



OFFICE OF THE PRESIDENT
875 Perimeter Drive MS 3151
Moscow ID 83844-3151

208-885-6365
president@uidaho.edu
uidaho.edu/president

October 5, 2020

To: College of Law Faculty, Staff and Students

From: Scott Green, President

Subject: Culture and Climate Report

In January of this year, after consulting with Dean Long, I appointed a special panel to review the issues of culture and climate at the College of Law, focusing particularly on diversity and inclusion with emphasis upon the treatment of underrepresented and other protected classes within faculty, staff and students. The composition of the Culture and Climate Review Committee consisted of Dr. Yolanda Bisbee, the University's Chief Diversity Officer; law professor emeritus Don Burnett, past College of Law Dean and Interim University President; law professor Michael Satz, then-Executive Officer of the University's Boise Center; and Honorable Linda Copple Trout, past Chief Justice of the Idaho Supreme Court. Dr. Bisbee chaired the panel. A facilitator, Sarah Borden, of Centered Consulting International, LLC also served as a facilitator for the listening sessions.

The committee started work on March 3, 2020, conducting listening sessions with individuals and groups of law faculty, staff and students in Boise and in Moscow (although the Moscow sessions were largely conducted through zoom due to the arrival of COVID-19). The panel delivered their findings and recommendations in the attached report on August 27th. Climate and culture issues exist within the College of Law and timely implementation of Committee recommendations is paramount to the success of your academic and professional environment.

Addressing these issues will require strategic leadership from the University and College administration. This should receive continuous attention from the dean together with resourced, active engagement from law students, faculty, and staff. Everyone plays a role in improving the culture and climate at the College of Law. The Committee recommendations outlined key areas to address in:

- Faculty, staff and student training
- Faculty and staff evaluations
- Recruitment and retention of diverse faculty, staff and students
- Student engagement and programming
- Curriculum

The work to improve culture and climate is never-ending. We can always learn more and do more to improve our condition. The dean and faculty have already taken important steps, previous to the issuance of this report, to shift the culture within the College. However, there is still work to do and it is my expectation that everyone does their part to listen, engage in difficult conversations, take meaningful action to continually improve, and provide a safe and supportive community. The faculty letter of June 11, 2020 to the student body contained concrete suggestions for consideration in this work. I understand that initiatives to implement many of these recommendations have already begun. I encourage you to read that letter in conjunction with the recommendations produced by the Culture and Climate Review Committee.

There must be a commitment to improve. Diversity and inclusion are important elements of a strong culture and key to a climate where all students feel heard and welcomed. I have charged the Dean of the College of Law to ensure progress is made for each of the recommendations contained in this report. I appreciate the hard work, empathy and care taken to produce this report and commend the Culture and Climate Review Committee for their service to the University.



**OFFICE OF EQUITY
AND DIVERSITY**
875 Perimeter Drive MS 3157
Moscow ID 83844-3157

208-885-2468
208-885-6558 (FAX)
diversity@uidaho.edu

To: President Scott Green
Dean Jerry Long

From: Yolanda Bisbee, *Yolanda Bisbee*
Chair of the College of Law
Culture and Climate Review Committee

Date: August 27, 2020

The College of Law Culture and Climate Review Committee, comprised of Chief Justice Linda Trout, former Dean and interim university president, Don Burnett, and former Dean and Boise Center Executive Officer, Mike Satz, were charged with collecting information on the College of Law's current culture and climate, with an emphasis on the treatment of underrepresented populations and other protected classes within the faculty, staff and students.

We have completed our review and, as outlined in our directive, are presenting our final report and recommendations to you and Dean Long for review and further action.

Please let me know if you need clarification or have comments on this report. Thank you for this opportunity to serve in this capacity.

UNIVERSITY OF IDAHO COLLEGE OF LAW CULTURE AND CLIMATE REVIEW PANEL

REPORT August 26, 2020

Introduction

President's Charge. In January, 2020, University of Idaho President Scott Green, after consulting with law dean Jerrold Long, appointed a special panel to review issues of “culture and climate” at the College of Law, focusing particularly on diversity and inclusion with “emphasis upon treatment of minorities and other protected classes within the faculty, staff, and students.” President Green added, “While there may be other operational issues, including budget and the complexities of dual operating locations, those operational issues will not be the direct subject of this review.”

Composition of the Panel. The panel is chaired by Dr. Yolanda Bisbee, the University’s Chief Diversity Officer. The other panel members are law professor emeritus Don Burnett, past law dean and interim university president; law professor Michael Satz, then-executive officer of the University’s Boise Center; and Hon. Linda Copple Trout, past Chief Justice of the Idaho Supreme Court.

“Listening Sessions” and Other Information-Gathering. On March 3, 2020, the panel conducted a day-long set of in-person “listening sessions” with individuals and groups of law faculty, staff, and students in Boise. On April 27, 2020, the panel held a similar day-long set of “listening sessions” with law faculty, staff, and students in Moscow. (The Moscow sessions were conducted by “Zoom” rather than in-person, due to COVID-19 restrictions.) The panel heard from roughly half of the law faculty at both locations, a substantial number of staff at both locations, and approximately 20-25 students (most of them in Boise, when in-person conversations were still possible). The panel was assisted in these “listening sessions” by Sarah Borden (Centered Consulting International, LLC), who served as facilitator of the discussions. The panel also received emails and other communications from members of the College of Law and University communities. In addition, as mentioned at various points below, the panel has examined documentary sources of information relating to diversity and inclusion at the College of Law as well as in legal education generally.

Faculty Letter to Student Body. On June 11, 2020, the law faculty wrote an open letter to the student body, stating the faculty’s commitment to fulfilling the College’s educational mission by addressing issues of racism and other forms of discrimination wherever they may exist. The letter, written and sent in the wake of national events including the George Floyd killing in Minneapolis, addresses topics that partly overlap with President Green’s charge to the “culture and climate” review panel. This report by the review panel is independent of, and drawn from

information gathered largely before, the faculty letter. The letter, however, is a significant statement relating to diversity and inclusion at the College, and it appears likely to exert a positive influence on the College's culture and climate in the future. The dean and faculty have already begun to implement elements of the letter. Accordingly, it is attached to this report as an appendix.

The Importance of Diversity and Inclusion in an Academic Setting.

- Justice Sandra Day O'Connor, writing for the Supreme Court majority in *Grutter v. Bollinger* (the University of Michigan law school admissions case), made the following observation about the effect of diversity upon teaching and learning:

[C]lassroom discussion is livelier, more spirited, and simply more enlightening and interesting when the students have the greatest possible variety of backgrounds. ... [N]umerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals. ... These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. [539 U.S. 306, 330 (2003) (internal quotation marks and citations deleted)]

- In order to realize fully these (and other) benefits of diversity and inclusion, a law school should strive to attract people of varied backgrounds, not only within the student body, but also among the faculty and staff. Diversity and inclusion in all of their dimensions – demographic, intellectual, and professional – will flourish when they are supported by the school's culture and climate. As noted in a prior (2018) report by UI Human Resources on culture and climate at the College of Law, an organization's culture is defined by its patterns of beliefs, values, and behavioral norms. The organization's climate, in turn, is shaped by how individuals within the organization *perceive* those patterns.
- Accordingly, in this review panel report, we distill what we have learned about the *perceptions* held by the College faculty, staff, and students, and other University constituents, who communicated with us. These perceptions are based partly on personal experiences described by some individuals, and partly on general impressions shared by various individuals or groups. Although we deem the personal accounts of individuals to be informative and important, we have taken care not to “find” that certain experiences occurred as described if we were unsure that we received the whole story. We also understand that some individual perspectives may be influenced by events outside the College of Law. Nevertheless, we can and do report, where appropriate, that certain impressions and perceptions exist – and that if they are widely held (whether entirely accurate or not), they affect the culture and climate of the College.

Findings

- In 2018 the University reinstated and updated a Diversity Plan promulgated in 2004. The updated plan is comprehensive, identifying eight diversity-enhancing goals that broadly encompass inclusion, climate, equal opportunity, equity, and human rights, together with recruitment and retention of students, faculty, staff, and administrators; curriculum diversification, community issues; extension and outreach; and research as well as other scholarly activity. The University’s plan expresses a clear institutional commitment to diversity and inclusion. The plan requires each of the University’s academic and administrative units, such as the College of Law, to develop its own implementation plan “set[ting] forth measurable, or otherwise accountable, actions.”
- The College’s current implementation plan, adopted by the dean and faculty in 2019, does not follow the format of the University plan, but it does refer to the University plan in an appendix. The appendix also cites the American Bar Association’s accreditation (“approval”) Standard 206 on “Diversity and Inclusion” – a standard with which the College plan appears to be consistent.
- The plan’s appendix does not cite, but could well have cited, the Association of American Law Schools bylaws on core values, diversity, nondiscrimination, and affirmative action, as well as AALS “Statements of Good Practices” relating to the same subjects, to ethical and professional responsibilities of law professors, and to recruitment and retention of law faculty members from underrepresented groups. The “Good Practices” emphasize the importance of law school faculty and administrators as role models of professionalism and civility. The College plan, as written, appears generally to be in substantial compliance with the themes of the AALS bylaws and “Good Practices.”
- The body of the College plan contains three broad goals and specific strategies for achieving them: (1) recruitment, retention, graduation, and placement of diverse student body from underrepresented groups; (2) recruitment, retention, and support for diverse faculty and staff; and (3) continuing to build and maintain an inclusive community across all sectors of the college. The College’s plan assigns responsibilities for advancing these strategies. Like the University’s plan, the College’s plan evinces a commitment to diversity and inclusion as elements of academic excellence. The plan’s prefatory statement is especially well crafted:

At the University of Idaho College of Law we embrace diversity within our College community and the legal profession by protecting and fostering an inclusive and respectful learning environment for the discussion of legal principles, concepts, and practical skills. As a preparatory ground for future

practitioners of the law, we adhere to high standards of legal professionalism within our classrooms, our offices, our hallways, our student organizations, our gathering places, and our activities. The calling to law is an important one with significant impacts on society, and as a College we take that significance to the core of our purpose. By all members of the College being able and willing to listen respectfully to each other's viewpoints and to participate in discussions in a calm, professional, and civil manner, we strive to abolish educational inequity stemming from disparate treatment. We welcome and value law students, staff, and faculty from all cultures, races, ethnicities, genders, physical abilities, lifestyles, opinions, nationalities, philosophies, sexual orientations, religious backgrounds, ages, life experiences, and identities. Diversity is an essential component of the College and requires legal professionalism from all sectors of our community to provide an appropriately respectful learning environment.

- As noted above, diversity and inclusion have demographic, intellectual, and professional dimensions. With respect to demographics, a second appendix to the College's implementation plan shows progress made by the College of Law:

[I]n 1999 [when a "Blue Ribbon Committee" examined the College's strategic future] the College of Law held one of the lowest percentages of female students among all law schools in the United States (26.4%) and for racial and ethnic student minorities (4.1%). Over the next eight years the College of Law worked to improve diversity among its student body and faculty and staff. By 2007, the percentage of women in the incoming class increased substantially, rising to 49%, and the percentage of multicultural students increased to 18%. Continuing in its efforts to promote diversity in the legal profession, the College of Law joined in 2007 with the Idaho State Bar to establish a new Diversity Section.

In 2011, the overall percentages of female students and students of color at the College of law were at 40% and 12% respectively, Likewise, diversity among the College's faculty and staff increased to include 20 women as faculty, instructors, adjuncts, and administrators, and 6 members of racial/ethnic minorities identifying as Native-American, African-American, and Hispanic. To further advance the College's commitment to achieving a more diverse and inclusive community, the College of Law faculty approved a revised Diversity Plan in the spring of 2011

In the 2018-19 academic year, the College's student body profile included students between the ages of 20 to 55, 45% women, and 21% multicultural students. The entering first-year class was 49% female and 28% multicultural students. The College's faculty of 37 (including visiting professors, tenure-track faculty, library faculty, and clinical professors) in the 2018-19 academic year is 51% female. The College's J.D. staff is 75% female, Eleven percent of our

faculty and J.D. staff are members of racial/ethnic minorities identifying as Native-American, Asian American, African-American, and Hispanic. The College's current student body profile can be reviewed on the College's website at <https://www.uidaho.edu/law/law-prospective/facc-sheet>.

- Despite these encouraging numbers, there is a widespread perception in the College community that the effectiveness of the College's plan has been diminished by constraints of time and money, as well as by a lack of vigorous faculty engagement. Some faculty and staff report feeling "burned out" by their other responsibilities.
 - Student recruitment by the Admissions Office receives little faculty support, and faculty mentoring for enrolled students appears to be spotty.
 - Many students from underrepresented groups feel isolated and marginalized. Some report that they find less diversity in Moscow and Boise than they had hoped (although the College can hardly be faulted for endeavoring to show its commitment to diversity in recruitment materials and communications).
 - The College's Diversity Committee – which most recently was chaired energetically by Professor Anastasia Telesetsky, and which produced an impressively thorough report in 2019-20 – appears to lack active support from the faculty as a whole, even though individual faculty members endorse the College's Diversity Plan. The Committee's events usually are not well attended and generally are not announced in class or otherwise prominently endorsed by faculty.
 - Of particular concern is turnover among people of color in the faculty, staff, and student body. Because the College has a comparatively small population of people of color, every departure has a disproportionate impact. Each case seems to turn on its own facts (including compensation levels in Idaho for faculty and staff); yet the disproportionality issue remains and it underscores the importance of fully implementing retention measures set forth in the Diversity Plan.
- Across the demographic groups of faculty, staff, and students, and across the "300-mile hallway" connecting the College's two locations, there appears to be a failure of groups to "see" other groups from a sympathetic, empathetic, or experiential perspective. Some groups, or individuals within groups, feel unseen or unheard. This perception is not limited to diverse populations within the law school community, but it may be felt most keenly by them.
- For students, law school is not easy; indeed, it is supposed to be challenging. A rigorous legal education is intellectually demanding, and the accompanying stress is increased for many students when readings and classroom discussions address individual rights and responsibilities as well as issues of equity and justice. Open discussion is a hallmark of quality in legal education, so long as contrasting viewpoints are thoughtfully developed and respectfully communicated. For students, meeting this challenge is part of becoming

an effective future lawyer. That said, there is a perception among many faculty, staff, and students that the College of Law community is not sufficiently concerned about the additional burdens created by anti-diversity microaggressions and other uncivil behaviors. As used in this report, the term “microaggressions,” means casual expressions and actions, whether intentional or unintentional, that communicate hostile, derogatory, or negative slights and insults toward any group. Based on our listening sessions, we know that microaggressions do occur at the College of Law.

- Words matter. As noted by AALS President Darby Dickerson in her Presidential Address at the 2020 AALS Annual Meeting:

[L]awyers and legal educators are professional communicators. Words are the instrument with which we practice our craft. ... Words are powerful tools. They can inspire social movements, evoke emotions, and create allegiances. They can help, and they can heal. But like many tools, words can be wielded as weapons to hurt and hinder, and to mislead and manipulate. Words translate our imagination. They can form bridges to connect us and walls that divide us. Words can comfort and isolate, empower and belittle.

- Belittling words and behaviors are known to be directed at women as well as at members of underrepresented groups. Persons on the receiving end of any such words and behaviors often believe they have no specific person in the College community with whom they can discuss these incidents. When discussions do occur, corrective actions taken by the College faculty or administration are viewed as insufficient or not widely communicated, perhaps due in part to confidentiality considerations. Rumors and negative anecdotes are thereby left free to flourish.
 - Many students from underrepresented groups, already feeling marginalized, are reluctant to speak up, especially in class. Some white students are reluctant to engage in difficult discussions as well. “Nontraditional” students with families, and students concerned about freedom of religious exercise, may feel their views are not well understood.
 - Students from underrepresented groups also find a paucity of role models in the College of Law community. It is a natural human trait for students to seek guidance from individuals with similar identities and life experiences. Although general mentoring programs for students do exist, they are perceived to have uneven levels of faculty and student participation.
 - There is a perception that, in general, the College’s faculty, staff, and administration have insufficient expertise to recognize and address these microaggression and behavior issues, and to provide counseling or other personal help to the students affected. Moreover, there appears to be little education on special vulnerabilities of some students (e.g., those from immigrant families) or on strategies of resilience for all students that would enable them to engage

actively in difficult discussions and to walk away emotionally intact (as successful practicing lawyers learn to do).

- The Native American Law program provides a structure of support for Native students, but there are not similar sources of support for most other students.
- Law schools are not only graduate schools; they are also professional schools. They are expected to develop professional skills and to inculcate professional values. First-year law students at the University of Idaho participate in a professionalism program during the opening week of their law school careers, and they attend several professionalism-related programs during the remainder of the first year. In the second year, students take the Professional Responsibility course. Over the course of second and third years, the students are also required to satisfy the College's professionalism requirement by participating in a Professionalism Education Program (PEP), adopted by the faculty in 2013 and inaugurated in the 2014-15 school year. As set forth in the College's catalogue and student handbook at section IV-C-7, the PEP "consists of educational opportunities addressing five topics: (1) cultural competencies; (2) civility and appropriate professional behaviors before courts, tribunals, and in other professional settings; (3) law practice management; (4) bias and thought processes; (5) other topics related to the development of a student's professional conduct and identity."
 - The importance of the PEP is underscored by Rule 8.4(d) of the Idaho Rules of Professional Conduct for lawyers, which prohibits "conduct that is prejudicial to the administration of justice." Official comment 3 to the rule states, "A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice."
 - The PEP topics are also closely aligned with values expressed in the "Idaho Standards for Civility in Professional Conduct," adopted by the Idaho State Bar, the Idaho federal courts, and the Idaho state judiciary. The preamble to those standards states:

An attorney's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as attorneys, we will be mindful of our obligations to the administration of justice, which is a trust-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner.

Uncivil, abrasive, abusive, hostile or obstructive conduct impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Incivility tends to delay, and often deny justice.

...

These standards should be incorporated as an integral component of the teaching of professionalism to law students and practicing lawyers alike.

- The importance of the PEP topics is further underscored by an influential report issued in 2007 by the Carnegie Foundation for the Advancement of Teaching, which urged American law schools to devote greater attention to the formation of “professional identity” and to the development of “civic professionalism,” in addition to the traditional focus on substantive law and procedure. At the College of Law, however, the content and delivery of the PEP have been largely delegated by the faculty to the dean or the “dean’s designee” (currently the College’s assistant dean for career development). Lack of active faculty engagement may send an unfortunate signal to students about the importance of this aspect of their legal education.
- Moreover, delivery of the subject matter coverage of the PEP appears to be spotty. Students are required to attend only a total of four lectures or other program offerings over the entire duration of their 2L and 3L years. The College provides approximately eight such programs over this two-year period, so students can satisfy the professionalism requirement by attending half of them. A chart of recent PEP offerings shows that during the 2018-2020 period, there was just one program on “implicit bias and privilege,” and none on “cultural competencies.” This erodes an essential purpose of the PEP; it represents a missed opportunity to promote diversity and inclusion, and to enhance the College’s culture and climate.
- Perhaps not coincidentally, in 2019 the Law School Survey of Student Engagement (LSSSE), a national survey of law student experiences and perceptions, showed that only 40.7% of University of Idaho male law students, 34.8% of women students, and 35.4% of students of color said College of Law encouraged “very much” or “quite a bit” contacts by students with persons of diverse backgrounds. Just 29.9% of the men, 39.3% of women, and 33.3% of students of color said their experience in the College of Law had contributed “very much” or “quite a bit” to understanding people of other racial and ethnic backgrounds. And 54.2% of men, 49.4% of women, and 47.9% of students of color said they were exposed “often” or “very often” to diverse perspectives in classroom discussions or assignments. A somewhat more encouraging 66.9% of men, 59.6% of women, and 60.4% of students of color reported having serious conversations “often” or “very often” with students of diverse beliefs or values.
- On traditional metrics of legal education, the College fared better in the LSSSE survey. For example, 89.8% of men, 87.8% of women, and 83.3% of students of

color said their legal experience had contributed “very much” or “quite a bit” to their ability to think critically and analytically. In addition, 72.0% of men, 75.6% of women, and 77.1% of students of color rated their overall educational experience at the College of Law as “excellent” or “good”. A remarkably consistent 77.8% of men, 76.7% of women, and 75.0% of students of color said they “definitely” or “probably” would attend the same law school again. These aggregated, quantitative survey responses do not necessarily contradict the personal, qualitative information provided by individuals who came forward and communicated directly to the culture and climate review panel. The lesson of the LSSSE data appears to be that the College is giving students a solid, traditional academic experience; but there is room for improvement in the diversity and inclusion components of a full professional education.

- Many members of the College community feel a lack of cohesion – and even a lack of collegiality and mutual trust – due to tensions between the Moscow and Boise locations, and the hierarchical relationships between faculty and staff. Many staff in both locations strongly feel they are unrecognized and undervalued – even treated like “second-class citizens” or “low-level functionaries” – by faculty. Staff members have reported being asked to take actions on which they have not been trained (e.g., ADA compliance) or which they believe should be done by faculty who refuse to help. Some of these tensions are personality-related; some are systemic. Disaffection is exacerbated by “silos” of faculty and staff job responsibilities, by perceived rigidity of administrative procedures and reporting lines between Moscow and Boise, and by perceived competition between the two locations for resources. Although these feelings of disaffection are not products of controversy over diversity and inclusion, they contribute to a climate in which resolution of such controversies is made more difficult.

Recommendations

- Climate and culture issues require strategic leadership from the University and College administration. The issues should receive continuous, prioritized attention from the law dean, together with resourced support and active engagement by the law faculty and staff. Annual reviews of the dean’s job performance, as well as the dean’s annual reviews of faculty and staff job performance, should include a focus on timely fulfillment of specific responsibilities assigned in the College’s diversity plan. Individuals to whom such assignments have made should have those responsibilities included in their position descriptions, and those responsibilities should, in turn, be referenced in the annual performance reviews. The reviews should contain narrative explanations of particular actions taken and (where appropriate) results achieved. If any shortfalls of performance on important elements of the diversity plan are due to resource limitations, those limitations should be noted specifically in the reviews along with realistic and reasonably actionable proposals to address the shortfalls by securing additional resources and/or by reallocating existing resources.

- Faculty and staff on the Diversity Committee should receive recognition – e.g., through awards and public commendations – for particularly noteworthy efforts to enhance the College’s culture and climate. They should also receive credit in their annual performance reviews for meritorious service commensurate with similarly meritorious service on other time-consuming committees such as the faculty appointments committee and the faculty tenure and promotions committee. All faculty and staff should assist the Committee in organizing, publicizing, and presenting its diversity programs, and should be recognized for these efforts as well.
- The dean and faculty should regularly and prominently communicate to the College community – e.g., through internal messages and the “First Monday newsletter – the indispensable role played by staff in carrying out all functions of the College of Law, especially in strengthening the College’s commitment to diversity and inclusion. The dean has made significant efforts in this regard. The College, commendably, puts staff on all appropriate faculty committees. These staff members need to be encouraged to participate actively, and their contributions should be valued.
- The College should undertake to conduct an exit interview is conducted with every faculty or staff member who leaves the College, and with every student in good standing who departs without earning a JD degree, in order to determine what culture or climate issues may have contributed to the decision to leave, as well as to invite the individual’s suggestions for improvement in the future.
- All faculty and staff should receive periodic education to develop skills in recognizing and addressing microaggressions and other uncivil behavior, including methods for translating such incidents into “teaching moments.” The College has taken steps in that direction. In the fall of 2019, the Dean organized a meeting with the Director of the University’s Center for Excellence in Teaching and Learning, to discuss how faculty can deal with controversial topics, microaggressions, and other related difficult classroom moments. The plan was to have the Director return in the spring of 2020 for a follow-up meeting and training session, but COVID-19 intervened. Presumably, this effort will resume in the 2020-21 school year. Attention is also invited to law school-relevant resources identified and furnished by the Director:
<https://www.webpages.uidaho.edu/cetl/law-school-resources.asp>. The University’s Office of Civil Rights and Investigations can assist in educating faculty, staff, and students as to when divisive misconduct crosses a threshold for application of federal or state antidiscrimination laws. The University’s Office of Equity and Diversity and the University’s Office of the Dean of Students can assist in educational efforts dealing with misconduct which falls short of a federal or state threshold but which violates the University’s Code of Student Conduct or otherwise adversely impacts the professional culture and climate at the College of Law.

- In any case, individuals who engage in microaggressions or other uncivil behavior should be made aware plainly and promptly that they are acting unprofessionally, that the issue is not one of “political correctness,” and that blunt, rude, and caustically critical comments are unprofessional. This will require full attention and professional role-modeling by faculty and staff. Students especially need to learn that such behavior in the future will not be appreciated by fellow lawyers, clients, jurors, judges, and court staffs. Training on this subject should also include helping impacted students and colleagues develop resilience techniques for dealing with such behaviors.
- The faculty and administration also should become familiar with – and consider what might be learned from – successful stratagems and processes for dealing with bias in organizations outside the academy. (*See, e.g., Williams & Mihaylo, “How the Best Bosses Interrupt Bias on Their Teams,” Harvard Business Review, November-December, 2019, pp. 2-6*), where the authors identify ways in which bias plays out in everyday work interactions, and they offer suggestions for preventive or remedial actions.
- The College has sent a valuable message about gender diversity by composing an administrative leadership team with seven members – the dean, four associate deans (two in each location), clinic director, and law library director – that include five women. To assure a visible and sustained focus on diversity and inclusion as elements of the professionalism in legal education, the College should take a further step and designate a faculty member in Moscow and one in Boise to organize education in professional skills and values; to serve as a supportive point of contact for concerned colleagues and students; and to develop a program of mentorship with diverse members of the Bar. Each faculty member so designated should receive an appropriate workload adjustment for this responsibility. In the future, when budgetary circumstances allow, consideration should be given to establishing at each location an Associate Dean for Inclusive Excellence and Professionalism.
- The College should continue to strive, consistent with its Diversity Plan and the law, to build a diverse and inclusive cadre of faculty and staff, and to attract diverse students in supportive cohorts at both the Moscow and Boise locations. The College will need to be mindful of a new Idaho statute, House Bill 440, effective July 1, 2020, which prohibits “preferential treatment ... on the basis of race, sex, color, ethnicity, or national origin” in public employment and public education. The American Bar Association’s accreditation Standard 206 on “Diversity and Inclusion,” mentioned earlier in this report, includes the following official interpretation: “The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, or national origin in admissions or employment decisions is not a justification for a school’s noncompliance with Standard 206. A law school that is subject to such constitutional or statutory

provisions would have to demonstrate the commitment required by Standard 206 by means other than those prohibited by the applicable constitutional or statutory provisions.” Law schools and universities in other states with laws similar to House Bill 440 have developed procedures to comply with such laws while maintaining a commitment to diversity and inclusion consistent with the ABA standard as well as with AALS guidelines and the professionalism component of legal education. The College has taken a useful step by asking applicants for full-time faculty and administrative positions to submit statements on how they could contribute, through their work, to supporting diversity and inclusion for all in the law school community. The University of Idaho’s general counsel should be consulted in regard to House Bill 440 and other nondiscrimination issues.

- The faculty, acting through an advisory committee (which could include students), should participate actively in developing the content of the College’s Professionalism Education Program (PEP) and should actively assist the dean’s designee in delivering the program. The faculty also should undertake “curriculum mapping” to ascertain where in the College’s doctrinal and clinical courses the subjects of professionalism, diversity, inclusion, culture, and climate are addressed and reinforced. Co-curricular programming support from the Diversity Section of the Idaho State Bar, and potential collaboration with Inclusive Idaho (www.inclusiveidaho.org), should be explored.
- In order to strengthen a culture of institutional unity and common purpose embracing Moscow and Boise, the College – with assistance as needed from the University – should continue to invest in distance education and meeting technology that is increasingly flexible and user-friendly, not only in instructional settings but also in the full panoply of meetings and events held by law school committees and student organizations with participants at both locations. Resources also should be identified and allocated, when budgetary circumstances permit, to increasing travel between locations by faculty, staff, and students (especially student leaders) in order to capture the benefits of in-person connections and networking that cannot be entirely replicated by remote communications.
- The College should analyze its practices and procedures with an eye toward encouraging innovations among faculty, staff, and student organizations in carrying out administrative and service-related tasks in Moscow and Boise. Insofar as rigid procedures and reporting lines appear to affect the College’s culture and climate, they should be openly and critically examined with an eye toward the question: “What’s not working?” Opportunities for local decision-making within College-wide guidelines should be explored.

Respectfully submitted:



Yolanda Bisbee, Ph.D.



Don Burnett



Michael Satz



Hon. Linda Copple Trout

Attachment: Faculty Letter to Students (June 11, 2020)

**COLLEGE OF LAW**

875 Perimeter Drive MS 2321
Moscow ID 83844-2321
208-885-2255
208-885-5709 [FAX]
P. O. Box 83720-0051
Boise ID 83720-0051
208-364-4560
208-334-2176 [FAX]

Dear Colleagues,

We, the faculty of the College of Law, write to you, our student body, to follow through on our commitment to do our part to help “[f]ulfill the College of Law’s educational mission by addressing issues of racism and other forms of discrimination wherever they may exist – at the College of Law, in Idaho, and nationally.”* In the wake of George Floyd’s killing, we have been reflecting individually and as a faculty on our roles in addressing systemic racism. We have worked collaboratively, through hours of difficult, but productive, conversations about how we can do better. Accordingly, today we further commit to the following:

- Make a formal proposal to the university and college administration to provide additional training in the fall of 2020 for faculty, staff, and students on issues of diversity and inclusion, as well as techniques for confronting and dismantling white privilege, racism, and discrimination; we will work with the administration to bring this proposal to fruition.
- In consultation with student organizations, provide increased institutional support for and continued encouragement of our student organizations representing students of color and other underrepresented students.
- Hold a moderated listening session on culture and climate with voluntary participation by students and mandatory participation by faculty at least once per semester.
- Recommend that as soon as possible the Bellwood Lecture be devoted to the topic of race and the criminal justice system.
- Investigate the feasibility and desirability of creating a separate, compensated position whose occupant's sole responsibility would be to respond to – and to devise policies, programs, and protocols for minimizing and reconciling – conflicts that implicate race, ethnicity, gender, religion, national origin, sexual orientation, or disability.
- In collaboration with our students, agree on the choice of one anti-discrimination book for the entire law school community to read and discuss during an annual day set aside for the discussion, with an initial focus on anti-racism.
- Collaborate with Idaho tribes, tribal people, students, and relevant decision-makers to discuss and explore the removal of murals in the Boise law building that depict the

* Email entitled “A Message to Our Students” from Dean Long on behalf of the Faculty of the University of Idaho College of Law, dated June 5, 2020, distributed to the student listserv.

lynching of Native Americans and investigate the feasibility of removing images on the Moscow campus that depict the degradation of Native Americans.

- Provide ongoing support for the College of Law Diversity and Human Rights Committee and its efforts, including establishing a Faculty Fund for Diversity & Inclusion for distribution by the Committee to support diversity and inclusion initiatives by students, staff, and faculty.
- Commit that the Chair of the Faculty Appointments Committee will consult and coordinate with the Chair of the Diversity & Human Rights Committee to ensure an inclusive recruitment process.
- As faculty, ensure that our courses — and urge that our overall curriculum — address the role of systemic racism in our legal system and in the deaths of countless victims, including Aiyana Jones (2010), Trayvon Martin (2012), Renisha McBride (2013), Eric Garner (2014), Michael Brown (2014), Tamir Rice (2014), Laquan McDonald (2014), John Crawford (2014), Freddie Gray (2015), Walter Scott (2015), Sandra Bland (2015), Deborah Danner (2016), Alton Sterling (2016), Philando Castile (2016), Terence Crutcher (2016), Antwon Rose (2018), Atatiana Jefferson (2019), Breonna Taylor (2020), and George Floyd (2020).

In closing, we want to reaffirm our appreciation for the student leaders who have spoken up this week, as well as for the students who have reached out to us individually. We pledge to listen, engage in these difficult conversations, and take action to provide a safe and supportive community at the College of Law.

Sincerely,

The Faculty of the University of Idaho College of Law