LeRoy Ashby, Regents Professor and Claudia O. and Mary Johnson Distinguished Professor of History, Washington State University; Senator Gary Hart, Wirth Chair Professor, Graduate School of Public Affairs, University of Colorado; Loch K. Johnson, Regents Professor of Public and International Affairs, University of Georgia; and Frederick A.O. Schwarz, Jr., Partner – Cravath, Swaine & Moore, and Fellow at the Brennan Center for Justice, New York University School of Law.

Professor Loch, former staff assistant to Senator Church and now considered the nation’s leading historian of the U.S. intelligence community, stated that the Church Committee helped return the American government to its founding principles by restoring safeguards against the abuse of concentrated power. As a result of the Committee’s findings, he said, a new era of intelligence accountability was introduced.

Author of Fighting the Odds, a biography of Senator Church, Professor LeRoy Ashby described the work of the Church Committee as a “luminous episode in American history.” Formed as the Cold War consensus was weakening, the Committee occurred within the context of an “historical crease” that led to the re-evaluation of dominant perceptions regarding the role of the intelligence community, presidential power, and secrecy in government. In light of current events such as growing public dissatisfaction with the conduct of the war in Iraq and a drop in the popularity of President Bush, Professor Ashby considered if a new historical crease might be evolving. However, he concluded that two important factors are now missing: a non-partisan Congress and a crusader like Senator Church seeking “to salvage America’s freedoms.”

Professor Kathy Aiken, a scholar of Idaho and national politics, took a close look at the Idaho connection to the Church Committee by examining the correspondence between Senator Church and his constituents while the Committee was in session. As a result of her research, Professor Aiken drew several conclusions about the attitudes of Idahoans concerning the work of the Committee – attitudes, she said, that resonate today in discussions of national security. Despite a persisting perception that Idahoans care little for foreign affairs, she found that Idahoans were in fact cognizant of the activities of the Church Committee; some were supportive and others were not. Through their letters to Senator Church, Idahoans expressed concern that the revelations made by the Committee would harm the nation’s image abroad; others worried that the Committee’s efforts would damage the ability of the intelligence community to protect national interests. Perhaps characteristically, some Idahoans worried about the cost of the investigation, and others felt that it was Senator Church’s job to concentrate on Idaho’s problems, not the nation’s.

Frederick (“Fritz”) Schwarz, who served as Counsel to the Church Committee, praised the work of the Committee members and staff, with special compliments for Senator Hart, a member of the Committee, and Professor Johnson, staff assistant to Senator Church. Schwarz credited much of the success of the Committee to Senator Church’s determination that the Committee should not simply solicit opinions from intelligence experts but would “actually get the facts.” He said the Committee mattered because it addressed the major factors that led to intelligence abuses: vague laws, instructions...

Continued on page 8
Pro Bono Publico Service Program Established

The University of Idaho College of Law joins a small vanguard of American law schools in establishing a pro bono publico service program for its students. Effective with the Class of 2009, each University of Idaho law student must complete 40 hours of pro bono legal service as a condition of graduation. The College’s pro bono requirement is unique among law schools in the Northwest: the service must not only be law-related, it also must be strictly for free and not for credit.

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The program, described as “a bridge-building program linking the academy and the profession,” is very close to the heart of Dean Don Burnett. “The purpose of the public service requirement,” he explains, “is to expose students to the core value of service in the legal profession. If members of the legal profession are expected to perform pro bono work, then a law school should provide experiential learning in public service.”

John “Jack” McMahon, former President of the Idaho State Bar, developed the program, working with Dean Burnett, members of the faculty and the bar, and student leaders. McMahon, who received his J.D. from Harvard Law School, also serves as program director. Initial funding for the program has come from Idaho’s district bar associations and from attorney John A. Church (‘66).

Students may choose among a wide range of pro bono opportunities in public or private settings, such as legal service organizations, government agencies, non-profits, public defenders, and legislative offices. A few specific examples include Advocates for the West, Catholic Charities of Idaho, Idaho Legal Aid Services, Idaho Women’s Network, Idaho Innocence Project, U.S. District Court Pro Bono Program, and the Idaho Supreme Court. Students also may create their own pro bono projects, subject to approval.

An advisory committee of faculty members and students will work with McMahon to approve pro bono placements, increase student involvement, and evaluate the effectiveness of the program. The program is expected to be sustained with support of the bar and private donors.

To date, student interest in the program has been positive. Over 50 students attended an informational session about the program held at the beginning of the 2006 Fall term. As program director Jack McMahon explained during the session, the Pro Bono Program “is an opportunity for students to use their skills, meet interesting people, and make a difference.”

Democracy, continued from page 6

democratic and anti-constitutional activities. Citing the recent unsuccessful effort of the German government to ban a political party, Professor Miller argued that the concept of militant democracy is significant to current conditions because it represents an attempt to “embed into a constitution how a society should respond to a threat.”

Senator Alan Simpson concluded the panel discussion by sharing his observations on the issues that had been discussed. Delivered with his characteristically Western wit, Senator Simpson held lively, critical, but always collegial debate with the panelists and audience members. Senator Simpson and Professor Adler engaged in a spirited discussion on the historical use of presidential war powers, drawing comparisons between President Lincoln’s suspension of habeas corpus during the Civil War and President Roosevelt’s internment of the Japanese in World War II as well as the current detention of prisoners at Guantánamo Bay, Cuba. Commenting on the current atmosphere in politics and the media, in which reasonable discussion is being replaced with name-calling, sarcasm, and in many cases, outright hatred, Senator Simpson cautioned the audience to remember that, “hate corrodes the vessel in which it is stored.”

Church Committee, continued from page 7

issued as “winks and nods,” an assumption of permanent secrecy, and an absence of congressional oversight.

Senator Gary Hart concluded the panel discussion. New to the Senate when appointed to the Church Committee, Senator Hart said he “grew up very, very fast” serving on the Committee. Using his personal experience investigating an alleged alliance between the Central Intelligence Agency and the American mafia to assassinate Cuban leader Fidel Castro as an example, Senator Hart said that the Church Committee revealed that American leaders had chosen expediency over principle “again and again.” He listed four reforms that came as a result of the Committee’s work, the Foreign Intelligence Surveillance Act, the Intelligence Identification Protection Act, the requirement that a presidential finding be written to authorize covert action, and the requirement that Congress oversee the actions of the Executive branch. In conclusion, Senator Hart said that the United States, with its “irrepressible sense of idealism,” is unique among great nations. “Powerful economically, politically, and militarily, we undercut our greatest power – our ideals – when we violate our principles.”
Water of the West Initiative Selected for Funding

Water of the West, an interdisciplinary initiative developed by Agricultural Engineering Professor Jan Boll and Law Professor Barbara Cosens, with colleagues across the University of Idaho, was among five proposals selected in April 2006 to share in a five-year, $5.5 million strategic investment program at the University. The announcement of funded projects culminated a year-long effort by the University to reinvest in strategic and multidisciplinary academic areas. The initiatives were recommended to University of Idaho Provost Doug Baker by the University’s Blue Ribbon Committee and were judged to hold high promise for advancing excellence in thematic areas identified last year in University of Idaho President Timothy P. White’s “Plan for Renewal.” Among the 11 members serving on the Blue Ribbon Committee was Law Professor Monique Lilliard.

With approximately 50 participants throughout the University of Idaho, the Water of the West initiative addresses the need to develop sustainable uses of water, an increasingly precious resource, especially in the western United States, where seven of the ten fastest growing cities in the United States are located. In their proposal, the initiative’s principal investigators, totaling 49 in number, explain that the current delineation among water science, engineering, and law and policy inhibits efforts to develop a sustainable water future. To achieve a sustainable water future, they argue, the current compartmentalized approach to managing water resources must be transformed to one that integrates many disciplines, including science, engineering, law, and public policy. This transformation of the decision-making process begins with higher education. The University of Idaho, explain the investigators, must take the next critical step to provide engineers, scientists, lawyers, managers, leaders, and citizens with an integrated knowledge of water resource management.

Under the Initiative, a new Water Resources Graduate Program under the Colleges of Graduate Studies and Law will be established. The program will offer M.S. and Ph.D. degrees in Water Resources with three option areas: Law, Management, and Policy; Science and Management; and Engineering and Science. For each degree, a concurrent J.D. option will be available. The new program will be centered in Moscow with links to satellite campuses and will draw participants from six University colleges. According to the principal investigators, the University of Idaho program is unique; while other American schools may offer interdisciplinary water resources programs, the Idaho program is most likely the only one that incorporates a J.D. component.

An innovative element associated with the initiative is a case study that the principal investigators will conduct. The goal of this study is to convert the University’s current multidisciplinary faculty into an interdisciplinary one that will provide expertise for integrated education and research in water resources. During the course of the study, investigators will study the Palouse Basin (including the Basin’s aquifers, South Fork of the Palouse River, Potlatch River, Paradise Creek, and other locally significant surface water bodies) and collaborate in community-based planning for the Basin. Partial funding for the study, which will provide a framework for future case studies on a larger scale, will be provided by the initiative.

From a legal viewpoint, explain the principal investigators, the Palouse Basin is a fitting location for the case study. The Basin faces the numerous boundary issues ranging from jurisdictional boundaries to ground and surface water boundaries, to the legal separation among water quality, water allocation, and species protection. At the interface between law and policy on the one hand, and science and engineering on the other, are questions concerning the degree of scientific certainty necessary to make decisions, the cost and feasibility of engineering solutions, and the legality of their implementation.

During the first five years, University funding will enable the College to hire a new law professor and a law teaching fellow. The College will use privately raised funds and (as needed) law student professional fee funds to sustain its participation in the initiative after the five-year period. Says Dean Burnett, “Water of the West is an important step toward realization of the Natural Resources and Environmental Law emphasis identified by the law faculty in the College’s Statement of Strategic Direction issued in 2003.”
Friends in Need: The College of Law Emergency Medical Grant Fund

At a time when misfortune has laid them low, University of Idaho College of Law students facing unanticipated medical expenses can look to the College’s Emergency Medical Grant Fund for assistance. The Fund, established in 2001 through a gift from the Schreck Family Foundation, provides financial grants to students who demonstrate financial need based on unexpected medical expenses incurred by the student or a member of the student’s family; the need must be such that it seriously impacts the student’s ability to continue his or her legal education.

Grants from the fund have been made to students injured in accidents, caught short in major medical procedures because of insurance shortfalls, and to cover major unexpected medical problems of family members.

One recipient of a recent award is Robyn Fyffe ’04. Robyn, now with the Boise firm of Nevin, Benjamin and McKay, was injured in an automobile accident while traveling on State Highway 55 near Cascade in January 2004. She sustained an open fracture of her right hand, as well as whiplash and severe bruises. Eventually, it was discovered that her left wrist also had been fractured.

With such serious injuries, Robyn’s road to recovery was lengthy and difficult. After two weeks of recuperation, she returned to classes despite her left arm being in a cast up to her elbow and her right hand having been surgically pinned. “Everything was a challenge,” Robyn recalls. “Worst of all – I couldn’t type! But I had some very good friends and Professor [Monica] Schurtman to help me get to school, carry my stuff, push the cart around the grocery store, do laundry, and otherwise get by.”

As a result of her injuries, Robyn was forced to quit one of her two part-time jobs. Had there been no grant program, she explains, it would have been necessary for her to find another job, which would have meant withdrawing from either some of her classes or from her Clinical responsibilities. “I was very devoted to my Clinic case, and it provided experience that has been instrumental as I have embarked on my legal career. I was very relieved that I didn’t have to drop Clinic after the accident,” she says.

While Robyn’s medical insurance covered 80% of most medical and surgical expenses, she was still responsible for the remaining 20%, which amounted to several thousand dollars. She also incurred expenses for physical and occupational therapy. “The accident couldn’t have come at a more hectic time in my life,” says Robyn, “and the grant money lightened my load at a time when I didn’t think I could take much more. Getting that help was especially meaningful. In addition to the tangible assistance the money provided, the recognition that I had undergone something very difficult and the attempt to alleviate the consequences of my emergency was heartening.”

Like Robyn, Mike Froehlich ’08 and his wife, Mandy, stress how the Emergency Medical Grant eased the burden they were feeling as a result of incurring the expenses of an unexpected major medical procedure. Says Mike, “Before I learned about the grant program, I just felt there were no options. There was so much pressure, and it was such a relief to learn that help was available.” Shortly after Mike began his first year of law school last fall, Mandy underwent, not one but two, surgeries to deal with gallbladder disease.

Through Mandy’s employer, the Froehlichs, who met while both were students at Washington State University, had medical insurance, but it covered only 80% of the medical and surgical expenses. As Mandy says, “20% of $20,000 might as well be $20,000 for people like Mike and me whose budgets don’t have room for major expenses of any kind.” Mandy adds that she and Mike were so thrilled when they learned that the grant would cover the entire insurance shortage that “we literally called everyone we knew.”

In response to the generosity they received from the College of Law, Mike and Mandy are determined to give something back to the law school when they are in a position to do so. “We were in a really scary situation at that time, and it was just amazing that there were such giving people who were so willing to help. We can’t express how grateful we are for the help we received through the fund,” says the couple.

In addition to medical expenses, such as those for Mandy Froehlich’s surgeries, the Fund also covers major unexpected dental expenses. During his first year of law school, Val Dean Dalling ’07 suffered an injury that resulted in two broken front teeth that needed to be reattached and repaired. Although Val Dean carried student health insurance, the difference between his dental expenses and his benefits was substantial. “When I learned that I was qualified for an award from the Fund,” he says, “it was a big relief, and I felt incredibly grateful. The Schreck family is exceptionally generous.” Val Dean adds that the Fund made it possible for him to continue his legal education “without the added burden of a financial setback.”

Students are first advised of the Emergency Medical Grant Fund during student orientation at the beginning of each academic year, and there also is a description in the Student Handbook. Individuals interested in applying for grants initially contact the Associate Dean for Administration who then works with the student to determine the amount of the award, which is based on documentation of incurred expenses. The Fund was started in 2001 with a gift of $10,000 from
the Schreck Family Foundation, and over the years, the Foundation donated an additional $11,000 to the Fund.

Retired University of Idaho College of Law Professor Myron Schreck manages the Schreck Family Foundation, a non-profit charity established by his parents, Sol and Pauline Schreck. Immigrating to North America as adolescents with their parents — Professor Schreck’s mother from the Ukraine just after the Russian Revolution and his father from Germany, just months before Kristallnacht — “both grew up in large poor households and depended upon the charity of other family members as well as the local Jewish communities,” says Professor Schreck.

Married in 1947, after both had served in the U.S. Army during World War II, the Schreck family developed a very successful army surplus business. “Like many immigrants,” says Professor Schreck, “my parents appreciated the opportunities and the civil liberties afforded them in this country. They supported Jewish charities and the State of Israel, and much of their financial giving was done anonymously. In planning their estate, they were naturally attracted to the concept of establishing a charitable trust.”

Made possible through the openhearted generosity of Sol and Pauline Schreck, and the Schreck Family Foundation, the Emergency Medical Grant Fund has made a difference in the lives of University of Idaho law students, providing them with assistance when support is most needed. 

A Glimpse of Scholarship: James Macdonald

From Indigenous Customary Law to Human Rights: “One Law for All”

[NOTE: This is a condensed and otherwise modified version of a paper delivered in connection with the author’s attendance at the 2004 and 2005 annual meetings of the Australasian Law Teachers Association and his sabbatical at the University of Western Australia in Perth during the 2005 – 2006 academic year.]

Introduction

The seed for this essay was planted by the author’s response to several papers presented at the 2004 Australasian Law Teachers Association (ALTA) Conference in Darwin, Northern Territory, Australia. The Darwin papers were generally sympathetic toward the idea of incorporating certain indigenous group customs into the national legal systems of certain Pacific Island and Australasian countries. And this “incorporation” concept did seem to fit nicely with the theme of the 2004 ALTA Conference, “Crossing Boundaries.” Respect for indigenous institutions in general does seem an obvious prerequisite for “crossing the boundaries” between the indigenous and dominant communities. And such respect has clearly been lacking. The generally laudable incorporation proposals, however, evoked a cautionary response from this author in light of the well known problematic customary treatment of women and children in many immigrant and indigenous communities. Not all indigenous custom is worthy of legal recognition!

The Darwin seed was germinated when the theme for the 2005 ALTA Conference at the University of Waikato in Hamilton, New Zealand was announced. “One Law for All” — perfect! It had occurred to this author in Darwin that a promising response to the incorporation suggestions might come by way of analogy to the regime of “equal protection” law under the 14th Amendment to the U.S. Constitution. “One Law for All” may capture the spirit of equal protection of the law almost perfectly. And this spirit leads to one of the conclusions of this paper — where any particular indigenous or immigrant custom is in fact a better way of dealing with a problem, then that approach should be available to and binding on all parties, not just those of indigenous or immigrant identity. In other words, One Law for All!

I. The General Problem – Cultural Pluralism Versus Legal Pluralism

For better or worse (and there is ongoing debate in society if not in the academy), cultural pluralism is a reality in the major western nations. The United States has for at least a century been the paradigmatic “melting pot.” Western Europe has left its historical “whiteness” far behind. And even isolated and historically insular Australia has abandoned its “White Australia” policy.

1. See, e.g., text accompanying notes 7-11.

1 Deidre Howard, Professor at the University of Newcastle, has distinguished “incorporation” and “recognition” of indigenous customary law. She uses “recognition” to describe a dominant power’s formal acknowledgement of an entire parallel indigenous legal system allowed to operate at the discretion of the dominant power’s courts and legislature. “Incorporation,” on the other hand, is used to describe the more limited phenomenon of selective acknowledgement of particular indigenous customary laws in limited particular situations. See Howard, D., 2004, Recognition or incorporation: have the Australian courts and legislatures really moved any closer toward recognizing indigenous customary laws alongside Australia’s legal system, in recent years? 2005 ALTA Conference Proceedings: Darwin: Charles Darwin University.

2 “…nor shall any State…deny to any person…the equal protection of the laws.” U.S. CONSTITUTION amendment XIV, §1.


“The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guarantee against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.
toward immigration. Many embrace, while many others decry, this immutable reality of modern life on our shrunken planet. From either viewpoint, however, it is undeniable that our formerly more unitary national cultures are ever-increasingly diverse. But diverse cuisine is one thing, attire another, religion still another and so on. Diversity in food seems to cause no social problems or unrest; in attire it creates a little more friction; in religion diversity has proven far more problematic. Our focus here of course is law. Can a nation-state have a diversity in applicable law as between therefore legal) culpability of an immigrant or indigenous defendant should be evaluated under the defendant's cultural norms rather than those of the legal jurisdiction. This argument has been referred to as the "cultural defense" and has been effective in a number of cases. A Japanese-American mother drowned her two young children and spent a year in jail. A Chinese-American husband bashed his unfaithful wife to death, was acquitted of murder and got five years probation for manslaughter. A Laotian-American raped a woman he desired to marry and got 120 days in jail. A Somali immigrant slices off her infant niece's clitoris and goes unpunished. An old indigenous Australian brutally anally rapes a 14 year-old girl whom he claims has been "promised" to him as a wife and gets a "wrist-slap" sentence. The basic question in these recurring scenarios remains the same: should these defendants be treated differently (more leniently) than "regular citizens" would be for very similar acts? While no jurisdiction has yet formally recognized any cultural defense by statute or otherwise generally (what might be called "hard" legal pluralism), as in the above described cases a number of courts have accepted the argument in individual cases ("soft" legal pluralism). Although the "hard" and "soft" versions of legal pluralism are descriptively and conceptually distinct, and conventional legal arguments can be made for the "soft" form, the preferable approach would seem to be to condemn both forms as inconsistent with general notions of the just state, universal principles of human rights and specific doctrines such as United States equal protection law. What I have referred to as "soft" legal pluralism is more related to the pursuit of "individualized justice" in particular prosecu-

A. The "Cultural Defense" Debate
There has been and continues to be a wide variety of criminal prosecutions in which the defense argument is made that the moral (and

...it is undeniable that our formerly more unitary national cultures are ever-increasingly diverse.

and among different cultural, ethnic, religious or other identifiable sub-groups within the overall population? Or is social cohesion and order ultimately dependent on having "One Law for All"? In other words, should the reality of cultural pluralism include legal pluralism?

"Legal pluralism" has been defined as having "legal systems, networks or orders co-existing in the same geographical space." Not surprisingly, there has been and is "a lot of criticism of the concept of legal pluralism." But on the other hand, there has been significant "progressive" support for and even "romanticizing" of the notion of legal pluralism, most often based on the argument that it is needed to protect either or both immigrants to western nations or indigenous peoples caught up in the "alien" legal cultures of western nations. This argument has been most developed in the context of the so-called "cultural defense," the use of cultural evidence to develop an excuse for otherwise criminal behavior by immigrant or indigenous defendants.

B. 2005 Discussion Paper by the Law Reform Commission of Western Australia

A most illuminating and comprehensive discussion of the whole interface between a western legal system and Aboriginal customary laws has recently been published in Perth, Western Australia. The 472-page WA Discussion Paper concludes with a full 93 separate proposals. This brief essay will focus on just one of those proposals ("Proposal 43") as a paradigm example of just how a regime of "One Law for All" could be a "two-way street," with dominant legal systems generally adopting lessons learned from indigenous and immigrant customs, on the one hand, and indigenous and immigrant peoples becoming subject to western law, including most significantly human rights/bill of rights provisions, on the other hand.

Anti-social behavior by young people (especially males) seems to be a problem plaguing all societies, whether eastern, western, indigenous or immigrant. The western approach has tended to be to criminalize much of such behavior, by definition "criminalizing" many of the young miscreants, with permanent detrimental effects on their lives and without any proven benefit to society as a whole. Prime examples in many jurisdictions are the punitive criminal laws relating to so-called "controlled substances" (i.e., drug laws), enforcement of which invariably seems to have disproportionate effects on young men from "minority" communities. Proposal 14 For a discussion of "The Doctrine of Individualized Justice," see Coleman, supra note 7, at 1114-1118.

...the preferable approach would seem to be to condemn both forms as inconsistent with general notions of the just state, universal principles of human rights...

8 See id.
9 See id. at 1093-94.
10 See id. at 1094.
11 R v G J (Unreported, Supreme Court of the Northern Territory (Yarralin)), SCC 20418849, Martin C.J. 11 August 2005.
12 See, e.g., Coleman, supra note 7, at 1103, comparing the "cultural defense" to "the traditional criminal law defenses of consent, insanity, diminished capacity and provocation."
13 E.g., the 1948 United Nations Universal Declaration of Human Rights, Article 7, providing that "[A] ll are equal before the law..." Again, "One Law for All!"
be an on-going trend to provide for rights, if at all, by “ordinary” legislation. That such ordinary legislation is ultimately inadequate to provide equal rights, or at the end of the day any enforceable rights, for minorities (or anyone else) may be best illustrated in Australia. The “Lucky Country’s” short history reveals that the founders of the Commonwealth Constitution avoided American-style privileges/immunities and equal protection of the law provisions for the very purpose of preserving legal racial discrimination!

...the delegates to the 1898 Constitutional Convention saw such a clause as threatening the colonies’ overtly racist laws, directed at Australian Aborigines, Pacific Islanders and Chinese. They were determined...to preserve a State’s right to distinguish on racial grounds between classes of persons coming within its jurisdiction [citing Charlesworth, ‘Individual Rights and the Australian High Court’ (1986) Law in Context 53].

The constitutional situation remains the same in Australia, 105 years after this “original sin.” There is no legal culture of embedded individual rights in Australia. What there is instead is continuing observance of the out-of-date, out-of-place “Washminster” system – a mish-mashed compromise arrangement which awkwardly combines “Washington”-style federalism with “Westminster”-type parliamentary supremacy, free of Washington-style judicial review in the name of a bill of rights. The Washminster governmental system is both anachronistic and geographically misplaced for a variety of reasons, only some of which are of special legal significance. The most general reason is that it is past time for a country of Australia’s obvious strength to state its independence and to tailor its institutions and culture from within. This is self-evidently an issue for Australians and not this American essayist. The general area of rights is, however, a focus of this essay, and Australia does seem to have a popular culture of rights, even though the legal reality under British-inherited parliamentary supremacy is far different. Australia’s most basic legal institution, its Constitution, should reflect this popular culture of rights. The British heritage is the problem.

Parliamentary supremacy and the concomitant theory of “responsible government” are one thing in a “unitary” system of government...
ment\textsuperscript{28} with a largely homogenous citizenry, i.e., historic England. It becomes quite another thing in a geographically far-flung federal union with an ever more diverse population. The most basic idea of the responsible government theory seems to be that the prospect of the next election to the sovereign parliament is somehow sufficient to protect what is protected elsewhere\textsuperscript{29} by embedded rights, invasion of which is beyond limited legislative authority. In the name of the “will of the people,” any non-majoritarian assertion of individual rights has no structural protection. The prospect of changing an alleged on-going violation of rights by winning a national or even state-level election is of little solace to one incarcerated or otherwise legally disadvantaged by government action. Such victims are inevitably disproportionately indigenous, immigrant and other “minority” persons. The responsible government theory that these peoples’ salvation lies in the next election borders on the inane.

The response from the defenders of responsible government\textsuperscript{30} logically points to the “non- or even sometimes anti-” majoritarian dilemma.\textsuperscript{31} It is obviously something other

\textbf{Such victims are inevitably disproportionately indigenous, immigrant and other “minority” persons.}

than direct democracy at work to allow majoritarian government action (legislative or other) to be trumped by judicial invalidation in the name of embedded rights. But a choice must be made between leaving minorities to unfettered “51\%ism,”\textsuperscript{32} on the one hand, and protecting individual rights, on the other hand. The responsible government system of parliamentary supremacy opts for majoritarian rule. Systems of embedded rights temper such parliamentary sovereignty in the name of “higher law.”\textsuperscript{33} Again, it is one thing to choose parliamentary supremacy and 51\%ism in a unitary government situation where the population is both relatively small and mostly homogenous (think historic England). Such a choice is much more problematic in a geographically large federal union, with a diverse population which contains significant numbers of indigenous and immigrant peoples. The parliamentary supremacy choice then becomes in practice a choice to provide no structural protection for individual rights as such. Those who suffer from the choice are those not part of the dominant culture. There are many many more such people in Australia than in historic England. The system of responsible government that may well have “worked” for old England simply does not work for indigenous, immigrant and other minority or marginal people in Australia.

Another response from opponents of embedded rights is that ordinary legislation can be sufficient to protect individual rights. But such proponents of parliamentary supremacy and responsible government concede that such ordinary legislation always remains subject to parliamentary abolition. Ordinary legislation, even when dressed up with high

of individual liberties were placed in statutes only, a tyrannical government could overrule them.

\ldots

[T]he Constitution needs to be understood as an intentionally anti-majoritarian document. Simple claims that American democracy is based on majority rule – such as in criticizing the judiciary for being anti-majoritarian – should be viewed suspiciously.


\textsuperscript{32} The term “51\%ism” is used generally by the author in his law school classes to describe majoritarian institutions.

\textsuperscript{33} The “higher law” idea is taken from the study of jurisprudence and includes both the “natural law” concept that mere “positive” law should be trumped by more transcendent principles and the constitutional principle of embedded rights and other provisions put beyond amendment by mere “ordinary” law-making acts.

\textbf{B. “Equal Protection” is Needed to Protect All}

While responsible government and parliamentary supremacy may protect majoritarian viewpoints,\textsuperscript{34} the argument here has been that such a system offers no real protection for indigenous and other marginalized groups and therefore cannot be the basis for a legitimate “One Law for All.” This assertion obviously raises the matter of what law to embed as the basic foundation of a true “One Law for All” regime. The proposal is that “equal protection of the law” become the foundation embedded principle. Only such an embedded principle can securely protect indigenous and other such groups from the danger of recurring discriminatory legislation and other government action. And it is also under such a regime of equal protection that the state can most readily incorporate certain indigenous, immigrant and other “minority” customary legal practices into the law applicable to all – while at the same time bringing the marginalized (and everybody else) under the protection of basic human rights principles put beyond the invasion of mere majoritarian politics. In other words we are back to the opening refrain\textsuperscript{35} as to how to achieve “One Law for All.”

\textbf{C. Embedded Equal Protection of What?}

What rights beyond the basic equal protection principle itself would be embedded by a society that had decided to get serious about individual rights? And by a society that had also decided to be inclusive of certain non-majoritarian peoples’ institutions?

\textbf{1. Human Rights!}

\textsuperscript{34} The viewpoint of the majority in the lower house is obviously protected. Whether that corresponds with the viewpoint of any other majority can only be the subject of speculation.

\textsuperscript{35} See text accompanying note 3.
Many models are available, with most having roots in the 1948 United Nations Universal Declaration of Human Rights. A model with particular significance in the current Australian situation is the proposed Human Rights Act 2006 (HRA). The HRA would be an ordinary legislative act and as such would embed no rights protection for indigenous or other people, but it would certainly be a significant step in the right direction. In fact, it would be a giant step for the only western country without a national human rights act.

What rights beyond the basic equal protection principle itself would be embedded by a society that had decided to get serious about individual rights?

For example from the HRA Preamble:

"...All people in Australia are entitled to the rights and freedoms set down in this Act without discrimination of any kind. This includes discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, property, birth, disability, age or sexual orientation.

A good start towards "One Law for All"! Even more helpful to the marginalized are a number of specific sections of the HRA. For example:

- Sec. 3: Objects
  - (a) to protect and promote human rights in Australia
  - (b) to make the law of Australia better conform with Australia’s obligations

...there is no meaningful enforcement of human rights type provisions without incorporation into domestic law.

2. The Current Inadequacy of International “Law”

In a more ideal world, international human rights provisions would operate with the force of law. And, as per HRA sec. 3 (b), many such provisions have been incorporated into domestic law. Without such specific domestic incorporation, however, the international provisions themselves seem more aspiration than “law.” In fact, as to the whole matter of so-called "international law," the foremost jurisprudence of the 20th century expressed doubt.

The term “aspirations” is used here to describe that genre of laws which is more descriptive of hopes for behaviors than of effectively sanctioned prohibitions. Certain so-called "victimless crime" laws, e.g., may fit this description in some jurisdictions. And the practical problem for international law, of course, is enforcement. It is in their sense that I would refer to international law as “aspirational.” Further, some even doubt that what we call international law is really best treated as “law” at all. On this, see text below at notes 39-40.

...the matter was “law” as such. Without getting into the taxonomic and philosophical debate about the status of international law as law, the important point practically and for purposes of this essay is that there is no meaningful enforcement of human rights type provisions without incorporation into domestic law. Again, ideally such incorporation would be embedded. But non-embedded statutory adoption is infinitely better than nothing! Nothing is what Australia has today.

Conclusions – A “Second Constitutional Moment” for Australia

The noted American scholar Bruce Ackerman, Professor of Law and Political Science at Yale University, has developed a theory that there have been three great “constitutional moments” in American history: (1) the founding in the 1780s; (2) the post-Civil War Reconstruction, featuring the 13th, 14th and 15th Amendments to the U.S. Constitution, in the 1860s; and (3) the New Deal in the 1930s, with its judicial reinterpretation of 14th Amendment “due process” and of the powers of the Congress in the area of economic regulation. The second of these constitutional moments may have particular resonance for the rights of Australian Aboriginals, immigrants and other marginalized Australian residents.

I used the term “original sin” earlier to describe the decision of the Australian Constitution’s founders to preserve legal

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36 Unlike the Australian Commonwealth, the ACT does have a human rights act.
37 See text accompanying notes 7-11, supra.
40 See H.L.A. Hart, THE CONCEPT OF LAW (1961), ch. X on “International Law”, where at p. 214 Prof. Hart notes that “the absence of an international legislature, courts with compulsory jurisdiction, and centrally organized sanctions have inspired misgivings at any rate in the breasts of legal theorists.”
41 Bruce Ackerman, WE THE PEOPLE, VOL. 1, FOUNDATIONS, Harvard University Press, 1991.
42 Before the mid-1930s, the U.S. courts had been active in striking down economic regulation as a violation of capitalists’ supposed “due process” rights to freedom of contract. Ever since a series of Supreme Court decisions beginning in 1937, however, the American courts have abandoned this now-discredited “substantive due process” theory in the economic area and reserved their judicial activism for matters involving individual rights and liberties. The literature on these developments in American jurisprudence is vast. For one, textbook treatment leading to many other sources, see Erwin Chemerinsky, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES, 2nd ed. (2002) pp. 581-605.
43 Supra, p. 13.

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New Associate Deans Announced

After six years of outstanding service as Associate Dean, Professor D. Benjamin Beard returned to full-time regular faculty status. He is succeeded, in an expansion and restructuring of the associate deanship, by Professor Elizabeth Brandt (Associate Dean for Faculty Affairs) and Professor Richard H. Seamon (Associate Dean for Administration and Students).

Dean Brandt will handle matters relating to faculty personnel, professional development, and curriculum while continuing to teach Family Law, Community Property, and Wills & Trusts. Professor Brandt practiced law with a major firm in Cleveland, Ohio, before joining the law faculty. She is a member of the editorial board of the American Bar Association’s Family Law Quarterly and a principal author of Idaho law manuals on high-conflict divorce and child protection. A past national board member of the American Civil Liberties Union, she recently co-authored with Idaho Congressman C.L. “Butch” Otter an article on the USA Patriot Act, published in the Notre Dame Journal of Law, Ethics & Public Policy.

Dean Seamon will handle matters relating to students and internal administration of the College. He will continue teaching Civil Procedure and Administrative Law (a field in which he is co-author of one of the main national casebooks). His career path to academia included a clerkship in the U.S. Court of Appeals for the D.C. Circuit (Judge Kenneth W. Starr) followed by service in the Department of Justice as an Assistant to the Solicitor General of the United States during the administrations of the first President Bush and President Clinton. While serving in the Solicitor General’s Office, he was a colleague of now-Chief Justice John Roberts, and he presented oral argument before the U.S. Supreme Court in 15 cases. His recent article on national security and criminal law enforcement has been published by the Harvard Journal on Law & Public Policy.

Professor Beard, who practiced commercial and corporate law before coming to academia, will resume full-time teaching in commercial law subjects. His courses in recent years have included Property, Sales, Negotiable Instruments, Suretyship, and Creditors’ Rights. Professor Beard has served as the Reporter for the Uniform Electronic Transaction Act, adopted in more than 35 states and followed as a model for the federal E-Sign legislation adopted in June 2000.

Anderson Honored for Excellence in Teaching

Professor Mark Anderson is the 2006-07 William F. and Joan L. Boyd Teaching Excellence Fellow. He is the inaugural recipient of the Boyd Teaching Excellence Fellowship, which was established in 2004 by William ’65 and Joan Boyd 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. Fellows are selected on the basis of faculty activity reports, memoranda on teaching, class visits, student evaluations, and other measures of teaching performance.

Praise for Professor Anderson’s selection comes from both colleagues and students. “This recognition is highly merited,” says Law Professor, and former College of Law dean, John A. Miller. “He is a person of remarkable talents. Chief among these is an extraordinary gift for analysis and synthesis. He is able to take immensely complicated matters and reduce them to their essentials. I am sure that this talent for clear thinking and expression, along with his keen wit, are what make Mark such a perennially popular teacher and colleague.”

One of Professor Anderson’s former students, Laura Bettis ’03, now primary administrator and a director of the Laura Moore Cunningham Foundation, as well as a member of the College of Law Advisory Council, says: “Professor Anderson cares very much that his students learn, not just the subject matter for whichever course he is teaching, but the underlying principles of reasoning and logic that will enable them to think like a lawyer. His demanding style of teaching requires students not just to answer simple questions about the required reading, but to make connections and draw conclusions beyond the scope of the reading. He also sets an example for students to act like lawyers by being extremely professional in his classroom presentation. The high expectations he holds for students raise the bar in his classes.”

Professor Anderson is a nine-time winner or co-winner of the student-bestowed Peter E. Heiser Award for outstanding dedication to students at the College of Law and a seven-time winner of the University of Idaho Alumni Award for Faculty Evidence.

William Boyd now practices in Coeur d’Alene, Idaho. Joan, also a University of Idaho graduate, taught English for 25 years in the Silver Valley before retiring.
New Faculty Bring Expertise in Commercial Law and Litigation

*Professors* Michael A. Satz and Alan F. Williams join the College of Law faculty with the 2006-2007 academic year.

Professor Satz will teach commercial law subjects, including contracts and creditors’ rights. Professor Satz received his J.D. degree with honors from the University of Michigan Law School, where he was executive editor of the Law Review. In 1990, he received his baccalaureate in education at Southern Methodist University, where he earned dual degrees in political science and history. After graduation, he was a Surface Warfare Officer in the U.S. Navy, completing two overseas tours of duty in Japan onboard the Amphibious Assault Ships USS San Bernardino and USS Dubuque.

It was during his service in the Navy that Professor Satz discovered an interest in the law. In addition to his duties as Surface Warfare Officer, he also was assigned equal opportunity and legal investigations duties.

Professor Satz, a member of the Texas Bar, practiced for two years in the bankruptcy and commercial litigation areas with the Dallas law firm Carrington, Coleman, Sloman and Blumenthal before becoming an in-house counsel with Nissan North America, Inc. His scholarly interests reflect the areas of his practice at Nissan, including consumer finance, bankruptcy, secured transactions, creditor’s rights, and especially, arbitration.

With his mother, a professor of English Literature, as a role model, Professor Satz’ main goal during his first year as a member of the Idaho Law faculty is to find his optimal teaching style. “I am good at reading people, which helps me communicate the message of the law. I want to develop the skill to use different approaches to get the message across,” he explains. He also hopes to become familiar with the various service opportunities the College provides and “to start inculcating in my students how important service is.”

Outside the classroom, Professor Satz interests include enthusiasms for military history and for American history, particularly the Civil War, and for sport touring motorcycles. He is also a martial arts expert, specializing in Krav Maga, the official self-defense system of the Israeli Defense Forces.

Like Professor Satz, Alan Williams, who will teach litigation subjects, including civil procedure, criminal law, practice court, and eventually, evidence, is a veteran of the nation’s armed forces. Professor Williams joins the faculty at the conclusion of 20 years of service on active duty in the U.S. Marine Corps. In his last assignment, he served as a military judge in the Eastern Judicial Circuit of the Navy-Marine Corps trial judiciary, presiding over 200 felony and misdemeanor trials.

Seamon Named to Shepard Professorship

*Professor* Richard H. Seamon is the 2006-07 Allan G. Shepard Professor of Law. Says Professor Seamon in response to his selection: “It is a great honor to have my name associated with that of Justice Shepard. I feel fortunate, as well, to be included in the remarkable group of colleagues who have previously received the Shepard Professorship.”

The Shepard Professorship, honoring the late Allan Shepard, former Chief Justice of the Idaho Supreme Court, is bestowed annually by the Dean upon a faculty member with a record of “distinguished service to legal education, or to his or her area of expertise.” Recent holders of the Professorship have included Professors Dennis Colson, Maureen Laffin, Russell Miller; Associate Dean Elizabeth Brandt; and faculty emeriti Joann Henderson, Art Smith, and Sheldon Vincenti.

Says Professor Seamon’s colleague, and former Associate Dean, Ben Beard, “It is hard to imagine a more qualified faculty member for this year’s Shepard Professorship. Professor Seamon’s accomplishments, as both a highly respected and decorated teacher, and his prolific scholarship make the award of the Shepard professorship to him particularly appropriate. He will assuredly continue his superlative teaching and scholarship even as he takes on the additional responsibilities of Associate Dean for Administration and Students.”

Professor Seamon, who was recently promoted to the rank of (full) Professor of Law, joined the College of Law faculty in 2004. A nationally recognized expert in administrative and constitutional law, he is the co-author of an administrative law text published by West Publishing Company. Professor Seamon also has authored numerous works on national security and the legal system, including an article recently published by the *Harvard Journal of Law & Public Policy.* Recently, he testified before Congress on extension and revision of the USA PATRIOT Act.

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Visiting Faculty Enhance Curriculum

The College of Law welcomes Milt Rowland and Mark Friendshuh as visiting professors during the 2006-2007 academic year. Professor Rowland will teach two courses: Procedure and Local Government, and Professor Friendshuh joins Professors Deborah McIntosh and Laurie O’Neal in teaching Legal Writing and Research.

Milt Rowland

Professor Rowland has been a member of the College’s adjunct faculty for many years, teaching a variety of courses. He is a 1973 cum laude graduate of the University of Detroit-Mercy and a 1985 summa cum laude graduate of Gonzaga University School of Law. Professor Rowland is presently the Senior Assistant City Attorney for the City of Spokane, Washington, where he has been litigation counsel since 1993.

Mark Friendshuh

Professor Friendshuh is a 2001 graduate of the University of Washington School of Law. After earning his J.D. he worked as in-house counsel for Boise Cascade Corporation. There, he practiced transactional and securities law, as well as litigation. He later worked at a small private firm in Coeur d’Alene, Idaho. Before attending law school, Professor Friendshuh graduated from Carroll College in Helena, Montana, with a B.A. degree in International Relations and Speech Communication Theory. He then taught English as a second language for one year at Carroll College and for two years in Japan.

College of Law Adjunct Faculty, 2006-2007

During the 2006-2007 academic year, students at the University of Idaho College of Law will have the opportunity to learn from some of Idaho’s most expert practitioners and skillful teachers. This year’s cadre of adjunct faculty brings to the classroom experience in a number of subject areas, including intellectual property, insurance, and estate planning.

Glen Utzman and John McGown will teach courses generally taught by Professor John “Jack” Miller, who is on sabbatical leave this year. Professor Utzman, a permanent faculty member in the Accounting Department of the University of Idaho College of Business and Economics, will teach tax law, and Boise attorney John McGown will instruct in the area of estate planning.

John McGown

As a fellow of the American College of Trust and Estate Counsel, McGown brings over 25 years of estate planning experience to the classroom. With the firm of Hawley Troxell Ennis & Hawley, LLP, McGown practices general tax, estate planning, tax disputes, and probate law. A certified public accountant, he earned his J.D. from the University of Colorado in 1974, and an LL.M. in Taxation from the University of Denver in 1981.

Glen Utzman

McGown, who is included in the recent edition of The Best Lawyers in America in both the Tax Law and Trusts and Estates categories, is a frequent lecturer. He also has served for over 19 years as the column editor for “Tax Thoughts” in The Advocate, the Idaho
Third Annual Indian Law Conference

The College of Law, along with the Indian Law Section of the Idaho State Bar, hosted its third annual Indian Law Conference on October 24 and 25 in Moscow. The American Indian Probate Reform Act was featured, with presentations on the history of the Act, intestate and testamentary dispositions, Land Consolidation Plans and Agreements, and Tribal Probate Codes.

Conference keynote speaker was Michael Bogert, Counselor to the U.S. Department of the Interior Secretary, and former Idaho Governor, Dirk Kempthorne. In a speech entitled “Sovereignty, Certainty, and Opportunity,” Bogert ’86 outlined Secretary Kempthorne’s vision for tribal waters settlements in the West. He noted that the Department of the Interior is responsible for stewardship of more than 20% of the landmass of the United States. Drawing upon his prior experience in state government as a participant in the Nez Perce Water Rights Settlement process, Bogert described the preference of now-Secretary Dirk Kempthorne and of the Bush Administration for local-level negotiations and non-litigious methods of resolving public policy disputes involving natural resources and tribal interests. “We are reaching out from Washington to people on the ground,” he said. “They live with the problems every day and usually have the best ideas on how to solve them.”

Besides providing the opportunity to review recent court decisions and legislative actions related to the American Indian Probate Reform Act, the conference served as a forum for discussions on tribal alternative energy development in the Northwest and employment law. Panel members who discussed alternative energy development included Miles Kubo, Executive Vice-President and Chief Operations Officer, Energy Industries, LLC, College of Law State Bar Association’s monthly publication and is the Idaho correspondent for State Tax Notes, a national publication by Tax Analysts. A member of the Executive Planning Committee of the Idaho State Tax Institute, McGown also is a qualified mediator for multistate tax disputes under the Multistate Tax Commission’s Alternate Dispute Resolution Program.

As in years past, Lewiston attorney Kenneth Anderson is teaching the Clinical lab section of the College’s bankruptcy course, taught this Fall semester by Ford Elsaesser (Elsaesser Jarzabek Anderson Marks Elliott & McHugh, Sandpoint). Also during the Fall semester, Frank Dykas (Dykas, Shaver & Nipper, LLP, Boise) is teaching a course on intellectual property and patents, while Buddy Paul (Huppin Ewing Anderson & Paul, P.S.) teaches insurance law. During the Spring 2007 term, Frances Thompson will continue to serve as adjunct professor for the Law Clinic’s Pro Se Clinic.

Adjunct Faculty, continued

College of Law Celebrates 100 Years

In 2009, the University of Idaho College of Law will celebrate its 100th anniversary, and throughout our centennial year, we will commemorate the past, rejoice in the present, and envision the future. Our Centennial will be celebrated in many ways, including: Centennial Kick-off, All-Class Reunion, 100th Birthday party for students, faculty, and staff, 100th Anniversary Gala Event and Alumni receptions throughout Idaho.

To memorialize this momentous event, we also are putting together a historical record of the College. If you would like to contribute to this effort by donating photographs, mementos, and reminiscences of your law school experience, please send them to Michele Bartlett, UI Boise Center, 322 East Front Street, Ste. 442, Boise ID 83702.

Additionally, in preparation for the All-Class Reunion, we are seeking alumni volunteers who will serve as liaisons between their class and the College of Law. If you would like to serve as a Class Representative, please contact Michele Bartlett, Director of Development, at bartlett@uidaho.edu.

The previous 100 years have been extraordinary. With your help, the next 100 will be as remarkable as the first.

Left to right: Rob Roy Smith, Douglas Nash, Cecelia Burke.

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rational discrimination. I have used that same term for years in my constitutional law lectures at the University of Idaho to describe the American founders’ 1787 decision to preserve legal racial discrimination in the “first” U.S. Constitution. The post–Civil War amendments to the U.S. Constitution could be seen as an attempt at redemption from the original sin of legally institutionalized racism. The 14th Amendment excised the incusus of human slavery. The 14th mandated “due process” and “equal protection of the laws” for all. And the 15th outlawed racial discrimination in voting. Australia has made several gestures toward redemption of its original sin but has studiously avoided any entrenched rights approach. The effect of this avoidance was made clear for all the world to see in the disgraceful reaction of parliamentary supremacy and so-called “responsible government” to the famous High Court decision upholding “native title” claims in Mabo v Queensland (No 2) (1992) 175 CLR 1. The Native Title Act of 1993 legislated non-application of RDA standards to native title claims in the years 1975-1994, validating titles granted in a racially discriminatory manner. And this blatant discrimination was upheld by the High Court in Western Australia in the disgraceful reaction of parliamentary supremacy and so-called “responsible government” to the famous High Court decision upholding “native title” claims in Mabo v Queensland (No 2) (1992) 175 CLR 1. The Native Title Act of 1993 legislated non-application of RDA standards to native title claims in the years 1975-1994, validating titles granted in a racially discriminatory manner. And this blatant discrimination was upheld by the High Court in Western Australia.

In 1967 the Commonwealth Constitution was amended through its sec. 128 referenda process to (1) strike the words “other than the aboriginal race in any State” from sec. 51 (xxvi), which empowers the Commonwealth Parliament to make laws for “the people of any race for whom it is deemed necessary to make special laws”; and (2) repeal old sec. 127 (stated “Aborigines not to be counted in reckoning population”), which previously read as follows: “In reckoning the numbers of people of the Commonwealth, or of a State or other part of this Commonwealth, aboriginal natives shall not be counted.” And in 1975 the Commonwealth Parliament enacted the Racial Discrimination Act (RDA), which is written in the lofty language of the International Convention on the Elimination of All Forms of Racial Discrimination, but which as mere ordinary legislation has been subsequently ignored by subsequent acts of parliamentary supremacy and so-called “responsible government,” as laid out in the text accompanying this note and note 45, infra.

“Disgraceful” is probably not strong enough to describe Government “responsible” only to white, majoritarian, mining, resource, pastoral and other exploitative interests at the expense of the aboriginal interests designed to be protected by the whole concept of “native title.”

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Fourth Annual Indian Law, continued from page 19

Honolulu, Hawaii; J.D. Williams, Umatilla co-generation project; Darren Williams, Nez Perce Tribe, Office of Legal Counsel, Nez Perce Biodiesel Project; and Constance Fredenberg, Aleutian Pribilof Islands Association. Bruce E. Didesch, Interim Chief Executive Officer, Colville Tribal Enterprise Corporation addressed employment law, focusing on the Colville Tribal Enterprise Corporation case.

Also speaking at the conference were the Honorable Patricia McDonald, Administrative Law Judge for the U.S. Department of the Interior, Office of Hearings and Appeals, Albuquerque, New Mexico; Stan Webb, Realty Officer, Bureau of Indian Affairs Western Regional Office, Phoenix, Arizona; John Dossett, General Counsel, National Congress of American Indians; John C. Sledd, Of Counsel, Kanji & Katzen, PLLC, Seattle, Washington; and Cecelia E. Burke, Deputy Director, Institute for Indian Estate Planning and Probate, Seattle University, Seattle, Washington.

Douglas R. Nash, Director of the Institute for Indian Estate Planning and Probate, Seattle University, and Rob Roy Smith, immediate past president of the Idaho State Bar Indian Law Section, organized the conference. “Indian people need to be aware of how the American Indian Probate Reform Act affects their property interests when they do not have a will, and what opportunities it provides for consolidating fractional interests in trust land. At the same time, tribes need to know what opportunities the act provides at the tribal level, including the opportunity for tribal probate codes to replace the federal probate provisions,” said Nash.

The conference was made possible, in large part, through the support of attorney, businessman and philanthropist James E. Rogers, who established the James E. Rogers Fellowship in American Indian Law in the College of Law in 2003. Other sponsors include Haglund, Kelley, Horngren, Jones & Wilder; Energy Industries; Holland & Hart; Dorsey & Whitney; and Morisset, Schlosser, Jozwiak & McGaw.

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Different Perspectives

Children and the Law

Students participating in the Children and the Law Clinic, the College’s newest clinical opportunity, serve as guardians ad litem and Court Appointed Special Advocates (CASA) under the CASA program of the Coeur d’Alene Tribal Court. The Clinic came into being through the efforts of several people, especially University of Idaho College of Law alumnus Cynthia Jordan ‘92.

Now on the bench of the Coeur d’Alene Tribal Court, Judge Jordan explains that child advocacy “has not only been the main focus of my practice but is also a subject dear to my heart.” In addition to her work with the Coeur d’Alene Tribe, Judge Jordan has also worked as a guardian ad litem and public defender for the Colville Tribe in Nespelem, Washington; as a public defender, tribal attorney and employment rights officer for the Kootenai Tribe in Bonners Ferry; and for the Court of Appeals of the Nez Perce Tribe in Lapwai.

Having identified the need for a child advocacy program, Judge Jordan approached Director of Clinical Services and Law Professor Maureen Laffin to ask if University of Idaho College of Law students would be available to serve as advocates and guardians ad litem. “While there was a definite need for the services, no funding was available to pay someone to do the work,” says Judge Jordan.

Seeing the request as an opportunity for students to gain valuable experience while providing a much-needed service, Professor Laffin then worked with University of Idaho College of Law Professor Elizabeth Brandt, whose areas of emphasis include children and
as one of the reasons why the program has proven its value, despite being in existence for less than a year. “The program gives students the opportunity to see beyond their client’s perspective. Generally, family law practitioners see only their client’s perspective, which often neglects the consequences for any children involved.” She adds that the Coeur d’Alene program is unique because it also provides a cultural perspective with which many students may be unfamiliar. In addition, both Judge Jordan and Ms. Morgan note that the program provides students with an opportunity to not only gain a greater procedural understanding but also to develop practical skills, such as interviewing, writing, and reasoning.

While too early to determine the impact of the program on the Tribal Court and the citizens of the Coeur d’Alene Reservation, Judge Jordan says that the University of Idaho College of Law Children and the Law Clinic is already “doing really great things.”

**Clinical Opportunities Continue to Expand**

With the recent establishment of the Children and the Law “mini” Clinic, the College’s Legal Aid Clinic now offers students practical experience in seven in-house Clinics, three mini-Clinics, and numerous externship opportunities.

The Children and the Law Clinic is a cooperative effort between the College of Law and the Coeur d’Alene Tribe. Students taking part in this clinic serve as guardians ad litem and Court Appointed Special Advocates (CASA) under the CASA program of the Coeur d’Alene Tribal Court. CASA is a national program of community volunteers who are appointed by the court to advocate for the best interests of children involved in court cases. “The Children and the Law Clinic,” says Clinical Services Director and Law Professor Maureen Laflin, “enables students to gain valuable experience while providing needed services.”

Established in the 2005-2006 academic year, the Idaho Victims’ Rights Clinic (VRC) has been awarded $105,000 to fund its second year of operation. The funding comes from the U.S. Department of Justice through the National Crime Victim Law Institute at Lewis and Clark Law School in Portland, Oregon. The Idaho VRC is one of eight such clinics nationally to receive the funding. Established in 2005, during its first year, the VRC represented survivors of sexual assault, domestic violence and arson, as well as victims of embezzlement and other theft crimes, in north-central Idaho.

During its second year, the VRC has added adjunct faculty in Lewiston, Jamie Shropshire, and Boise, R. Monte MacConnell, to expand services to state courts throughout Idaho. In addition to supervising Clinic students, Shropshire and MacConnell help recruit attorneys for a pro bono roster. They also provide outreach and education to criminal justice system participants and to the public about crime victims’ rights. Clinic professor Pat Costello will continue to act as supervising attorney and principal investigator for the project.

Professor Costello also supervises students participating in the Domestic Violence and Sexual Assault (DVSA) Clinic, established with funding from the Idaho Coalition Against Sexual & Domestic Violence. The DVSA Clinic, which began accepting clients in January 2006, allows third-year law students to provide legal assistance to persons involved in civil litigation stemming from domestic violence, sexual assault, dating violence, and stalking.

While General Clinic interns previously handled these types of cases, students are now able to specialize in this type of practice. Its existence has enhanced clinical services overall, by providing students with more complete and extensive training, as well as enabling the Clinic as a “law firm” to take on a greater caseload. The DVSA Clinic is funded from a subgrant from a U.S. Department of Justice Legal Assistance to Victims grant to the Idaho Coalition Against Sexual & Domestic Violence.
Fourth Annual International Law Symposium

Professor Russell Miller, and former University of Idaho College of Law faculty colleague Rebecca Bratspies (now at the CUNY School of Law) organized and conducted the Fourth Annual University of Idaho College of Law International Law Symposium, *Indigenous Peoples and International Law: Lands, Liberties and Legacies*, in Coeur d’Alene, Idaho, on March 16-18, 2006. The symposium focused on the status and rights of indigenous peoples under international law, which has increasingly begun to acknowledge the unique interests of indigenous peoples.

“...the process afforded to the Dann sisters...constituted a violation of human rights protection secured by international law.”

The keynote speaker was S. James Anaya, James J. Lenoir Professor of Human Rights Law and Policy, University of Arizona, James E. Rogers College of Law. Anaya, author of *Indigenous Peoples in International Law*, was one of a number of distinguished participants that also included Andrea Carmen, executive director of the International Indian Treaty Council; Brian Tittemore, senior human rights specialist for the Inter-American Commission on Human Rights; and Tracey Ulltveit-Moe with Amnesty International.

A special guest and presenter at the symposium was Western Shoshone tribal elder, Carrie Dann. She and her sister Mary Dann (now deceased) have long sought access to Western Shoshone traditional lands, consisting of much of present-day Nevada but extending into Idaho as well, to graze livestock. When denied that access by the American courts, the Dann sisters continued their struggle before the Inter-American Commission on Human Rights and now the United Nations’ Committee on the Elimination of Racial Discrimination. In a strongly-worded rebuke issued just days before the Idaho symposium, the Inter-American Commission found that the process afforded to the Dann sisters by the United States in resolving their claims constituted a violation of human rights protection secured by international law.

Other presenters included Professors Miller and Bratspies, as well as Professor Miller’s University of Idaho College of Law colleagues Dennis Colson and Dale Goble. One of the symposium’s unique features is the opportunity it provides University of Idaho law students to participate as presenters. Three students – Seth Gordon, Megan Mooney, and Shelli Stewart – presented papers at the symposium and engaged in panel discussions alongside the distinguished participants.

Stewart ’06 presented on the Alien Tort Claims Act and its impact on indigenous peoples. Mooney ’07 focused on how the Organization of American States, working through the Inter-American Commission and Court of Human Rights, has pushed for recognition of indigenous rights. Gordon ’07 argued that historically held legal prejudices are ingrained in current international legal structure and that indigenous rights cannot be effectively gained without restructuring the framework.

The scholarly papers presented at the symposium, including the papers presented by the students, will be collected and published as a special symposium issue of the *American Indian Law Review*. Noted documentary directors Joel Freedman and George Gage filmed portions of the symposium, including a session held on the Coeur d’Alene Reservation. Freeman’s documentaries on the Western Shoshone case include *Broken Treaty* at Battle Mountain and *To Protect Mother Earth*, each narrated by actor Robert Redford.

Financial support for the symposium was donated by the Pamela Jacklin Fund for International Law (Jacklin is a 1978 graduate of the College of Law) and the Carr Foundation.
A Community of Scholars: Academic Year 2005-06

Mark Anderson
Subject Area Emphasis: Business Associations, Trademarks and Unfair Competition, Antitrust
Recognition: William F. and Joan L. Boyd Teaching Fellowship Award

D. Benjamin Beard
Subject Area Emphasis: Electronic Commerce, Commercial Law, Property Law
Scholarship:
Service:
Co-Chair, Electronic Commerce Subcommittee, Cyberspace Law Committee, Business Law Section, American Bar Association.
Vandal Innovation and Enterprise Works (VIEW), University of Idaho.

Elizabeth Barker Brandt
Subject Area Emphasis: Family Law, Community Property Law, Children and the Law, Domestic Violence, Wills and Trusts, Civil Liberties
Scholarship:
Annotated Child Protection Forms (revised, expanded, and updated 2006).
Presentations:
Supervised Visitation: In the Best Interests of the Child, University of Oregon Child Advocacy Conference (March 20, 2006).

Don Burnett
Subject Area Emphasis: Professional Responsibility, Judicial Process
Scholarship:
Presentations:
A Republic, If You Can Keep It: The Courts, the Media, and the Rule of Law. Phi Beta Kappa Annual Dinner and Member Inauguration, University of Idaho, Moscow, ID (April 5, 2006).
The Media and the Courts: A Trouble Symbiosis. Interdisciplinary Colloquium, University of Idaho, Moscow, ID (February 2006).
Professionalism, Public Service and the Academy: Are Law Schools Doing Enough to Provide a 'Whole Training' in Law? Keynote address: Meeting of National Board of Directors, Legal Services Corporation, Boise, ID (October 2005).
Service:
National Advisory Board, American Judicature Society.
Elected Fellow, American Bar Association.
Chair, Professionalism Committee, Section on Legal Education and Admissions to the Bar, American Bar Association.
Indian Law Section Governing Council, Idaho State Bar.
Board of Directors, Idaho Law Foundation.
Chair, General Counsel Search Committee, University of Idaho.

Dennis Colson
Subject Area Emphasis: Idaho Constitutional Law, Indian Law, Contracts

Barbara Cosens
Subject Area Emphasis: Water Law, Alternative Dispute Resolution
Scholarship:
Presentations:
Lecture on general water law, tribal water law, groundwater law, the Nez Perce Settlement, interstate allocation, and questions and answers. Institutes for Journalism and Natural Resources, Blue Mountain Institute Learning Expedition (May 2006).
The Legal Aspects of Managing an Interstate Water Basin, Palouse Basin Aquifer Committee Retreat (April 2006).
The Role of Law in Environmental Advocacy, Inland Northwest Philosophy Conference, Moscow, ID (March 2006).
Panel Moderator, Borah Symposium: Resource Wars (March 2006).
Truth or Consequences: The Role of Uncertainty in Resolving Natural Resource Disputes, Idaho Academy of Science Annual Symposium, Moscow, ID (March 2006).
Panel Moderator, Palouse Basin Water Summit, Moscow, ID (October 2005).
Settlement of Indian Water Rights, Department of Agricultural Economics Class, University of Idaho (September 2005).
Keynote Address, Indian Water Rights Settlement Conference (September 2005).
Idaho Mediation Association, Local Chapter (June 2005).
Service:
Vice Chair, Public Service for the Water Committee of the Natural Resource and Environment Section, American Bar Association.
Mediator, Walker River Basin Settlement.

Patrick D. Costello
Subject Area Emphasis: Clinical Legal Education
Service:
Children and Families in the Courts Committee, Idaho Supreme Court.
Delivered delivery of legal services.
Legal Panel, American Civil Liberties Union of Idaho.
Judicial Council, University of Idaho.
Academic Appeals Board, University of Idaho.
Foundation Board, Idaho Public Television.
President, Friends of KUID-TV.

Lee Dillion
Subject Area Emphasis: Clinical Legal Education, Business Law, and Externships
Presentations:
Externships, field placements and relations with the Bar, Fifth Annual Meeting of Law School Small Business/Transactional Law Clinic Educators: Teaching Transactional and Exempt Organization Law in the Classroom, in the Clinic and in Field Placements, Chicago, IL (April 6 & 7, 2006) [panel presentation].
My Client? And I Agreed to do What? - Rule 1.2 and the Scope of Representation, Professionalism & Ethics Section-sponsored CLE (May 24, 2006).
Ethics and Asset Protection Planning, Annual Seminar of the Taxation, Probate and Trust Law Section (September 9, 2006).
Development and Implementation of Effective Law Firm Mentoring Programs, Law Practice Management Section-sponsored CLE (November 1, 2006).
Service:
Judicial Education Committee, Idaho Supreme Court.
Chair, Professionalism & Ethics Section, Idaho State Bar.
Law Related Education Committee, Idaho State Bar.
Chair, Continuing Legal Education Committee, Idaho Law Foundation.
Vandal Innovation & Enterprise Works (VIEW), University of Idaho.

Ruth Funabiki
Subject Area Emphasis: Technical Services Law Librarianship, Communication Scholarship:
The Double-Edged Nature of Satisfaction with Media in Political Decision-Making, co-author; peer reviewed, accepted, and awarded “Top 3” designation for presentation at the Association for Education in Journalism and Mass Communications annual conference.
Teaching:
Law of Mass Communication, Adjunct Instructor, Washington State University, Pullman, Washington (Fall 2006).
Service:

Dale Goble
Subject Area Emphasis: Natural Resource Law and Policy (particularly public lands and wildlife law) and American Legal and Environmental History
Scholarship:
The Endangered Species Act at Thirty: Conserving Biodiversity in Human-Dominated Landscapes (Island Press 2006) [edited with J. Michael Scott and Frank Davis].
The Protection of At-Risk Species in The Endangered Species Act at Thirty: Conserving Biodiversity in Human-Dominated Landscapes (Island Press 2006).
Ongoing Threats to Endemic Species, 312 Science 526 (2006) [with J. Michael Scott].
Recovery Management Agreements Offer Alternative to Continuing ESA Listings, 31(1) Fisheries (January 2006) [with J. Michael Scott].
Three Cases / Four Tales: Commons, Capture, the Public Trust, and Property, 35 ENV'TL L. (2006).
Presentations:
What are slugs good for? Ecosystem Services and the Conservation of Biodiversity, Symposium on the Law and Policy.
Michael J. Greenlee  
**Subject Area Emphasis:** Legal Research, Law Librarianship  
**Scholarship:** Human Rights and Religious Freedom in China: A Falun Gong Bibliography [in progress].  
**Presentations:** Intellectual Freedom Roundtable, Idaho Library Association Annual Conference, Pocatelio, ID (October 2005).  
**Service:** Chair, Intellectual Freedom Committee, Idaho Library Association.  
Faculty Advisor, Inter-American Human Rights Moot Court Competition, College of Law.  
Diversity Committee, American Association of Law Libraries.

John J. Hasko  
**Subject Area Emphasis:** Law Librarianship, Legal Research  
**Scholarship:** Idaho Legislative History - Easing the Pain, 49 Advocate 35 (March 2006).  
HeinOnline Redux, 49 Advocate 41 (July 2006).  
**Service:** Borah Foundation Committee, University of Idaho.  
Co-chair, Student Computing Advisory Committee, College of Law.  
Board of Trustees, Latah County Library District.

D. Craig Lewis  
**Subject Area Emphasis:** Evidence, Procedure  
**Presentations:** Trial Evidence for Judges: Hearsay, Magistrate Judges Institute, Boise, ID (November 2005) and District Judges’ Conference (January 2006) [with Merlyn Clark].  

Maureen Laflin  
**Subject Area Emphasis:** Alternative Dispute Resolution, Appellate Advocacy, Trial Practice, Clinical Education  
**Presentations:** UMA and Mediation Privilege in Idaho, IMA Region II, Moscow, ID (October 12, 2005).  
Mediation Ethics, part of the Professionalism program: Settlement Negotiations and Ethical Considerations, Idaho State Bar, Post Falls, ID (July 14, 2005).  
**Service:** IVLP Policy Council.  
Governing Council, Alternative Dispute Resolution Section.  
Evidence Rules Advisory Committee, Mediator Privilege subcommittee.  
Ray McNichols Inn of Court.  
Facilitator and Head of 2nd District team, Idaho Community Justice Initiative. Created a Community Justice Group for the 2nd Judicial District.

Monique C. Lillard  
**Subject Area Emphasis:** Torts, Remedies and Workplace Law (common law employment at will, employment discrimination, and other employment matters)  
**Scholarship:** Research on comparing American immigration law with the migrant worker law of the European Union.  
Research on comparing American law of workplace harassment and abuse to that of the UK and the European Union [in progress].  
Research on employer liability for torts of employees [in progress].  
**Service:** Chair, Admissions Committee, College of Law.  
Career Services Committee, College of Law.  
Blue Ribbon Committee (Strategic Investment Proposals), University of Idaho.  
American Association of Law Schools, Employment Discrimination Section, Executive Committee.

James Macdonald  
**Subject Area Emphasis:** Constitutional Law, Federal Courts, Securities Regulation, Jurisprudence, Accounting and the Law, Sports Law  
**Scholarship:** From Indigenous Customary Law to Human Rights: One Law for All [submitted to Australian law reviews].  
**Presentations:** On sabbatical leave 2005-2006 academic year at the University of Western Australia in Perth, lecturing in Constitutional Law (Australian), Religion and the Law, and Legal Theory (Jurisprudence).

Deborah McIntosh  
**Subject Area Emphasis:** Legal Research and Writing
Faculty in Focus

John A. Miller
Subject Area Emphasis:
Federal Taxation, Estate Planning, State and Local Taxation, Business Planning, Elder Law
Scholarship:
The Tax Treatment of Sabbaticals and Scholar’s Visits (In progress) [with Robert Pikowsky].
Service:
Board of Trustees, Kenworthy Performing Arts Centre.
Chair, ABA Site Inspection Team for Cumberland University Samford College of Law (Spring 2006).
Board of Trustees, Idaho TIAA-CREF Mutual Fund Program.
Standards Review Committee, Section of Legal Education and Admissions to the Bar, American Bar Association.
Audit Committee, Law School Admission Council, University of Idaho College of Law.
Honors and Awards:
University of Idaho Alumni Award for Faculty Excellence [with Will Orndorff '06].
The Role of ‘Outsiders’ in U.S. Supreme Court Appointments, York University, Os- goode Hall Law School, 1st Constitutional Law Roundtable – Constitutional Courts: Appointment, Diversity and Impact, Toronto, Canada (February 8, 2006).
Recognitions:
Faculty Service Award Allan G. Shepard Distinguished Professor of Law, 2005-06.

Russell Miller
Subject Area Emphasis:
Constitutional Law, Comparative Constitutional Law & Public International Law
Scholarship:
Presentations:
Corporate Deliberative Democracy as an

Laurie O’Neal
Subject Area Emphasis:
Legal Research and Writing, Advanced Legal Writing
Presentations:
Effective Use of Teaching Assistants in Legal Writing, Rocky Mountain Regional Legal Writing Conference (March 2006) [with Deborah McIntosh and Erik Ryberg].
Service:
Chair, Upper Level Writing Committee of the Legal Writing Institute (August 2006-March 2007).
Coach, National Moot Court team (Fall 2005).
Academic Advisor, McNichols Moot Court Competition (Fall 2005).
Recognitions:
Alumni Faculty Excellence Award, December 2005 [with Ritchie Eppink ’06].

Monica Schurtman
Subject Area Emphasis:
Immigration, International Human Rights and Humanitarian Law, Tribal Advocacy
Presentations:

Richard Henry Seamon
Subject Area Emphasis:
Administrative Law, Appellate Advocacy, Civil Procedure, Constitutional Law, Criminal Procedure, Dispute Resolution focusing on disputes involving the government.
Scholarship:
U.S. Torture As a Tort [forthcoming in RUTGERS L.J. (2006)].
Lightening and Enlightening Exam Conference [forthcoming in J. LEGAL EDUC. (2006)].
Service:
Elected Member, American Law Institute.
Recognitions:
Allan G. Shepard Professorship Award, 2006-07.
German Law Journal Gives Students a Global Perspective

When Professor Russell Miller joined the College of Law faculty four years ago, he brought with him the first and only online, English-language report on developments in German and European jurisprudence. In its seventh year of publication, the German Law Journal (http://www.germanlawjournal.com) now has over 5,000 "subscribers" from over 50 countries who have requested that they receive email notification of the publication of each monthly issue.

While an LL.M. student at Johann Wolfgang Goethe University, Frankfurt am Main, Germany, Professor Miller founded the German Law Journal with Peer Zumbansen, now the Canada Research Chair of Transnational and Comparative Corporate Governance at Osgoode Hall Law School of York University, Toronto, Canada. “A close community of legal scholars and judges from around the world,” says Professor Miller, “has long known that Germany possesses an impressive and dynamic legal tradition meriting comparative study. Unfortunately, German legal sources, statutes, cases and commentaries were often available only to those with a command of the German language. Reporting in English (surely, the lingua franca of our time) the German Law Journal provides a portal to the rest of the world into German legal culture.”

Service as a Student Editor is a serious responsibility requiring a faithful commitment of two years. Students are also required to take Professor Miller’s Public International Law course, to attend editorial meetings regularly, and to publish in the Journal. The primary duty of Student Editors is to conduct “native language” checks of submissions to the Journal. Professor Miller explains that many of the contributors are non-native English speakers. “Students Editors check their articles to ensure that they are legible. By doing this, the students become much more intimately engaged with the text than if they were editing a piece written by a native English speaker.” Student Editors also format submissions for publication on the Internet and check all footnotes to ensure they are in compliance with the Bluebook, the style manual for citing legal documents.

In addition to editorial duties, Professor Miller says there are abundant opportunities for Student Editors to develop such administrative efforts as fundraising, outreach, and marketing. “So far, we’ve done almost no marketing; there just hasn’t been the time. We’d also like to establish a relationship with legal databases, such as LexisNexis and Westlaw.”

The Journal has published contributions from some of the world’s most notable commentators on law and jurisprudence, including Bruce Ackerman, Yale Law School; Martti Koskenniemi, Finnish Erik Carsten Institute; Jutta Limbach, President of the Goethe Institutes and former President of the German Federal Court; and Anne-Marie Slaughter, Dean of Princeton’s Woodrow Wilson School. In addition to German law and jurisprudence, the Journal also reports on European Union Law, International Law, the European Convention for Human Rights, Comparative Law and Jurisprudence, and Legal Theory.

Second-year students serving as editors of the German Law Journal with Professor and co-editor Russell Miller. Left to right: Mikela French, Amanda Ulrich, R. J. Linnan, Jeremy Dittard, Joshua McCarthy, Professor Russell Miller, Sarah Higer, Jason Wing, Ross Brown.
Multicultural Competency: A Key to Effective Practice

To help students work as competent lawyers in an increasingly multicultural world, the College’s Diversity Committee, in cooperation with the student Multicultural Law Caucus, provides extracurricular cultural competency instruction, generally during the spring term of the academic year. Thanks to financial support provided by the College, this elective instruction is available at no cost to students.

Under the direction of trainers Cherie Buckner-Webb and Michael Welp, the session for the 2005-2006 academic year was held on March 2, 2006. Buckner-Webb, Global Diversity Program Manager with Hewlett Packard Company, is the recipient of several public service awards, including the Year 2000 Hewlett Packard Award for Distinguished Leadership in Human Rights and the 2005 Jefferson Award for Public Service. Welp is the founding partner of White Men as Full Diversity Partners. His work centers on creating long-term cultural change in organizations, and he has authored three books on diversity and leadership.

Among the students who participated in the education were Lance Fuisting, Jamila Holmes, and Brad Willis, all members of the Class of 2007. A native of Connecticut, Fuisting, now Vice-President of the Student Bar Association, taught high school in southern Idaho for nine years before enrolling in law school. “The training,” he says, “is essential. I participated last year and found the experience incredibly valuable.” During this year’s training, he adds, the participants discussed “why things are the way they are and what can be done to change them” and learned specific techniques to help them relate to people as individuals. “It is very empowering,” he says “to know what to do when I am introduced to someone from a culture different from my own.” Fuisting plans to pursue a general practice in a small Idaho town, probably Driggs, after graduation.

Like Fuisting, Jamila Holmes, whose bachelor’s degree in Psychology is from Boise State University, is a two-time diversity education participant. “The biggest thing I learned last year was that only very little diversity is immediately apparent,” she says. “Things like religion, politics, wealth or lack thereof, etc. certainly shape our perspectives but are not visible in the way that race and ethnicity are.” This year’s training, says Holmes, helped her become “more comfortable with the fact that I don’t know much about cultural differences. In practice, I hope I will be able to learn from fellow practitioners and clients very different from myself.” Holmes intends to go into public interest law following graduation.

Brad Willis also plans to specialize in public interest law after commencement. A native of Utah, and holder of two bachelor’s degrees, one in History and the other in Liberal Arts, Willis says diversity instruction has been an “eye-opening” experience for him. “I had always thought of myself as open-minded and tolerant about people, but the training really made me confront my assumptions. It was a powerful experience that enabled me to see how I had generalized people’s experiences, even those with personal backgrounds similar to my own.” Of his second round of instruction, he says that the program was “even better the second time. As educated as a person is,” he adds, “there is always room to question his or her assumptions, to be aware of diversity, and to practice cultural competence. It is important to meet every new person with an open heart and an open mind.” *

2006 Law Review Symposium Explores Community Justice

In addition to publishing the Idaho Law Review three times per year, the Law Review also presents an annual symposium, which brings together scholars and practitioners for a day of presentations and discussion on a topic of timely concern to the legal profession. Past topics have included legal ethics, biodiversity, First Amendment law, and public education law. The theme of the 2006 symposium, which took place on April 14 in Boise, was “Community Justice: Exploring Possibilities.”

Ritchie Eppink ’06, Paul Harrington ’06, and Lisa O’Hara ’06, editors of the symposium edition of the Law Review, organized the 2006 event. Eppink, now a Fulbright Fellow researching community legal education in Canada, secured a $2,000 grant from the Idaho Humanities Council to help support the symposium, which brought together
judges, lawyers, law enforcement and corrections officers, school principals, Idaho legislators, and community members from across Idaho to discuss ways of addressing some of our society's most difficult problems.

Participants in the symposium included some of the nation's leading experts on the growing community justice movement, including Peggy McGarry, Walter Dickey, Michael S. Scott, and Robert Yazzie. After introductory remarks by Idaho Seventh Judicial District Judge Brent Moss, a team presentation by McGarry, Dickey, and Scott surveyed the landscape of community justice efforts in the United States. Scott, founder and director of the Center for Problem-Oriented Policing, concluded the team's contribution with a video profiling the nation's most successful community policing projects.

University of Idaho sociology professor Eric Jensen spoke about his research on the origins and growth of the drug court movement, with a focus on adult drug courts in Idaho. The morning's sessions concluded with a presentation by Justice Robert Yazzie on Navajo peacemaking techniques. The immediate past Chief Justice of the Navajo Nation, Yazzie explained the characteristics and advantages of the Navajo “peacemaking” system, which he called “ODR”—the original dispute resolution.

The afternoon was devoted to a panel discussion, moderated by Idaho community justice innovator Judge Patricia Young ’77, and featuring all of the morning's presenters, as well as Idaho Appellate Public Defender Molly J. Huskey ’93. Young led the panel in brainstorming community justice approaches for a “hypothetical” Idaho town beset with methamphetamine abuse and other criminal problems. The day before the symposium, in a collaborative effort between the Idaho Law Review and the Idaho Supreme Court, Young led an all-day workshop on practical community justice possibilities for judges, lawyers, police, and educators.

“This year’s symposium has perhaps been the most successful event in the Idaho Law Review’s history,” Eppink said. “Not only did we draw together key people from across the whole state of Idaho, but the symposium print edition has been requested by state legislators and even the New York Court of Appeals.” The print edition includes articles written by the symposium presenters and others.

The 2007 Idaho Law Review symposium, “Getting Bigger Better,” will explore the problems facing expanding municipalities in the Pacific Northwest, the means other American cities have used to respond to those problems, and the way those responses might need to be adapted for cities in this region. The event is tentatively scheduled for March 23 or March 30, 2007, in Boise. For more information, contact Symposium Managing Editor Amber Ellis at aellis@uidaho.edu.

Student Awards for Excellence

Two members of the Class of 2006, Ritchie Eppink and Will Orndorff, received the University of Idaho Alumni Association’s Academic Award for Excellence for the 2005-06 academic year. These awards recognize academic achievements of top senior, law and graduate scholars chosen by a committee of faculty, staff, and alumni. Each recognized student has an opportunity to name a faculty member who has had a memorable impact on his or her development. Eppink named Professor Laurie O’Neal, and Orndorff, Professor John A. Miller.

Second year students Hillary Bearden and John Withers are the recipients of the 2006 Idaho Trial Lawyers’ Association (ITLA) award. Annually, the ITLA selects a best brief from each of the two first-year class sections. At the end of the school year, the legal writing instructors for each section select the top three appellate briefs submitted by their first-year class, then forward those three briefs to the ITLA. A panel of three judges selected by the ITLA then reads the submitted briefs and selects the best one from each section. The winning students receive a cash award and a plaque, and the presentation ceremony is part of the College’s Opening Convocation held at the beginning of the school year.
Pursuing the Public Interest: A New Organization Takes Wing

In the spring of 2006, several first year students founded the Public Interest Law Group. The purpose of the entirely student-run organization is to create a supportive community for students interested in pursuing public interest law as a career, to nurture the development of public interest law, and to educate the community-at-large of the importance of public interest legal work. Officers for the 2006-2007 academic year are Josh McCarthy, President; Marisa Swank, Vice President; Morgen Reynolds, Secretary; and Michelle Creecelius, Treasurer. Anne-Marie Fuller, Director of Career Development, serves as the Group’s advisor.

One of the group’s founding members, Mikela French, explains that there were two important reasons she and her classmates started the organization. “First, we saw a gap at the College of Law that needed to be filled. Second, while very few graduates from the University of Idaho College of Law go into public interest law, there is a definite need for public interest practitioners. In addition to government positions, Boise has the highest number, per capita, of 501(c)(3) organizations in the nation, and those organizations are hiring lawyers from other schools to fill their needs.”

In addition, French says that she and the other members of the group believe that “public interest lawyers are crucial to maintaining a fair legal system and a just society.” During the summer of 2006, several members of the group put their beliefs into action. French worked with a Seattle labor union affiliated with the AFL/CIO, Morgen Reynolds with the Boise chapter of the ACLU, and Michelle Creecelius for Second Judicial District Judge John R. Stegner.

“Our members,” says French, “seek the fulfillment that meaningful work can offer – the satisfaction of serving our communities, not simply our pocketbooks.”

One of the group’s initial efforts has been to support the work of Jack McMahon, as he launches the College’s new Pro Bono Program. “Students in the Public Interest Law Group,” he says, “have been of tremendous help to me in brainstorming and giving me ideas, spreading the word with classmates, and announcing meetings and information sessions.”

One of the group’s most important goals is to provide scholarships for students interested in completing public interest internships and externships. To raise funds for these scholarships, members of the group intend to engage in enthusiastic fundraising through such innovative techniques as maintaining a Web site, www.cafepress.com/uipig, from which apparel bearing the College of Law name may be purchased. *

...“public interest lawyers are crucial to maintaining a fair legal system and a just society.”

Front row, left to right: Michelle Creecelius, Marisa Swank, Mark Creecelius, Ashley Ruen
Back row, left to right: Mikela French, R.J. Linnan, Ross Brown, Joshua McCarthy, Morgen Reynolds

*One Law for All, continued from page 20

Australia v Commonwealth (the Native Title Act case) (1995) 183 CLR 373, at 454-5.

Could there be a clearer example of the ultimate inadequacy of non-entrenched, so-called “rights” provisions? Can there be any denying that “[a] clear benefit of a constitutionally entrenched guarantee of equality may be to remove the temptation for governments to compromise minority human rights with schemes of this kind [non-application of RDA to native title]?” How much longer should Aboriginals, immigrants and other marginalized Australians have to accept that “the cynical political culture which produces Australian reluctance to amend the Constitution may be equally capable of producing a desire to scale back Constitutional guarantees where it is perceived that they give Aboriginal people... ‘too much’ or deny important members of the political majority ‘certainty.’” Without constitutional entrenchment, the supposed human rights guarantee against racial discrimination in the RDA evaporated in the “cynical political culture” that is so-called “responsible government.” Who wouldn’t be cynical about imaginary “rights”? The only way to remove the cynicism about human rights in Australia is to get serious about their protection. It is not being serious about rights to allow them to be legislated away whenever powerful majoritarian interests find rights inconvenient, as was the case with the RDA and native title. America was shown to be far from serious about certain of its high ideals in the mid-nineteenth century. The constitutional reaction was the post–Civil War Amendments, entrenching minority protection against an always potentially “cynical political culture.” This was America’s “second constitutional moment,” partially redeeming the original sin of human slavery. Australia needs such a second moment. It is the only way to guarantee all a “fair go.” One Law for All! *
Margaret Knight brings to her position of Administrative Assistant for the College’s Career Development and Admissions programs a depth of public service experience far beyond her 26 years. Almost immediately after graduating from Colby College in 2002, with dual degrees in Economics and Art, Margaret (who prefers to be called “Meg”) left her home in Maine to volunteer with the Peace Corps in West Africa.

From September 2002 to November 2004, Meg lived in Banikoara, a village of 50,000 people (with neither paved roads nor a police force) located in the Republic of Benin. Her job was to help promote small business opportunities for the citizens of Banikoara, especially women. She explains that it was common for women of the community who shared the same method of generating income, such as raising chickens or making cheese, to band together in cooperatives.

One of Meg’s most important assignments was to teach the members of the cooperatives basic accounting and finance skills. She also served as an English language tutor at the high school, developed a community garden at the hospital, and taught computer literacy classes to young women. Communication was accomplished with the assistance of a translator who translated Meg’s French into the local language, Bariba.

One of her most memorable experiences as a Peace Corps volunteer was participating in the community’s celebration of World Women’s Day. “World Women’s Day is a big deal in Africa,” Meg explains, adding that during her time in Banikoara, there was not one female student to graduate from high school. Wearing dresses of matching fabric, she and many women of the community marched to express their solidarity and to increase awareness of HIV/AIDS issues. Meg also remembers the satisfaction she felt after the father of a teenage girl she was tutoring in English and computer skills expressed his gratitude for her help in enabling his daughter to continue her secondary education.

It was in Benin that Meg met her partner, Bryan Moravec, also a Peace Corps volunteer at that time and now a graduate student in Hydrogeology at Washington State University. Both Bryan and Meg see themselves returning some day to Africa to work on initiatives close to their hearts. Meg’s involvement with the local chapters of the League of Women Voters and Planned Parenthood reveal her interest in public health issues, especially those involving women. As a hydrogeologist, Bryan is concerned about the environment, particularly the management of water resources.

“I am very proud that I served in the Peace Corps,” says Meg. “The work I did in Banikoara, and helping students here at the College of Law, have shown me that I want to lead a life of public service. I have been so fortunate in my life, and I know there is so much I can offer.”

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### Career Development: Class of 2005

Statistics for the 97 members of the Class of 2005 show 93.8% of the class obtaining employment, enrolling in post-J.D. educational programs, or engaging in full-time study for the Bar.

<table>
<thead>
<tr>
<th>Type of Employment</th>
<th>Full-time degree student</th>
<th>Studying for the Bar</th>
<th>Unemployed, seeking &amp; not seeking</th>
<th>Total Other</th>
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<tr>
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<tr>
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<td><strong>3</strong></td>
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<td><strong>97</strong></td>
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### Location of Employment

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<td>Japan</td>
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</table>
On May 13, 2006, in ceremonies conducted at the University of Idaho Student Union Ballroom, the law school community and an audience of approximately 800 persons extended their congratulations to 89 members of the Class of ‘06, some of whom had graduated in December or had opted to participate in the spring commencement ceremony in Boise.

The Honorable Larry M. Boyle ’72 Chief Magistrate Judge of the United States District Court for the District of Idaho, was selected by the graduating students to be their commencement speaker. Judge Boyle, whose unique career has spanned private practice and service as a Justice of the Idaho Supreme Court, in addition to his service in the federal judiciary, called upon the Class of ’06 to continue a multi-generational tradition of Idaho lawyers working to improve their communities. Moreover, recalling President John F. Kennedy’s call to the service of our country, Judge Boyle urged the new graduates to think broadly about opportunities to make a difference. He challenged them to use their analytical minds to resolve disputes efficiently and to listen to their hearts in healing conflicts compassionately.

Nancy M. Morris ’83, Secretary of the U.S. Securities and Exchange Commission, received the Faculty Award of Legal Merit. In her position – one of the most important lawyering jobs in the federal government – she advises the SEC on legal, administrative, and procedural questions and is responsible for the oversight and administration of the Commission’s programs and operations. In comments to the graduation audience, and during a colloquium for students the previous day, Ms. Morris noted the satisfaction of working to uphold ethics in the securities marketplace and in the government itself. She added emphatically that her Idaho legal education had prepared her well for this national service.

Taylor L. Mossman, President of the Student Bar Association in 2005-06, delivered the student address in which she recounted the accomplishments of selected students in the class and described the strength of the class as a whole. She expressed confidence that the Class of ’06 “will move the legal profession in a positive direction.”

The faculty-established Award of Legal Achievement, earned by the graduate with the highest cumulative grade point average in the most recently graded academic term, was presented to Ritchie Eppink. The graduating class conferred the Peter E. Heiser Award for Excellence in Teaching upon Professor Elizabeth Brandt in recognition of the quality of her work in the classroom and her accessibility to students.
Walters Receives Silver & Gold Award

In recognition of his distinguished record of achievement and service, retired justice Jesse Walters ’63 was awarded the University of Idaho Alumni Association’s Silver & Gold Award at a ceremony in Boise in March 2006.

Retired Justice Walters is an Idaho native who graduated from the University of Idaho with a bachelor’s degree in Political Science in 1961 and from the College of Law in 1963. He was admitted to the Idaho Bar that year. Following law school, Justice Walters was law clerk to the Chief Justice of the Idaho Supreme Court from 1963 through 1964 and in 1965, attorney for the Idaho Senate.

Justice Walters was in private practice in Boise until 1977 when he became a Fourth District Judge, serving in that capacity until 1982. From 1981 to 1982, he also served as the Administrative District Judge of the Fourth Judicial District. In 1981, Governor John Evans appointed him to the Idaho Court of Appeals. In 1990, Justice Walters earned a Master’s Degree of Law in Judicial Process from the University of Virginia.

In 1997, Governor Phil Batt appointed Justice Walters to the Idaho Supreme Court, and in 1998, he was elected to a six-year term on the Court. Justice Walters retired from the bench in July 2003; that same year, the College of Law awarded him the Award of Legal Merit.

In addition to his distinguished legal career, Justice Walters has an equally impressive record of serving his profession and his community. He is especially committed to mentoring students and young lawyers, always stressing the importance of integrity and ethical behavior. Justice Walters has taught the College of Law’s Judicial Remedies course and regularly serves as judge in high school and law school moot court competitions. “In this era of media-induced fascination with image and fame,” says Dean Don Burnett, “Justice Walters has led a public life without pretense. His career has been shaped by a clear sense of duty, not by self-promotion.”

Justice Walters and wife, Harriet, have three children: Craig, Robin, and Scott, as well as several grandchildren.
Class of 1956 Celebrates 50th Reunion

Calling it “one of the richest classes in terms of diversity of success,” Dean Don Burnett welcomed members of the Class of 1956 to the College of Law on April 28, 2006. Those present to commemorate the 50th anniversary of their graduation from the College were Robert Bakes, Kenneth Bell, Wallis Friel, Ralph Haley, Edmund Lozier, John Lynch, Charles McDevitt, Thomas Miller, William Nixon, John Reese, and Roger Swanstrom.

Following a reception at the law school, the graduates met in the College of Law Courtroom with faculty, students, and staff for an informal conversation. After providing abbreviated histories of their distinguished legal careers, the men shared reminiscences about their law school days. At the request of Dean Don Burnett, each of the men revealed his most memorable experience as a student. Amusingly, most were extra-curricular in nature, involving poker games in the law library, a Phi Alpha Delta initiation in Genesee, releasing flies into classrooms, and inter-College basketball games.

Many of those present also expressed their appreciation for the legal education they received at the University of Idaho and for their profession. Wallis, “Wally” Friel, who practiced for over 30 years, primarily in Washington State, described the law as the “most marvelous profession in the world.” In addition, he also acknowledged the “great professors,” namely Thomas Walenta and George Bell, under whom he studied. Washington lawyer John Reese commented that the education he had received at the College of Law was more than adequate preparation for the cases he tried as a military attorney.

Second generation Idaho practitioner William Nixon, who shared that he “loved the practice of the law,” also expressed his pride that his son, Jed, had joined the family practice, which his grandfather, William James Nixon, established in Bonners Ferry in 1956.

Law Advisory Council 2006

Left to right, front row: Sally Bagshaw ’76, Laura Bettis ’03, Bill Parsons ’57, Linda Copple Trout ’77, Trudy Fouser ’81, Mary Giannini ’84, Allen Derr ’59, Bill Nixon ’56

Left to right, back row: Don Burnett, Cynthia Larsen ’78, Nels Mitchell ’78, Jesse Walters ’63, Tim Hopkins, Jim Bevis ’74, Jim Whistler ’73, Dennis Johnson ’70, Bob Alexander ’64, Michael Bogert ’85, Jon Oliver ’97, Allyn Dingel, Bill McCann, Jr. ’69

Photo: Boise, April 2006
Dear Graduates and Friends of the University of Idaho Law School:

At a time when the third branch of our Government is so much in the news, when the independence of our judiciary is being regularly challenged and when our fundamental liberties are being expected to accommodate limitations deemed necessary to assure our National security, educating an emerging generation in the fundamentals of our constitutional form of government, and in the law, could not be more important.

Having been given the opportunity as a member of the Law School Advisory Council to visit our Law School, meet the faculty and administration and observe the educating process, I have been continually and favorably impressed. Progress is obviously being made toward the School’s goal to become America’s best small state law school. There is lots of top flight competition for that superlative title, however, and it will not be easily attained.

That’s where all of us graduates and friends of the School must come to help. As we all know, the costs are high and the Legislature’s funding has been conservative, at best. There is great need for student scholarships to lessen the burden of student loans that affect hiring decisions and discourage young families. Better faculty salaries and endowed chairs are essential to the way the School attains and perpetuates its excellence. And, despite my own incredulity, the Albert Menard Law chairs are essential to the way the School attains and perpetuates its excellence. And, despite my own incredulity, the Albert Menard Law School building is no longer “new.”

The graduates of our Law School are bright and eager and well-trained. My firm hires them regularly, and so do you. Please join me and my firm in supporting our Idaho Law School as generously as you can. Dean Don Burnett, the faculty, and staff are working very hard and my firm in supporting our Idaho Law School as generously as you can. Trudy Hanson Fouser ’81

Gjording & Fouser
Boise, Idaho

Mary R. Giannini ‘84
Witherspoon Kelley Davenport & Toole, P.S.
Spokane, Washington

Dennis Johnson ‘79
United Heritage Financial Group & Life Insurance Co.
Meridian, Idaho

Hon. Karen L. Lansing
Idaho State Court of Appeals
Boise, Idaho

Cynthia J. Larsen ’78*
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Sacramento, California

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Holland & Hart LLP
Boise, Idaho

William Vern McCann, Jr. ’69
McCann Law Office
Lewiston, Idaho

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First District Court
Coeur d’Alene, Idaho

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U.S. Securities and Exchange Commission
Santa Monica, California

Nancy M. Morris ’83
U.S. Securities and Exchange Commission
Washington, D.C.

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University of Virginia
Charlottesville, Virginia

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Burley, Idaho

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Sunbelt Communications
Las Vegas, Nevada

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Moscow, Idaho

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U.S. Court of Appeals
Boise, Idaho

Hon. Linda Cupple Trout ‘77
Idaho Supreme Court
Boise, Idaho

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San Diego, California

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Dwight V. Board ’69*
Merlyn W. Clark ’64*
Candy Wagahoff Dale ’82
M. Allyn Dingel
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Eugene Miller ’49*
Katherine Moriarty ’91
Thomas Moss ’65
William Warren Nixon ’56
W. Marcus W. Nye ’74
Louis F. Racine, Jr. ’40†
Gov. James E. Risch ’68
Ray W. Rigby ’50
John Roshol’t ’64*
Ernesto Sanchez ’72
Hon. N. Randy Smith
Hon. Jesse R. Walters ’63
Lucinda Weiss ’73
Paul Larry Westberg ’68
Dennis E. Wheeler ’67*
†denotes deceased
*indicates Past Chair

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Hansen Hoopes PLLC
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Eugene Miller ’49*
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Thomas Moss ’65
William Warren Nixon ’56
W. Marcus W. Nye ’74
Louis F. Racine, Jr. ’40†
Gov. James E. Risch ’68
Ray W. Rigby ’50
John Roshol’t ’64*
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Hon. N. Randy Smith
Hon. Jesse R. Walters ’63
Lucinda Weiss ’73
Paul Larry Westberg ’68
Dennis E. Wheeler ’67*
†denotes deceased
*indicates Past Chair
By the Numbers

Funding for Excellence

During the fiscal year ending June 30, 2006, a total of $583,179 in gifts and pledges designated specifically to the College of Law was received. As of June 30, 2005, the endowment principal at market (all endowments combined) was $9,650,992 and $391,230 of the earnings were distributed to the College of Law for scholarships, lectures, and visiting legal academicians and practitioners.

All of the endowments and funds listed provide for a specific program or scholarship. They were established to pay tribute to a family member or honor an accomplished practitioner or judge, a friend or a professional associate. And they were created for the same reason: the honoree and/or donor held a love and an appreciation for the College of Law and the legal education the University of Idaho College of Law 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
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Suko, Lonny R.

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McCann, William V.

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Baker, Dwight E.
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Zagelow, Robert L.

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Stucki, Marvin Rodney
Zollinger, Keith A.

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Hinin, Michael H.
Jensen, Terry L.
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Hanks, Stephen Grant
Hohnhorst, John C.
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Stephens, Alan Childs

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Johnson, Dennis Lane
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Riposta, Anthony J.
Smith, Jack Wheten

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Shaver, Robert L.

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Soignier, Shannon M.

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Joanis, Lance Eric

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Labrum, Tara
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