

**University of Idaho College of Law
Faculty Tribute Essays**



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I. MARK D. ANDERSON: A TEACHER'S TEACHER AND A SCHOLAR'S SCHOLAR

by Wendy Gerwick Couture*

After 38 years on the College of Law faculty, Professor Mark D. Anderson will be retiring from the University of Idaho College of Law at the end of the 2019-2020 academic year. Professor Anderson joined the faculty in 1982, after earning his A.B. from Macalester College, earning his J.D. from the University of Chicago Law School, and practicing antitrust and corporate law at a top firm in Minneapolis/St. Paul.

Through his teaching, Professor Anderson has influenced several generations of College of Law graduates, including several sets of parents and children. Indeed, his first-year Criminal Law course and upper-level Business Associations course are regarded as rites of passage at the College of Law, and alumni enjoy bonding over their shared experiences in the classroom of the "spookily smart" Professor Anderson. In recognition of Professor Anderson's status as a "teacher's teacher," he has been awarded both the Peter E. Heiser Award for Excellence in Teaching and the Alumni Award for Excellence nine times apiece.

Professor Anderson's students are especially appreciative of his deeply thoughtful approach to the course material. For example, he developed the following metaphor for his Criminal Law students: "In this course, imagine that you are building an onion from the inside out. Start with the core, and then add layers of complexity. By the end of the semester, you should be able to slice through the material and see how the different segments relate to each other." Likewise, in his Business Associations course, Professor Anderson wove a simple theme through the complex material: "Fundamentally, this course is about the allocation of power and money and the interrelationship between them, such as the power to force a buy-out or a liquidation."

Professor Anderson is also an impactful scholar, primarily in the area of antitrust law.¹ Professor Anderson's early work came at a time of real change in antitrust law, after the tectonic shifts of the late 1970s, which he experienced as a young antitrust attorney. He recalls writing his first article, *Vertical Agreements*

* James E. Wilson Distinguished Professor of Law at the University of Idaho College of Law. The author would like to acknowledge the contributions of Max Huffman, Professor of Law at Indiana University Robert H. McKinney School of Law, to this essay, including unquoted contextualization of Professor Anderson's scholarly work.

¹ See, e.g., Mark Anderson, *The Enigma of the Single Entity*, 16 U. PA. J. BUS. L. 497 (2014); Mark D. Anderson, *The False Duality of Efficiency and Predation in the Analysis of Monopolizing Conduct*, 33 SANTA CLARA L. REV. 1 (1993); Mark D. Anderson, *Federalism and Conspiracy: Is Governmentally Compelled Conduct Per Se Lawful Under § 1 of the Sherman Act*, 40 OKLA. L. REV. 209 (1987); Mark D. Anderson, *Vertical Agreements Under Section 1 of the Sherman Act: Results in Search of Reasons*, 37 UNIV. FLA. L. REV. 904 (1985).

Under Section 1 of the Sherman Act: Results in Search of Reasons,² by hand on yellow legal pads. In that piece, Professor Anderson identified the analytical flaws in the Supreme Court's analysis of the existence of an "agreement" under Section 1 of the Sherman Act and argued for the adoption of a "dependence test" for the existence of concerted action; and he is planning to write a follow-up in light of subsequent developments in the law. In *The False Duality of Efficiency and Predation in the Analysis of Monopolizing Conduct*,³ Professor Anderson analyzed the conduct element of the monopolization offense under Section 2 of the Sherman Act, which he characterizes as "the hardest question that he took on as a scholar." In that piece, he demonstrated the failure of the Supreme Court's efficiency-predation dichotomy by identifying competitive conduct that is neither predatory nor efficient and argued that the conduct element should legalize monopolies that engage in ordinary competitive acts, even if those acts are not efficient. Professor Anderson has also made scholarly contributions in the area of business associations. For example, in *Entity Exit: Rights, Remedies, and Bounded Rationality*,⁴ Professor Anderson explained how the obligation of an entity owner to remain part of the entity and the strength of the remedy upon an owner's attempt to exit work together to impact the fragility of the entity; and he made the breakthrough insight that, for some entity forms, the strong remedy operates as a form of specific performance that does not require going to court.

Professor Anderson has also had a fruitful scholarly collaboration with fellow antitrust law expert Max Huffman, Professor of Law at Indiana University Robert H. McKinney School of Law. To date, they have co-authored two articles in print and a third nearing submission—not counting their collaborations that are still in desk drawers. Together, Professors Anderson and Huffman have analyzed the potential for sharing economy firms, like Uber and Airbnb, to be treated as hub-and-spoke cartels under antitrust law⁵ and, using antitrust law to demonstrate a trans-substantive approach, argued that the stringency of notice pleading standards should depend on both the cost and likelihood of false positive errors.⁶

Professor Huffman describes Professor Anderson as "a scholar's scholar, with a deeply reflective analytical process that starts with 'what would happen if that were the law, and is that an acceptable outcome, and if not, what should change?'" Professor Anderson analogizes their collaborative process to "the Vulcan mind meld because you can't look at any page and say 'that page is mine' or 'that page is Max's'—every idea and every word is the product of joint thinking." Indeed,

² Mark D. Anderson, *Vertical Agreements Under Section 1 of the Sherman Act: Results in Search of Reasons*, 37 UNIV. FLA. L. REV. 904 (1985).

³ Mark D. Anderson, *The False Duality of Efficiency and Predation in the Analysis of Monopolizing Conduct*, 33 SANTA CLARA L. REV. 1 (1993)

⁴ Mark Anderson, *Entity Exit: Rights, Remedies, and Bounded Rationality*, 17 HOUS. BUS. & TAX L.J. 1 (2016).

⁵ Mark Anderson & Max Huffman, *The Sharing Economy Meets the Sherman Act*, 2017 COLUM. BUS. L. REV. 859.

⁶ Mark Anderson & Max Huffman, *Iqbal, Twombly, and the Expected Cost of False Positive Error*, 20 CORNELL J.L. & PUB. POL'Y 1 (2010).

their phone conversations are so lengthy that Professor Anderson purchased a headset, which only increased the impression that they were in each other's heads. Professor Huffman agrees: "Mark's and my approach to the law of antitrust often starts from very different directions and converges as we progress on a project. Our joint work has married his analytical depth with my varying flirtations with new theories, such as behavioral antitrust and procedural law."

In addition, Professor Anderson has served as a mentor for innumerable students, who appreciate his interest in them, not only as future lawyers, but also as people. There is often a line of students down the hallway during his office hours, as students seek help with their studies, ideas about their career paths, and overall life advice. Several students have expressed that they "wouldn't have made it through law school without Professor Anderson." And the appreciation is mutual—what Professor Anderson will miss most about being a full-time faculty member is his students, in particular their "enthusiasm, questions, and desire to learn."

Finally, Professor Anderson is a valued and respected colleague because he demonstrates genuine interest and curiosity in everyone. Indeed, Professor Anderson says that he "has learned more from those who are dissimilar to me than those who are similar." On a personal note, Professor Anderson has also mentored numerous junior faculty, myself included. For example, after I was too intimidated to speak up at my first faculty meeting, he set me straight: "You are a member of this faculty, and you have a duty to contribute your insights and opinions." After I stumbled while teaching a class, Professor Anderson shared the following simultaneously encouraging and humbling perspective: "Your worst day teaching isn't as bad as you think it is, but your best day isn't as good as you think it is either." Most precious of all have been the lengthy phone conversations probing various business entity statutes, as we simultaneously flipped through the code, asking each other: "But what if X? And surely the answer can't be Y?"

As he enters retirement, Professor Anderson leaves behind a legacy at the College of Law, not only as a teacher's teacher and a scholar's scholar, but also as a mentor and a friend.

Additional Comments from Faculty, Staff & Students

Patrick Fackrell '16

Dear Professor Anderson:

Congratulations!! Your classes were like no other. From Criminal Law to Business Associations, you taught me how to approach learning the law and solving legal problems. You also taught me much more. Your class presentations invariably demonstrated preparation and the value of effective delivery, virtues that are at the very core of a lawyer's craft. Your time outside class in particular, meeting to discuss practice exams demonstrated the necessity of an effective mentor. I sincerely thank you for your dedication.

Carolyn Todd, Staff

Mark: When I started working at the circ desk and was working with old exams, I discovered Mark's CrimLaw exams, peopled by Able, Baker, and Charlie (and multiple other folks). Those guys got into so much trouble - stealing cars, blowing up each other, illegal fishing, you name it. They never learned their lesson

but they make for a great read. I also fondly remember meeting him at the snack machine back when we could both eat Snickers bars in the afternoon (well, I ate Snickers bars).

II. D. BENJAMIN BEARD: A LAW PROFESSOR FOR ALL SEASONS

by Richard Seamon

D. Benjamin Beard is old school in the best sense, a sense that is increasingly lost upon those of us in modern academia, to our loss. Accordingly, on the occasion of Ben's retirement, we as Ben's colleagues at the College of Law can best honor Ben by striving to emulate the timeless qualities that Ben has brought—and to match the enduring contributions that Ben has made—to the College.

When I came to the College in 2004, Ben was serving as the associate dean, a position he held from 2000–2006. When you read that Ben was the associate dean, you might wonder, "Associate dean for what?" It is an understandable question, considering that today the College is blessed with four associate deans, each with different responsibilities and different titles. In 2004, however, Ben was the one and only associate dean. He was associate dean for students and administration—the veritable chief cook and bottle washer.

And remarkably, Ben managed to do it all, and to do it with his customarily exacting attention to detail and high standards for his work product. Ben drafted the course schedule. Ben counseled students who were failing their courses. Ben fielded complaints from students about members of the faculty and staff the students perceived were not serving the students well. Ben oversaw building projects and upkeep. And to do all this while meeting his family obligations, Ben was almost always the first person in the building every morning, excluding the custodial staff. This early-bird approach, plus Ben's amazing abilities to organize, prioritize, and focus, enabled him to fulfill his associate dean roles without missing his children's soccer practices and other family events.

I had the good fortune to see Ben's associate deaning in action when I shadowed him for one semester before taking on an associate-dean role myself in 2006. (By that time, my former colleague, Elizabeth Brandt, had become the associate dean for faculty, leaving me to serve as just the associate dean for students.) From shadowing Ben, I not only learned how to be an associate dean but also, over time, came to learn how generous a man, how loyal a colleague, and how great a teacher and scholar Ben is.

As for generosity, Ben was generous with the most valuable commodity any of us has: his time. When it came to giving his time to the College, Ben always stepped forward to do whatever needed to be done without making a big deal of it or expecting credit. Besides his stint as associate dean from 2000–2006, he held that role beforehand, as acting associate dean in the spring of 1998, and again afterwards, as interim associate dean for six months in 2012. And Ben contributed greatly to College operations in other roles, such as by overseeing the drafting of the College's self-study in preparation for American Bar Association (ABA) accreditation. And by planning extensive building updates for the installation of classroom technology. And by frequently chairing the curriculum committee, including during an extensive update of the first-year curriculum. And by co-founding the Early Welcome Program for incoming students who needed extra time adjusting to attending law school in Moscow, Idaho. Not to mention the hundreds of hours Ben devoted over many years to service on the admissions committee.

I could go on. Indeed, I could expand this tribute to the length of a traditional law review article if I were to attempt to describe all of Ben's service contributions to the College. Suffice it to say that perhaps more than any other, single person, Ben built and, for a long time, maintained the College's infrastructure. Although I cannot exhaustively catalog Ben's contributions to the College's operation, I hope I have said enough to show that—in his generous devotion of time to many thankless tasks associated with running the College—Ben exemplifies another quality that seems increasingly rare in modern academia: loyalty to an institution.

Ben came to the College of Law in 1987, after graduating from college and law school with top honors—Phi Beta Kappa and Order of the Coif, respectively—and after five years of full-time practice at a major law firm in Cleveland, Ohio. Since then, Ben has spent his entire academic career, spanning thirty-three years, at the College. He has been the stabilizing influence through seven university presidents, innumerable university budget crises, and continuous law school ups and downs. Thus, Ben is the antithesis of the flighty modern academic who alights at an institution only until a perceived-to-be-better perch becomes available. Ben has been a pillar of the College.

Ben has provided stability and continuity to the College in ways that go beyond his involvement in discrete administrative positions and projects. Ben has developed an invaluable store of institutional knowledge and a university-wide reputation for collegiality and sagacity. More than that, Ben has conveyed and exemplified the College's unique culture. It is a culture of civility, high standards of ethical conduct, selflessness, mutual support, and devotion to serving others. It is a culture that has positively shaped Ben's faculty colleagues, the College's graduates, and, in turn, the Idaho legal profession.

Even while devoting so much time to serving the College, Ben developed an international reputation as a commercial law scholar. Ben drew upon his five years of law firm practice to publish multiple law review articles on issues of commercial law. Ben also devoted much time to applied-scholarship projects of the ABA and the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission or "ULC"). For example, Ben served from 2008–2010 as a Reporter for the ULC's Committee to Implement the United Nations E-Commerce Convention. Ben was also, from 1996–2000, a Reporter for the ULC project that drafted the Uniform Electronic Transactions Act, a uniform law enacted by 47 States, including Idaho. In addition to these national roles, Ben has served as an ABA representative at the international level: as ABA representative to the United Nations Commission on International Trade Law, and as a law school representative for the ABA's Central and Eastern European Law Initiatives. Ben has thus vividly shown how a law professor in isolated Moscow, Idaho, can develop an international reputation through scholarly contributions with global, real-world impact.

Despite his abundant generosity and loyalty and his achievements as a scholar and a mainstay of the College, I believe that Ben will be remembered best for his gifts as a teacher. I have had a chance to identify those gifts because I have seen Ben teach many times, including in his role as a charter faculty member for

the Early Welcome Program described above. Ben is a great teacher for many reasons: his clarity, his transparent organization, his sharp attention to detail, and his engaging presence. But the quality that, I believe, is the key to Ben's giftedness is Ben's deep, genuine caring for his students.

A sign in Ben's office expresses Ben's distinctive way of showing his care for his students. The sign says, "I yell because I care." Using that approach in the classroom, for example, Ben would help students understand the most important points by making them emphatically—indeed, by shouting if the point deserved particular attention. To modern sensibilities, Ben's use of emphasis might register as microaggressive. However that may be, hundreds of Ben's former students will attest to its effectiveness. Those former students will, in the same vein, attest to the effectiveness of having seen Ben display impatience with students who came to class poorly prepared, even though such a negative emotion goes against the grain of the modern tendency in some quarters to praise students just for showing up.

And now we come to what might seem least comprehensible to some modern academics: When Ben discovered that a student was poorly prepared for class (and who hadn't given Ben an adequate explanation in advance), Ben didn't seem to care much about *why* the student was ill-prepared. Instead—just like the judges before whom that student would soon appear as an attorney, and just like the clients upon whose livelihoods the student's preparedness as an attorney would soon depend—all Ben cared about was the lack of adequate preparation, not the excuse for it. In this way Ben taught our students the invaluable life lesson that when you fail to live up to your obligations, most people will only remember your failure, not your excuse for it.

I have been in legal education long enough to see many fads come and go when it comes to educational theories and methods. As Dooley Wilson famously sang, "The fundamental things apply ... [a]s time goes by."⁷ I thank Ben for teaching me the fundamental things that apply to being a great colleague, a great teacher, and above all, a good man.

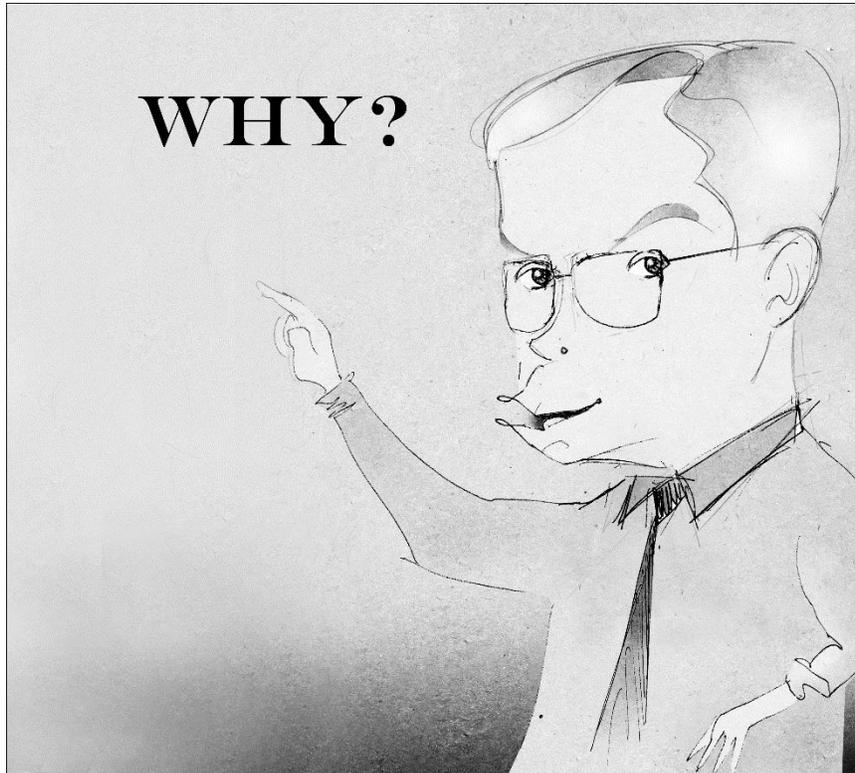
⁷ Herman Hupfeld, *As Time Goes By* (1931).

Image courtesy of Kendal Johnson

Additional Comments from Faculty, Staff & Students

Patrick Fackrell '16

Dear Professor Beard:



Congratulations!! I hope you know how significantly your teaching and dedication impacted me. I can safely say that I would not be where I am today were it not for Property and Sales with you. Your classes always challenged me; your teaching style always motivated me. Thank you for everything. I wish you many happy years of fly fishing.

Kelsey Gooden '18

I want to congratulate Professor Beard on his retirement. His class was the very first I had in law school, contracts in August of 2016. He was tough; everyone who has had the pleasure of his teachings knows that. But, along with all those high expectations, he certainly taught me a lot. Not a day goes by in my work as a lawyer that I do not think of something he taught me. Thank you, Professor Beard. I wish

you all the best in your future endeavors (and gosh I hope there are no typos or grammatical errors in that -ha!)

Carolyn Todd, Staff

Ben: One of the things I always appreciated about Ben was his ability to reach out with the right language when times were tough. When he was Associate Dean during the early days of Iraq and Afghanistan, he responded to a number of students who were serving over there and shared the emails with all of us. That meant so much to me, because my son was there as well. Plus i love his sign – “I yell because I care.” Truth.

III. SPARK!: LIZ BRANDT'S LUMINOUS LEGACY AT THE UNIVERSITY OF IDAHO

by Don Burnett

Everyone of a certain age can remember the high school science lab with its test tubes, transistor circuit boards, and a student favorite: the Van de Graaff generator, a silver globe that gave off electrostatic sparks and could make your hair stand on end. At the University of Idaho College of Law, from 1988 to 2019, we had a similar energy source—the human variety. Her name was Elizabeth Barker Brandt, and she was a student favorite, too.

Liz came to us in 1988 after receiving her law degree from Case Western Reserve University (Order of the Coif), practicing law in Cleveland, and working as an instructor and adjunct faculty member at Case Western. From her arrival in Moscow to her retirement 31 years later, Liz enlivened our classrooms, produced a glowing array of impactful scholarship, and provided tireless service to the law school community, to our university, to the legal profession and, especially, to the cause of equal justice under law. The sheer volume of her work is astonishing. Consider this portrait in numbers:

- *Twelve* law courses taught, encompassing family law, domestic violence, children and the law, community property, wills and trusts, civil procedure, contracts, real estate finance, legal history, and appellate advocacy, as well as directed research and the foundational course in legal research and writing.
- *Nineteen* law review articles published on topics of constitutional law, marriage equality, family law, high-conflict divorce, protection of children, financial and business issues in the dissolution of marriage, the right to privacy, academic freedom, and the war on terrorism. In one of the articles, *Preserving the Foundations of Liberty*, 19 Notre Dame Journal of Law & Public Policy 261 [2005], Liz notably collaborated with then-Idaho congressman and future Idaho governor C. L. “Butch” Otter. Although they occupied opposite ends of the political spectrum, they shared a profound interest in constitutionally protected liberty.
- *Eleven* book chapters, adaptations or major editorial contributions including an essay on free association and surveillance published in 2008 by the prestigious Routledge Press in its treatise on U.S. national security, intelligence, and democracy. Collaborating with Idaho judges and practitioners, Liz also made a lasting impact on Idaho family law with her *Idaho Family Law Formbook*, *Idaho Child*

Protection Manual, Idaho Child Protection Forms, Protecting Children of High Conflict Divorce: An Idaho Benchbook, and the Idaho Child Protection Manual.

- *Eleven* additional articles in professional journals such as *The Advocate* (Idaho State Bar) on diverse topics ranging from the Indian Child Welfare Act to issues of prayer in public schools, same-sex marriage, and even the nettlesome trusts-and-estates rule on perpetuities. (“Aargh!” Liz exclaimed.)
- *Eighteen* professional consultations and *amicus curiae* briefs written or co-authored on issues as varied as open legislative meetings, creditors’ rights to community property, child custody questions relating to same-sex co-parents, *de facto* custodians, and grandparents, Medicaid funding of abortions, constitutional rights of unwed fathers, and the First Amendment expressive rights of a neo-Nazi group. The scope of these efforts defied any simplistic political description; rather, Liz undertook each project, on a *pro bono* basis, to urge a point of legal principle.
- *Eighteen* invited presentations to professional audiences; *twenty-eight* continuing legal education presentations to members of the bar and judiciary; and more than *fifty* presentations made, and workshops conducted, for community groups.
- *Twenty-four* years of service to the legal profession through active participation in committees of the Idaho Supreme Court and Idaho State Bar (which bestowed the Family Law Section’s Distinguished Service Award upon her). Liz’s reputation as an expert on children and the law led to her chairing a panel that reviewed, and recommended comprehensive changes in, child protective policies at the Idaho Department of Health and Welfare. Liz’s professional activities also included *seven* years of membership on the national board of the American Civil Liberties Union and *sixteen* years on the board (two as president) of the Idaho ACLU, which honored her with the Founder’s Award for Distinguished Service. She was a member of the editorial board of the American Bar Association’s *Family Law Quarterly* and a member of the Executive Committee of the Family and Juvenile Law Section of the Association of American Law Schools.
- *Twenty-one* university-level service commitments including a wide range of administrative and faculty governance committees, especially the University of Idaho Faculty Senate (which she chaired) and the position of University Faculty Secretary and Policy Coordinator, where she won acclaim for her contributions to interdisciplinary cooperation.

- *Eight* college-level service commitments including, most prominently, chairing the all-important faculty appointments committee (where she advanced the diversity and excellence of our faculty). She unselfishly devoted six years to the time-consuming job of associate dean for faculty affairs—often while teaching a full course load. During her early years at our college, she created the academic support program that now fosters academic success. Somehow, she also found time to serve as faculty advisor to numerous law student organizations including the McNichols moot court board; and she became a beloved mentor to a full generation of law students. She provided the students a window on law as a pathway to justice, and her office—with its cheerful ambience and open door—provided a safe place of welcome for students finding their way in law and life.

Through these prodigious efforts, Liz earned recognition as the University of Idaho's Allan G. Shepard Professor of Law, as the James E. Rogers Professor of Law, and ultimately as the holder of the James E. Wilson chaired professorship. She received the University of Idaho's Award for Teaching Excellence. On three occasions law students voted her to receive the Peter E. Heiser Award for Teaching and Service (our college's version of the "teacher of the year"). On three additional occasions, individual law students who received University of Idaho Alumni Association awards for outstanding achievement chose Liz to be recognized as their most influential teacher.

For many years, a poster near the door to Liz's office proclaimed the message of Mahatma Gandhi: "The true measure of any society can be found in how it treats its most vulnerable members." Liz carried that message in her heart and in her work. In 2006 the Latah County Human Rights Task Force honored her with the Rosa Parks Award for Distinguished Commitment to Human Rights—an award that Liz humbly and emotionally accepted. In 2010 the nonprofit advocacy group "Idaho Voices for Children" gave Liz its Children's Hero Award. In 2012, the Athena organization, founded to promote an inclusive and equitable climate for women at the University of Idaho, bestowed its "Faculty Woman of the Year" award upon her. And, in 2018, the Diversity and Human Rights Committee at the College of Law bestowed its "Diversity Award" upon her for "contribut[ing] significantly to the diverse and inclusive culture of the College of Law community."

In retirement, Liz is remembered fondly by colleagues, not only for these achievements and recognitions, but also for her warm and generous personality. In faculty meetings, if disagreements emerged, her feelings might bubble up, but she never ceased to be civil and respectful. During discussions of curricular emphases and strategic initiatives—which could be delicate, with individual faculty intellectual and personal interests at stake—Liz always took the institutional view. She did not ask, "What's in it for me?" Her extraordinary energy and good will were always on display, even when she was (successfully) battling cancer.

Liz's professional colleagues outside the College of Law also have admired her deeply. The Honorable Bryan Murray, Magistrate Judge of Idaho's Sixth Judicial District, recalls the pivotal role Liz played in crafting Idaho's response to the federal Adoption and Safe Families Act of 1997:

A multidisciplinary committee was created. [Professor Brandt] was one of the founding members of the committee. Liz immediately put her vast knowledge and wisdom to work in helping create a wholly new child protection system for Idaho courts. New laws, court rules, data collection systems, and training were put in place. ... [Professor Brandt] demonstrated how a dedicated law professor could make a tremendous impact on the improvement of the legal system in a state, not just by teaching students, but also teaching and supporting professionals as they sought to improve their work. Beyond just her expertise, Liz brought and joy and enthusiasm to the work that inspired all to do and be better. She became more than a friend in this process, she is family to be loved and appreciated forever.

Debra Alsaker-Burke, statewide child protection manager for the Idaho Administrative Office of the Courts, recalls Liz's role in the child protective committee work described by Judge Murray. She notes that:

[Liz] has a profound sense of justice... . At her core, she [is] a passionate and effective advocate for children. ... Her breadth of knowledge beyond child welfare (e.g., family law, constitution law, civil procedure) ensured that the child protective committee discussions were broad, comprehensive, and complex. Her smile and enthusiasm will be eternally missed She is one in a million and we miss her still.

Julie Kane, managing attorney of the Nez Perce Tribe, recalls working closely with Liz in several training and continuing legal education programs focusing on the Indian Child Welfare Act. "[Liz] is a joy to work with," says Julie. "I wish her lots of rest and relaxation in retirement, but somehow, I can't see her resting and relaxing."

For family reasons, Liz and her husband Tom (a renowned teacher at Moscow High School) have moved back to the Cleveland area. Their twin children, Carolyn and Christian, are now adults with lives and careers of their own.

Time moves on, yet a legacy remains. In her colleagues and students Liz has implanted a spark. Wherever there is a plea for justice, or perhaps a child's cry, the spark comes to life again.

- Don Burnett, Professor of Law Emeritus
Past Law Dean and Interim President
University of Idaho

Auriana Clapp-Younggren '14

I took community property and domestic violence in the law school from Professor Brandt. My passion for aiding individuals in domestic violence situations was bolstered by Professor Brandt's knowledge of family law. After law school, Professor Brandt inspired me to volunteer my time at the Women's and Children's Alliance providing legal advice to individuals and families recovering from domestic violence situations. Professor Brandt's community property book has been a continual resource to me and my estate planning practice. Professor Brandt showed genuine concern for her student's both in and outside the classroom. It was a honor having the opportunity to be mentored by Professor Brandt and my career was enhanced with her impact on my education.

Erin Tomlin '12

During law school, Professor Brandt quickly became a source of inspiration as I balanced motherhood with academic and career goals. Following graduation and upon joining the Idaho State Bar, Liz continued to support my passions and engage me in her existing classes as a guest speaker and eventually as an adjunct for curriculums and classes pioneered by her, i.e., Domestic Violence and the Law. Because of Professor Brandt, hundreds of students and practitioners are more aware of legal issues surrounding families and children, domestic violence, and what it means to be an advocate in the spirit of service and change with an impeccable attention to detail. I am incredibly grateful for Professor Brandt's mentorship and her impact continues daily despite her immediate absence from our campus and community.

IV. A TRIBUTE TO DON BURNETT

by Professors Maureen Laflin and Michael Satz

Professor Maureen Laflin, past Director of the College of Law Clinical Programs and the NW Institute for Dispute Resolution

It is no secret that no one wants to speak after Don Burnett because no one could sound as eloquent, well-reasoned, and intelligent. Similarly, it is a herculean task to boil Don Burnett's accomplishments down to a few pages. It is with great humility that I attempt to do justice to the man, the scholar, the leader, the judge, the dean, the professor, and the president. His impeccable academic record, his commitment to service, professionalism, and his love of Idaho, and in particular, the University of Idaho (UI), are evident in his exhaustive resume and the tributes below from his colleagues and former students.

His colleagues and students provide a glimpse into his professional life with anecdotal stories. I must confess, this tribute only provides a Gilbert's account of Don's accomplishments. If you have had the pleasure of working with Don, you know that this piece skims the surface of his many years of service to the state of Idaho.

His roots in Idaho are deep and his love of the state and the UI are unwavering. Don's parents, who grew up in Wallace, Idaho, are graduates from UI. He proudly talks of his mother, Doris McDermott, and her picture from the 1930s hangs in the University's Administration Building. Although she did not recall the photo being taken, when Don showed it to her, she remembered the names of each of the other four women in the picture. He was so proud of her and frequently told the story of when, at 90, she accompanied him to an alumni reception. *"Seeing a piano in the room, and a crowd gathered around it, she sat down and played 'Here We Have Idaho.' She then said, 'I can't believe it. I haven't played that in more than 60 years!' She hadn't missed a note."* No doubt, he got his incredible memory and love for Idaho from her.

Don was born and raised in Pocatello, Idaho. He received an A.B. degree, *magna cum laude* from Harvard (1968), a J.D. from the University of Chicago Law School (1971), an LL.M. from the University of Virginia School of Law (1990), and an honorary LL.D. from the University of Idaho (2019). He is obviously a believer in lifelong learning.

With his law degree in hand, Don returned home to Idaho. He practiced law from 1971–1982 as a clerk, an assistant attorney general, an Army Reserve JAG officer, a founding partner in his own law firm, and then as one of the original members of the Idaho Court of Appeals (1982–1990). He left Idaho for 12 years to serve as dean and professor at the Brandeis School of Law, University of Louisville, but he maintained his engagement with the Idaho legal community. This was most evident by his work in 1999–2000 as one of the architects of the Blue Ribbon panel that studied the statewide mission of the UI College of Law and identified strategic alternatives for the future, including the possibility of a dual location model. He subsequently returned to his beloved Idaho to serve as our dean from 2002–2013.

Throughout his tenure as dean, I was impressed by Don's intelligence, tenacity, and thoroughness. I served as his escort around southern Idaho when he

interviewed for the deanship. I was astounded to realize that he had not only memorized everyone's name prior to arriving, he had read at least one piece of each person's scholarship and could converse with each faculty member about his or her scholarly interest.

We spoke extensively about what he wanted for the College of Law—a mandatory pro bono program, a professionalism program, and a strong connection between the state bar and the law school. Don is a visionary with an unrelenting commitment to his convictions. As a result, many of his hopes and dreams for the College were actualized during his deanship. Early in his tenure as dean, he introduced his signature professionalism program as part of 1L orientation, which brought in respected practitioners and judges to work with our newly enrolled students. He started the College's mandatory pro bono program to instill in our students the importance of giving back to those in need. The College also started its Jurist in Residence program, which offered judges the opportunity to spend a week or two at the college delving into research, engaging with the students and faculty, and bringing wider experience and expertise into our halls. He supported faculty diversity, and he also encouraged and affirmed faculty outreach efforts. The dual location concept came into fruition when the college opened a full three-year program in Boise.

You may be wondering how he was able to actualize so many of his dreams, but if you have worked with Don, you know the real question is, "Does this man ever sleep?" The answer is resoundingly, "No." Dean Don was unmistakably a night owl, generally leaving the law school in the wee hours of the morning when Professors Dale Goble and Ben Beard were arriving for work. And all of us who did not see him leave shortly before the sun rose, knew from the flood of emails sent around 2 a.m. that he'd been there nearly all night.

It is abundantly clear to everyone that Don is outwardly focused, primarily concerned with others' needs. During his interview at UI for his job as dean, Don voiced a fierce advocacy for his faculty and the College. When he was negotiating his offer to be our dean, he told the administration that he was less concerned about his salary than he was with what the university would do for his faculty and the College.

Preparation is the key to success, and Don was a master of preparation. Each year, Don gave the opening remarks at the College's Northwest Institute for Dispute Resolution. The Institute brings in many of the country's most respected dispute resolution leaders to teach classes to our students and practitioners in the northwest. After giving the opening one year, two of the instructors asked me who conducted Don's research and wrote his speeches. They were shocked to learn that Don did his own research and wrote his own presentations. Even though dispute resolution was not one of Don's focus areas, they said that he was probably one of the top 5 most articulate and knowledgeable deans in the country on ADR.

Don accomplished a great deal as an administrator, but he also taught four different courses and presented numerous CLEs while serving as our dean. He also generously devoted hours to clinic faculty and students as we wrestled with ethical

issues. At times, it seemed as if we had Don on speed dial. What a resource—our own encyclopedia!

One of Don's most endearing descriptions of UI's statewide mission and role came in response to the Idaho State Board of Education decision to stop calling UI the state's flagship university. That did not stop then-President Burnett from repeatedly recognizing the UI's distinctive history and noting that every fleet needs its leader. Don referred to UI as "*Idaho's national land-grant, founding, comprehensive, constitutionally established and, therefore, flagship university!*"

Despite his many lauded accomplishments, no job was beneath him. Don would show up in the middle of the night to shovel the snow to make sure the College's entrances were clear when people arrived in the morning. While there are pages more that could be written about Don's accomplishments and good deeds, those aren't the things that stand out. It is the person, the teacher, the mentor, the leader, and most of all, the friend that I value and cherish. Thank you, Don, for being you.

Professor Michael Satz, Executive Director, Southwestern Idaho

I don't even know where to start with Don Burnett. He first impressed me 15 years ago when he was recruiting me to join our wonderful faculty at the University of Idaho College of Law. I was truly impressed by his passion for both the school and the profession of law. At that began a long and wonderful relationship with him as my dean, friend, and mentor.

During this time, it became apparent that he isn't a man driven by ambition, nor ego, but rather a sincere desire to be a conscientious member of both the professions of law and education as well as a socially conscientious citizen. His unyielding faith in the ethical practice of the law, and of the profession as a much higher calling than simply making a living, would show through in almost everything he did, and it was absolutely infectious to those around him, be they his administrators, faculty, staff, students, or members of the legal community.

Inside the law school and University of Idaho community, Don Burnett was always driven to do what he thought was the right thing. I had the great honor of serving under Don as a faculty member, an associate dean, and then as interim dean while he served as our institution's interim president. What I found absolutely laudable in him as a leader is that whenever a circumstance arose that required working with me, or with his leadership team, he would always listen to everyone, analyze what was said, and reach a solution that earnestly took into account what his people told him. He would also make the extra effort to explain what he was doing and to teach me and others in the process. In those situations that were outside of his areas of expertise, he worked hard to learn about the issues involved. He was, and remains, one of the strongest advocates for equity and inclusion that I have ever had the honor of working with. Allies like Don Burnett move the needle for underserved populations and for that I am so, so grateful.

Finally, Don really loves Idaho. He loves Eastern Idaho so much, and is so well connected there that I (only half-jokingly) call him a member of the Pocatello Mafia, a group of some of the best attorneys, business leaders, and civic leaders in Idaho upon whom the College of Law called frequently for advice, leadership, and programmatic involvement. And, although it is true that Eastern Idaho holds a

special place in Don's heart, he is known and well respected throughout our great state, and knows so much about Idaho's rich history. If one is lucky enough to travel in Idaho with Don Burnett, you will learn about Idaho history, whether it be the hotel that the great Clarence Darrow stayed at during Idaho's trial of the century after the assassination of then Governor Frank Steunenberg, the great fires that spawned the U.S. Forest Service, or the history of the many Native American tribes in Idaho. A true Idahoan through and through.

The University of Idaho and the College of Law were lucky to have such a fine example of a man as Don Burnett as dean and interim president. But perhaps more importantly, those of us who had the opportunity to call Don a friend, colleague, and mentor are most appreciative and grateful and are, without doubt, all the better for it. I wish Don and his lovely wife Karen—whom we all know deserves a lot of credit for Don's success—a wonderful retirement!

Additional Comments from Faculty, Staff & Students

Emeritus Professor Kathy Aiken, History Department; past Dean, College of Letters, Arts & Social Sciences; and past Interim Provost

Donald L. Burnett, Jr. enjoyed a distinguished career as a practicing attorney in Idaho and as one of the first members of the Idaho Court of Appeals, which he was instrumental in creating. He became Dean of the University of Louisville School of Law (re-named the Justice Louis D. Brandeis School of Law due to Burnett's efforts) in 1990. He returned to his home state of Idaho in 2002 to accept the deanship at the University of Idaho College of Law. During his eleven years as dean, Burnett expanded student pro bono work and diversified the law school faculty. His decanal legacy is especially strong in terms of connecting the Law School with other parts of the university through interdisciplinary programs such as "Waters of the West." His understanding of the academy and the inter-connectedness of the various disciplines resulted in collegial and supportive relationships with other deans and led to a greater recognition of the College of Law's central place at the University of Idaho. His Provost Council colleagues valued his thoughtful and judicious approach to issues and his ability to focus on the entire University rather than only his individual college.

Donald Burnett accepted the position of Interim University of Idaho President in 2013. In that role, he provided a model for leaders of higher education institutions in terms of his erudite and eloquent advocacy for learning and its value both to the individual and to society. His description of the University of Idaho as Idaho's "founding, comprehensive, constitutional, land-grant, research, and therefore flagship" institution led to a greater recognition of the University of Idaho's role and value that boosted morale among the institution's community members and enhanced the institution's reputation throughout the State of Idaho. During his tenure as interim president, the University of Idaho advanced a \$225 million development campaign and began a year-long celebration of its 125th

anniversary. Don Burnett's grace and dignity, coupled with his devotion to learning, define his interim presidency.

Professor Barbara Cosens, University Distinguished Professor

There is a general rule at the University of Idaho—avoid following Dean or President or Emeritus Professor Don Burnett in making a speech. His capacity to capture the moment, to speak to everyone in the room, and to draw upon the most appropriate and inspirational quotes exceeded that of even the best speech writers. It is generally best to end on that note.

There is another general rule within the College of Law—to be introduced by Don Burnett will be the peak moment of your career. Don does not stretch the truth or gush over minor accomplishments. As Dean, he took the time to understand who each of his faculty was, what our strengths were and what we personally, with a little encouragement, could contribute to the University of Idaho. His introductions reflected this by pulling out the one thing each of us does better than anyone else.

As Dean of the College of Law, Don recognized that a small public law school could only offer richness, diversity, and quality to its students, Idaho, and the world, by letting each of his faculty do what we do best. As the State's sole public law school, the University of Idaho College of Law must serve students with a wide range of capabilities, interests, and backgrounds; many are the first in their family to attend higher education and yet have, with a little encouragement, the capacity to compete with top lawyers across the country. Don understood that the best way to meet this challenge was to foster the diverse capability of his own faculty. Those whose outreach served a wider public beyond Idaho were encouraged as much as those whose service would be welcomed by potential Idaho donors. Those who thrived on teaching over research were given the larger classroom setting to perform. Those whose research engaged top end students and brought attention to the College from beyond Idaho were encouraged to follow this path and given more focused teaching packages. In this way, the College punched well above its weight during Don's service as Dean.

On a personal note, Don hired me to the College of Law. He saw my ability to work across disciplines, and encouraged the development of a program in Water Resources that would be unique in the relatively arid, western United States and that, along with a concurrent JD/MS program in Environmental Science, would include an option for concurrent JD/MS and JD/PhD degrees. He recognized the need for trained natural resource lawyers in a state with 64% public lands, a water dependent economy with recreation as its fastest growing economic sector, and five Native American Reservations with historic and cultural interests in the state's abundant natural resources. He understood the need to stop the brain-drain of high performing students to the environmental and natural resource programs in more populous states that were focused on public interest litigation. Instead, Idaho would train problem solvers at the law/science interface who understood the need for alternative methods of dispute resolution to solve the underlying resource problems. These interdisciplinary programs grew during the period that Don led the committee of Deans overseeing them across seven Colleges. Don's leadership skills and integrity kept peace in the valley while the students in the program thrived and faculty gave more than 100% to build an institution they believed in. For me, this is

Don's greatest legacy. His ability to find the unique talent within each individual and encourage its growth fostered an atmosphere in which the whole exceeded the sum of the parts.

John Quincy Adams said *If your actions inspire others to dream more, learn more, do more and become more, you are a leader.* By this standard Dean, President, and Emeritus Professor Don Burnett is a true leader.

Professor Wendy Couture, Associate Dean for Faculty Development and James E. Wilson Distinguished Professor of Law

From my first day as a faculty member, Dean Burnett inspired me with his genuine and infectious love for the College of Law and his encyclopedic knowledge of its history and notable alumni. He worked tirelessly on the College's behalf; indeed, he was infamous for sending emails at 2:00 a.m. And yet, he was never too busy to acknowledge individual contributions—no matter how small—with a kind note of appreciation.

Associate Professor Dylan Hedden-Nicely

I believe the paramount responsibility for the law school dean is to ensure that every graduate understands the immense power and responsibility that lawyers have in our community. Don took that role seriously; he made sure that his students understood that lawyers are the keepers of the rule of law, and that responsibility requires a commitment to service, empathy, and justice. Although Don has had many important jobs in his career, I believe his time as dean of the University of Idaho College of Law will have the longest legacy. Because of Don, lawyers all over the country understand their important role, practicing in a way that honors these fundamental values every day.

Professor Kenton Bird, UI School of Journalism and Mass Media

I had the honor of chairing the Faculty Senate for the first four months of Don Burnett's term as interim president of the University of Idaho. I learned a lot about leadership from Don, who moved "up the hill" to the Administration Building during an anxious time for the university. He recognized his role as a transitional leader but was not afraid to make tough decisions during his nine months as president.

Don took office a little more than a year after the State Board of Education voted to delete "flagship" from the UI's mission statement. That didn't stop Don from using that term to describe the institution to which he had been connected since birth (his parents were alums) and that he came to love as a professor, dean, and interim president.

At nearly every faculty meeting, convocation and public gathering at which Don presided, he declared how proud he was to lead "Idaho's founding, comprehensive, constitutionally established, national land-grant, research . . ." and, after a dramatic pause, "flagship university!" He did so playfully but confidently, always to applause and laughter of the audience. He spoke reverently about the university's long history, drawing examples from two books, "Beacon for Mountain and Plain" (1962) and "This Crested Hill" (1989).

The best insights into Don's wit and wisdom came in his weekly President's Letter, sent to the campus community and to alumni and friends around the world. From June of 2013 through February of 2014, Don wrote about the triumphs of students, faculty, staff and alumni, whose experiences were shaped by their time at the University. He didn't gloss over the university's shortcomings, but found ways to inform and inspire the UI's many constituencies.

In January of 2014, as his term as president was drawing to a close, he wrote:

'Making the world a better place' may be a time-worn phrase, but at the University of Idaho we have people doing exactly that every day. Their work advances human progress, informs our teaching, and shapes our outreach to communities in Idaho and elsewhere. Most fundamentally, it expresses the spirit of discovery that puts wind in our sails.

He couldn't overlook one final allusion to the UI as a flagship for higher education in Idaho, one that became more shipshape with Don Burnett at the helm.

Russ Heller, retired secondary curriculum director of the Boise School District.

Several years ago, Don Burnett undertook direction of a project to advance well-taught civic education. The instrument of that project was a professional development program for teachers focused on the importance of the rule of law and an independent, impartial judiciary. As lead architect of the resulting summer institutes, Don enlisted the support of jurists, journalists, academics, teachers, and education administrators as volunteer speakers, workshop leaders, and courtroom hosts. Now in their sixth year, the institutes have served over one hundred teachers, representing a wide range of subject and grade level assignments, from school districts throughout Idaho.

The institute's program was structured to help teachers broaden their content knowledge and generate classroom applications of that content. During small group sessions following each topical presentation, teachers and presenters engage in conversation driven by questions specific to each program component and then address "core" questions for translating the presentation content to instructional settings. This tandem pairing of deep, topical presentations and energetic workshops provides teachers meaningful substance and a stimulating setting for their instructional creativity. Teachers' reviews of the institute praise the experience for its quality of speakers, the value of court visitations and close interactions with jurists, and the provision of a setting and tone that imbue the program with a sophistication that acknowledges and dignifies teachers' professional responsibilities and challenges. The most impressive data of the institute's impact are the large numbers of teachers requesting return enrollment. Don Burnett shaped and deserves high praise for this design and its success.

Throughout the planning and operation of the institutes, Don has provided organizational leadership, insightful guidance, and learned presentations. His unmatched experiences as attorney, judge, academic, and administrator have shaped every successful component of the institute, and his devotion to lucid reasoning and rigorous, deliberate, engaging instruction models teaching at its best.

As a result of Don's unwavering commitment to this project and his many labors, thousands of Idaho students have benefitted as well-informed members of their civic communities, a benefit that accrues to the health of our republic. For that, we who are part of this project are most grateful.

Jana Gomez '09

Don Burnett is the epitome of professionalism. On the first day of law school orientation, he informed our class that the practice of law is a noble profession, and, as future attorneys, we would be held to a higher moral standard than most. His words comforted me, as I began to realize that my personal values would align well with the professional values in my newly-chosen career path, despite what Hollywood would have me believe. Since that day, Dean Burnett has imparted the same advice to countless other incoming law students and challenged them to always practice law with a focus on ethics and professionalism. The Idaho State Bar is undoubtedly more congenial thanks to the tireless efforts of Dean Burnett. Thank you, Dean Burnett, for helping make Idaho a wonderful place to practice law!

Cody Earl '16

Throughout my time in law school, nothing was more informative and educational than the semester I spent as Professor Burnett's research assistant. During that semester, Professor Burnett instilled in me the importance of serving one's community and underscored the necessity to educate the general public about the role of the judicial system in our society. I have tried to keep in touch with Professor Burnett, and am always amazed at how genuinely curious he is about what his students are up to in the "real world." I am beyond grateful to call Professor Burnett a mentor and friend. I wish him nothing but the best in his future endeavors.

Henry Stegner '17

Three Stomps for Don Burnett

We all knew that we were taking first-year civil procedure from one of the great legal minds of our time. Prof. Don Burnett had an uncanny talent for interweaving anecdotes from his years of experience as a litigator and jurist with the black letter law, leaving students both entertained and enlightened. His lectures inevitably wound their way to a close in a cinematic fashion where the day's story concluded within seconds of the end of class. And, because the lectures were mixed with both life lessons and testable material, when something was certain to be tested, Prof. Burnett would signal the class with his patent "three stomps" so as not to leave any students in the dark. If I am ever confronted with a situation that requires me to engage in a "noisy withdrawal" from representing a client, I won't be surprised if, by force of habit, I stomp three times before presenting the motion to the court.

Aside from being a charismatic professor and speaker, Prof. Burnett was a dedicated advisor and mentor to hundreds of aspiring lawyers. He instilled the

value of law clerkships and for practicing law to help those in need. When it came to volunteering his time, Prof. Burnett never once declined a request to forego a night or weekend to support a student group. His contributions to the College of Law, the University of Idaho, and the legal profession are immeasurable, and his impact on the next generation of legal minds will not go unnoticed.

V. LEADING THROUGH COLLABORATION: A TRIBUTE TO DISTINGUISHED
PROFESSOR BARBARA COSENS

by Donald Burnett, Dylan Hedden-Nicely & Anastasia Telesetsky

Anastasia Telesetsky, Professor of Law

Professor Barb Cosens walks in two worlds—she is both a scientist and a lawyer, striving to locate new spaces for transdisciplinary thinking. Arriving at the College of Law in 2004 after serving as a leading mediator in Montana on multi-party water resources disputes, Professor Cosens dedicated herself to the mission of University of Idaho to contribute to innovative thinking, lead community engagement and provide transformative education. Her legacy has touched students, residents of the Northwest, and the broader policy community.

She has brought great innovation to the curriculum and dedicated mentorship. Primary to that goal was her understanding that complex environmental issues require interdisciplinary solutions. She partnered with faculty members from across campus in the science and engineering departments, forging partnerships to provide an integrated water resources management and policy curriculum known as “Waters of the West” (WoW) to enhance graduate education. The curriculum brings together law students and graduate students in team-taught courses and in collaborative, science-based investigations of water basin issues. Professor Cosens has helped to fund and mentor numerous graduate students through a National Science Foundation, “Integrative Graduate Education and Research Traineeship” (IGERT) grant.

Her work within the College of Law has likewise been transformative. Working with her colleagues and several of her students, Professor Cosens formed the Natural Resource and Environmental Law program. That program has provided almost a hundred students with the opportunity to take specialized environmental law courses, write an environmental law thesis, and participate in environmental internships. Professor Cosens’ students have universally praised her ability to teach effectively. Many of her students have gone on to take on leadership positions in government, academia, and non-profits.

Recognized by University of Idaho as a University Distinguished Professor, Professor Cosens is one of foremost authorities in the United States and North America on the Columbia River Treaty and the relationship between law and resilience. In 2009, through her leadership of the Universities Consortium on Columbia River Governance, she organized at the University of Idaho a historic interdisciplinary symposium on the renegotiation of the Columbia River Treaty. Her work has continued to be influential in this area as she works with policymakers to amplify the voices of indigenous peoples and honor indigenous lifeways.

She is a prolific and high impact scholar. Her writings on resilience and the law have been internationally recognized. She has published in widely read journals including *Sustainability* and *Ecology and Society*. In 2016, she was selected to be a Distinguished Scholar at the National Socio-Environmental Synthesis Center.

Working in a collaborative team of scientists and lawyers, she explored the linkages between resilience and law across six water basins in a paradigm shifting project on “Social-Ecological System Resilience, Climate Change and Adaptive Water Governance.” Her work has been impactful for practitioners as well including establishing a database on Indian water rights settlements for the Department of the Interior’s Indian Water Rights Office.

Professor Cosens has blazed a legacy trail for the University of Idaho College of Law with her teaching and scholarship. Her colleagues admire her success as a role model for students and as a creative thinker in the academy. For her colleagues, perhaps the most important contribution of Professor Cosens to the law school has been her compassion for others and her enduring friendship. Professor Cosens always finds time for meaningful connection and her warm engaging presence will be deeply missed as she begins the next phase of her dynamic journey.

Dylan Hedden-Nicely, Associate Professor of Law, Director, Native American Law Program

Much of my life as I now know it can be traced back to a single discussion I had with Barbara Cosens sometime in the spring of 2008. I was twenty-three years old and traveling around the northwest to visit law schools, and she graciously agreed to sit down with me. The subject-matter of the discussion—the law school, the University of Idaho’s environmental and natural resources law curriculum, the newly developed concurrent degree program with the University’s Water Resources Program, and other opportunities—are not what stick out in my memory. What I remember is Barb—her quiet confidence, her kind brilliance, and her warmth. Because of that short meeting, I came away with the firm conviction that I wanted to study at the University of Idaho and I have never regretted that decision. Indeed, it was that decision which set into motion the series of events leading to my penning this letter today as Barb’s Colleague on the faculty at the College of Law. From her work as a lawyer, mediator, and scholar, Barb’s career has been prolific. However, I believe my story demonstrates Barb’s most enduring legacy: the straight line between Barb and the myriad lawyers and scientists all over the country that work every day to make our communities a better place.

Barbara Cosens was born to lead the University of Idaho College of Law’s natural resources and environmental law curriculum into the twenty-first century. Raised in California’s Strawberry Valley, Barb spent her adolescence walking the trails of the Sierra Nevada. She came to love that place—its land, waters, plants and animals. But as she gazed west, toward the State’s central valley, she also came to realize the complexity of our society’s interrelationship with the natural world. Indeed, those same waters of the Sierra from which she drew spiritual and emotional sustenance were relied upon by the farmers of California—and by extension, the entire world—for economic and physical wellbeing. Barb has dedicated her life to finding common ground in this fraught and complex field.

Barb first took her collaborative philosophy to Montana, where she served as lead negotiator for the State’s Federal Reserved Water Rights Compact Commission. In that role, she worked with state personnel, the United States, Indian tribes, and local stakeholders to develop comprehensive settlements of the reserved water rights appurtenant to federal lands throughout the State of

Montana.⁸ Kim Gottschalk worked across from her during this era, serving as attorney for the Chippewa Cree Tribe of the Rocky Boy's Reservation. He remembers Barb's "professionalism, competence, sense of perspective, judgment, patience, and congeniality during a difficult process."⁹

Barb is universally praised for her commitment to excellence during these negotiations. As Dave Amman, a Montana State hydrologist who worked with Barb during this time put it, "Just getting the job done, or even just done right, is not enough. Barb always strived to create products of excellence, knowing that this work would be around for a long time."¹⁰ His favorite anecdote comes from their effort to develop an estimate of the extent of groundwater recharge to the springs and geyser systems at Yellowstone National Park. As he put it: "After much debate, someone suggested that the line should be drawn to reflect an average of everyone's opinions, to which Barb objected, 'Science is not done by consensus!'"¹¹

Barb was instrumental in developing comprehensive solutions to complex water resource problems. Her focus remained on creative and mutually beneficial ways for federal, tribal, and non-Indian communities throughout Montana to build water security. Pam Williams, Director of the Interior Secretary's Indian Water Rights Office credits Barb for helping to develop solutions that "quantified tribal rights, provided funding for tribal water infrastructure and protected existing non-Indian water users. These settlements provided, and continue to provide, certainty to all affected water users and have allowed tribal and non-Indian economies to grow."¹²

⁸ Those settlement negotiations she led included Yellow Stone and Glacier National Parks, the Big Hole National Monument, the Little Bighorn National Monument, Bighorn Canyon National Recreation Area, as well as Red Rock Lakes, Benton Lake, and Black Coulee National Wildlife Refuges. Finally, she served as chief negotiator for the quantification of the reserved water rights of the tribes of the Fort Belknap and Rocky Boy's Reservations. She also led the effort to implement the compacts negotiated on the Northern Cheyenne Reservation and Fort Peck Reservation, and served in a supporting role in negotiations the Blackfeet and Confederated Salish and Kootenai Tribes water compacts. Finally, she played a role in innumerable other negotiations related to many national forests and wildlife refuges within the State of Montana.

⁹ Email from Kim Gottschalk, Attorney, Native American Rights Fund, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

¹⁰ Email from David Amman, Hydrologist, State of Montana Water Rights Compact Commission, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (Feb. 26, 2020) (on file with author).

¹¹ Email from David Amman, Hydrologist, State of Montana Water Rights Compact Commission, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (Feb. 26, 2020) (on file with author).

¹² Email from Pamela Williams, Director, Secretary's Indian Water Rights Office, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

The most important result of Barb's work during this time, however, is the new era she helped to usher into Montana, using water rights negotiations as a vehicle for bringing communities closer together. Generally, these negotiations are ripe for conflict. The parties invariably become entrenched and the stakes devolve into a zero-sum game measured in gallons of water won and lost. Those representing the state in these discussions serve as leaders to the entire non-Indian community. Unfortunately, the traditional relationship between tribes and states has been adversarial and many states have taken this posture in recent water rights cases. The result is relationships between communities—often frayed before—become irreparably broken. As lead negotiator for the State of Montana, Barb flipped this script, choosing instead to be a collaborative partner with Montana's tribes. The process built trust, focusing on the common goal of seeking to ensure water security for everyone within the State. As a result of her leadership, water rights negotiations in Montana served not as a source of conflict, but as a bridge that formed the basis for a lasting relationship.

Barb brought her commitment to collaborative excellence to the University of Idaho when she joined the faculty in 2004. Many of the College's best students over the past decade came to Idaho specifically to study under Barb. Students like Marie Calloway Kellner, now the Conservation Program Director at the Idaho Conservation League have said, "It's not too strong a sentiment to say that [Barb] is why I attended the U of I College of Law."¹³

Barb's students have universally praised her teaching. Greg Haller, currently executive director at Pacific Rivers, notes that Barb was his favorite professor because "her mastery of the subject matter, her real world experience, and her good nature made going to her classes a special treat . . ."¹⁴ Carmen Thomas Morse, now an attorney at the United States Department of the Interior remembers that "Barb Cosens was the best instructor I had the pleasure of learning from during my U of I law school education. She made complicated concepts simple and easy to understand. That is not to say her courses or exams were easy, for her exams were very challenging."¹⁵

Barb committed herself to supporting her students to succeed both in the classroom and after graduation. One such student, Shanna Knight remembers Barb as a

wonderfully supportive teacher, both praising work done well, and asking great questions that lead us to our own answers. I'm very grateful to Barb for giving me a chance to work my first summer in law school on the Columbia River Treaty scenario

¹³ Email from Marie Calloway Kellner, Conservation Program Director, Idaho Conservation League, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

¹⁴ Email from Gregory Haller, Executive Director, Pacific Rivers, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

¹⁵ Email from Carmen Thomas Morse, attorney, United States Department of the Interior, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

development process, which led me to increasing my knowledge of the Basin and developing relationships with indigenous environmental stakeholders. I still value and carry forward these relationships in my work today with economic development in Indian country.¹⁶

Matt Janz, now an assistant attorney general with the Washington Department of Ecology, remembers waiting to learn his fate after presenting his master's thesis defense:

After sitting for, in my hazy recollection, [what seemed to be] two to three weeks, Barb came out. She walked over to me and paused with a serious look on her face. She paused for, [what seemed to be] easily, two to three hours before laughing and shaking my hand; my thesis had been approved. . . . Barb was the face of one of my very favorite days at the U of I.¹⁷

Barb's teaching philosophy included a healthy dose of practicality. Her students, most of whom plan to practice on the practical side of natural resources law, appreciated this approach. Although these students "enjoy the legal philosophical discussions so many law school classes employ," they "also appreciate those special times when what you learn in school turns out to be directly applicable to work or life." Barb was always able to appropriately strike this balance. Marie Calloway Kellner recalls

Barb's water law class was Idaho specific, and included lots of Idaho cases and current real life scenarios. When I finally got the chance to practice water law a few years after graduation, and I started sinking my teeth into conjunctive management practices and Snake River flow management, Barb was one of the first calls I made to say thank you for teaching things in class that were directly relevant to my work.¹⁸

Finally, she has served as a role model to her female students as they embark on careers on the cutting edge of both law and science—fields traditionally dominated by men. Marie Calloway Kellner credits her for being "a role model to

¹⁶ Email from Shawwna Knight, Staff Attorney, Lewis & Clark Law School Small Business Legal Clinic, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

¹⁷ Email from Matthew Janz, Assistant Attorney General, Ecology Section, Washington Office of the Attorney General, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

¹⁸ Email from Marie Calloway Kellner, Conservation Program Director, Idaho Conservation League, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

me as a strong woman leader. She still is. I am incredibly thankful to know her.”¹⁹ Carmen Thomas Morse remembers,

As a ‘non-traditional’ student, she inspired me because she came to law after studying and working in a science-based field. She showed me that it was possible not only to engage in the study of law as a ‘second career,’ but also to succeed in practicing law.

Meghan Carter, now a deputy attorney general with the Idaho Department of Water Resources, remembers that Barb was always

bold, straightforward, and incredibly generous with both her time and support. I’ve always looked up to her as an example of a great lawyer and as a role model for female practitioners. She’s always made an effort to keep tabs on former students and provide encouraging words. I will be forever grateful to have her as a teacher, mentor, and friend.²⁰

Donald Burnett, Dean and Professor of Law Emeritus, past Interim University President

During his tenure of deanship, Dean Emeritus Burnett joined faculty colleague Elizabeth Brandt in nominating Professor Cosens to be designated a University Distinguished Professor. Excerpts of Dean Burnett’s letter supporting the nomination are reproduced here in Professor Cosens’ honor:

National and International Recognition. Professor Cosens is one of foremost authorities in the United States and North America on water resource and environmental resilience issues. When she picks up the telephone and calls other leading scholars and policy-makers in these fields, they readily take her calls. For example, although she gives well-deserved credit to others, she was the pivotal figure in shaping the historic symposium in 2009 on renewal of the Columbia River Treaty – one of the world’s most important transnational legal frameworks for natural resource management, multi-sovereign governance, and sustainable economic development. The symposium attracted scholars and policy-makers from this hemisphere and elsewhere, including China. The symposium was the organizing event for creation of the Universities Consortium on Columbia River Governance. Professor Cosens was a leading force (and “laboring

¹⁹ Email from Marie Calloway Kellner, Conservation Program Director, Idaho Conservation League, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

²⁰ Email from Meghan Carter, Deputy Attorney General, Idaho Department of Water Resources, to Dylan R. Hedden-Nicely, Associate Professor of Law, University of Idaho (March 5, 2020) (on file with author).

oar”) in establishing the Consortium, which includes interdisciplinary faculty from the University of British Columbia, University of Washington, University of Idaho, and other Northwest universities. In a related initiative, Professor Cosens soon will undertake an approved sabbatical research project that is expected to entail collaboration with the Stockholm Resilience Center at Stockholm University. Within the United States, Professor Cosens has earned widespread recognition as a preeminent mediator of complex, multi-party water resources disputes involving the federal government, many state governments, Native American tribes, and private interests. Her preeminence has brought great credit -- and credibility in high places -- to the University of Idaho.

Superior Record of Scholarly Achievement. Professor Cosens’ cross-border reputation rests not only on her collegial ability to summon diverse experts into a collective enterprise, but also on the quality and quantity of her own scholarship. She edited and authored a key chapter of the forthcoming book (Oregon State University Press) based

upon the Columbia River symposium. She co-edited and contributed to another book . . . on the *Winters* doctrine -- the foundation of Native American treaty-based water rights. (Professor Cosens is one of North America’s leading authorities on tribal water resource issues.) Her other . . . publications include book chapters and law review articles published by the University of Arizona Press, the University of Utah Journal of Land Resources and Environmental Law (featuring her as a Wallace Stegner Young Scholar), *Natural Resources Journal*, *Idaho Law Review*, *Environmental Law*, *Journal of Environmental Law & Litigation*, and other publications well chosen to reach academic and policy-making audiences. She also has organized or made recent presentations at major scholarly and professional conferences throughout the western United States, including the American Bar Association centennial conference on the *Winters* doctrine, and the Rocky Mountain Mineral Law Institute’s program on inter-basin transfers of water.

Breadth and Depth of Teaching – with Excellence. Professor Cosens is an outstanding teacher, not only in law but also in science-based areas of water and natural resources policy. More than any other individual at the University of Idaho – and perhaps first among faculty members at other Western research universities – she has forged a partnership between law and science in developing the integrated water resources curriculum

known as “Waters of the West” (WoW). The curriculum brings together law students and graduate students in team-taught courses and in collaborative, science-based investigations of water basin issues. Through the efforts of Professor Cosens, the University of Idaho now has a distinctive array of concurrent degree opportunities combining the J.D. with various Masters and Ph.D. degrees in water resources management and policy. Moreover, Professor Cosens is an extraordinary teacher in the classroom. In addition to the observations contained in Dean Brandt’s letter, I can attest from my own evaluations that I have found her particularly open to pedagogical experimentation, adept at uses of demonstrative materials and real-world illustrations, and effective at bringing guest experts with multiple perspectives into the classroom. Her passion for natural resources subjects, especially water law and policy, is obvious to the students. For her classroom excellence, as well as for her interdisciplinary enrichment of our curriculum, I was pleased in 2008 to present her the College of Law’s William and Joan Boyd Award for Excellence in Law Teaching.

University Service and Service Addressing the Needs of One or More External Publics. . . . Professor Cosens has served on water and natural resources law-related national committees of the American Bar Association, on regional water drainage interdisciplinary study teams, and – as mentioned above -- a mediator of complex water disputes in many states. She has given invited testimony to the Idaho Legislature on water policy issues. Closer to home, her interdisciplinary law/graduate student research teams have illuminated issues for management of surface and ground water resources in the Palouse Basin and the Lapwai Creek Watershed. Within the University of Idaho, she has been one of the founders and participants in governance of the visionary WoW program and has served on, or chaired, committees in the College of Natural Resources and the Environmental Science program, while also serving on University-level committees including the University Research Council. At the College of Law, her service has included active membership in our Admissions Committee and Faculty Appointments Committee (very time-consuming assignments), along with our Strategic Planning and Outreach Committee. Her service in all respects has been exceptional. . . .

* * *

All three of the authors here note that the retirement of Barbara Cosens marks the end of an era at the College of Law. The gap she leaves behind will be impossible to fill. But there is no doubt the College—the entire University—is a better place because of Barb Cosens. There is no doubt that our society is a better

place because of Barb Cosens. We, all of your colleagues, former students, and friends, honor you for a life well lived.

Additional Comments from Faculty, Staff & Students

Owen Moroney '14

Congratulations on the retirement Professor Cosens! Thank you for your inspirational teaching at the University of Idaho College of Law. I often think back to your classes and very much appreciate the knowledge you imparted. It has been very helpful throughout my legal career. Have an awesome retirement!

Julie Poynsenby, Ph.D. Candidate

I met Barb through signing up for a special topics class she offered last Fall. My Major Professor insisted I sign up for two reasons, firstly the topic was relevant to the work we were doing with the Coeur d'Alene Tribe, and second, because Barb Cosens is amazing. You really shouldn't let this opportunity pass by, and I know her class will be inspiring. It was sound advice. The class was indeed relevant, enjoyable and included a wonderful trip to BC and the Columbia Basin Transboundary River Conference. I often think about the time our group spent in BC, gathering interviews from conference delegates and listening to some thought-provoking commentary from First Nations and Native American representatives. It was a wonderful experience and all down to Barb's vision for the course.

Barb is inspiring and everyone I have spoken to has something wonderful to say about her. As the only student in the class who was not studying environmental science or water resources, I never once felt out of place or the odd one out. Barb is a skilled educator, enigmatic and engaging, with the ability to explain the most complicated legal documents and environmental law by including powerful anecdotal stories that bring the cases to life.

I am so glad that I decided to take my MPs advice and be part of Barb's class. It really was inspiring and yes, Barb is amazing, and I am excited and honored that she is part of my Doctoral committee.

Rebecca Witinok-Huber '19

It's difficult to put into words the impact that you have had on my doctoral education and UI experience. I'm sure the same will be true as I move forward with my career. From the initial IGERT interview, you saw my potential and have worked over the past 3.5 years to support me in every way possible and to help me see and express that potential. You have worn many hats during my time at UI from major professor, mentor, and cheerleader, to friend, guide, legal counsel, therapist, you name it. Not to mention, as we both know, working across disciplines and with community partners adds an element of difficulty and uncertainty. You stepped up to the challenge and also helped me push the boundaries with my research and writing. I also know that I was the first, and last, student that you were the sole doctoral advisor for. Like everything else you do, you gave it 110%. My success, despite the challenges of completing fieldwork in a post-conflict developing country

with little programmatic support, is a testament to you, to your support, leadership, compassion, and guidance. You saw me as a whole person, and therefore knew when I needed to be pushed and when I needed extra support and empathy. Thank you for mentoring me with grace, humor, and humility. I am a better researcher, educator, and human being for having worked with you. Congratulations and have fun in retirement.

Amanda Stahl, WSU student

To Prof. Cosens: congratulations and many thanks to you. I cannot imagine what I would be doing now without your training and guidance on interdisciplinary research, resilience scholarship, and intersecting law with ecology! I hope to continue our conversations. Best wishes for a wonderful retirement.

Alycia Bean, Ph.D. Geography

Professor Cosens has been instrumental in my education. She went out of her way to give me access to water law courses necessary for my interdisciplinary degree. She has been a role model for a positive, healthy and successful professional. I am extremely grateful to have been a student during her tenure!

Vivi Gonzalez, Current student

Professor Cosens has been one of the best educators that I have had. Her passion and knowledge made me eager to learn Property Law. She made the class so enjoyable and engaging every day. She is such a genuine individual and I am so lucky to have been able to take a class by her. I wish her the best in her future endeavors!

Elowyn Yager

Congratulations Barb! I wish you a relaxing and fun retirement! I only wish we had lived in the same city so that we could have interacted more frequently. Best--Elowyn Yager

Carmen Thomas Morse '10

The conspiracy began in Property Law. After class one day, fellow student Moira Ingle and I were discussing how fantastic the professor, Barb Cosens, was, especially her ability to clearly and thoroughly explain complex issues. That conversation led to others, as Moira and I got to know each other. Moira and I wondered why, with professors like Barb Cosens, the University of Idaho School of Law did not offer a Natural Resources certificate or specialization like the University of Vermont and Lewis and Clark law schools did. We agreed that the University of Idaho certainly appeared to have high caliber professors teaching natural resources classes.

After a few conversations, we decided to research the requirements for a natural resources certificate or emphasis. I compiled the course requirements for both the University of Vermont and Lewis and Clark and developed a list of courses available through the University of Idaho that were similar. I approached Barb with the two lists and asked what she thought it would take for the U of I law school to adopt a natural resources certificate or emphasis program. Although she did not know what would be required, she enthusiastically embraced the concept. She

recommended a few changes to the lists, and we were off. Using her boundless energy and keen mind, she guided the nascent emphasis program through the maze of university and law school approval. I don't know what Barb had to do to shepherd the program through the process. I attended only a single meeting of the law school faculty, who seemed supportive of the program.

Months later and after the addition of a Native American Law emphasis, the University of Idaho College of Law announced the inception of both a Natural Resources and Environmental Law and a Native American Law emphasis program. Both were available, for the first time, to the graduating class of 2009. When I received my transcript the following year, I was proud and happy to see it reflect the Natural Resources and Environmental Law emphasis. Every student whose transcript notes either of these emphasis areas owes Barb Cosens a debt of gratitude for championing the program to its fruition.

Now for some remarks about Barb's teaching ability, which is simply unsurpassed. I hold three degrees from three different universities and count Barb among the absolute finest professors that I have had the privilege to study under. I am very grateful to have had the opportunity to learn from her and, although I am saddened at the thought that future U of I law students will not have the same pleasure in learning Property and Water Law under her guidance or have the chance to experience the special torture of Barb's take-home exams, I am very, very happy to know that all of Barb's time will soon be her own.

Barb was also inspirational to the non-traditional law students who were interested in natural resources, like Moira and I. There seemed no limit to what she could do: from being an excellent instructor, to assisting in developing a dual-degree program and then implementing that program, to championing a natural resource and native American law emphasis programs, to being a prodigious and international water law scholar. And she always seemed upbeat and energetic, no matter how many irons she had in a seemingly impossibly overcrowded fire. Thank you, Barb, for your excellent teaching, mentoring, and guidance, and showing me and others what is possible in a "second" career. Many happy trails, Barb, and congratulations!

All my best wishes for continued good health and many fun adventures,

Ashley McDermott '17

Professor Cosens - I have nothing but admiration and deep appreciation for who you are as a teacher and a friend, for your support and care during those long four years I was getting my J.D. and P.S.M., and for being such a positive influential mentor. Thank you so much. That school is going to miss your expertise and passion for education! Thank you for being there for me when I needed it most and the biggest thanks for sending me to Ecuador with my soon-to-be husband, haha! I hope you thoroughly enjoy retirement, travel often, and experience life to the fullest! You deserve every moment of it! Best of Wishes.

Patrick Johnson '16

There are many scholars who have devoted their lives to thoughtfully transforming their field of study in profound ways. There are others who have spent their time zealously mentoring and advocating for their students. Somehow, Professor Cosens has been able to jointly accomplish these tasks with kindness, humility, and dedication. Her contributions to the field of water governance and her efforts to promote the integration of law and science in education are too extensive to briefly summarize. The ripple effect of these contributions will be felt for decades to come, and Professor Cosens should be professionally cherished for her work in these fields. Despite the thousands of hours that were required to make such valuable contributions, Professor Cosens has kindly served as a mentor to many young people, finding time for long-winded students attempting to find their way in the world. Professor Cosens patient mentorship has changed the trajectory of many lives. I speak from experience. Professor Cosens will never truly understand how significantly she altered the direction of my professional and personal life. She has earned some rest in the mountains, though I suspect that she will be unable to rest for long. Whatever the next chapter brings for Professor Cosens, I am hopeful that it is fulfilling and provides her with joy. She is a legend in her field and will forever be a friend. Thank you, Professor Cosens, for all that you have done and for the person that you are.

Stephen R. Miller, Professor of Law

Professor Cosens was a mentor to me from the moment I walked onto campus. From her, I learned a vision of legal education imbued with ideals: that law and science can be allies; that the environment needs a champion; that colleagues across locations can work together as one. The humanity with which she approached complex questions encouraged others to move beyond long-held beliefs. She will be remembered for championing needed change and building institutions as necessary as her idealism. I will miss her greatly.

Lucy Page Chesnutt '14

Professor Cosens: I do not think my law school experience, nor my legal career to this point would be the same without your positive influence. Your attentive listening ear, guidance, encouragement, kindness, and promotion is something that I am so very grateful for.

I wish you all the best in retirement and the next phase of life. Congratulations on an exceptional career where you have been such a wonderful influence on so many lives, many thanks for your encouragement, guidance, and investment in student success, and may the best adventures be yet to come!

Carolyn Todd, Staff

Barb: Barb was like a breath of fresh air to me when she arrived at the College of Law. Right from the start she was involved in programs that weren't law-school-specific, and she was always friendly and engaged with both staff and faculty. She encouraged me (and Maureen) to try our hand at the Palouse Sprint Triathlon, and I'm still hoping to start swimming someday because of her example.

VI. A TRIBUTE TO MAUREEN LAFLIN

by Liz Brandt

Maureen Laflin never planned to be a law professor. She stumbled into a two-year, grant-funded position with the Legal Aid Clinic at the University of Idaho while looking for a professional law practice position, having recently relocated to Moscow for family reasons. It's doubtful she realized at first that she had not only discovered her life's work, but that she would make an outsized and enduring contribution to the University of Idaho College of Law and the State of Idaho.

Professor Laflin has been one of the most dynamic and creative forces on the faculty at the College of Law since 1991. She has built a nationally recognized clinical legal education program and an innovative appropriate dispute resolution program.²¹ As the director of clinical programs, she has taught, nurtured and supported hundreds of future lawyers and also has fostered the clinic's core mission of representing low income clients in civil matters in the courts of Idaho. In addition, Laflin has supported and developed a diverse set of clinics, including an appellate clinic, a mediation clinic, a victims' rights clinic, a low-income taxpayers clinic, a land use and economic development clinic, a small business and entrepreneurship clinic, and an immigration clinic. Laflin also has played a pivotal role in expanding the college's externship program and working to ensure that externship placements are rigorous and educationally sound.

Students First

Professor Laflin's legal education career has been most informed by her profound commitment to providing law students with an educationally sound, rigorous, and rewarding educational experience. Her goal has been that students' clinical experiences provide the strongest foundation possible for their future practice of law. One of Laflin's first initiatives as director of clinical programs, foreshadowing her priorities, was to work with clinic faculty and staff to improve the clinic's approach to student evaluation and grading so that it was more rational, consistent, and rigorous, and so that students received better and more consistent feedback on their work. To ensure that this effort continued to inform pedagogical practice in the clinic, she instituted a series of annual retreats and meetings to

²¹ In ??? *National Jurist* magazine gave UI an A- for practical skills training, placing UI in the top 37 law schools nationwide for practical skills. In 2011, *National Jurist* magazine ranked the UI Clinical Program thirteenth of "top law schools for clinical opportunities," Michelle Weyenberg, *Top Law Schools for Clinical Opportunities*, NAT'L JURIST, Sept. 2011, at 24. In 2006, *Pre-Law Magazine* 2006 ranked the UI College of Law 31st of 200 law schools for best availability of clinical offerings. [To be finalized.]

enable clinical faculty and staff to share information, discuss approaches, and understand each other's needs and goals.

Professor Laflin took over a strong clinical program when she became the director in the mid-1990s. She worked to not only sustain the quality of programs in the clinic but also to enhance and add to those programs. One of the signature educational experiences of the clinical program has always been Trial Advocacy Week, fondly known at the college as Trial Ad. Trial Ad brings leading litigators to campus every year to work with law students on an intensive, one-week trial training program based on the model of the National Institute for Trial Advocacy (NITA). The program was the vision of the first director of clinic at the college, Professor Emeritus Craig Lewis. Laflin diversified the program by including both civil and criminal law trial training. She expanded the program which had been limited to students enrolled in the clinic, so that it was available to all students at the College of Law. She also worked to develop a more diverse group of distinguished trainers—some of the top lawyers and judges in the state and region—who were committed to training law students for the program.

Laflin's efforts invigorating Trial Ad led her to see the importance of student-practitioner collaboration in skills education. With that in mind, she developed the Northwest Institute for Dispute Resolution, discussed in detail later. She structured the program to ensure that students would participate in a collaborative environment with lawyers and judges.

Laflin also worked to develop innovative externship programs. She led efforts to improve the college's summer externship program by instituting a classroom teaching component to the program and ensuring that placements were rigorous and educationally appropriate. She also was pivotal in the formation of the College's semester-in-practice program.

Laflin's priorities are clear in her writing and speaking, where she has focused on clinical pedagogy, student skills development, and ethics education.²² Alumni of the clinical program attest that she was successful at putting her ideas about teaching into action. They report that their experiences in Laflin's clinic classes were the most important and influential of their law school experience. And that her influence continues long after graduation. Former students describe Laflin using the superlative. One former student, part of a group early in Laflin's career who worked to add Appropriate Dispute Resolution to the college's curriculum, wrote, "Maureen had the vision and the enthusiasm to carry the idea forward and pursue getting ADR incorporated into the law school curriculum and clinic practice.

²² Maureen E. Laflin, *Preserving the Integrity of Mediation Through the Adoption of Ethical Rules for Lawyer-Mediators*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 479 (2000); Maureen E. Laflin, *Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV. 1 (1997); see also Maureen E. Laflin, *University of Idaho College of Law Clinical Programs*, ADVOCATE, May 2000, at 18; Maureen E. Laflin & Nancy Luebbert, *Ninth Circuit Praises Work of Appellate Clinic Interns*, ADVOCATE, Feb. 1999, at 13; Maureen E. Laflin, *Clinical Legal Education Gets High Marks*, ADVOCATE, Sept. 1997, at 9; Maureen E. Laflin, *Real Life Moot Court: The University of Idaho Legal Aid Clinic's Appellate Component Benefits Students, Clients, and Court*, ADVOCATE, Nov. 1993, at 24.

The Northwest Institute for Dispute Resolution—now celebrating its 24th year—stands as a testament not only to the audacity of the 1Ls that spearheaded the initial conference but to Maureen’s professionalism and leadership in securing the legacy of their vision.” Another former student, now a longtime practitioner, reports that Laflin’s influence has “proved invaluable” in his career, while another former student states that having the opportunity to work with Laflin was an “amazing experience.” A current student comments that “she has mastered the delicate line of supervising while not micromanaging her students.” Laflin’s students also emphasize that her mentoring went beyond the classroom and courtroom. One states that she “authentically cared” for her students and clients. Another comments that “she [was] a true mentor both inside and outside the classroom.” Another adds that “without her guidance and support I would not have been able to manage my career, family, and other obligations.”

Service and Outreach

While Laflin’s commitment to the education of students has always been her first concern, her commitment the legal profession and service to the people of Idaho cannot be understated. She has zealously ensured that residents of Idaho have access to the highest quality legal representation possible within the limits of the clinic’s reach and mission. She has tirelessly worked to support the legal profession in Idaho by developing educational resources for Idaho judges and lawyers and by participating in judicial and legal continuing education. She has contributed regularly regarding state and national policy issues in the area of dispute resolution.

1. High Quality Legal Representation

The past thirty years are replete with examples of Laflin’s efforts, through her students, to provide high quality legal representation to the people of Idaho. Two cases, bookend her career and provide insight into her efforts. The first case, *Mathews v. State*,²³ arose early in Laflin’s career at Idaho while she was director of the College’s appellate clinic. Over a period of 12 years, under Laflin’s supervision, students worked on three different appeals to the Idaho Supreme Court as well as appeals to the Federal District Court for the District of Idaho and the Ninth Circuit Court of Appeals in the case. While they were ultimately unsuccessful in obtaining a reversal of the client’s conviction, the students uncovered significant issues in the procedures employed by the state during the client’s arrest. They were able to brief and argue complex, novel issues of law regarding jurisdiction on Indian reservations and search and seizure. One court reviewing the case explicitly recognized Laflin and her students for their diligent work stating that “[t]he Court expresses its appreciation to Maureen Laflin and the University of Idaho Law School student interns for their outstanding work in this matter.”

²³ *State v. Mathews*, 986 P.2d 323, 133 Idaho 300 (1999); *see also State v. Mathews (Mathews I)*, No. 20154, 1994 WL 376131 (Idaho July 18, 1994); *State v. Mathews (Mathews II)*, 934 P.2d 931, 129 Idaho 865 (1997). [To be finalized.]

The second case involved the Syringa Mobile Home Court in Moscow.²⁴ Laflin, Clinic Professor Jessica Long, and 24 of their students served as counsel on a class action lawsuit filed against the owner of the Syringa Mobile Home Park after residents endured 93 days without potable water, raw sewerage in the park, and up to two weeks with no water. The students secured a rare class action monetary settlement for residents of the park. The case presented complex real estate, remedies, and procedural issues. At Laflin's encouragement clinic interns consulted with many faculty at the college and experts across the university. The case brought national attention to a much wider issue—the plight of mobile home park residents when a park owner fails to maintain the property. It was the focal point of story on National Public Broadcasting.²⁵

These two cases illustrate Laflin's courageous and dedicated work providing legal services and access to the courts. The cases demonstrate Laflin's commitment to the education of law students. In both, she pushed the students to the forefront and enabled them to work on complex and novel legal issues. Both cases forced students to grapple with ethical concerns and presented opportunities for broad collaboration. In between these two emblematic cases were hundreds more in which Laflin empowered students, modeled passionate and excellent lawyering, helped students grapple with a variety of legal issues, and encouraged them to identify resources and work in collaboration with others. The quality of her students' work on behalf of underserved clients is evidenced by the fact that local elected officials and community members asked the clinic to become involved in cases such as the Syringa case. During the years in which her appellate clinic was offered, Laflin and her students were recognized for their high-quality representation in the text of eight different opinions of the United States Court of Appeals for the Ninth Circuit over the course of a decade.²⁶

²⁴ Page v. Magar, No. CV-2014-227 (Idaho Dist. Ct., 2d Jud. Dist., Latah County Feb. 12, 2018). [To be finalized.]

²⁵ Daniel Zwerdling, *Mobile Home Park Owners Can Spoil an Affordable American Dream*, NAT'L PUB. RADIO (Dec. 16, 2016, 1:32 PM), <https://www.npr.org/2016/12/26/502590161/mobile-home-park-owners-can-spoil-an-affordable-american-dream>.

²⁶ Valdez v. Rosenbaum, 302 F.3d 1039, 1039 n.* (9th Cir. 2002) (“Valdez was well represented in this appeal by Daniel R. Anderson and Ms. Katherine C. Ball, law students from the University of Idaho College of Law. The court thanks them for their excellent work.”); Frost v. Agnos, 152 F.3d 1124, 1127 n.* (9th Cir. 1998) (“We commend *pro bono* counsel for their outstanding performance at oral argument and for their fine legal work on this case.”); Vignolo v. Miller, 120 F.3d 1075, 1077 (9th Cir. 1997) (Reversing the district court's dismissal of a prisoner civil rights claim, the Court noted that Vignolo was well represented on appeal by the University of Idaho College of Law Legal Aid Clinic.); Curnow v. WSP Med. Staff, No. 95–35321, 1997 WL 154054, at *1 n.1 (9th Cir. Mar. 31, 1997) (“This case was very ably argued by University of Idaho law student Stephen Noel, under the supervision of Professor Maureen Laflin.”); Whitfield v. Fresno Cty. Det. Facility, No. 95–17072, 1997 WL 135818, at *1 n.1 (9th Cir. Mar. 24, 1997) (“Whitfield was well represented on appeal by legal interns John W. Kluksdal and Courtnie R. Tucker

2. Educational Resources for Idaho Judges and Lawyers

Laflin has dedicated significant time to developing and participating in continuing education for Idaho judges and lawyers and to organizing and writing continuing legal education materials. One of her most significant and sustained efforts in this regard is the Northwest Institute for Appropriate Dispute Resolution (NWI), which she developed to deliver rigorous training to practicing attorneys, judges, and students in all facets of dispute resolution. NWI offers several courses every year during an intensive one-week training session in May. The offerings have covered a wide range of topics including basic civil and family mediation, leading to certification under Idaho Court Rules. In addition, courses in mediation of complex cases, arbitration, criminal mediation, environmental mediation, employment mediation, and others have been offered. The Institute courses are taught by nationally known experts and are focused on collaborative learning between the participating lawyers and judges and law students. As the Institute has grown, Laflin has worked to provide better access to its offerings. NWI has begun offering courses throughout the year and in diverse locations throughout the state.

Laflin's colleague, Cardozo University Law School Professor Lela Love, described the institute as "remarkable" and noted that Laflin's vision has resulted in the development of a state bar and judiciary that is knowledgeable in cutting-edge ideas in the area of mediation.²⁷ Merlyn Clark, a leading Idaho attorney who collaborated often with Laflin, concluded that "without any hesitation, I can say that [Professor Laflin] is the individual who is primarily responsible for the development of appropriate dispute resolution in the State of Idaho."²⁸

Beyond NWI, Laflin has been the presenter at more than forty legal and judicial education seminars in Idaho alone. She served as the coordinating editor and contributor to the *Idaho Appellate Handbook*,²⁹ and as one of the principal

with guidance of supervising attorney Maureen E. Laflin of the University of Idaho College of Law Legal Aid Clinic."); *Smith v. Noonan*, 992 F.2d 987, 987 n.* (9th Cir. 1993) ("Smith was well represented on appeal by Ms. Michelle M. Evans, a law student from the University of Idaho College of Law. Ms. Evans was guided by Ms. Maureen E. Laflin, her supervising attorney."); *Mendoza v. Blodgett*, 960 F.2d 1425, 1433 n.7 (9th Cir. 1992) ("The plaintiff-appellant/cross-appellee was well represented in this appeal by Kristin Bjorkman and Thomas G. Myrum, legal interns at the University of Idaho College of Law."); *Klein v. Borg*, No. 90-55833, 1991 WL 270734, at *1 n.* (9th Cir. Dec. 17, 1991) ("The appellant was well represented on this appeal by Suzanna L. Graham, legal intern of the University of Idaho College of Law.")

²⁷ Letter from Professor Lela Love, Dir. of the Kukin Program for Conflict Resolution, to Dean Barbara Petty (Jan. 12, 2017) (on file with author).

²⁸ Letter from Merlyn W. Clark, Hawley Troxell Ennis & Hawley LLP, to Dean Barbara Petty (Jan. 22, 2018) (on file with author).

²⁹ IDAHO APPELLATE PRACTICE SECTION, IDAHO STATE BAR, IDAHO APPELLATE HANDBOOK (5th ed. 2017).

drafters of the several Idaho court rules regarding the practice of mediation.³⁰ Linda Copple Trout, former Chief Justice of the Idaho Supreme Court stated that “[t]hanks to [Laflin’s] work, the Idaho Supreme Court adopted a first-ever rule regarding mediations in criminal cases, which has resulted in the successful mediation and resolutions of hundreds of criminal cases.” Justice Trout also remarked,

Professor Laflin has . . . given freely her time and expertise in training judges and attorneys in both civil and criminal mediation. I participated in the training to become certified in mediating criminal cases and found her knowledge and expertise in the area to be extraordinarily helpful. She has worked with the courts in Idaho to improve both court processes as well as skill building for judges She has accomplished a phenomenal amount of work over the past 25 years and, through those efforts, has benefited the judiciary, Idaho attorneys, students at the College of Law, the University of Idaho, and the people of Idaho.³¹

3. State and National Mediation Policy

Laflin has also made substantial contributions to state and national mediation policy. In Idaho she has served as a member of the governing counsel of the Idaho State Bar Association’s Section on Alternative Dispute Resolution, the Idaho Supreme Court’s Mediation Committee and the Advisory Committee for the Idaho Federal District’s mediation program. She has served on the Board of Directors of the Federal Defender’s service of Idaho, the Idaho Volunteer Lawyers Program Policy Council, and the Idaho Legal Services Delivery Council/Access to Justice Committee. She was one of the founding members of the Ray G. McNicols American Inns of Court.

Laflin has written on mediation in criminal cases.³² She has spoken extensively to national audiences in Florida and Washington state on this topic. She has often been a presenter at the annual Northwest ADR Conference and the annual Northwest Clinicians Conference. She has been an active member of the Association of American Law Schools Section on Clinical Education and the Clinical Legal Education Association.

³⁰ I.C.R. 18.1 (Mediation in Criminal Cases); I.C.A.R. 73 (Qualifications of Civil Mediators); I.R.C.P. 37.1 (Mediation of Civil Lawsuits).

³¹ Letter from Linda Copple Trout, Justice (ret.) The State of Idaho Supreme Court, to Dean Barbara Petty (Jan. 24, 2018) (on file with author).

³² Maureen E. Laflin, *The Mediator as Fugu Chef: Preserving Protections Without Poisoning the Process*, 49 S. TEX. L. REV. 943 (2008); Maureen E. Laflin, *Remarks on Case-Management Criminal Mediation*, 40 IDAHO L. REV. 571 (2004); see also Maureen E. Laflin, *Case-Management Criminal Mediation Offers Promise But Requires Caution*, ADVOCATE, Nov. 2004, at 15; Maureen E. Laflin, *Remarks on Case-Management Criminal Mediation*, 34 FLA. CRIM. L.J. 6 (2004); Maureen E. Laflin, *Can Informed Consent Preserve the Integrity of Mediation*, ADVOCATE, Nov. 2000, at 12.

Institutional Commitment

Professor Laflin has given unselfishly of her time to further the mission of the College of Law and of the University of Idaho. She has served on countless committees both at the college and at the university levels. She is known on campus as someone who can be called upon for support and assistance in a wide variety of circumstances. She has served on search committees and university policy committees as well as facilitated retreats for university departments and for the university president. She has moderated panels presented by faculty, staff and students. At the College of Law, she has served as a member of countless staff and faculty search committees. At one time or another she has been a member of every College of Law standing committee except the Admissions Committee. She was instrumental in developing plans for the College's expansion to Boise. To put it simply, Professor Laflin has been there when it counted.

Finally, she has been our friend and colleague in the truest sense of the word. She is an engaged and vibrant presence on the faculty—a voice of support and encouragement for those who need it and a catalyst for conversation and communication. She has consistently set aside professional and personal priorities in order to work on projects to advance the interests of the college and university. Her retirement is well deserved but will leave a hole that will not be easily filled.

Additional Comments from Faculty, Staff & Students

Nels Mitchell '78

Maureen did an outstanding job of creating, nurturing and managing clinical education. I always looked forward to the opportunity to participate in the trial advocacy program with Maureen and her team. During my time as a partner at two different national law firms (Paul Hastings; and Manatt Phelps) I ran the training and education programs at those firms. After working with young lawyers from some of the top-rated law schools in the country, I believe that the lawyers who came out of the U of I clinical program were much better prepared for the practice of law.

Carolyn Todd, Staff

Maureen: Maureen has been an amazing friend. She let my kids babysit her kids, she loaned me a bike so we could do the Palouse Sprint Triathlon, and now she's on city council. I'm looking forward to many more years of friendship.

Cathie Alonzo, Staff, 1999-2005

Congratulations on your retirement Maureen! You were such a great teacher when I worked with you; you never micro-managed, you made the responsibilities mine and because of you I gained a lot of confidence and learned a lot. And I loved being your detail person! Before I started working with you at the clinic you said you would walk into the clinic every morning and say: "I will give anybody a dollar if they would just smile!" Well, I smiled a lot in that job and enjoyed working with you and I loved working with the students. I have many fond memories including

filling your office with purple balloons when you celebrated your 45th birthday. I had worked at the clinic a very short time when you invited me to participate in a conference at Sleeping Lady Resort in Leavenworth. That was such a great time, (great food!) learning and feeling part of the Law School community. I was so proud to be part of the important work of the Legal Aid Clinic and working with law students who still had ""stars in their eyes"" and cared so deeply for their clients. The Law School was very good to me when Rudy became ill and I had to take time off. I will never forget that kindness. You meant a lot to Rudy and me as a personal friend; I will never forget your coming to visit us when Rudy was so ill. Wishing you the best now and always Maureen.

VII. A TRIBUTE TO PROFESSOR MONIQUE LILLARD

by John Rumel

I am honored and delighted to type these words about my colleague, Professor Monique Lillard. Professor Lillard will be retiring this Spring after over thirty years of dedicated and, indeed, remarkable service to the University of Idaho College of Law, its faculty and staff, and the many students who have passed through its doors.

I first met Monique toward the latter third of her career; however, I have learned that the profound effect she has had on those with whom she has worked and taught pre-dated her arrival in Moscow from her native California in the Fall of 1987 and has continued up to her pending departure in Spring 2020.

Emeritus Dean and faculty member Don Burnett recounts that, while serving on the Idaho Court of Appeals in early 1987, he encountered Dean Sheldon Vincenti outside the College of Law's courtroom in the Menard Law Building. As Dean Burnett puts it, Dean Vincenti "had a beaming expression on his face" because he had just received word that "a brilliant young legal scholar . . . had agreed to join the faculty. Her name was Monique Lillard, and she had made his day."

Monique has made my days and those of her other faculty colleagues on countless occasions over the years. She has shown an abiding willingness and ability to listen, express concern for the rights and feelings of others, and serve as a problem-solver; yet, at the same time, she has demonstrated a steely resolve concerning issues ranging from salary equity for women faculty and staff members (not surprising given her status as a consummate workplace law teacher and scholar) to curricular and academic freedom issues, including course requirements, grading policies and the like. For me, as with many of our mutual colleagues, Monique has been a sounding board, as well as a never-ending source of support, encouragement, and well wishes. She has been a colleague who has enthusiastically and respectfully allowed me to bounce harebrained, scholarly ideas off her in our overlapping areas of endeavor (mostly, employment law), who has responded with a creative perspective on the problem at hand that invariably made my scholarship better, who has genuinely taken joy in my and others' accomplishments and provided solace during our setbacks, and who has always made sure to check in after any hiatus in our communications.

Monique has had the same effect on faculty with whom she has worked during the latter part of her career. Associate Dean and Professor David Pimentel, who joined the College of Law faculty in 2015, commented, "When I was brand new on the faculty, untenured and comparatively inexperienced, Monique made it a point to treat me like an equal, as her colleague. She made me feel like I was an important part of the law faculty, and my contribution here was meaningful." Regarding his limited exposure to Monique's long career, David lamented that he felt like "someone who walked in the theater for the final minutes of what must have been a truly remarkable film. I feel bad for what I have missed, and grateful for the small part I was able to see—indeed, she has played the role of professor

and mentor with exquisite sensitivity and nuance.” And, Professor Dylan Hedden-Nicely, a former College of Law student who joined the faculty in 2017, stated, “Many of my role models—the people I have tried to be like in my practice and now as a member of the faculty—were my law professors. Monique is one of those people. . . . The College of Law is in the business of shaping future leaders and our community is better because our leaders have learned just a little bit of Monique’s values.”

Monique’s impact has extended to Moscow, the State of Idaho, and beyond. Monique and her husband, Duncan Palmatier, have not only opened their Moscow home to faculty and students for fellowship and camaraderie, but also to community activists for organizing purposes. Monique was instrumental in forging a connection between the College of Law’s Women’s Law Caucus and the statewide Idaho Women Lawyers Association. Well after Monique and Duncan’s children had completed their primary schooling in Moscow and gone on to college, Monique promoted the importance of education through her work with Palouse Pathways, a nonprofit group that counsels high school students about the value of higher education. For many years, she has served on the Board of Directors of Catholic Charities of Idaho and has been an officer of the Labor Relations and Employment Law and Employment Discrimination Law Sections of the Association of American Law Schools, a national legal educational organization.

Monique also has directed her scholarship toward benefitting her adopted home state of Idaho and, specifically, the Idaho legal profession. She conducted significant research and wrote extensively in the areas of Idaho employment termination and medical malpractice law. Monique’s work filled a major gap in Idaho jurisprudence and has served, and will continue to serve, the lawyers and judges of the Gem State.

Monique’s legacy? “Respect.” Each of my faculty colleagues who contributed to this tribute used that word in describing Monique. She has been and always will be respected because she has treated with respect all those with whom she has come in contact. As Professor Hedden-Nicely said of Monique, “From her I learned to treat everyone with respect; I learned to presume good faith until proven otherwise; and I learned to take time to laugh.” Likewise, Dean Burnett, in chronicling the generation of young women on the faculty and staff and in the student body Monique has mentored, remarked, “People in the academic community have taken their concerns to her . . . because she gives each person time, respect, and thoughtful attention.”

Monique’s respect for others and her inculcation of respect as a value have played out, most notably, in the classroom. Both Dean Burnett and Professor Pimentel relayed to me comments from Monique herself about her approach to and best moments while teaching. Regarding teaching the occasional male student who harbored stereotypes regarding women in the legal profession, Monique once told Dean Burnett that she tried hard not to alienate those students but that she did endeavor to “soften their ideas (or at least open their minds) on a few matters.” She also recounted to Professor Pimentel a memorable classroom discussion where two students who were from powerfully opposed ideological camps set aside their differences and achieved a moment of connection—reaching a previously unattainable level of understanding and appreciation of the other’s point of view. According to Professor Pimentel, although Monique was “largely responsible for

creating that moment, she viewed it not with a sense of accomplishment, but with a sense of wonder and awe: sheer joy that it happened and admiration for the courage and humility of the students who had reached out to bridge a yawning divide.”

Thank you, Professor Lillard. During these currently divisive times (and before), we—the University of Idaho College of Law and its stakeholders—are indebted to you for all you have done for us and our communities large and small. May the values you have lived and taught us be your legacy and may joy continue with you in the days ahead.

March 23, 2020

John Rumel, Professor of Law, University of
Idaho College of Law

Additional Comments from Faculty, Staff & Students

Patrick Fackrell '16

Dear Professor Lillard: Congratulations!! I have no doubt your retirement will be filled with joy, intellectual engagement, and excitement. I am eternally grateful for your endless mentorship and instruction during law school. Needless to say, my law school experience would not have been the same without you. From first-year Torts (where, I will never forget, you called on me the first day of class), to Advanced Torts, to Workplace Law, and then to serving as your research assistant, I can honestly say that I am forever and positively impacted by your instruction. Your decades of dedication to legal education have benefited not only me, but scores of law school students and lawyers. I sincerely thank you for everything.

Fran Talboy Kershisnik '92

First, let me say Monique, you are an amazing woman. I was blessed to have you as my instructor. I always appreciated how you allowed me to explore ideas rather than shutting me down with a “no, this is the way it is.” That has served me well in life and in my practice of the law. I think too, from a female perspective, that empowered me to stand up and say, there are other ways, ideas, arguments, let everyone be heard, my argument is equally (if not better) than yours, sir! Thank you for that.

On a personal level, I treasure our friendship. I have enjoyed you staying at our home, allowing my daughter to stay at your home and our interesting discussions.

While time and distance keeps us apart, I will always cherish you as a teacher and a friend. Enjoy your well deserved retirement.”

Carolyn Todd, Staff

Monique: Monique has always felt like my connection to my SoCal roots - we went to high schools just a few miles apart and i think both of us have never

completely shed that L.A. vibe. Plus she was inspired to go to law school by Perry Mason - also one of my favorite shows ever!

VIII. "THANK YOU, PROFESSOR MILLER"

by Dennis C. Colson

John A. (Jack) Miller rolled onto the University of Idaho campus during the summer of 1988 to begin his appointment as an Associate Professor on the College of Law Faculty. Now, thirty-two years later, Professor Miller has decided his job is done. No doubt all who have been students, colleagues, or acquaintances of Professor Miller will join us in saying: "Thank you, Professor Miller."

Jack arrived in Moscow well-prepared for his appointment. He earned a B.A. (1972, Political Science, *Phi Beta Kappa*) and Juris Doctorate (1976) from the University of Kentucky. The J.D. was followed by ten years of practice, mostly with the Kentucky Attorney General's Office, eventually serving as the Chief Tax Counsel for the State of Kentucky. The practice whetted Jack's appetite for tax law, and he wanted more, perhaps a bigger pond to swim in, so he took on the Internal Revenue Code and earned an LL.M. – Tax from the University of Florida College of Law (1987). After a year as a Visiting Assistant Professor at Florida, Jack found himself at the front of a classroom in the Al Menard Law Building.

Associate Professor Miller became Professor Miller in 1994. Professor Miller became Dean Miller in 1995 and served as Dean of the College of Law until 2002. In 2004 he was appointed the Weldon Schimke Distinguished Professor of Law. These various appointments evidence the talent and dedication Professor Miller brought to the College and cause us to say: "Jobs well done."

Professor Miller's primary teaching responsibility has always been federal income taxation of individuals, corporations, partnerships and trusts, and federal estate and gift taxation. Like many on the faculty he joined, Professor Miller made teaching a high priority, and he is good at it. He received the Peter E. Heiser Award on three occasions, given by the graduating College of Law class to their selection of the outstanding law professor. Professor Miller, with co-author Jeffrey Maine, created *The Fundamentals of Federal Taxation*,³³ which is accompanied by a teachers' manual and problems and solutions, with the hope of making the subject more accessible to students.

Scholarship has been as important to Jack as teaching. One of the most striking features of his work is the range covered and the careful analysis applied. A variety of topics are covered and a range of perspectives considered, from the practical needs of lawyers to the jurisprudential needs of the academy. Compare *Wealth Transfer Tax Planning for 2013 and Beyond*³⁴ and *Preserving Wealth and*

³³ (with Jeffrey Maine) Carolina Academic Press (5th Ed 2018).

³⁴ (with Jeffrey Maine) 2013 BYU L. REV. 879–948 (2013).

*Inheritance through Medicaid Planning for Long Term Care*³⁵ with *Indeterminacy, Complexity and Fairness: Justifying Rule Simplification in the Law of Taxation*,³⁶ and *Liars Should Have Good Memories: Legal Fictions and the Tax Code*³⁷ and you will see what we mean.

Professor Miller has always been helpful to those students in need of special support. He organized and directed the highly successful Council on Legal Education Opportunity (CLEO) program offered by the College in 1994. CLEO is the longest-serving national organization committed to diversity in legal education. His interest in students is sincere, and he is always willing to offer counsel.

Dean Jack Miller brought the same dedication and talent to leading the College of Law that he took into his classroom and scholarship. High standards and integrity were always in play. Jack, while a member of the faculty, was mentored and befriended by Dean Sheldon Vincenti.³⁸ As Dean, Jack was able to nourish the collegial faculty, who shared the mutual respect and sense of family that Dean Vincenti had worked so hard to create.

With a sharp eye on the budget, Dean Miller was able to marshal the resources required by a strong program. He understands the importance of maintaining a competitive salary structure and searching nationally for new faculty. Each member of the faculty received at least a fifty percent raise during his time as dean, bringing the College of Law into the modern world of legal education. It was during his time as dean that the College endowed its first four professorships, the Bellwood Lectures, built one of the first interactive video classrooms in legal education, the Wheeler Room, and established what would become the College's Boise campus.

One of the signs of a great dean is that he or she enjoys the interaction with the academic and legal communities and sees it as a source of sustenance rather than a burden. Jack cultivated warm and cooperative relations with Idaho alumni, lawyers, judges, and political leaders. One of his early actions as dean was to form the College of Law Advisory Council. The Council continues to serve as a major source of external support for the College. Jack brought with him to Moscow the social courtesies learned during the Kentucky years. Whether hosting a Kentucky Derby party or chairing a faculty meeting, there was something of the southern gentleman in his manner.

Many examples could be offered which would show the inspiration and effort Dean Miller brought to the office, but perhaps his leadership is best illustrated by his work on the Bellwood Lecture Series. We'll name those Dean Miller brought to the campus, and Idaho more generally. You will recognize their prominence. Sandra Day O'Connor, Antonin Scalia, Janet Reno, Ruth Bader

³⁵ (with Sean Bleck and Barbara Isenhour) 17 MICH. STATE UNIVERSITY JOURNAL OF MED. & L. 153–196 (2013)

³⁶ 68 WASH. L. REV. 1–78 (1993).

³⁷ UNIVERSITY OF COLO. L. REV. 1–55 (1993).

³⁸ *Remarks Upon The Retirement of Deam Emeritus and Proferssor Sheldon. A. Vincenti*, 88 Idaho Law Review 523 (2002).

Ginsburg, Charles Wilkinson, David Halberstam, Martha Nussbaum, and Bryan Stevenson.

Jack tirelessly served the committee needs of the College the University, and the profession. He has chaired most of the important College committees on multiple occasions, including: Promotion and Tenure, Third Year Review, and Honor Code Revision. His service to the larger university included chairing the Faculty Senate. His service extended to the national legal community as well. For nearly twenty years he contributed to the various committees of the Law School Admission Council (LSAC) including eight years on the LSAC Board of Trustees. At the same time he served on numerous Site Inspection Committees of the American Bar Association. He also served as a visiting professor at seven other law schools including, the University of Washington, the College of William and Mary and the University of California at Hastings. Faithful to his character and commitment to the College, Jack is rendering service to the very end. In the last months before retirement he is chairing the Curriculum Committee, which is planning the future of our College.

We do not know whether Associate Professor Miller intended to devote his professional life to the University of Idaho when he arrived thirty-two years ago. But we do know that it was a career done with style and commitment and that it has made the College of Law a better place.

Dennis C. Colson
James E. Wilson Professor of Law Emeritus
Neil Franklin
Professor of Law and Dean Emeritus

Additional Comments from Faculty, Staff & Students

Katherine Moriarty '90

Congratulations, Jack, on your retirement! Even though I found your classes to be very demanding, I always loved attending because you have such a passion for the law. You were such a great professor; you made it look easy. I was so impressed with your knowledge and expertise; but what I admired most were your interactions with your students. You were always probing, asking great questions; but you were also so respectful of your students. You were demanding, but also encouraging. And you have a great sense of humor--something all lawyers must possess! You have made countless contributions to our legal profession, but I want to especially thank you for your role in creating our Law Advisory Council. Thank you for your many contributions to our College of Law and our legal community. Here's to a long, happy retirement!

Amanda Brusic, Current Student

Congratulations Professor Miller! Thank you for all you have done. Wishing you happiness in your retirement!

Carolyn Todd, Staff

Jack: I really appreciated Jack's term as Dean because he was willing to push for a law school location in Boise. It took a number of years, but it finally happened and is the success he predicted. He was tech savvy when we needed someone to help us make the transition to email and Windows and all the things. He started the first Clio program. He was a rock star (still is)."

IX. GROUP COMMENTS

The following comments were provided referencing more than one professor. A decision was made to keep these comments together to retain the integrity of the comments.

Jessica Pilgrim '13

I was absolutely devastated to learn that the retirement celebration had been cancelled (though I understand). I want Professors Beard, Anderson, and Lillard to know: You absolutely impacted my life. I so very much enjoyed your classes. Not only for how well you taught them, but the wonderful memories. We had some really great belly laughs (more than I think you are probably allowed for law school)! Practicing law has been an absolute joy for me, and I think of all of you and your advice and lessons daily. I channel my inner "Beard" when I question or explain "why" in briefs or to clients. I recall the endless, fun hypos (and questionable drawings hahaha) of Professor Lillard and her patience with us as we twisted the facts just a little more. . . And on weekends, as I watch my family play in the yard, or there is a quiet sunset, I recall the last day of class, when Professor Anderson made me misty eyed telling us how the law is like the riverboat captain who cannot just see the ripples on the water anymore now that he knows too well what lies below them. . . and his advice to not forget to just enjoy the sparkles and the ripples on the water even though we now know the law. Advice I remind myself of almost daily. The Law School has lost some legends, for sure. The next generation will not know the joy I knew having taken classes from you, and enjoying your company and encouragement. You inspired me. You inspire me. Thank you for all you have given to me, and to my family, through your gift of teaching me the law. Truly. Now, go forth, and enjoy your well-earned retirement!

Kou T. Xiong '97

Strongest commendations and congratulations to the retirement law professor class of 2020! What an exceptional group of teachers, scholars, social and legal engineers. I am most grateful for each of you who had allow me to be your student and a part of your story. Thank you.

Among the giants of each of you, I want to especially thank Professor and Dean John Miller for his vision and support. Your decision to admit me to the college of law in the Summer of 1994 was momentous for me. Your belief in me has left an indelible impact on my life and helped me to establish a legacy for me and my family in ways you might not have realized...simply because you were just being you. Your decision has had a profound impact on not only my life but the communities and the legal profession I serve. Whether you or I believe it or not, I am now considered a mentor, an achiever and a leader. Credits to you and the 1994-1997 faculty. I am forever indebted.

In your retirements, I want to wish and bless each of you and your families with continuity of great health, vitality, prosperity, and happiness. I truly believe that each of your legacies have now been solidly and forever cemented. Congratulations!"

Jon Rezabek '18

Congratulations to the entire All-Star retiring faculty members of Spring 2020. Many of your classes have shaped the way I think about the law, the world, and have been stepping stones on the path to a profession and career. I thank you for that service. Individually: Professor Anderson: Thank you for your pedagogy and approach to Business Associations as the very nature of the class better prepared me for thinking about the law, elementally. Thank you also for your humor and friendly conversations in between class. Professor Beard: Thank you for your pedagogy. Your classes prepared me for the court room setting better than any other. I also appreciated the way you broke laws down to their individual components, illuminating issues in interpretation. Professor Cosens: Thank you for developing the Waters of the West Program and allowing me to pursue my interests in water resources and law in a novel program. Thank you also for mentoring me through both the law and graduate degree. The program has propelled me to my career as a Rule Writer and Legal Analyst with Arizona's Department of Environmental Quality. I wish all of you well as you transition into retirement. Make sure to enjoy life with your newfound time. Congratulations! Sincerely: Jon Rezabek

Danielle Strollo, Current Student

To all of you whom I've met or had the privilege of learning from (and to those of you I have not): Congratulations on your wonderful careers, and thank you for all of the valuable expertise you've imparted to us here at U of I. We're a richer learning environment for having had all of you in it. Enjoy retirement!

Joseph A. Wright '91

To: Monique, Mark and Ben - "End of an era".. an understatement, indeed. While your title may be "professor", you are each an outstanding "teacher", which is the highest praise anyone in the profession can receive. For the Wright family, you taught us "the law", but more importantly, you taught us how to be good lawyers. I experience the positive influence of your teaching every day, whether it's using critical thinking skills you taught me to sort out a complex business transaction, or listening (with a good deal of pride) to Brennan and Cooper discussing the best way to proceed with a probate case. You have every right to be proud of what you have accomplished for the law school and molding a generation (or two) of Idaho lawyers. We wish you each all the best moving forward, and thank each of you for service to the legal profession. It was a good run ;)

Sandra Richartz '11

This is basically the retirement of all of my professors! Congratulations to you all!

Professor Cosens: You are the reason I chose University of Idaho and the reason I managed to complete the concurrent degree program! I have wanted to study water law since before I was in undergrad. Finding a law school with the

concurrent degree program was a dream come true for me. When it all started crashing down for me in 2009, you were kind and supportive and committed to getting me through. I learned so much from you about interdisciplinary work and the inherent philosophical conflicts of water that I utilize to this day. I am finally utilizing my education to work on land use and water policy professionally. Some of my favorite memories from law school are thanks to you (and Mardibar).

Professor Lillard: Thank you for a beautiful and graceful introduction to Torts. To this day, certain things inspire me to say ""that's a Tort"" and think of your class.

Professor Miller: I always appreciated the music you played before class. It helped to start the day off well. To this day I do my own taxes and better understand a topic I would never have thought I could appreciate. May your retirement hold beautiful music and travels.

Professor Anderson: Business Associations became clear to me and the examples you used in class stuck with me and got me through the bar exam. I still try to reiterate some of your jokes, but they are never the same.

Professor Laflin: I'm not sure you were ever actually my teacher, but I loved your dog and I carry a sweet memory of your kind, inquisitive spirit with me. I hope your retirement continues to offer your richness and fulfillment.

Professor Beard: I'm not sure you were ever my professor, but your presence in the school added to the rigor and dignity of the education we received. May your retirement hold great things!

Amanda Brusic, Current Student

Congratulations Professor Beard on your retirement! You were a valuable asset to the law school and I feel fortunate to have had you as a professor. Thank you for all you have done. You will be missed!

Congratulations on your retirement Professor Anderson! Thank you for your time and commitment to the law school and its students.

Happy retirement Professor Lillard! Thank you for all you have done over the years and thank you for making Torts a class I enjoyed.

Congratulations on your retirement Professor Laflin! Thank you for bringing a positive and upbeat attitude to the clinic this past year. Wishing you plenty of rest and relaxation in your years to come!

Alycia Moss '05

Each of you made my experience at U of I College of Law exceptional! (well... I didn't have the pleasure of having a clinic or class with Jack or Monique and didn't know Jack, but Monique you were always there with a cheerful smile and to help ;)

@ Maureen -- you made clinic fun and provided me with invaluable real-life experience. I deeply enjoyed our talks in your office and our friendship (still do) :)

@ Mark -- you were always available for office hours and to help with anything. I really appreciated that.

@ Barb -- thanks for bringing water law to life. It was great to have your love for the environment infused in class.

@ Ben -- thanks for opening your house and your heart to me. Remember capitalism without socialism doesn't work.