

**2017 IDAHO TEACHERS' INSTITUTE ON LAW-RELATED CIVIC EDUCATION:
SECURING THE RULE OF LAW
THROUGH AN INDEPENDENT, IMPARTIAL JUDICIARY**

June 15-16, 2017

Idaho Law & Justice Learning Center, 514 W. Jefferson Street, Third Floor, Boise, Idaho

PROGRAM OUTLINE

Day One – Thursday, June 15, 2016

7:30 a.m. Sign-in and administration (including registration and fee payment by participating teachers who seek professional development/continuing education credit)

8:00 a.m. OPENING SESSION

- Welcoming remarks:
 - On behalf of the Idaho Supreme Court and state judiciary: Hon. Roger S. Burdick, Chief Justice
 - On behalf of Idaho's federal judiciary: Hon. B. Lynn Winmill, Chief Judge, U.S. District Court for the District of Idaho
 - On behalf of the University of Idaho College of Law: Dean Mark Adams
- Overview of the Teachers' Institute:
 - Curriculum design, professional development/continuing education credit, etc.: Katherine (Katie) Ball, Associate Clinical Professor, College of Law, and Program Coordinator, Idaho Law & Justice Learning Center
 - Workshop pedagogy and objectives, with introduction of master teachers: Russ Heller, educational services supervisor for K-12 history and social sciences, Boise School District (retired)
- Brief self-introductions by the participating teachers (photographer will be available)

9:00 – 1:00 p.m.

Topic 1:

Distributing Power and Protecting Rights: The Genius of the U.S. Constitution, the Dynamics of Federalism, and the Distinctive Roles of Trial and Appellate Courts

- a. Relationships among law, legal procedure, and justice
- b. "Vertical" and "horizontal" dispersions of power: preventing tyranny of the few over the many
- c. Enumeration of individual rights: preventing tyranny of the many over the few
- d. An independent, impartial judiciary: the "great American experiment"

[9:45 – 10:00 a.m. Break]

- e. Working relationships between the judiciary and the other branches of government (legislative and executive)
- f. Federalism and distinct characteristics of America's *multiple* court systems: national, state, and tribal
- g. Distinctive roles of trial and appellate courts

- h. Introduction to upcoming oral argument in the Idaho Supreme Court: the function of oral argument in appellate justice, the special nature of a “mandamus” proceeding, and the issues in *Nate et. al v. Denney* (gubernatorial veto case)

[10:55 a.m. Walk to Idaho Supreme Court to attend oral argument in *Nate case*, which will start at 11:10 a.m., followed by opportunity for brief Q&A in the courtroom between teachers and Justices of the Supreme Court; then return to Idaho Law & Justice Learning Center.]

12:45 p.m. *Workshop luncheon* (small group discussions convened and facilitated by master Teachers, joined from time to time by Topic 1 presenters):

- 1) What do the “independence” and “impartiality” of the judiciary mean to you? (Can you envision one without the other? Can you help your students articulate how these concepts reinforce each other?)
- 2) Some commentators on judicial decisions say the courts have a duty to follow the “will of the people.” What does this mean? How can you encourage students to think carefully about this in relation to the U.S. Constitution?
- 3) Litigants who disagree with a trial court decision sometimes say they will appeal “all the way to the U.S. Supreme Court.” Is this consistent with the structure of the state and federal courts, and with the responsibilities of appellate courts? How can you help your students recognize the differences among types of courts?
- 4) How is the “rule of law” served by oral arguments before an appellate court? Can you help your students understand the difference between an appellate argument and a trial?

Core questions to be considered in these workshop discussions and in **every** workshop Discussion during the Institute:

- *What are the main points you plan to develop in your classrooms back home?*
- *What learning outcomes will you seek for your students?*
- *What challenges will you face in achieving those outcomes?*
- *How will you assess the achievement of those outcomes?*

Principal instructors for Topic 1:

Hon. Jim Jones, Chief Justice, Idaho Supreme Court (retired)
Professor Emeritus Don Burnett, University of Idaho College of Law

1:45 p.m. – 4:45 p.m.

Topic 2: Judicial Decisions: Honoring and Implementing the “Rule of Law”

- a. Standards of appellate review of trial court decisions – issues of law, fact, and discretion
- b. The function and discipline of written decisions
- c. Identifying the “rule of law” in a judicial decision
- d. A judge’s dual responsibility: *interpreting* and *following* the law
 - 1) Methods of interpreting statutes and administrative regulations:
 - (a) Rules of statutory interpretation
 - (b) Interpreting a vague or ambiguous statute
 - (c) Judicial review of actions by administrative agencies, including review of agency interpretations of statutes
 - 2) Development and application of case law (the “common law”)
 - 3) Constitutional interpretation: federal and state constitutional perspectives, and the “supremacy clause”
 - 4) The role of “precedent”: balancing the value of predictable, uniform decisions with the value of decisions that take account of changing societal conditions and fact patterns
- e. “Judicial activism” – truth and fiction

Teacher Q&A dialogue with Topic 2 presenters

[3:30 – 3:45 p.m. Break]

Workshop discussions (convened and facilitated by master teachers):

- 1) How do a judge’s responsibilities differ from the public’s expectations for elected office-holders in the other two branches of government? How can you help students recognize the difference?
- 2) How can a constitutional principle (e.g., the Fourth Amendment’s protection against “unreasonable searches and seizures”) be applied consistently in a variety of cases? See cases in the Institute materials under the Topic 2 tab. How can you encourage your students to think about principle-guided, rather than result-oriented, judicial decisions?
- 3) What do your students think are the characteristics of a good judge? Are there (or should there be) any public policy “litmus tests?”

Core questions to be considered in every workshop discussion during this Institute (see list Under Topic 1 above)

Principal instructors for Topic 2:

Hon. Robyn Brody, Justice, Idaho Supreme Court

Hon. Ronald Bush, U.S. Magistrate Judge

Convening panelist: Prof. Burnett

Evening of Day One

Banquet at the “Inn at 500” Hotel, 500 South Capitol Boulevard
Social at 5:30 p.m. and Dinner at 6:00 p.m. (concluding by 7:30 p.m.)

Banquet Program:

“A Dialogue on Judicial Decision-Making and Interpreting the U.S. Constitution”
Hon. B. Lynn Winmill, Chief Judge, U.S. District Court for the District of Idaho
Prof. Richard Seamon, University of Idaho College of Law
Moderator: Prof. Don Burnett

Day Two – Friday, June 16, 2016

8:00 a.m. - noon

Topic 3: Public (Mis)Understanding of the Judiciary and the Rule of Law

- a) Civic education relating to the judiciary
- b) Secondary school coverage of the judicial function
- c) Mass media reporting of judicial decisions – perspectives from the bench
- d) Challenges facing news reporters, editors, and the courts
- e) Coping with electronic and social media
- f) A case in point: Media coverage of the *Nate* case oral argument viewed by the teachers yesterday

Teacher Q&A with Topic 3 Presenters

[9:45 – 10:00 a.m. Break]

Workshop discussions (convened and facilitated by master teachers) –Teaching students to be discerning citizen-consumers of news about judicial decisions:

- 1) In the *Nate* case, what law-based reasoning supports each of the parties’ arguments? Are there any “sympathetic” facts you think might affect the Idaho Supreme Court’s decision? Should they?
- 2) In the same case, suppose your students were news reporters working under a same-day deadline. How would you guide them in outlining the key elements of the first 3-5 paragraphs of a story – providing essential facts while also illuminating the “rule of law?”
- 3) How can you encourage students, as “consumers” of news, to look for “rule of law” content, rather than merely result-and-reaction narratives, in media reports of court decisions?

Core questions to be considered in every workshop discussion during this Institute (see list under Topic 1 above)

Principal presenters for Topic 3:

Professor Ball, panel convener
Hon. Gregory Moeller, District Judge, State of Idaho, 7th Judicial District
Dave Metcalf, Law Clerk, U.S. District Court, District of Idaho
Prof. Kenton Bird, Past Chair, U. of Idaho School of Journalism/Mass Media
Betsy Russell, Reporter, *Spokesman-Review*; President, Idaho Press Club
Peter Kavouras, Coordinator of Social Studies, Idaho Dept. of Education
Russ Heller

12:00 p.m. Lunch Break

12:45 – 2:15 p.m.

Topic 4: The Jury’s Role in the Administration of Justice

- a. Distinguishing the grand jury from a trial jury
- b. Questions of law for the trial judge; questions of fact for the trial jury
- c. Process for selecting impartial jurors:
 - 1) Questionnaires for prospective jurors
 - 2) *Voir dire* of prospective jurors (a “live” demonstration)

Teacher Q & A with Topic 4 presenters

Workshop discussions:

(Hypothetical: Selection of a jury in a hate crime case)

- 1) Do your students think jurors, once selected, will actually strive to be impartial? How can our judicial system guard against bias?
- 2) Is the role of juries consistent with the “rule of law”? How can your students be encouraged to think carefully about this?

Core questions to be considered every workshop discussion during this Institute (see list under Topic 1 above)

[2:15 p.m. – 2:30 p.m. Break]

2:30 p.m. – 3:40 p.m.

Topic 5: Special Issues in the Administration of Criminal Justice

- a. Ethical dimensions of a prosecutor’s and defense counsel’s work
- b. Suppression of evidence gathered in violation of the federal or state constitution
- c. An accused person’s Sixth Amendment right to a “speedy” trial
- d. Scope of the Sixth Amendment right to “the assistance of counsel”
- e. Avoiding (or remedying) a wrongful conviction

Teacher Q & A with Topic 5 presenters

Workshop discussions:

- 1) The prosecutor as a “minister of justice”: Do your students believe the public should evaluate a prosecutor’s job performance by the “batting average” of convictions?

- 2) The role of defense counsel: Do your students think the attorney's role is simply to "get the client off?"
- 3) Do your students think our criminal justice system "lets people off on technicalities?" Do they view the Constitution a "technicality"?

Core questions to be considered in every workshop discussion during this Institute (see list under Topic 1 above)

Principal presenters for Topics 4 and 5:

Convening panelist: Hon. Candy W. Dale, U.S. Magistrate Judge, U.S. Dist. Court, Dist. of Idaho
Wendy Olson, Stoel Rives law firm (former United States Attorney, Dist. of Idaho)
Mark J. Ackley, Federal Defender Services of Idaho, Inc.
Jan Bennetts, Prosecuting Attorney, Ada County, Idaho
Erik Lehtinen, Appellate Unit Chief, Idaho Statewide Appellate Public Defender

3:40 p.m. – 4:30 p.m.

Topic 6: Summing up: Best practices in teaching civic education with a focus on the rule of law and the role of an independent, impartial judiciary

Interactive panel-and-audience discussion between the master teachers and the teacher-participants

Convener: Russ Heller

4:30 p.m. - 5:00 p.m.

Administration: Awarding certificates of participation, and reviewing process for submitting materials to satisfy requirement for one credit hour of professional development/continuing education

Conveners: Russ Heller and Prof. Ball

5:00 p.m. Adjournment