

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO
IDAHO STATE JUDICIARY
UNIVERSITY OF IDAHO COLLEGE OF LAW
ATTORNEYS FOR CIVIC EDUCATION

2021 IDAHO TEACHERS' INSTITUTE ON LAW-RELATED CIVIC EDUCATION
June 17-18, 2021

*KEEPING OUR REPUBLIC:
THE RULE OF LAW AND AN INDEPENDENT, IMPARTIAL JUDICIARY*

AGENDA & PROGRAM OUTLINE

Day One – Thursday, June 17, 2021

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

7:30 a.m. Sign-in and administration (teachers who seek professional development/continuing education credit are able to receive registration assistance at this time)

8:00 a.m. Opening Session

- Welcoming remarks:
 - On behalf of the Idaho state judiciary: Hon. G. Richard Bevan, Chief Justice, Idaho Supreme Court
 - On behalf of Idaho's federal judiciary: Hon. David C. Nye, Chief United States District Judge, District of Idaho
 - On behalf of Attorneys for Civic Education (ACE), Idaho State Bar: Hon. Jessica M. Lorello, Judge, Idaho Court of Appeals, and past chair of ACE
 - On behalf of the University of Idaho College of Law: Wendy Couture, Professor and Associate Dean of Faculty

- Overview of the Teachers' Institute:
 - Curriculum design, professional development/continuing education credit, etc.: Katherine (Katie) Ball, Clinical Professor/Assistant Dean, College of Law, and Program Coordinator for the Idaho Law & Justice Learning Center Workshop
 - Pedagogy and objectives: Russ Heller, educational services supervisor for K-12 history and social sciences, Boise School District (retired)
 - Introduction of master teachers: Brendan Earle, Anna Resnick, Blake Gaudet, Peggy Godby, and Dani Backer

- Brief self-introductions by participating teachers

8:45 a.m. – 1:45 p.m.

Topic 1: America's Enduring Experiment – A Constitutional Republic Anchored by an Independent, Impartial Judiciary

- **8:45 – 9:15: Distributing Power and Protecting Rights in Our Constitutional Republic**

Presenter: Don Burnett, Professor Emeritus and past Dean, College of Law

- “Vertical” and “horizontal” dispersions of governmental power: preventing tyranny of the few over the many
 - Explicit recognition of rights: preventing tyranny of the many over the few
 - The “rule of law” v. the “law of rulers”
 - Judicial independence and impartiality: America’s unique vision
 - “Checks and balances” and the true meaning of “judicial independence”
 - The imperative of judicial “impartiality” – even (and especially) in hyper-partisan times
 - Civil justice: Principled resolution of disputes
 - Criminal justice: A government that obeys the law while enforcing the law
- **9:15 – 9:30: Break**
 - **9:30 – 10:30: How Do Judges Understand, and Strive to Fulfill, Their Duties of Independence and Impartiality?**

Panelists:

Hon. Danielle J. Forrest, Judge, United States Court of Appeals for the Ninth Circuit

Hon. John R. Stegner, Justice, Idaho Supreme Court

Hon. Molly J. Huskey, Chief Judge, Idaho Court of Appeals

Don Burnett, Professor Emeritus and past Dean, College of Law (convening panelist)

- **10:30 – 10:55: Distinctive Roles of Trial and Appellate Courts**

Presenter: Hon. Jessica M. Lorello, Judge, Idaho Court of Appeals

- Trial and appellate court approaches to issues of law, fact, and discretion
 - The function of oral argument in appellate justice
 - Roles of the Court of Appeals and Supreme Court in Idaho’s state appellate system
 - Introduction to upcoming oral argument in the Idaho Supreme Court (State v. Randall, Docket No. 46893)
- **10:55a.m. – 12:40 p.m. Walk to Idaho Supreme Court to attend oral argument in person (or prepare to view live-stream at the ILJLC if in-person attendance at the Supreme Court is precluded by then-existing Covid-19 regulations). Argument will begin promptly at 11:10 a.m., followed if feasible by opportunity for brief Q&A between teachers and Supreme Court Justices. Teachers then return to (or remain at) the ILJLC.**
 - **12:40 - 1:15: Lunch Break (meal provided)**
 - **1:15 – 2:00: Federalism, Court Structures, and Specialized Courts**

Presenters:

Wendy J. Olson, partner, Stoel Rives law firm, and past U.S. Attorney, District of Idaho

Hon. James S. Cawthon, Magistrate Judge, Fourth Judicial District, State of Idaho

- **2:00 – 2:45: Workshop discussions convened and facilitated by master teachers, joined from time to time by Topic 1 presenters. Suggested discussion questions:**
 - 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 concept of an independent, impartial judiciary?
 - 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 state, tribal, and federal trial courts, and with the responsibilities of appellate courts? How can you help your students recognize the distinctions among types of courts?
- **2:45 – 3:00: Break (refreshments provided)**

3:00 p.m. – 5:00 p.m.

Topic 2: Judicial Decision-Making as Viewed from the Bench

- **3:00 – 4:00: The Dual Challenges of Interpreting and Following the Law**

Panelists:

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

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

Don Burnett, Professor Emeritus and Past Dean, College of Law (convening panelist)

- Deciding national and state constitutional issues
 - Jurisprudential perspectives – “originalism” v. “living constitution”
 - The U. S. Constitution’s “supremacy clause”
- Interpreting statutes and administrative regulations
 - Canons of statutory construction
 - Judicial review of actions by administrative agencies, including review of agency interpretations of statutes
- Developing and applying case law (the “common law”)
 - The role of precedent
 - 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
 - Writing a judicial decision – demonstrating the rule of law by connecting the outcome to legal principle(s)
 - Reading a judicial decision – looking for the principle(s) that govern the decision
- “Judicial activism” – truth and fiction
- **4:00 – 5:00: Workshop discussions convened and facilitated by master teachers, joined from**

time to time by Topic 2 presenters. Suggested discussion 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 series of cases that present the same basic issue but differing factual situations? See the list of variable fact patterns, based on Idaho Supreme Court case argued earlier today, under the Topic 1 tab. How can you encourage your students to appreciate the importance of *principle-guided* (rather than *ad hoc 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?"

Evening of Day One

**Social Gathering (5:30 p.m.) and Buffet Dinner (6:00 p.m.) with Panel Discussion
Place to be Announced**

Dinner Panel Topic:

**From Barnyard Courtrooms to Mask Protesters:
How the Courts Have Adapted to the Pandemic**

This panel session will address the tremendous behind-the-scenes efforts to keep courthouses open and operational during the COVID-19 pandemic. Like schools, the courts have had to revamp almost every aspect of their operations. Panelists will discuss the challenges the courts have faced, and the creative solutions they have developed, during this unprecedented time.

Panelists:

- Stephen Kenyon, Clerk of the U. S. Courts, District of Idaho (moderator)
- Sandra Barrios, Trial Ct. Administrator, Fourth Judicial District, State of Idaho
- Sherry Richter, Jury Administrator, U. S. Courts, District of Idaho
- Amy Tate, Courtroom Deputy for Hon. Candy W. Dale, U. S. Magistrate Judge, District of Idaho

Day Two – Friday, June 18, 2021

**James A. McClure Federal Building and United States Courthouse
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 6th floor.

8:00 a.m. – 12:10 p.m.

Topic 3: Criminal Justice and the Individual Defendant in the Federal System

- **8:00 – 9:00: Pre-Trial Proceedings**

Presenter(s):

Hon. Candy W. Dale, United States Magistrate Judge, District of Idaho
Selected Court Staff

- The plea process, setting bail, pretrial detention
- Observation of a “live” arraignment

- **9:00 – 9:15: Break (water and snack bars will be available near the courtroom)**

- **9:15 – 10:45: Post-Trial Proceedings**

Presenter(s):

Hon. David C. Nye, Chief United States District Judge, District of Idaho
Selected Court Staff

- Federal sentencing guidelines and sentencing alternatives
- Observation of a “live” sentencing hearing
- Brief Q & A between teachers and the judge(s)

- **10:45 – 11:30: Workshop discussions on Topic 3 (criminal justice and the individual defendant), convened and facilitated by master teachers. Suggested 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 interests 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 ways 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 ways to prioritize or balance them?

11:30 a.m. – 12:15 p.m.: Lunch break (meal provided)

12:15 – 2:15

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

- **12:15 – 1:15: The media’s role in educating the public about the work of an independent, impartial judiciary**

Panelists:

Hon. Gregory W. Moeller, Justice, Idaho Supreme Court

Hon. Nancy Baskin, District Judge, Fourth Judicial District, State of Idaho
Rebecca Boone, Supervisory Correspondent, Associated Press, Boise
Katie Ball, Clinical Professor/Assistant Dean, College of Law (convening panelist)

- Challenges facing news reporters, editors, and the courts
 - Perspectives from the bench
 - Coping with electronic and social media
- **1:15 – 1:45: Workshop discussions convened and facilitated by master teachers, joined from time to time by Topic 4 presenters. Suggested question:**
 - See the “case in point” at the Topic 4 tab in the Institute notebook. Suppose your students were news reporters working under a same-day deadline. How would you guide them in outlining the key “bullet points” of a story – providing essential facts (the “who, what, where, when” of the case) while also illuminating the rule of law (the “why” of the judicial decision)?
 - **1:45 – 2:00: Break (refreshments provided)**

2:00 – 3:45 p.m.

Topic 5: Recurring Issues in the Administration of Criminal Justice

Panelists:

Hon. Candy W. Dale, United States Magistrate Judge, District of Idaho (convening panelist)
Justin D. Whatcott, Assistant United States Attorney, District of Idaho
Nicole Owens, attorney, Federal Defender Services of Idaho

- **2:00 – 2:20: Challenges facing the prosecution and defense**
 - Plea negotiations and the administration of criminal justice
 - Dual imperatives: speedy trial and fair trial
- **2:20 – 3:00: The quest for impartial juries**
 - Gathering information about prospective jurors – e.g., court-administered questionnaires
 - Addressing the problem of implicit bias (video)
 - *Voir dire* of prospective jurors (“live” demonstration) in a hypothetical case – see materials under Topic 5 in the Institute booklet
- **3:00 – 3:45: Workshop discussions convened and facilitated by master teachers. Suggested questions:**
 - How would you guide your students in thinking about the role that negotiated pleas play (or should play) in the administration of criminal justice?
 - Do your students believe that jurors, once selected to serve, will sincerely strive to be impartial? How does, and should, our judicial system guard against juror bias?

3:45 – 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

Panelists: Master teachers and Russ Heller (panel convener)

- Panel discussion and interactive engagement between master teachers and teacher-participants

4:30 – 4:45 p.m.

Administration and Adjournment

Conveners: Professor Katie Ball and Russ Heller

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

APPENDIX

Core Questions for Workshops Conducted by Master Teachers

- 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?

Master teachers are encouraged to conclude each workshop session, using the core questions to help summarize the session's takeaway.