

**2019 IDAHO TEACHERS' INSTITUTE ON LAW-RELATED CIVIC EDUCATION:  
EDUCATING FUTURE CITIZENS ON THE RULE OF LAW AND  
AN INDEPENDENT, IMPARTIAL JUDICIARY  
June 13-14, 2019**

**AGENDA & PROGRAM OUTLINE**

**Day One – Thursday, June 13, 2019**

**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: Hon. Roger S. Burdick, Chief Justice
  - On behalf of Idaho's federal judiciary: Hon. David C. Nye, Chief U.S. District Judge, U.S. District Court for the District of Idaho
  - On behalf of Attorneys for Civic Education (Idaho State Bar): David Lloyd, Attorney at Law and co-chair of ACE
  - On behalf of the University of Idaho College of Law: Associate Dean Stephen Miller
  
- 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

**9:00 a.m. – 1:45 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. The "rule of law" v. the "law of rulers"
  - d. An independent, impartial judiciary: America's unique vision
    - (1) Civil justice: Principled resolution of disputes
    - (2) Criminal justice: Government that obeys the law while enforcing the law

[9:45 – 10:00 a.m. Break]

- **Impartiality in an Era of Hyper-Partisanship and “Truth Decay”**
- **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
- **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
    - Procedural road map to an appellate argument

***[10:55 a.m. Walk to Idaho Supreme Court to attend oral argument in the case of State v. Eldon Samuel, 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 – 1:45 p.m.**

**Luncheon with workshop 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 the appellate process? 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?*
- *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 presenters for Topic 1:**

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

**[1:45 – 2:00 p.m. Break]**

**2:00 p.m. – 4:45 p.m.**

**Topic 2: Judicial Decisions – Perspectives from the Bench**

- A judge’s dual responsibility: *interpreting* and *following* the law
  - a. National and state constitutional issues
    - (1) Jurisprudential perspectives – “originalism” v. “living constitution”
    - (2) 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
    - (2) Balancing the value of predictable, uniform decisions with the value of taking account of changing societal conditions and fact patterns
- The function and discipline of written judicial decisions
  - a. Writing a judicial decision – demonstrating the rule of law by connecting the outcome to legal principle(s)
  - b. Reading a judicial decision – looking for the principle(s) that govern the decision
- “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 officeholders in the other two branches of government? How can you help students recognize the difference?

- How can a constitutional principle be applied consistently in a variety of factual situations? See list of variable fact patterns, based on Idaho Supreme Court case argued earlier today, 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 presenters for Topic 2:**

Hon. Robyn M. Brody, Justice, Idaho Supreme Court

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

Convening panelist: Professor Emeritus Don Burnett

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**Evening of Day One**

**Social Gathering (5:30 p.m.) and Buffet Dinner (6:00 p.m.)**

Hyatt Place Downtown, 1024 Bannock Street, Boise, Idaho

**Panel Presentation: “Criminal Justice Reform and the Rule of Law”**

Professor Aliza Cover, University of Idaho College of Law (convening panelist)

Bart Davis, United States Attorney, District of Idaho

Kathleen Elliott, Executive Director, Idaho State Public Defense Commission

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**Day Two – Friday, June 14, 2019**

**Morning Session**

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

**550 W. Fort Street, Boise, Idaho**

**7:30 a.m. – 8:00 a.m.** Arrive at Federal Building in time to go through lobby security, then proceed to Courtroom 2 on the 6<sup>th</sup> floor.

**8:00 a.m. – 12:10 p.m.**

**Topic 3: Criminal Justice and the Individual Defendant**

- **8:00 – 9:00 a.m. in courtroom to be designated**
  - Arraignment, the plea process, setting bail, pretrial detention
  - Observation of a “live” arraignment before Hon. Ronald E. Bush, Chief U.S. Magistrate Judge
  - Brief Q & A between teachers and the judge

**[9:00 – 9:15 a.m. Break – water and snack bars will be available in an attorney/witness room**

**(Room #679) across from Courtroom #2]**

- **9:15 – 11:00 a.m. in same courtroom (or other courtroom to be designated)**  
Sentencing (when a defendant has pleaded guilty or has been found guilty at a trial)
  - Observation of a “live” sentencing hearing before Hon. Edward J. Lodge, Senior U.S. District Judge
  - Brief Q & A between teachers and the judge
  
- **11:00 – 11:30 a.m.**  
*Return to the Idaho Law & Justice Learning Center*

**Afternoon Session**

**Idaho Law & Justice Learning Center**

- **11:30 a.m. – 12:10 p.m.**  
**Luncheon with workshop discussions criminal justice and the individual defendant, convened and facilitated by master teachers on the following questions:**
  - At the pretrial stage, what tension exists between (a) the liberty interest of an accused person who is presumed innocent, and (b) the public’s interest in protecting the community and in assuring the accused person’s appearance at all court proceedings? How can you help your students think about this tension and how it should be resolved?
  
  - At the sentencing phase – if a defendant pleads guilty or is found guilty – should the judge make the sentence (a) fit the crime, (b) fit the individual offender, (c) fit the views of victims and the community, and/or (d) fit other goals of the criminal justice process? How can you help your students think about these objectives and how to prioritize or balance them?

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

**Principal presenters for Topic 3:**

Katherine (Katie) Ball, Clinical Professor of Law, University of Idaho

Hon. Edward J. Lodge, Senior U.S. District Judge, U.S. District Court for the District of Idaho

Hon. Ronald E. Bush, Chief U.S. Magistrate Judge, U.S. District Court for the District of Idaho

**12:10 --- 2:10 p.m.**

**Topic 4: An Educated Citizenry – Does the Public Fully Understand the Judiciary and the Rule of Law?**

- Sources of 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
    - i. Challenges facing news reporters, editors, and the courts
    - ii. Perspectives from the bench

iii. Coping with electronic and social media

- A case in point: Media coverage of a judicial decision  
(See Topic 4 tab of the Institute booklet booklet.)

***Teacher Q&A with Topic 4 Presenters***

**[1:20 – 1:35 p.m. Break]**

**Workshop discussions convened and facilitated by master teachers, joined from time to time by Topic 4 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 in addition to result-and-reaction narratives?
- Regarding the “case in point” referenced at the final bullet point on page 5 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 4:**

Hon. Jessica M. 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

Rebecca Boone, Supervisory Correspondent and Bureau Chief, Associated Press, Boise

Peter Kavouras, Coordinator, Instructional Support, Idaho Department of Education

Russ Heller, Educational Services Supervisor (retired), K-12 History and Social Sciences

**2:10 – 4:00 p.m.**

**Topic 5: Selected Issues in Criminal Justice**

- Challenges facing the prosecution and defense
  - Plea negotiations and the administration of criminal justice
  - Dual imperatives: speedy trial and fair trial
- The quest for impartial juries
  - Gathering information about prospective jurors – e.g., court-administered questionnaires
  - *Voir dire* of prospective jurors (“live” demonstration) in a hypothetical case – see materials under Tab 5 of the Institute booklet
  - Excusing potential jurors (a) “for cause” or (b) through peremptory challenges

***Teacher Q & A with Topic 5 presenters***

**[3:20 – 3:35 p.m. Break]**

**Workshop discussions convened and facilitated by master teachers, joined from time to time by Topic 5 presenters, on the following questions:**

- How would you guide your students in thinking about the resources necessary to assure fair proceedings and accurate outcomes in the criminal justice system? What role do (or should) negotiated pleas play in the administration of justice?
- Do your students believe that jurors, once selected to serve, 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 5:**

Hon. Candy W. Dale, U.S. Magistrate Judge, U.S. District Court for the District of Idaho –  
convening panelist

Hon. David C. Nye, Chief U.S. District Judge, U.S. District Court for the District of Idaho

Justin Whatcott, Assistant United States Attorney, District of Idaho

Nicole Owens, Federal Defender Services of Idaho

**4:00 – 4:40 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 master teachers and teacher-participants

Convener: Russ Heller

Master Teachers:

Dani Backer, K-12 Social Studies Consulting Teacher, District Services Center,  
Boise School District

Brendan Earle, Government Teacher & Social Studies Chair, Idaho Fine Arts Academy,  
West Ada District (Eagle)

Blake Gaudet, Honors American Government (and other subjects) Teacher, Meridian Medical  
Arts Charter High School

Peggy Godby, American Government and Economics Teacher, New Plymouth High School

Carly Hill, US History teacher, Fairmont Junior High School,  
Boise School District

Anna Resnick, U. S. History and AP Human Geography Teacher, East Junior High School, Boise  
School District

**4:40 – 5:00 p.m.**

**Administration and Adjournment**

- Completing teachers' evaluations of the Institute
- Reviewing process for submission of materials to satisfy requirement for one credit hour of professional development/continuing education
- Awarding certificates of participation

Conveners: Russ Heller and Professor Katie Ball