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Donald L. Burnett Jr.

University of Idaho College of Law, dburnett@uidaho.edu

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LET OUR MINDS BE BOLD — STEPPING INTO U OF I'S SECOND CENTURY

Dean Donald L. Burnett, Jr.
*University of Idaho,
College of Law*

One of my illustrious predecessors, Idaho law dean Cliff Thompson, was fond of quoting the late J. Blaine Anderson, Judge of the U.S. Court of Appeals for the Ninth Circuit, who once told a circuit conference that “[i]n Idaho, the air, water, and justice are all equally pure.”¹ Judge Anderson’s tongue-in-cheek observation made no claim of perfection for his beloved Idaho, but he gently implied that we should be proud of our state – a place not yet spoiled, a place where we can still get things right, a place that can be a model for the rest of the country.

I was reminded of Judge Anderson’s words when several Idaho faculty colleagues and I attended an international conference on the future of legal education last year. Through the efforts of our own Associate Dean Richard Seamon, we had secured an invitation to present a vision of how a public law school



Dean Donald L. Burnett, Jr.

could reach out to the entire state with a curriculum that features interdisciplinary teaching and scholarship relating to the state’s needs; by developing professional skills that assure effective, affordable access to justice and legal services; and by inculcating in each student a strong sense of professional values, identity and purpose. Drawing upon strategic planning underway in Idaho since 2007, Dean Seamon made a splendid presentation. Later, the organizer of the conference — who earlier had made his own presentation on how Johns Hopkins University had achieved pre-eminence in medical education through relevant teaching and scholarship, and through service to surrounding communities — came to me, took me by the elbow, and exclaimed enthusiastically, “Idaho can be the next Johns Hopkins of legal education!”

Foundations of Excellence

Idaho is the right place for bold thinking, because a culture of achievement already exists. Idaho law faculty for decades have been making important

contributions to the development of law and legal institutions in Idaho. Examples of those contributions are noted in the “impact scholarship and outreach” feature in this issue of “The Advocate.”

Moreover, Idaho law alumni can be found in the United States Senate (Jim Risch ’68), where the service of Jim McClure ’50 is still remembered with admiration; in the Idaho Supreme Court (Chief Justice Daniel Eismann ’76, Justice Roger Burdick ’74, and Justice Joel Horton ’85); in the Idaho Court of Appeals (Judge Darrel Perry ’79, soon to be succeeded by Judge John Melansen ’81, and Judge David Gratton ’85); and in the Office of the Idaho Attorney General (Lawrence Wasden ’85). Another Idaho leader, former Chief Justice Linda Cople Trout ’77, occupies a special place in the state’s history as the first woman to sit on the Idaho Supreme Court and to serve as the Chief Justice. In Idaho’s federal judiciary, Magistrate Judge Candy Dale ’82 is a similar “first” distinction in her position. Her federal colleagues from the College of Law include Senior Ninth Circuit Judge Tom Nelson ’62, District Judge Edward Lodge ’61, Magistrate Judge Mikel Williams ’69, and Magistrate Judge Larry Boyle ’72.

Idaho alumni too numerous to list here have distinguished themselves in law practice and professional leadership. Perhaps less well known is the degree to which Idaho law alumni have become leading business executives. Examples include Frank Shrontz ’54, former CEO of The Boeing Company; Dennis Wheeler ’67, CEO of Coeur: The Precious Metals Company; Steve Hanks ’78, former CEO of Washington Group International (now URS/Washington Division); and Dennis Johnson ’79, CEO of United Heritage Financial Group. Other alumni have had distinguished careers in more than one field — e.g., former Idaho Chief Justice Charles McDevitt ’56, whose notable achievements have encompassed the judiciary, private practice, corporate business administration, and entrepreneurship.

Faculty and alumni records of achievement are salient indicators of quality. Another badge of quality, however, is the diversity of backgrounds and perspectives in the student body, because students learn from each other as well as from the faculty and from their individual studies. Ten years ago, when a special panel of consultants was engaged

to study the strategic future of the College of Law, the panel found one of the lowest percentages of women students among all law schools in the United States at 26.4%; and for racial and ethnic student minorities, a mere 4.1%.² Since then, the representation of women in the whole student body has risen to approximately 40% and the representation of minorities to approximately 15%. Diversity among the faculty and staff also has shown significant improvement, with eight women now holding faculty tenure track positions and three members of racial and ethnic minorities among the teaching and law library faculty. The professional staff includes four women and two minority members, all of whom hold J.D. degrees and full-time positions. In further advancement of diversity, the College of Law has collaborated with the Idaho State Bar to establish a Diversity Section, which promotes opportunities in legal education and the practice of law in Idaho.

Excellence, of course, requires resources; indeed, it is axiomatic in public higher education that taxpayer and student resources buy competence, while private support furnishes the additional margin of excellence. The College of Law receives generous gifts from its alumni, who have provided more than 40 endowments and more than 30 scholarships, and who have underwritten the creation of signature events. Included among these gifts are the William and Carolyn Folz Scholarship Endowment; the Burton and Dee Ellis Academic Excellence Endowment; and the James E. Wilson Memorial Endowment, from the estate of L. Weldon Schimke. Each of these donors has provided a cumulative gift to the Law School in excess of \$1 million.

In 2003, the College of Law received a significant gift from a non-alumnus, the philanthropist James E. Rogers. Rogers announced he would help the College of Law to become America’s best small state law school, and created the Roger’s Scholarship Challenge and the Roger’s Fellowship in American Indian Law. This was followed in 2004 by the establishment of the James E. Rogers Distinguished Professorship in Law. The Scholarship Challenge has aided as many as eight students each year, with continuing aid in subsequent years, at levels nearly equal to fees charged to Idaho residents. In addition, Rogers has underwritten a

faculty fellowship in American Indian Law and a distinguished professorship in law. All told, Rogers' contributions and commitments have risen to nearly \$1million to date.

Many initiatives, of course, are not supported by large individual donations, but rather by the cumulative gifts made by many donors whose generosity has created a "Dean's Fund for Excellence" that has made possible a number of programs gaining distinction in the law school community.

Building on the Foundation

These achievements and program advances reflect the ideas and energy that have fueled the College of Law to date. The long-term viability of the College, however, also depends upon an understanding of the future relationship between the College and the state it serves. The University of Idaho is charged with a statewide mission in legal education. Since the Menard Law Building was constructed in 1972-73, Idaho's population has doubled, and the state's economy and government have more than doubled. Yet the law program has changed little. Meanwhile, the Treasure Valley has become America's largest metropolitan center that comprises a state capital but lacks a legal education program within its borders or nearby. Rising demand for legal education in Boise, and growing law-related career opportunities across southern Idaho, now make a law degree program in Boise inevitable – and perhaps imminent. To secure the future of the program in Moscow, and to fulfill its assigned mission, the University of Idaho must provide legal education statewide.

Idaho needs legal expertise to support economic development, administration of criminal and civil justice, and services needed by Idaho families. Legal education also is responding to globalization, specialization, demand for practice-ready graduates, and increased use of law degrees in business and a wide variety of other occupations. These needs must be addressed by *public* legal education. Affordable public legal education enables graduates to take jobs in Idaho communities or in the public and nonprofit sectors. It also keeps legal services and justice accessible for people of ordinary means.

The College of Law has conducted an open and thorough strategic planning process, engaging the law school community (faculty, staff, students), expert consultants, University leaders,



Photo courtesy of University of Idaho

Attending the College of Law has been a family endeavor for many. This photo shows Professor Thomas Walenta with a student and family.

distinguished alumni on the Law Advisory Council, the Idaho State Bar (co-sponsor of a conclave on Idaho legal education), district bar associations, and Idaho's judiciary. The process has revealed that maintaining the status quo is not an option for the future; it would inadequately serve the state's needs and the University's mission. Surveys show that the College of Law would be more attractive to students if it were located in Boise as well as Moscow. Faculty scholarship, service to the state (including state government), and community outreach also would be enhanced.

The College's planning consultant, a former three-time law dean and chair of the American Bar Association committee on accreditation standards, has strongly recommended a single statewide law school with efficient, unified administration and curricular design, providing two places of opportunity: Moscow and Boise. The Law Advisory Council unanimously has made the same recommendation. The concept of a branch extension has been adopted by the law faculty and endorsed by the University leadership as well as by the University of Idaho Foundation. The branch extension

concept strengthens legal education in Idaho by maintaining the connection with land-grant research and teaching at Moscow while also connecting more fully to the state capital – a center of law, commerce and population. The Idaho Supreme Court has embraced the concept and is collaborating with the College of Law in planning an Idaho Law Learning Center in Boise.

On April 17, 2008, the State Board voted "to approve the request by the University of Idaho for authority to proceed with implementation planning for the two-location concept, including operating budget, capital budget, facility needs analysis, curriculum and an implementation timeline." The College of Law prepared an implementation plan providing for enhancement of the Moscow program and development of a Boise branch program. The plan contained an eight-year timeline reflecting a law faculty commitment to academic quality, the depth of the qualified student applicant pool, accreditation standards (to be met and exceeded), the costs of each step, and the resources available from the Legislature and Governor, student fees, private support, grants and contracts.

The State Board reviewed the plan during its meeting on August 21, 2008. The State Board: (i) authorized the University of Idaho to go forward with a full third-year law program in Boise and to seek a legislative appropriation for that purpose; (ii) instructed the University to re-visit funding and support for the full three-year branch curriculum and to return to the Board for further discussion; (iii) re-affirmed the University's statewide mission in legal education; and (iv) directed the University to continue collaborating with the Idaho Supreme Court on the Idaho Law Learning Center.

Enhancement of the Moscow program and ultimate development of a full branch extension program at Boise, as shown in the summary below, would enable the University of Idaho to deliver an integrated program with basic J.D. instruction at both locations plus distinctive, complementary specialties at each location. The College of Law would be stronger in two locations than it could be at either location alone. Moreover, collaboration with the Idaho Supreme Court on the Idaho Law Learning Center – a multi-purpose facility -- offers a once-in-a-generation opportunity for synergy and efficiency. This will be the Supreme Court's first major capital request in approximately 40 years. Renovation and expansion of the "Capitol Annex" building (the old Ada County Courthouse) is one of the Law Learning Center possibilities. The College of Law also will continue upgrading the Menard Law Building in Moscow, in order to meet the challenges of modern legal education.

The Idaho State Board of Education approved and submitted to the Governor a funding request for support of the third-year law program in Boise, starting in Fiscal Year 2010. In January, 2009, the Governor, citing the economy and diminished tax revenues, declined to ask the Legislature for new higher education funding initiatives. (The Legislature did not fund any such new initiatives, although it did continue funding for a previously approved dairy/environmental center and for a center for advanced energy studies).

The President of the University of Idaho (Dr. Duane Nellis) and the Chief Justice of Idaho (Hon. Daniel Eismann) have submitted letters to the Idaho Department of Administration, declaring their commitments to the "Idaho Law Learning Center" and supporting long-term use of the "Capitol Annex" building

in Boise for this purpose. The building, which has been temporarily utilized by the Legislature while the main capitol building is remodeled, is expected to be vacated by the end of 2009. Estimates are now being prepared of the cost for infrastructure improvements before the building can be used for the College of Law third-year program, for the Idaho State Law Library (to be operated by the College of Law under an agreement with the Supreme Court), and for judicial education and public education components of the "Law Learning Center" concept. The building subsequently would be expanded to accommodate the College's full three-year branch location, the correlative expansion of the library, judicial education and outreach, and other public functions.

In the fall of 2009, the Department of Administration, in collaboration with the Idaho Supreme Court and with support from the University of Idaho, is expected to submit to the Idaho Permanent Building Fund, an entity supported by a public endowment and annual legislative appropriations, a request for funding the currently needed infrastructure improvements to the Capitol Annex.

The College of Law faculty has begun to shape the academic plan for maintaining the quality of the Moscow program while implementing the third-year program with step-by-step additions of faculty in Boise. The State Board-approved program in the state capital will focus largely on business and commercial law and will complement the Moscow program. It may begin as early as the fall of 2010 with approximately 25-30 third-year students, if at least two faculty positions, a staff support position, and library needs can be provided initially with student fees and private support.

**Proposed Full Branch Concept:
Second Century of Legal
Education in Idaho
"One Statewide Law School, Two
Places of Opportunity"**

Moscow

Small ("quality over quantity")

- Residential law program; intimate teaching/learning environment
- Interdisciplinary connections with University of Idaho land grant research and teaching at the intersections of law, public policy, business (e.g., Juris Doctor and Master of Accountancy), and science (e.g., combining Juris Doctor with "Waters of the West" doctoral and masters joint degrees, or masters of environmental science degree)

- Emphases in natural resources and environmental law, American Indian law, and public lands
- Cooperation with Washington State University, including concurrent degree programs (e.g., Juris Doctor and Master of Business Administration)
- College of Law principal administrative offices to remain located on main University campus in Moscow, providing connections and service to the academic community

Boise

- Small (reinforcing "quality over quantity") metropolitan program with variable-time curriculum
- Emphases in intellectual property, technology transfer, entrepreneurship, business and commercial law, regulatory law, and international business transactions and trade
- State law-related research and service to judiciary, legislature, and city/state/federal agencies
- Enhanced access to readily available, high-quality affiliate faculty
- Cooperation with Boise State University, including concurrent degree programs (e.g., Juris Doctor and Master of Accountancy with emphasis in Taxation) and potentially with Idaho State University

Dynamic Connections at Both Locations

- Delivery of core Juris Doctor degree education, including clinical programs, advocacy, and dispute resolution, with curricular progressions and capstone experiences
- Emphasis on development of professional identity, skills, values, and a sense of public calling, concurrent with generating intellectual growth and a fund of knowledge, as recommended by the 2007 Carnegie Report on Legal Education and the "Best Practices" Report of the Clinical Legal Education Association
- Differentiated and complementary upper-division offerings under integrated curricular plan
- Linkages of people and places through distance education and related technologies
- Outreach to the legal profession and judiciary and to communities in Idaho and beyond
- Unique and innovative approach to legal education – transcending distance

The overriding imperative is to sustain the College's commitment to

excellence by establishing a structure of public legal education that serves Idaho fully while protecting the state's 100-year investment in the program's historic anchor in Moscow. The proposal can be achieved in a series of steps, beginning with elements of the State Board-approved third-year program, as private and public resources are marshaled to the task. Progress can, and should be, scaled to the demand for legal education, as revealed by the quality and depth of the applicant pool. Ultimately, the proposal will establish about the same relationship between Idaho's public investment in legal education and the size of the state as the relationship that existed when the Menard Building was completed in 1973.

In short, the plan is both ambitious and practical – worthy of a Johns Hopkins analogy, yet not beyond Idaho's reach. It secures the University of Idaho's leadership in legal education as the College of Law steps into the second century. In the words of U.S. Supreme Court Justice Louis D. Brandeis, a proponent of innovation at the state level, "[i]f we would guide by the light of reason, we must let our minds be bold."³

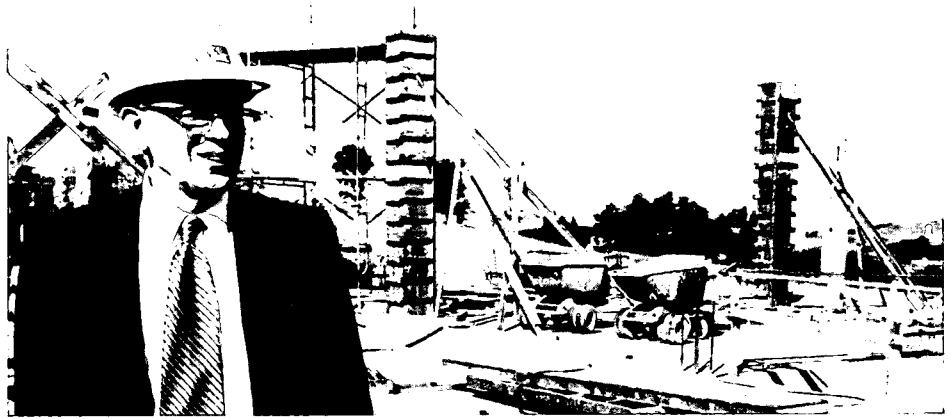


Photo courtesy of University of Idaho

Dean Albert Menard looks over the construction site of the new law school in 1972.

About the Author

Dean Donald L. Burnett, Jr., a native of Pocatello, has served as the University of Idaho's law dean and as Foundation Professor of Law since 2002. He is a former President of the Idaho State Bar, Judge of the Idaho Court of Appeals, and Dean of the Louis D. Brandeis School of Law at the University of Louisville. He received his legal education at the University of Chicago (J.D.) and University of Virginia (LL.M.)

Endnotes

¹ Cliff F. Thompson, *Legal Education in Idaho: 1978-79*, THE ADVOCATE, 1980, vol. 23, no. 1.

² Frank T. Read, et al., *Strategic Directions in Legal Education for Idaho: The Report of a Special Panel Appointed by the President of the University of Idaho (January 8, 2000)*, THE ADVOCATE, June 2000, at 21.

³ *New State Ice Co. v. Liebman*, 285 U.S. 262, 310-11 (1932) (Brandeis, J., dissenting).

ALTERNATIVE DISPUTE RESOLUTION

Merlyn W. Clark

Mr. Clark serves as a private hearing officer, federal court discovery master, neutral arbitrator and mediator. He has successfully conducted more than 500 mediations. He received the designation of Certified Professional Mediator from the Idaho Mediation Association in 1995. Mr. Clark is a fellow of the American College of Civil Trial Mediators. He is a member of the National Rosters of Commercial Arbitrators and Mediators and the Employment Arbitrators and Mediators of the American Arbitration Association and the National Panel of Arbitrators and Mediators for the National Arbitration Forum. Mr. Clark is also on the roster of mediators for the United States District Court of Idaho and all the Idaho State Courts.

Mr. Clark served as an Adjunct Instructor of Negotiation and Settlement Advocacy at The Straus Institute For Dispute Resolution, Pepperdine University School of Law in 2000. He has served as an Adjunct Instructor at the University of Idaho College of Law on Trial Advocacy Skills, Negotiation Skills, and Mediation Advocacy Skills. He has lectured on evidence law at the Magistrate Judges Institute, and the District Judges Institute annually since 1992.

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ATTORNEYS AND COUNSELORS

Phone: 208.388.4836
Fax: 208.342.3829
melark@hawleytroxell.com

877 Main Street • Suite 1000
Boise, ID 83702
www.hawleytroxell.com