



The Resource Page



MEDIATION TRAINING FOR JUDGES

A weeklong mediation training program for judges will be presented in Phoenix, Arizona, from November 29 through December 3, 2004. The program is cosponsored by two sections of the American Bar Association—the Judicial Division and the Section on Dispute Resolution—and the Arizona Supreme Court Educational Services Division.

Program faculty include two law school professors with extensive mediation experience: Kimberlee Kovach, a lecturer at South Texas College of Law, and Peter Robinson, a law professor at Pepperdine University. Kovach has more than 25 years of mediation experience, is past chair of the ABA's Dispute Resolution Section, and is the author of a casebook on mediation that is now in its third edition. Robinson is acting director of the Straus Center for Dispute Resolution. Previously, he mediated more than 300 disputes as the director of the Christian Conciliation Service of Los Angeles.

In addition to these professors, six present or former Arizona judges or commissioners with extensive mediation experience will be on the faculty. These faculty include Judge Bruce Meyerson, Arizona Court of Appeals (retired). Meyerson is the immediate past chair of the ABA's Dispute Resolution Section.

The program is designed to give judges both in-depth knowledge about the skills needed to settle cases and practice in using those skills. A substantial part of the week will be spent in interactive mediation role plays, with discussion afterwards with experienced mediators.

Cost of the program is \$850 for non-ABA members; \$750 for members of the ABA Judicial Division or Dispute Resolution Section; or \$800 for ABA members who are not members of one of those sections. Contact Regina Ashmon of the ABA's Section of Dispute Resolution by phone (202-662-1686) or by e-mail (ashmonr@staff.abanet.org).



THE PAPERS OF JUSTICE BLACKMUN

Library of Congress Website
<http://www.loc.gov/rr/mss/blackmun/>

New York Times Website
http://www.nytimes.com/packages/html/national/20040304_BLACKMUN_FEATURE/

National Public Radio Website
<http://www.npr.org/news/specials/blackmun/>

Justice Harry Blackmun served on the United States Supreme Court for 24 years, from 1970 to 1994. He died in 1999 and left all of his papers—1,576 boxes—to the Library of Congress, with the stipulation that they not be publicly available until five years after his death. The papers were released on March 4, 2004.

In addition, there is an extensive oral history video that was conducted by Yale Law School professor Harold Hongju Koh, a former Blackmun law clerk. He conducted several hours of interviews with Blackmun between July 1994 and December 1995.

A 514-page transcript of the interviews with Professor Koh, plus the videos themselves, are available at the Library of Congress website. Many of the other materials have been converted to electronic format and are available at terminals in the Library of Congress in Washington, D.C. In the Library of Congress Reading Room, you could view the case files for eight of the most significant cases Blackmun worked on, including *Roe v. Wade*, *Planned Parenthood v. Casey*, *Bowers v. Hardwick*, and *Buckley v. Valeo*.

For those who may not want to go to the Reading Room or spend hours watching Justice Blackmun reminisce on video, two other websites offer a fascinating glimpse into these “inside-the-court” materials. Blackmun's estate authorized

two reporters—Linda Greenhouse of the *New York Times* and Nina Totenberg of National Public Radio—advance access to the Blackmun papers. Both Greenhouse and Totenberg have provided audio reports (Greenhouse for the website and Totenberg via her NPR reports), along with photos of many of the documents in the collection of interest.

The *New York Times* site provides several audio commentaries by Greenhouse, with related documents coming onto the computer screen as she describes them. Major sections of her commentary cover the drafting of court opinions and the relationship between Blackmun and Chief Justice Warren Burger. Documents shown include handwritten draft opinions and correspondence between Blackmun and Burger. Also included is a handwritten letter of thanks to Blackmun from Bruce Edward Callins, the death row inmate in *Callins v. Collins*, in which Blackmun wrote in dissent, “From this day forward, I no longer shall tinker with the machinery of death.” Callins's letter on yellow legal paper, mailed from prison, made it to Blackmun and was kept by him; Blackmun's file also included a letter two years later from Callins's sister telling the justice of her brother's execution.

The NPR site includes 10 separate reports Totenberg put together for broadcast, along with several “web-only” features. One of the reports describes how Blackmun came to write the *Roe v. Wade* opinion even though he was then the most junior justice. Another provides examples of switches in votes, after the court's conference, that changed the outcome of several well-known cases.

Totenberg's documents include a handwritten scoresheet Blackmun kept on the bench one day, tallying which justices were asking the most questions. Ginsburg was the winner that day, with Scalia a close second and, apparently, no one else all that close.

For those with an interest in legal history, these websites are worth a look.

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The Resource Page: Focus on Jury Reform

THREE PLACES TO START

B. Michael Dann, "Learning Lessons" and "Speaking Rights": *Creating Educated and Democratic Juries*, 68 IND. L.J. 1229 (1993).

This article remains one of the best starting points for any discussion of jury reform. In it, then-Arizona Superior Court Judge Mike Dann presents a compelling argument that the traditional legal model of juror behavior—in which jurors must act passively throughout a trial—is contrary to overwhelming social science and education research about how people, jurors included, learn best. He presents a reality-based model of the juror, discusses the lessons we can learn from educators, and then discusses the implications of these lessons for jury reform. The article is not available on the web; if you can't find a copy, contact the *Court Review* editor and we'll send you one.

Jury Commission Reports

Arizona (1993): <http://www.supreme.state.az.us/jury/Jury/jury.htm>

D.C. (1998): <http://www.courtexcellence.org/publications/Reports/Juriers2000%20a.pdf>

Ohio (2004): http://www.sconet.state.oh.us/publications/juryTF/jurytf_proposal.pdf

These three jury commission reports provide an excellent review of the types of recommendations that can come from a systematic review of the jury system by judges, lawyers, jurors, and others. Arizona's report led to substantial reforms there and encouraged review elsewhere. D.C.'s commission was unique in that it looked into reforms needed in both federal and state courts. Its 112-page report is especially thorough and provides both sample instructions and case authorities for many of the reforms discussed. And Ohio's 54-page report, issued earlier this year, is the most recent, comprehensive review of a state-court jury system.

G. THOMAS MUNSTERMAN, PAULA L. HANNAFORD & G. MARC WHITEHEAD, EDs., *JURY TRIAL INNOVATIONS* (1997), 334 pp.

Most of the proposals for jury reform are catalogued here with pros, cons, and citations to cases and articles discussing each one. Though the book is now a bit dated and a new edition is likely in the offing, it remains a good and comprehensive resource. Topics covered include juror questioning of witnesses, juror note-taking, and juror discussion of evidence during trial. More than 100 pages of appendices include sample preliminary jury instructions, instructions about the deliberation process, and jury exit questionnaires. The book can be ordered from the National Center for State Courts website (www.ncsconline.org).

OTHER RESOURCES

Model Legislation to Promote Jury Service

<http://www.alec.org>

The American Legislative Exchange Council (ALEC) has drafted model legislation entitled, "The Jury Patriotism Act." The act is designed to remove barriers to citizens serving on juries. It establishes limited, but uniform, ways to get excused or deferred from jury service, provides for job and benefit protections for those serving on juries, and establishes a "Lengthy Trial Fund" to help supplement jury pay for longer trials. A copy of the act can be found on ALEC's website (under "Model Legislation"); more information can be obtained from ALEC's legal advisory, Cary Silverman, an attorney with Shook Hardy & Bacon, 600 14th Street, N.W., Washington, D.C. 20005-2004, (202) 782-8400, e-mail: csilverman@shb.com.

Educational Programs for Jury Assembly Rooms

<http://justicetalking.org> [related website]

The Annenberg Public Policy Center at the University of Pennsylvania has instituted the "Sounds of Democracy

Initiative" to make audio cassettes and listening devices available to courts for installation and use in jury assembly rooms. The initiative will feature hundreds of programs from National Public Radio's "Justice Talking" series. The initiative seems to make the inevitable "down time" experienced during jury selection more rewarding and to bring the Constitution to life for ordinary citizens. For more information, contact Katherine Kolbert, executive producer, Annenberg Public Policy Center, 3620 Walnut Street, Philadelphia, Pennsylvania 19104, (215) 898-6751, e-mail: kkolbert@asc.upenn.edu.

CourTopics: Jury Trial Innovations, Jury Selection, Jury Management

<http://www.ncsconline.org/WCDS/topi-clisting.htm>

The National Center for State Courts provides listings of resources on various topics in their "CourTopics" area. Specific resources can be found regarding jury trial innovations, jury selection, jury management, and jury decision making.

PRIOR COURT REVIEW ARTICLES

Court Review articles are available at: <http://aja.ncsc.dni.us/courtrv/review.html>

Gregory E. Mize, *On Better Jury Selection: Spotting UFO Jurors Before They Enter the Jury Room*, Spring 1999 COURT REVIEW at 10.

While on the D.C. Superior Court, Judge Mize began doing individualized voir dire of each potential juror who had *not* responded to any questions during collective questioning of the jury panel. He found that just under 20% of these "quiet ones" had very relevant personal information to share vis-à-vis the case at hand. In 27 of 30 jury trials, at least one and as many as four of these jurors was struck by consensus for cause; without individualized voir dire, they would quite possibly have served on the jury.

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irrelevant (e.g., it tells nothing about negligence or how much damage was caused) and would let jurors know that any speculation about how much insurance the parties have, or even whether or not they have any insurance, would be inaccurate.⁵¹

CONCLUSION

Most of the recent innovations in jury trials recognize that jurors are active decision makers and adjust trial procedures to reflect that reality. Whether or not jurors are permitted to submit questions during trial, we know that questions are occurring to them as they try to understand the evidence in anticipation of being charged with reaching a verdict. Permitting jurors to submit their questions during trial provides the opportunity to learn what those juror questions are and to address them when possible. As this research indicates, even when judges tell the jury that they cannot allow a witness to answer a juror's questions, the jurors generally accept the decision easily and move on. The need to leave some juror questions unanswered offers no justification for missing the opportunity to assist jurors in reaching well-grounded decisions.



Shari Seidman Diamond is the Howard J. Trienens Professor of Law and Professor of Psychology at Northwestern University Law School, and a senior research fellow at the American Bar Foundation. She received her Ph.D. in social psychology from Northwestern University and her J.D. from the University of Chicago. She has published extensively in law reviews and behavioral science journals and has testified as an expert on juries, trademarks, and deceptive advertising. Her writings on juries and on surveys have been cited by the United States Supreme Court. She also practiced law (1985-87) at Sidley & Austin, served as editor of the *Law and Society Review* (1989-91), was president of the American Psychology Law Society (1987-88), received the 1991 Award for Distinguished Research Contributions

in *Public Policy* from the American Psychological Association, and was a member of the National Academy of Sciences Panel on the Evaluation of Forensic DNA Evidence (1994-96). She has served on advisory groups for the National Center for State Courts, the Federal Judicial Center, and the American Bar Association. Her e-mail address is s-diamond@law.northwestern.edu.



Mary R. Rose has been an assistant professor of sociology and law at the University of Texas at Austin since 2002. Between 1999 and 2002, she was a research fellow at the American Bar Foundation. Professor Rose's empirical research on juries concerns both juror decision making as well as the process of selecting juries. In addition, her work examines the social psychology of justice perceptions, such as how people conceptualize fairness in different settings and how people respond to perceived unfairness. She is an editorial board member of the *Law and Society Review*, serves on the Board of Trustees for the Law and Society Association, and is a reviewer for several law and social science journals. She received her A.B. in psychology from Stanford University in 1991 and her Ph.D. in social psychology from Duke University in 1998. She can be reached via email at mrose@mail.la.utexas.edu.



Beth Murphy is the project coordinator for the Arizona Jury Project at the American Bar Foundation. Previously with the American Judicature Society, she directed the study *Behind Closed Doors: A Resource Manual to Improve Jury Deliberations*, which produced a Jury Deliberation Handbook that is used widely by courts throughout the country. She also coauthored *Enhancing the Jury System: A Guidebook for Jury Reform*. Ms. Murphy has a master's degree in sociology from the University of Illinois.

51. *Id.*

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Peter M. Tiersma, *Jury Instructions in the New Millenium*, Summer 1999 COURT REVIEW at 28.

Linguist and law professor Peter Tiersma provides practical guidance on making jury instructions understandable. The article includes a helpful list of legal words often used and words that could be more appropriately used with a jury.

Robert G. Boatright & Beth Murphy, *How Judges Can Help Deliberating Juries: Using the Guide for Jury Deliberations*, Summer 1999 COURT REVIEW at 38.

Boatright and Murphy explain, based on research in 12 jury trials, how jurors can benefit from additional

background information about how to go about the work they are to expected to do.

A FEW, FINAL ARTICLES

Symposium Issue: The Jury at a Crossroad: The American Experience, CHICAGO-KENT L. REV., Vol. 78, No. 3 (2003).

<http://lawreview.kentlaw.edu/articles/78-3/CONTENTS%2078-3.html>

This symposium issue contains 10 articles discussing the role of the jury—past, present, and future. Topics covered include social science research on race and juries, ways to improve the voir dire process, and the

jury's historic and present role in statutory interpretation.

Shari Seidman Diamond, Neil Vidmar, Mary Rose, Leslie Ellis & Beth Murphy, *Jury Discussions During Civil Trials: Studying an Arizona Innovation*, 45 U. ARIZ. L. REV. 1 (2003).

<http://www.law.duke.edu/fac/vidmar/AzLR.pdf>

This article provides an in-depth evaluation of the Arizona innovation permitting juries to discuss the evidence during the trial. The evaluation was based on an experiment that involved the videotaping of actual jury discussions and deliberations.