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## Improving Communications in the Courtroom Symposium (Welcoming Remarks and Statement of the Issues)

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# PROCEEDINGS

## Communicating with Juries

*THE ANNENBERG WASHINGTON PROGRAM*

Friday, April 10, 1992  
Washington, D.C.

### WELCOMING REMARKS AND STATEMENT OF THE ISSUES

NEWTON N. MINOW\*  
PETER DAVID BLANCK\*\*

MR. MINOW: Good morning, ladies and gentlemen. I am Newton Minow, Director of The Annenberg Washington Program. It is my privilege to welcome you and to thank you for participating in what we believe will be an important and very constructive conference. For those of you who have never been to The Annenberg Washington Program before, I should take just a moment to tell you a little about it.

We are part of Northwestern University. Eight or nine years ago, Ambassador Walter Annenberg came to the conclusion that communications technology was moving so quickly that it was outpacing public policy, and it was his vision to create a place in the nation's capital where people involved with communications policy could meet together in an unbiased neutral forum. We have people here from government, from universities, and from the communications industry who meet to work on and deal with issues of public policy affecting communications.

Being a lawyer myself, I have been particularly interested in some of the communications law questions, and last year we had a very successful program that addressed the question of who should be on a jury in an age of mass communications. Should we take people who have read about a case, listened to something about it on the radio, or who saw something about it on television and exclude them from being on juries in an age when we are really drowning in information from the media?

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That led to a major issue of the *American University Law Review* devoted to the papers at that conference.<sup>1</sup> It was so successful and provocative and it attracted such attention in the national press that we decided to further pursue the issue of juries. Today, we are dealing with not just influences on juries from outside the courtroom, but also from inside the courtroom. How does the jury understand what the instructions are from the judge? Does a jury misunderstand?

I had a personal experience with my family this last year. My wife and one of my daughters, both reasonably well-educated people, were selected for federal court juries in criminal cases, both drug cases, one in Los Angeles and one in Chicago. They would not talk about the case while it was pending, but after it was all over I asked, "What did you think?" Each of them said, "Neither I nor the other eleven people on the jury could understand the judge's instructions." So jury communication is clearly a major problem and it is obvious that many jurors have difficulty understanding the instructions that are put to them.

We were very lucky in putting this conference together to get a top-notch young legal scholar to organize it. Peter Blanck is an associate professor at the University of Iowa College of Law. He has conducted research on the effect of trial judges' nonverbal communication on jury behavior. He has written widely about this,<sup>2</sup> and we are very pleased that he is a fellow of The Annenberg Washington Program. He is going to do a project next year dealing with the communication problems and the Americans with Disabilities Act. Peter practiced here in Washington with Covington and Burling. He was a law clerk to a man who was my favorite law professor and a very distinguished judge, Judge Carl McGowan, at the United States Court of Appeals for the District of Columbia. In addition to getting his law degree from Stanford, Peter was the President of Stanford's Law Review and he also has a Ph.D. in psychology from Harvard. We are very lucky to have Peter Blanck to introduce the program and tell you what we hope to accomplish today. Peter.

MR. BLANCK: Thank you, and welcome to everybody. I am certainly pleased to be with this distinguished group today to focus on the issue of communicating with juries. The views represented here are from the bench, both the trial and the appellate level; from counsel, both sides of the table; from academics; and from professionals engaged in helping lawyers understand the role of communications in the courtroom.

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1. *Symposium Issue on the Selection and Function of the Modern Jury*, 40 Am. U. L. Rev. 541 (1991).

2. See, for example, Peter D. Blanck, *Calibrating the Scales of Justice*, 68 IND. L.J. 1119 (1993), and articles cited therein.

As Mr. Minow mentioned, last year The Annenberg Washington Program sponsored a forum called *Selecting Impartial Juries*. That program explored the impact of the press on jury selection in high profile trials, such as the practice of excusing media-literate citizens from jury service. During that forum, and while working on a special issue of the *American University Law Review*, we were struck by the dramatic communication biases and failures that often exist within our modern courtroom. Systematic and anecdotal research evidence has found, for example, that jurors routinely report not understanding the judge's instructions or the facts of complex cases.<sup>3</sup> In my own research, the appearance of judicial bias, as communicated to juries through judges' nonverbal behavior alone, has been linked to trial outcomes.<sup>4</sup> Over the past seven years, my colleagues and I, several of whom are here today, have been developing empirical and real-world models for describing the impact of judges' behavior on juries' decision-making processes.

In many cases from around the country, a trial judge's biased communication directed toward the jury has constituted, by itself, a violation of defendants' due process rights in the criminal trial, resulting in the reversal of the conviction.<sup>5</sup> In one often cited case, for example, a Missouri judge hearing the defendant's brother testify that the defendant was at home when the alleged burglary occurred, placed his hands to the side of his head, shook his head negatively, leaned back, and swivelled his chair 180 degrees from the jury, without uttering a word.<sup>6</sup> Needless to say, that jury received a not-so-subtle message from that judge.

The community of trial and appellate judges is extremely interested in the questions surrounding judge-jury communications. Judicial training programs exist across the country that address these issues, such as programs at the Reno Judicial College. Legal scholars and practitioners are similarly interested in courtroom communication. In fact, the American Bar Association's 1990 amendments to the Code of Judicial Conduct include a canon that specifically emphasizes the need for the appearance of fairness in both verbal and nonverbal courtroom communications.<sup>7</sup>

Finally, the work of social scientists has provided rich insights into the nature and relevance of courtroom communications in our system of justice, and many of these views are represented here today. This program, therefore,

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3. See, e.g., Valerie P. Hans & Krista Sweigart, *Jurors' Views of Civil Lawyers: Implications for Courtroom Communication*, 68 IND. L.J. 1297 (1993).

4. See generally Blanck, *supra* note 2; Peter D. Blanck et al., Note, *The Appearance of Justice: Judges' Verbal and Nonverbal Behavior in Criminal Trials*, 38 STAN. L. REV. 89 (1985).

5. Blanck, *supra* note 2, at 1173.

6. *State v. Barron*, 465 S.W.2d 523, 527 (Mo. 1971).

7. MODEL CODE OF JUDICIAL CONDUCT Canon 3B (1990).

focuses on communicating with juries, with a special emphasis on how trial judges communicate with juries, possible sources of bias in the courtroom, and possible means for improving the effectiveness of courtroom communication through the use of technology.

Each panel is composed of distinguished lawyers, judges, social scientists, or experts in courtroom and jury communications. In the first panel, our participants will consider such questions as: What are the sources of verbal and nonverbal communication in the courtroom? How may bias or the so-called unconscious expectations of judges be transmitted to juries? What can counsel do to document or prevent such biased communications? And likewise, how have social scientists gone about studying such communications?

The second panel is an effort to understand and to evaluate recent innovations in courtroom communications with juries both from the appellate and trial court levels. We will consider questions such as: How can new technologies be used to enhance courtroom communications, as well as to educate jurors about the case at trial? How will trial and appellate courts assess the quality and admissibility of technologically enhanced courtroom and jury communications? What are the permissible legal limits of technological innovations designed to enhance courtroom communications? And finally, what is the proper balance of technology and advocacy in the courtroom?

The third panel will present actual examples by leading professionals in the field regarding the use of technology to enhance courtroom communications and communications with juries. Examples of ways to enhance communication through computer animation, demonstrative evidence, and graphic displays will be shown and discussed. The panel includes a lawyer who has used technology in arguments before juries, as well as a trial judge who has presided over such proceedings.

The discussion for each panel will be guided by a moderator. Steve Adler, news editor for law for the *Wall Street Journal*, will moderate the first panel. I will moderate the second. Fred H. Cate, who is the Director of Research and Projects and a senior fellow of The Annenberg Washington Program, will moderate the third.

I would like now to turn to Mr. Adler to begin the first panel discussion.