

**2018 IDAHO TEACHERS' INSTITUTE ON LAW-RELATED CIVIC EDUCATION:
SAFEGUARDING THE RULE OF LAW
THROUGH JUDICIAL INDEPENDENCE AND IMPARTIALITY**

June 14 -15, 2018

PROGRAM OUTLINE (Final Draft)

Day One – Thursday, June 14, 2018

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

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 (or designee)

- 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 participating teachers (photographer will be available)

9:00 – 1:00 p.m.

Topic 1 -- The Great American Experiment

- **Distributing Power and Protecting Rights in a Constitutionally Framed Republic**
 - a. "Vertical" and "horizontal" dispersions of governmental power: preventing tyranny of the few over the many
 - b. Explicit recognition of rights: preventing tyranny of the many over the few
 - c. An independent, impartial judiciary: America's unique vision
 - d. The "rule of law" v. the "law of rulers"
 - (1) Criminal justice: A government that obeys the law while enforcing the law
 - (2) Civil justice: Principled resolution of disputes – an illustration

[9:45 – 10:00 a.m. Break]

- **The Dynamics of American Federalism**
 - e. Federalism and distinct characteristics of America’s *multiple* court systems: national, state, and tribal
 - f. Jurisdictional and working relationships among the court systems

- **The Distinctive Roles of Trial and Appellate Courts**
 - g. Trial and appellate court approaches to issues of law, fact, and discretion
 - h. Introduction to upcoming oral argument in the Idaho Supreme Court: the function of oral argument in appellate justice, and the issue presented in the case of *State of Idaho v. Shaula Marie George*, Case No. 45196 (whether a state district court has jurisdiction in a criminal prosecution of a Native American defendant charged with possession of controlled substances on the Coeur d’Alene Reservation).

[10:55 a.m. Walk to Idaho Supreme Court to attend oral argument in State v. George, which will start promptly at 11:10 a.m., followed by opportunity for brief Q&A 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, on the following questions:

- What do (should) the “independence” and “impartiality” of the judiciary mean to your students? (Can you envision teaching one concept without the other? Can you help your students articulate how these concepts reinforce each other?)
- 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 independent, impartial judiciary envisioned by the U.S. Constitution?
- 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?
- 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 this workshop session and in every workshop session during the Institute:

- *What are the main points you plan to develop when teaching 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, past Justice (and Chief Justice), Idaho Supreme Court
 Professor Emeritus Don Burnett, University of Idaho College of Law

1:45 p.m. – 4:45 p.m.

Topic 2: Judicial Decisions -- A Judge's Role in Honoring and Implementing the "Rule of Law"

- The judge's dual responsibility: *interpreting* and *following* the law
 - a. National and state constitutional issues
 - (1) Jurisprudential perspectives – “enduring” or “living” constitutions
 - (2) Dimensions of “due process”
 - (3) The “supremacy clause”
 - b. Statutes and administrative regulations
 - (1) Rules of statutory interpretation
 - (2) Judicial review of actions by administrative agencies, including review of agency interpretations of statutes
 - c. Development and application of case law (the “common law”)
 - (1) 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
- The function and discipline of written judicial decisions
 - a. Writing a judicial decision – connecting the outcome to the “rule of law”
 - b. Reading a judicial decision – identifying the “rule of law”
- 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, joined from time to time by Topic 2 presenters, on the following questions:

- 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?
- How can a constitutional principle (e.g., “due process” under the Fifth and Fourteenth Amendments) be applied consistently in a variety of cases? See summary of an illustrative case 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?
- What do your students think are the characteristics of a good judge? Are there (or should there be) any political or 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 M. Brody, Justice, Idaho Supreme Court

Hon. B. Lynn Winmill, Chief Judge, U.S. District Court for the District of Idaho

Convening panelist: Professor Emeritus Don Burnett

Evening of Day One

Social Gathering and Reception (heavy hors d'oeuvres and beverages) 5:15 – 6:15 p.m.
Idaho Law & Justice Learning Center

Walk to Lincoln Auditorium, Idaho State Capitol Building (Lower Level)

Dramatic Presentation at 6:30 – 7:30 p.m.

The Nisei Paradox:

Testing the Rule of Law When a Crisis Blurs the Constitutional Vision

Program Introduction by Hon. Ronald E. Bush

Magistrate Judge, U.S. District Court for the District of Idaho

Day Two – Friday, June 15, 2018

James A. McClure Federal Building and United States Courthouse (Fourth Floor)

550 W. Fort Street, Boise, Idaho

8:00 a.m. – 11:00 a.m.

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

- Civic education relating to the judiciary
 - a. Secondary school coverage of the judicial function
 - b. The media's role in educating the public about the work of an independent, impartial judiciary

- Mass media reporting of judicial decisions
 - c. 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 a judicial decision – see materials under Topic 3 tab of the Institute booklet

Teacher Q&A with Topic 3 Presenters

[9:30 – 9:45 Break]

Workshop discussions convened and facilitated by master teachers, joined from time to time by Topic 3 presenters, on the following questions:

- How can students become discerning citizen-consumers of news about judicial decisions? Can they be educated to look for “rule of law” content, rather than merely result-and-reaction narratives in media reports?
- In the “case in point” referenced at item f above, 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 (the “who, what, where, when”) while also illuminating the “rule of law” (the “why”)?

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

Principal presenters for Topic 3:

Hon. Jessica Lorello, Judge, Idaho Court of Appeals – panel convener
Hon. Melissa N. Moody, District Judge, State of Idaho, Fourth Judicial district
Dave Metcalf, Law Clerk, U.S. District Court for the District of Idaho
Professor Kenton Bird, Past Chair, U. of Idaho School of Journalism & Mass Media
Betsy Russell, Reporter, *Idaho Press-Tribune*, and President, Idaho Press Club
Peter Kavouras, Coordinator of Social Studies, Idaho Department of Education
Russ Heller, Educational Services Supervisor (retired), K-12 History and Social Sciences

11:00 -- Noon

Topic 4: Selected Issues in the Administration of Justice

Part A: Resolving Civil Disputes

- The purpose(s) of civil justice
- Essential elements of a civil lawsuit
- The growing role of mediation
- Responsibilities of the trial judge and jury
 - a. Questions of law and procedure to be decided by the trial judge
 - b. Material issues of genuinely disputed fact to be decided by the trial jury
 - c. The role of “summary judgments” in civil cases

[Lunch break: Noon –12:45]

- ***Walk to Judge Winmill’s courtroom; observe oral argument on motion for summary judgment in the case of Does and Elliott v. Boy Scouts of America, et al., Case No. 1:13-cv-00275-BLW, starting promptly at 1:00; then return to classroom, where there will be brief Q&A by teachers with a federal judge***

2:30 – 2:45 Break

Part B: The Quest for Impartial Juries

- Gathering information about prospective jurors
 - a. Court-administered questionnaires
- *Voir dire* of prospective jurors (“live” demonstration) in a hypothetical case – see materials under Tab 4 of the Institute booklet
- Excusing potential jurors (a) for “cause” or (b) through peremptory challenge

Teacher Q & A with Topic 4 presenters

Workshop discussions convened and facilitated by master teachers, joined from time to time by Topic 4 presenters, on the following questions:

- In the summary judgment case argued today, how would you guide your students in thinking about principle(s) – as opposed to personal opinions -- that should govern the judge’s decision?
- Do your students believe that jurors, once selected in a civil or criminal case, will actually strive to be impartial? How can our judicial system guard against bias?

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

Principal presenters for Topic 4, Parts A and B

Hon. Candy W. Dale, U.S. Magistrate Judge, U.S. Dist. Court, Dist. of Idaho – convening panelist
Hon. David C. Nye, District Judge, U.S. District Court for the District of Idaho
April M. Linscott, Attorney at Law, Owens, McCrea & Linscott, Hayden, Idaho
B. Newal Squyres, Attorney at Law, Holland & Hart, Boise, Idaho

4:00 – 4:40

Topic 5: 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

Master Teachers:

Dani Backer, K-12 Social Studies Consulting Teacher, District Services Center, Boise School District
Vicki Chase, Grades 6-8 Social Studies & Gifted Program Teacher, Blackfoot Middle School, Blackfoot School Dist.
Jason P. Draney, American Government Teacher, Borah High School, Boise School District
Brendan Earl, Government Teacher & Social Studies Chair, Idaho Fine Arts Academy, West Ada District
Carly Hill, Adv. Placement Human Geography, Speech, and Theater Teacher, Fairmont Jr. High, Boise School Dist.
Thomas Pirc, Jr., Grade 6 World Civilizations Teacher, Meridian Middle School, West Ada School District

4:40 - 5:00

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 Professor Katie Ball

5:00

Adjournment