

**HB**

**52**

<target><bill>HB 52</bill><subject>HB  
52</subject><comm>HFIN26</comm></target>



# Representative Beth Kerttula

House Minority Leader

## Sponsor Statement

### House Bill 52

**"An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."**

The jury system is a fundamental component of the American legal system. Jurors are asked to carry out a civic duty, yet there is the possibility of experiencing excessive levels of stress and no support is offered to help jurors cope with normal reactions to abnormal events, at its worse resembling a milder version of Post Traumatic Stress Disorder. Categorized as secondary trauma, jurors become traumatized through the traumatic experience of victims.

House Bill 52 would allow judges to offer 10 hours of post-trial group counseling to a juror who serves in a criminal trial involving extraordinarily graphic, gruesome, or emotional evidence or testimony. This bill would not apply to every juror in every case. Counseling sessions are necessary in only a small percentage of trials but are nonetheless highly valuable when needed.

The public's impression of the administration of justice is largely based on jury service. Offering counseling to jurors will ensure that care is taken of citizens' welfare, while also enhancing positive public attitudes toward jury service. As the government compels citizens to report for jury duty, it should minimize the burden it places on jurors. With public trust and confidence as a fundamental goal of courts nationwide, judges, court administrators and court staff must be concerned with the juror experience and the effect of the experience upon those called to serve. Jurors are unprepared for some consequences and courts do not currently provide any assistance in finding help from mental health professionals. In order to protect the integrity of the legal system I think courts are obligated to help improve the jury experience, including addressing juror stress. Proper counseling helps people cope with their normal reactions to abnormal events and provides tools to adapt to those reactions. I greatly appreciate your support of House Bill 52.

Mindy Lobaugh - Testimony

Mr. Chairman & Members of the Committee, Thank you for this opportunity and all you do for the State of Alaska

This bill represents a bridge, a bridge that I and many other jurors did not have at the end of a very traumatic trial.

You arrive at the courthouse, given detailed instruction of what is expected of you as a juror and how the process of a trial works. What the court system does not do is transition the juror out of the trial.

It is not uncommon to have major criminal trials run for many days. I served as a juror on the Rachelle Waterman trial 4 years ago and it lasted approximately 10 days. For me I arrived open and ready to do my civic duty as a Juror. And for 10 days prosecutors went into excruciating detail to help the jurors relive the events of an unsuspecting Mother getting abducted from her home, tortured and finally murdered.

It was then our duty to determine if the defendant, her daughter was guilty of masterminding this tragedy against a woman who was a pillar of her community. By the end of the trial I left there as a victim feeling closed, mentally battered and very traumatized by the burden of knowledge I now carried.

I am here to tell you the media does not even come close to covering the depth of this trial. As a juror we had access to piles of emails detailing out various ways these men planned to kill the mother, physical evidence, photographs and of course the hours of testimony.

For quite some time during and following that trial eating for me was a near impossibility because of the constant nausea I felt.

To my friends and family I became a stranger....and each night I prayed myself to sleep.

One of my fellow jury mates was pregnant with her second child. She had shared her excitement and ultrasound pictures with us early on. By the end of the trial she lost her baby and had to be excused from the trial.

When this trial ended with a hung jury I turned to the presiding judge and ask if the courts offer some kind of counseling or process to help jurors deal with all this traumatizing information? The answer was NO.

For me it was like having a door slammed in my face. There would be no help in transitioning back to my life before this trial, no bridge. Rather I would have to move forward with this dark knowledge deeply entrenched in my mind and the minds of my fellow jurors.

It was at this point I felt the court system had failed me as a juror doing my civic duty.

Mr. Chairman, Members of the committee, Please help me to build this bridge by supporting HB52 Post Trial Jury Counseling. I may not have found closure with respects to this trial but maybe you can help build that bridge for future Jurors doing their civic duty by passing HB52.

Thank you so much for your time and I am open to any questions you may have.

3055 Submitted by Rep. Kerttula's OFFICE

# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1  
 Bill Version: HB 52  
 (H) Publish Date: 3/1/10

Identifier (file name): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Post-Trial Juror Counseling RDU Alaska Court System  
 Sponsor Representative Kurttula Component Trial Courts  
 Requester \_\_\_\_\_ Component Number \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>	<b>15.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)  
 House Bill 52 would allow a trial judge to offer a juror up to 10 hours of counseling services following a trial that involved extraordinarily gruesome or emotional testimony or evidence. This option would be available in homicide, felony assault and sex offense cases. The court system would contract with local counselors or psychologists for the counseling services. Although difficult to estimate, this note assumes that approximately 10 jurors a year would take advantage of the 10 hours of counseling and that the court system will be able to procure that counseling at an average rate of \$150 and hour.

Prepared by: Doug Wooliver, Administrative Attorney Phone 907-453-4750  
 Division: Alaska Court System Date/Time 2/22/10 @ 8:45 am  
 Approved by: Doug Wooliver for Christine Johnson, Administrative Director Date 2/22/2010  
Alaska Court System



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STATE OF ALASKA  
2010 LEGISLATIVE SESSION

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Requester \_\_\_\_\_

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Estimate of any current year (FY2010) cost: \_\_\_\_\_

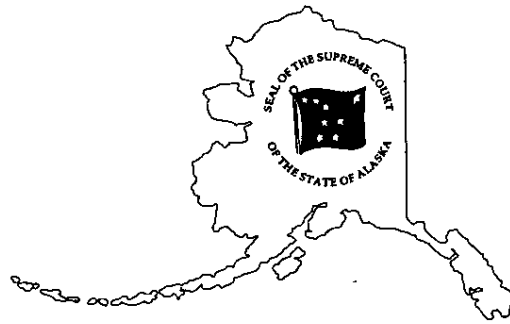
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Prepared by: Doug Wooliver, Administrative Attorney  
Division: Alaska Court System  
Approved by: Doug Wooliver for Christine Johnson, Administrative Director  
Alaska Court System

Phone 907-453-4750  
Date/Time 2/22/10 @ 8:45 am  
Date 2/22/2010



ALASKA COURT SYSTEM  
State of Alaska  
Office of the Administrative Director

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Anchorage, Alaska 99501-2005  
(907) 264-8265  
FAX (907) 264-8291

Doug Wooliver  
Administrative Attorney

March 25, 2010

The Honorable Bill Stoltze  
Co-Chair, House Finance Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Stoltze:

I spoke with Ben this morning about a scheduling conflict that I have this Friday. I need to be in the House Finance Committee in case there are questions about the court system's fiscal note on HB 52, which is Representative Kurttula's bill on post-trial juror counseling. At the same time, I need to be in the House Judiciary Committee for testimony about and amendments to HB 324, which is the governor's rewrite of the bail statutes. (Chris Christensen, who might otherwise be able to fill in for me, also has a conflict as he must be in the Senate Finance Committee during the time you will be hearing HB 52.)

Although I plan to be available to come to the House Finance Committee should there be questions on the court's fiscal note, I thought there might be fewer questions if I better explained the analysis behind the note.

As you probably know, HB 52 allows a judge to offer a juror up to 10 hours of psychological counseling, without charge, in certain specified cases following "extraordinarily graphic, gruesome, or emotional evidence or testimony." In order to assess the fiscal impact of this bill, I needed to estimate how often judges would be likely to offer counseling and what kind of counseling they would be likely to offer.

As I do with almost all legislation that may impact the court system, I circulated HB 52 among our trial court judges for their estimates of impact. For this bill, I asked them how often they see cases that meet the criteria set out in the bill. All of those who responded said that they did not see them very often. None thought they saw as many as one a year. Also, most noted that in those cases where the trial was particularly difficult, there tended to be only one or two jurors who were really impacted.

Representative Stoltze  
HB 52 Fiscal Note  
March 25, 2010

However, almost all judges remembered a few trials where some of the jurors were very distraught and for whom the judges would have offered counseling had it been available.

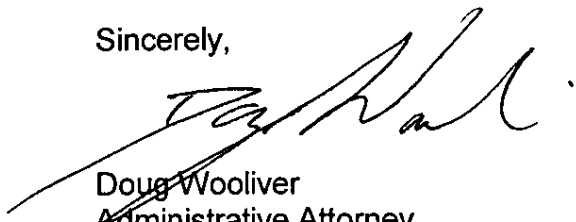
Based on that information, and for purposes of this note, I estimated that 10 jurors a year would receive 10 hours of individual counseling at an average cost of \$150 an hour. But individual counseling is not the only type of counseling available, and, in some cases, may not be the most appropriate. Another option is group counseling.

A common type of counseling for groups who share a traumatic experience is called Critical Incident Stress Debriefing. This is much cheaper than individual counseling and involves a relatively brief session with the entire group that occurs immediately following the traumatic event, in this case at the conclusion of deliberations. These sessions last an hour or two and cost between \$300 and \$500 an hour. This group counseling might or might not be followed up with individual counseling for those who need further support.

But whichever counseling option courts select for particular cases, our estimate is that we will spend roughly \$15,000 a year on juror counseling. And although this is necessarily an estimate, I believe that it is a reasonable one based on judicial comments and the counseling options available.

I hope that this is helpful. Please let me know if you have any questions.

Sincerely,



Doug Wooliver  
Administrative Attorney  
Alaska Court System



Representative Beth Kerttula  
House Minority Leader

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DATE: February 26, 2010  
TO: Representative Bill Stoltze  
Co-Chair, House Finance Committee  
FROM: Representative Beth Kerttula *Beth Kerttula*  
RE: House Bill 52 POST-TRIAL JUROR COUNSELING

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I respectfully request that the House Finance Committee schedule House Bill 52 Post-Trial Juror Counseling for a hearing. Potential witnesses include: Mindy Lobaugh (constituent who requested the bill) and mental health clinician Lina LePage.

Please find attached:

- House Bill 52
- Fiscal Note
- Sponsor statement
- Letters of Support
- Professional Journal Article

Thank you for your consideration. If you have any questions, please do not hesitate to call me or my aide, Hannah McCarty (x4767).

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

### VIOLENT CRIMES COMPENSATION BOARD

SEAN PARNELL, GOVERNOR

P.O. BOX 110230  
JUNEAU, ALASKA 99811-0230  
PHONE: (907) 465-3040  
TOLL FREE: 1-800-764-3040  
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February 22, 2010

Representative Beth Kerttula  
State Capitol  
Juneau, AK 99801

Dear Representative Beth Kerttula:

Thank you for considering HB 52, "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony." We understand that certain criminal trials can generate serious levels of stress among jurors that can last weeks or months after the trial is over. Traditionally, jurors in a critical trial end their service without ascertaining whether or not the events of that trial have had any psychological impact. For years, there have been cases of post-trial jurors experiencing their own mental pain and difficulty focusing back on their daily lives. Symptoms of juror stress manifest themselves as a number of physical and psychological reactions, including increased anxiety and frustration, disrupted eating and sleeping routines, nausea, depression, and anger and hostility. In many instances, talking to jurors about their symptoms validates their feelings and helps them understand that what they are experiencing is normal and can in itself bring considerable stress relief.

After exposure to a highly graphic criminal case jurors can develop stress by having to relive the traumatic experiences of the victim. For some, it is difficult to suddenly step back into their own world without some form of closure. We believe this is a unique opportunity for courts to have a positive interaction with individuals from the communities they serve. A juror who is asked to fulfill their civic duty should be protected from the potentially negative health effects of the trial process.

In general, post-trial group counseling could reduce stress and offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction. We support HB 52 because it would offer traumatized jurors access to group counseling services to help counteract the negative effects which may result from jury service.

Sincerely,



Gerard Goehry  
Chairman

## Juror Stress: Symptoms, Syndromes, and Solutions

Laurence Miller

Independent Practice, Boca Raton, Florida

*Abstract: As civic duties go, jury service can be among the most stressful experiences that a citizen can undergo. This article describes the common sources of juror stress, including jury summons, jury selection, understanding and coping with complex or disturbing evidence and testimony, jury deliberation, and the pressure to arrive at a just verdict. The article then goes on to delineate a number of intervention models for helping jurors manage stress reactions and prevent the development of more serious traumatic stress syndromes. Finally, some recommendations are offered for professionalizing jury service that would act in the interests of civil and criminal justice. [International Journal of Emergency Mental Health, 2008, 10(3), pp.203-218].*

**Key words:** forensic psychology, criminal justice, juror stress, jury system, legal stress, stress management

Imagine you awaken one night with a mysterious pain. You make your way to the nearest emergency room and ask to see a doctor. You're told that, instead, you will be examined by 12 citizens who have been pulled off their jobs and ordered to the emergency room to decide your case. When you begin explaining your symptoms and medical history, someone in the back of the room stands up and objects that your past illnesses and treatments are irrelevant and that this medical decision panel must make their treatment decision based solely on their current examination findings. You're asked a series of yes-no questions and when you try to explain further, are told to only answer the question as it's been asked. After they've finished with you, the 12 citizens retire to a separate room to deliberate your case. When you

try to protest that this is no way to practice medicine, they tell you to feel lucky to live in a country where you can receive a "fair" examination and have your diagnosis and treatment decided by 12 of your peers.

Sound ridiculous? Yet, these kinds of complex life-altering decisions are made every day in courts throughout the United States and many other countries by juries with no more knowledge of the law than the above hypothetical panel has of medicine. While the merit of this kind of justice system is a topic for another venue, this article will focus on what those 12 souls may go through in trying to do the best they can in negotiating the justice system. This article will delineate some of the major stresses and stress syndromes associated with jury service and offer some recommendations for helping jurors cope with the ordeals of their service and the pressures associated with certain kinds of trials.

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Raton, Florida 33432, 561-392-8881 [docmlphd@aol.com](mailto:docmlphd@aol.com)

## Juror Stress: Scope of the Problem

A core feature of the American civil and criminal justice systems is the right of a defendant to a trial by jury. Serving as a juror is considered a civic duty and a citizen's failure to respond to this call may result in judicial sanctions and penalties. Other than the occasional traffic citation, jury service is one of the primary means by which the average, law-abiding citizen comes into contact with the American judicial system. Most jurors take their responsibilities seriously and carry out their jury service to the best of their abilities. But until recently, little consideration has been given to the psychological impact of jury service on the jurors themselves (Butler, 2007; Hafemeister, 1993).

Ironically, much of this attention has come from the observations of judges who have to deal with stressed-out juries on a regular basis and who are subject to their own judicial stresses and challenges (Miller et al., 2007; Zimmerman, 2006), which will be the subject of a future article in this series. On a practical level, heightened awareness of juror stress may result in a shrinking pool of citizens who are willing to report for jury service. As greater numbers of citizens manage to avoid jury service, juries become less and less representative of their communities, leading to a deterioration of public trust and confidence in jury verdicts, making still more people reluctant to serve, and so on, in a vicious cycle. In addition, extreme juror stress levels may compromise their ability to render a fair judgment or impel jurors to make premature decisions, resulting in the appeals of many more verdicts than necessary and, in some cases, the corruption of justice (Butler, 2007; Curridan, 1995; Hafemeister, 1993; Hafemeister & Ventis, 1992; Sturgess, 1990).

## The Jury Process

The odyssey of jury service typically begins when a citizen receives a *jury summons*. The very term, "summons" can make the citizen feel like he or she is already guilty of something and conveys to the recipient that this service is not optional; indeed, failing to report for jury duty can result in the citizen being held in contempt of court, possibly fined and jailed, and ultimately being forced to appear. The summons either orders the citizen to report to the courthouse on a specific date or instructs them to call the courthouse over several days to see when their service is required. Some jurisdictions give citizens the option of postponing jury service for a limited period of time.

When arriving at the courthouse, prospective jurors are typically herded into a large auditorium where they are given a brief orientation, by video or live speaker, to the civil and criminal justice systems. They wait to be called for empanelment, which may be almost immediately or at any time throughout the day. In some jurisdictions, if a juror is not empaneled on that day, his or her service is done; in other jurisdictions, they must return day after day until selected for a jury or rejected during jury selection.

Jury selection involves the careful examination, or *voir dire*, of each prospective juror by the opposing attorneys in the case. Ostensibly, the goal is to select jurors who can make an impartial decision, free of personal biases that might taint their careful, objective weighing of the issues. In reality, *voir dire* often represents a way for attorneys from either side to "stack" the jury with individuals who most likely will be favorable to their case (Kressel & Kressel, 2002). Since a wide range of jury characteristics may affect their thinking about a given case, *voir dire* questions may range from opinions about points of law ("Do you believe the death penalty is ever an appropriate punishment?") to personal habits or preferences ("How many hours a week do you think is normal for someone to be looking at internet pornography?"). Typically, the initial weeding-out is accomplished by means of a written interrogatory, or questionnaire, and those prospective jurors who pass this first hurdle are then interviewed in *voir dire*. The law also allows a limited number of jurors to be rejected on a "peremptory" basis, which means the attorney doesn't have to give a reason, and which usually occurs to exclude a juror because of some personal feature such as ethnicity or social background. The acceptance/rejection ratio of jury selection explains the "cattle-call" nature of summoning vast numbers of potential jurors to the courthouse on any given day.

After a jury is empaneled, the case generally begins. Depending on the nature of the case, jurors spend anywhere from a few days to many weeks hearing complex and conflicting testimony from plaintiff and defendant (in a civil case), prosecutor and defendant (in a criminal case), fact witnesses (who have observed or have personal knowledge about something pertinent to the case), and expert witnesses (professionals with specialized training who can render opinions about technical issues of the case). Attorneys naturally try to present evidence that will be most favorable to their side of the case to "sway" the jury (Kressel & Kressel, 2002).

Traditionally, jurors are not allowed to take notes or ask questions and are supposed to process all this material in their heads to prepare for deliberation. Perhaps responding to the realities of human cognition, some jurisdictions now permit limited questions by jurors during the trial in order to help clarify crucial points that they will deliberate on. In most trials, jurors get to go home at the end of each day but are not allowed to discuss the case with anyone. In some high-profile cases, juries may be *sequestered* – literally isolated in a hotel room between court appearances, and deprived of newspapers, TV, or any contact with the outside world that might taint their view of the case.

After testimony and each attorney's closing statements are completed, the jury retires to a separate room for their deliberation, which may take a couple of hours or many days. Since, in most cases, verdicts must be unanimous, this can be an extremely grueling process, as jurors may change their minds several times throughout the deliberations and their decision-making processes may be influenced by anything from new insights on the case to what will get them out of there the quickest. Prior to deliberation, the judge usually provides a set of jury instructions as to which aspects of the case they just heard can be considered and which parts they should disregard; admittedly this kind of cognitive compartmentalization can be extremely difficult to accomplish ("Do not assign any weight to the bereaved mother's spontaneous crying and unsolicited comment about how she misses her murdered daughter.")

At any point in the trial prior to the actual reading of the verdict, the two sides of the case can arrive at an agreement that obviates the need for a jury. A number of juries have been in the position of sweating over a weeks-long trial, spending several more hectic days in heated deliberations, only to be told at the last moment that the case has been settled and "thank you for your service." It is hard to imagine a more frustrating set of circumstances than to have placed one's whole life on hold, to have had one's thoughts and emotions wrenched by days of testimony that ranged from the soporific to the horrific, to have deliberated earnestly and hard, only to be told, often at the brink of a unanimous decision, the judicial version of "never mind." Perhaps the only thing worse are cases where the judge "sets aside" the jury's verdict after it has been read because he or she decides that these 12 citizens could not possibly have reached this conclusion if they had properly considered all the pertinent facts and points of law in the case. In these circumstances, juries

understandably feel like bad little schoolchildren who failed their class assignment. Even where the court accepts the jury's verdict, they know it's not over yet, because most serious verdicts are appealed.

### Positive Aspects of Jury Service

Although this article will focus on the negative psychological effects of jury service, to be fair, a number of surveys and studies have found that most American and Canadian jurors view their service positively (Butler, 2007; Casey, 1998; Diamond, 1993). For many citizens, this is the most important thing they have done in terms of having a real impact on their communities. Individuals who may feel that they plod meaninglessly through life and receive scant acknowledgement for their efforts at their jobs or at home are suddenly thrust into a position of trust, treated like adults, and accorded great respect, with the weight of another human being's fate placed in their collective hands. Jurors often emerge with much enhanced respect for the legal system after seeing how seriously and carefully most cases are tried, with learned attorneys in expensive suits vying for their decision through meticulously researched and cogently presented arguments, all parties forced to follow strict rules of evidence under the watchful gaze of an enrobed judge sitting on high. This experience often inculcates in jurors a sense of empowerment and engagement with civic life; in fact, serving on a jury makes people more likely to vote. Many jurors surveyed say they would like to serve again (Butler, 2007; Casey, 1998).

However, some of the positive feelings reported on juror surveys may be the result of rationalization and cognitive dissonance: having been conscripted to legal servitude for days or weeks at a time, suffered loss of income and restrictions in their family time, many jurors may feel compelled to justify to themselves that this all must have been for some greater good in order not to feel like chumps (Butler, 2007). And, as will be discussed below, this positive perception of jury service is far from universal; indeed, from the results of other surveys and studies, one can only conclude that, for many jurors, their service amounts to a descent into hell.

### Stresses of Jury Service

Even short of hell, many jurors experience stresses that range from mild to severe. While trials containing complex and/or grisly evidence may be understood to be inherently stressful, even more mundane cases can take a grueling toll.

For all the lip service about their noble mission, courts can be surprisingly unaccommodating to jurors who are often relegated to the bottom of the courtroom pecking order. This may be due to a strong social identification factor: Judges and lawyers share a common level of education, training, and experience; indeed, many judges were once practicing lawyers and career shifts in the other direction are not uncommon either. Thus, they understand that they are in a different social and demographic league than most jurors who tend to come from a more working-class and nonprofessional population - i.e. the type of people who cannot easily get out of jury duty. In addition, the same judges and lawyers tend to interact with one another repeatedly in the same kinds of cases, whereas jurors are here for one case, and then gone. Thus, it is easy for the courtroom "regulars" to unconsciously treat the newcomers as transients who are there to do their jobs and then scam (Butler, 2007; Curridan, 1995).

A survey by the National Center for State Courts (Casey, 1998) asked a large sample of jurors or alternate jurors from a wide range of civil and criminal cases (e.g. robbery, drunk driving, malpractice, and personal injury) to rate the level of perceived stress they experienced from a list of stressors. The top ten sources of stress for jurors serving on non-death-penalty cases were: deciding on a verdict; jury deliberations and discussions; disruptions to daily routines; fear of making a mistake; violent crimes; the jury selection process; crimes against children; answering questions in front of other people; sentencing a criminal defendant; and dissension/differences among jurors. Looking at the top items on the list should remind us that, even in relatively routine cases, most jurors take their responsibilities very seriously and are acutely aware that they are making decisions that will greatly affect people's lives, what Bornstein and colleagues (2005) refer to as the "burden of justice." It is this very sense of responsibility that often makes their jobs so stressful (Hafemeister, 1993).

But how stressful? Most surveys have found that about 40% of jurors report stress levels hovering around the mild to moderate range, but that clinically significant anxiety or depressive disorders are rare (Antonio, 2006; Bornstein, Miller, Nemeth, Page, & Musil, 2005; Casey, 1998; Kaplan & Winget, 1992; Kelly, 1994; Casey, 1998; Shuman, Hamilton, & Daley, 1994). So, even though most jurors aren't actually being "driven crazy" by their ordeal, the stresses of jury service can have a sufficient effect on their daily lives to demand serious attention.

## Sources of Juror Stress

Jurors experience stressors from a variety of sources associated with their service. A review of the relevant literature (Antonio, 2006; Bell & Feldman, 1992; Bishop, 1992; Bornstein & Nemeth, 1999; Bornstein et al., 2005; Butler, 2007; Casey, 1998; Diamond, 1993; Fishfader, Howells, Katz, & Terese, 1996; Goleman, 1991; Greene & Bornstein, 2000; Hafemeister, 1993; Haney, Sontag, & Costanzo, 1994; Kelley, 1994; McAree, 2004; Miller, Flores, & Dolezilek, 2007; Mott, Hans, & Simpson, 2000; Rauch, 1992) suggests that these can be divided into two main categories, those associated with the judicial process of jury selection and empanelment, and those associated with the content and conduct of the trial itself.

### *Court Procedures*

*Physical setting.* The physical environment in various courthouses throughout the country ranges from reasonably comfortable to atrocious. Stress factors cited by jurors include poor temperature controls, limited access to food and bathroom facilities, cramped and overcrowded waiting areas ("cattle pens"), and the inconvenience of getting to and from the courthouse (lack of public transportation, poor parking, courthouse in bad neighborhood).

*Payment.* For all the high-minded talk of how jurors are a vital component in our system of justice, the daily compensation rate for jurors - typically far below minimum wage - can only be seen as diluting the supposed high regard that the court has for them. "I couldn't get someone to clean my toilets for this kind of money," is a typical complaint. A few jurors have commented that they tore up the check when it came or sent it back with a nasty note.

*Life disruption.* A near-universal complaint of jurors and prospective jurors is the disruption of work and family schedules necessitated by their service. Under the mantle of civic responsibility, jurors may lose days or weeks from work and have to delegate childcare and other household responsibilities. Although employers, as an expression of good citizenship, are supposed to give their employees days off with compensation to attend jury duty, in most cases the worker absorbs a pay loss. Adding insult to injury, when the term of jury service extends more than a few days, the worker may return to find that his or her job has been filled by someone else.

For the self-employed, the situation can be even worse. Salespeople live by their commissions and most small businesses can't afford to close down for even a few days. Even in medium-sized companies, the worker may not have anybody to take his or her place if he or she is in court; clients and customers may quickly go elsewhere. Some jurors report that they have had their businesses ruined by a lengthy term of service.

And it's not just work. Time away from spouses and children strains family relationships; women jurors especially appear to feel the strain of isolation very acutely. Not being allowed to discuss the case when he or she comes home from court deprives the juror of a main source of tension reduction that most people have for unloading their daily stress, and further marginalizes the rest of the family who see their loved one in distress but are unable to do anything to help them (Feldman & Bell, 1991; Hafemeister, 1993; Slind-Flor, 1992).

As previously noted, in some high-profile cases, to avoid "contamination" of the jury by media, casual conversation, etc., jurors may be sequestered, which essentially amounts to enforced isolation during the trial. Because of state and local budgets, accommodations are rarely first-class. This heightened isolation from work, family, and friends may cause many jurors to feel that they are being treated like "criminals," "POW's," or "terrorists at Guantanamo Bay," as some jurors have put it. It is these conditions that most often lead some jurors to fear they are losing their minds (Antonio, 2006).

But, at least for American jurors, the ordeal is over when the trial ends, at which time they are free to talk, write books, or expound on TV about their role in a famous trial (although most jurors just want to go home and forget it). No such consideration is afforded their northern brethren, as the Canadian Criminal Code makes it an offense for their jurors to ever disclose information regarding jury proceedings. Canadian jurors cite this ban as one of the most difficult things to deal with (Butler, 2007; Hafemeister, 1993). On the other hand, this permanent gag order may free these jurors from the relentless media intrusion that often dogs American jurors in high-profile cases and which often seems designed to provoke a media-worthy lurid reaction from jurors.

For example, after the high-profile Rodney King beating trial, jurors were assailed by the press to the point that local police warned them not to remain in their homes because of all the publicity they were garnering. These jurors felt com-

pelled to defend their decision to friends and family and felt that they were being condemned in the press for the rioting that took place after the verdict. One juror received a bomb threat at her workplace. Another juror bought a gun for protection, while still another slept with an axe. Many jurors compared their experience to having been raped; they suffered anxiety, hypervigilance, tearfulness, exhaustion, sleep and weight loss, and disruption of family relationships. A few of the jurors sought professional counseling, but most suffered in silence (Davis, 1993).

*Jury selection process.* For many jurors, especially those that value their privacy, filling out detailed questionnaires and answering sometimes very personal questions in front of a group of strangers can be extremely uncomfortable. Many jurors have reported feeling as if they were the ones on trial. For example, in financial fraud cases, lawyers may want to know what the juror's salary is or whether he or she has ever "thought about" cheating on their taxes. In sex-related cases, jurors may be queried about their sexual preferences or whether they have ever "thought about" cheating on their spouse. Simply refusing to answer could technically result in the juror being cited for contempt of court, but few judges would be willing to subject the juror to further duress. More commonly, embarrassed jurors will simply lie and tell the questioning attorney whatever they believe will make the lawyer move on. The result may be the empanelment of a jury containing several members who have been seated under false pretenses, thereby compromising the whole rationale of jury selection.

Perhaps for these kinds of reasons, while American lawyers can question potential jurors to screen out those they don't like during the voir dire process, in Canada this kind of jury selection process is considered prejudicial and all eligible jurors are assigned on a first-come-first-serve basis. The absence of a rigorous juror screening process has been found in surveys to increase stress on those Canadian jurors who are seated (Butler, 2007). It would be an interesting empirical question to see which system is associated with the greatest psychological morbidity and satisfaction with jury service.

### *Trial Factors*

*Death penalty cases.* Understandably, the decision to find a defendant guilty of a crime warranting the death penalty is one that most American jurors take very seriously.

reflecting the "burden of justice" (Bornstein et al., 2005) that jurors feel more intensely, the more serious the trial (e.g., capital murder vs. grand larceny). In some jurisdictions, the jury determines guilt or innocence in a capital crime and the judge imposes a sentence. In other courts, the jury may first decide on guilt and then deliberate a second time to determine the sentence, usually either death or life imprisonment. Findings from the Capital Jury Project (Antonio, 2006) and other studies have shown jurors who render a death penalty verdict to suffer from a variety of stress reactions, including *posttraumatic stress disorder* (PTSD) at higher rates than those who render a life sentence.

Some jurors describe nightmares that replicate how the victim was killed or that relate to details of the crime scene, many of the images coming from photographs viewed at trial. Some jurors report feeling physically sick during and after the trial. Jurors may express regret at their final punishment decision, often feeling that the wrong decision was reached. In some cases, jurors regret the death sentence; but in a few others they wish death had been meted out instead of life imprisonment. Many jurors who harbor second thoughts post-trial feel they were pressured or "brainwashed" by other jurors to go along with the majority decision: "I should have stuck to my guns, but everybody else was so sure of their side and we all just wanted to get out of there."

Fear of reprisal by the defendant or his cohorts is a common theme reported among jurors serving on capital trials. Many report that the defendant would sit in court and stare intimidatingly at individual jurors during the trial. Nightmares of such possible reprisals by the defendant are commonly reported, more frequently by women. Other jurors are simply afraid of running into either the victim's or defendant's family in or around the courthouse. Some fear wider censure by their own families, friends, and communities for making the "wrong" decision in socially sensitive cases. Most jurors who have served on capital cases are determined not to repeat the experience.

Interestingly, in the Capital Jury Project study (Antonio, 2006), a number of jurors specifically expressed the need for some kind of post-trial counseling and half thought it should be made available by courts themselves. Others took the initiative and sought counseling on their own after the trial had ended, either from a family member, clergyman, or mental health clinician (Antonio, 2006).

*Grisly evidence.* One of the distressing aspects of mur-

der trials or those where there has been significant bodily injury is the frequent necessity for juries to view gruesome hospital or crime scene photos depicting death and or mutilation, as well as to hear sometimes horrifying testimony of how victims were assaulted, tortured, raped, and/or killed (Bishop, 1992, Boone, 2008). Remember that police officers, criminal attorneys, judges, and specially trained mental health counselors who work with the court system all have years of experience dealing with disturbing evidence, yet, even in these hard-boiled veterans, particularly heinous crimes (often those involving child victims) may evoke destabilizing emotional reactions that require intervention in the form of critical incident debriefing or other mental health contact (Miller, 1998c, 1999, 2006a, 2006b, 2007a, 2007b, 2008a, 2008b, 2008c).

How much greater must the reaction be to this kind of evidence by untrained, inexperienced jurors who are being assailed by grisly evidence throughout the trial. This is frequently compounded by the fact that prosecution and defense counsel each have their own agendas that they may play off the jury. For example, the prosecution may specifically try to shock the jury by literally throwing the exhibit (crime scene photo, bloody clothing, murder weapon) in front of the jury precisely to spur an emotional reaction that will hopefully lead to a conviction (another variation of this is to abruptly display an image of the disturbing exhibit on a huge projection screen in the ominously darkened courtroom). For its part, the defense team will initially try to exclude evidence they consider "inflammatory" or, alternatively, if it is presented, may try keep it exposed as long as possible or present it repeatedly in order to try to desensitize the jury to its presence. Sometimes this works and jurors get used to seeing the bloody knife and the photographic stab wounds lying on the evidence table day after day. But sometimes the tactic backfires and the jurors grow increasingly sensitized, rather than immunized, with each exposure.

Studies are near-unanimous in reporting high rates of anxiety, depression, and PTSD symptoms in jurors sitting on capital murder, aggravated kidnapping, aggravated sexual assault, aggravated assault, and child abuse cases (Antonio, 2006; Feldman & Bell, 1993; Hafemeister, 1993). Some of this may relate to the concept of *vicarious trauma*, in which those who work frequently and closely with victims of violence come to empathically absorb and internalize some of the psychic pain and begin to show PTSD symptoms themselves (Davis & Friedman, 1985; Figley, 1983; Fullerton, Carroll, Ursano, & Wright, 1992; Miller, 1998a, 1998b, 2008c; Moon,

1999; Talbot, Dalton, & Dunn, 1995; White, Lawrence, Biggerstaff, & Grubb, 1985; Yassen, 1995). These kinds of reactions may have implications for adjudication of the case if jurors make extreme decisions based primarily on their emotions rather than on a rational analysis of the evidence, or if they become so numbed to the savagery of the crime through repetitive testimony or evidence presentation that they come to diminish the seriousness of the criminal act in their deliberations (Miller et al., 2007).

*Complex Evidence.* Another feature of murder trials or other violent felony trials is that they tend to be long and contain vast amounts of complex and ambiguous evidence. In most courts, jurors are forbidden to take notes or ask questions, although some jurisdictions are very recently beginning to allow limited forms of these activities. Thus, the juror is placed in the position of having to process complex technical information and conflicting eyewitness narratives presented by two different sides who are each trying to spin the evidence to the fullest extent that the court will allow, with the juror permitted to take no (or limited) notes and ask no (or limited) questions. Add to this the fact that much testimony is just plain boring or literally incomprehensible and there is evidence that jurors forget a great deal of what they hear in court (Rosehan, 1994). If this were a college course, what grade do you think the jurors would get? Yet, they are charged with the task of taking this information and using it to render what, in some cases, is literally a life or death decision about someone's fate.

Complicating the process is the fact that, in the case of a college course, the students are all more or less equivalent in background in terms of education, training, and native intelligence, and have probably all completed at least some prerequisite coursework for the present class. But jury members come from all walks of life and will have vastly differing levels of sophistication in handling complex testimony and in understanding the legal instructions they're given (Antonio, 2006; Bornstein et al., 2005; Butler, 2007; Miller et al., 2007; Steele & Thornburg, 1991). Because most professional people in their 30s to 50s, as well as most mothers with childcare responsibilities, can probably find some reason to get out of jury duty, most juries will contain a disproportionate number of very young, very old, less educated, and less family-grounded individuals. In deliberations, less comprehending jurors may feel intimidated by seemingly more savvy members who, for their part, may be frustrated with their slower

compatriots' failure to grasp their arguments or see things their way.

Indeed, an entire industry of *jury persuasion*, often trafficking under the euphemism of *trial consulting*, has sprung up precisely to capitalize on juries' frequent cluelessness and to help attorneys use this to their own advantage (Kressel & Kressel, 2002; Posey & Wrightsman, 2005; Vinson & Davis, 1996). For example, we know from cognitive psychology and everyday experience that most people make decisions not by carefully weighing evidence and using inductive reasoning to arrive at a conclusion. Rather, they make an immediate judgment which is typically based on emotion and first impressions and lies within their pre-existing frame of reference and comfortable world-view. Then, they selectively scan the available data to cherry-pick information that will self-justifyingly support their original position. Hence, most jurors strive to reach verdicts which do not conflict strongly with the views they've held at the beginning of the trial; that is, they strive to reduce cognitive dissonance (Feigenson, 2000; Nisbett & Ross, 1980; Petty & Ciacioppo, 1986; Singer, 1998; Sunby, 1997).

Thus, lawyers know that it is good trial strategy to build your case around a small number of fundamental principles about which most jurors are surmised to feel strongly and that consequently act as screens or filters to interpret, distort, or reinforce information presented during the trial. Tactically, the more an attorney can frame his or her case in terms of the jurors' own personal experience, the greater the likelihood of winning the case (Kressel & Kressel, 2002; Murphy, Loveland, & Munsterman, 1992; Vinson & Davis, 1996). Finally, human beings form impressions about other human beings more strongly than they do about abstract data. When jurors can understand the content of the testimony, they usually factor this into their decisions. But when the complexity of the subject matter exceeds their comprehension, they rely on the perceived sincerity and persuasiveness of the witness (Cooper, Bennett, & Sukel, 1996).

Today's poor, benighted jurors may be forgiven their blunders if only because the complexity of the world as a whole has changed much in just a few centuries, while the human brain and human nature have not. No less an authority than retired Supreme Court justice Sandra Day O'Connor (2003) has lamented this modern state of affairs:

The world is a very different place now than it was in 1220 or in 1789 or fifty years ago. We therefore

should not be surprised to learn that aspects of the jury system that worked well in those times work less well today and need some repairs. What should surprise us is that so little of the necessary repair work has been done.

There are three aspects of the jury system that need particular attention. First, *the conditions of jury service*. When citizens are called for jury service, they often view it as a burden rather than a privilege. And for good reason: when they arrive at the courthouse they frequently are treated more like sheep than people, and the system can seem designed to disrupt their lives to a maximum degree. Second, *jury selection*. The process of selecting a jury out of the citizens called for jury service on a particular day has changed from a necessary safeguard against potentially biased jurors to a way for highly paid jury consultants to attempt to ensure a jury favorable to the side paying their fees. And third, *the conduct of the trial itself*. Too often, jurors are allowed to do nothing but to listen passively to the testimony without any idea what the legal issues are in the case, and without being permitted to take notes or participate in any way, finally to be read a virtually incomprehensible set of instructions and sent to the jury room to reach a verdict in a case they may not understand much better than they did before the trial began (O'Connor, 2003, pp. 217-218; cited in Posey & Wrightsman, 2005, pp. 218).

*Jury deliberation*. This is where it all comes together, where the jurors are supposed to put their heads together and come up with a decision that follows the law and respects the evidence in the case. They have already been instructed that there are specific things they are and are not allowed to include in their thinking about the case; they may or may not understand these rules. A number of surveys have shown that the interactions and dynamics of these 12 strangers, thrown together from diverse cultures and walks of life, with widely varying cognitive skills and personalities, can often be the biggest source of stress for jurors during the trial. While many jury deliberations proceed tolerably, and in some instances may even be enjoyably challenging, others are described by jurors as the worst experience they've ever had (Antonio, 2006; Butler, 2007).

The types of stresses during jury deliberation can be multiple and can range from little personal irritations from another juror's mannerisms or tone of voice, to a particularly obnoxious, ignorant, or intimidating juror who just ticks everybody else off and makes the process so much more unpleasant. Not to be overlooked is the physical setting, with poorly ventilated jury chambers resembling sweaty locker rooms after a few hours. The deliberation process itself can be contentious and the juror who evinces a minority opinion may find him- or herself reviled and alienated for "not letting us get on with this." Some jury deliberations have reportedly almost broken into fistfights, and breakdowns in decorum with inadvertent or intentional spewing of stereotypes and prejudices are not uncommon, as the mounting stress brings out the ugly side of the deliberators (Bornstein et al., 2005; Butler, 2007; Casey, 1998).

### Juror Stress: Symptoms and Syndromes

Butler (2007) points out that if a research committee were to propose a study on the human stress response that incorporated the factors reviewed above, they would no doubt be fired from their university and banned from research for the rest of their lives. Another, perhaps more germane, way to look at it is that the kind of working environment that many jurors are subjected to during their service would be strictly illegal in all regulated American public and private organizations, and discovery of such conditions would subject the organization to civil penalties and criminal prosecution.

Juror stress symptoms can be conceptualized along three dimensions: (1) symptom type; (2) symptom severity; and (3) symptom time course.

#### *Symptom Type*

Juror stress symptoms tend to replicate those reported more generally in the stress and trauma literature (Antonio, 2006; Bell & Feldman, 1992; Bornstein et al., 2004; Butler, 2007; Casey, 1998; Costanzo & Costanzo, 1994; Davis, 1993; Feldman & Bell, 1993; Kaplan & Winget, 1992; Kelley, 1994; Shuman et al., 1994) and include the following:

*Physical symptoms*. Impaired sleep, headaches, heart palpitation, high blood pressure, cutaneous reactions (hives and rashes), ulcers, impaired sexual functioning, muscle tension, tremors, chest pain, faintness.

*Psychological symptoms.* Intrusive recollections, nightmares, emotional numbing and detachment, anxiety, depression, increased alcohol consumption.

### *Symptom Severity*

Juror stress appears to show the standard *dose-response ratio* seen with other stressors, that is, the greater the level of stress, the more severe the symptoms (Butler, 2007). For example, jurors serving on "traumatic" trials, including rape, murder, and aggravated kidnapping, were found to experience more severe symptoms than jurors on "non-traumatic" trials such as burglary or drug possession (Shuman et al., 1994). In particular, the jurors on traumatic trials were many times more likely to experience depression (Miller et al., 2007).

### *Symptom Time Course*

In the Capital Jury Project (Antonio, 2006), jurors' stress reactions were found to occur in three main stages: during the trial; immediately after the sentence was announced; and in the days, weeks, or months after the trial ended.

*During the trial.* Interestingly, only a few of the jurors reported that the full impact of their jury experience was felt while the trial was occurring; most jurors seemed to go "on automatic" to function while the trial was in progress. The major source of stress at this time was determining the actual punishment decision. Other stressors included having to view disturbing crime scene evidence and the isolation of not being able to speak to their families about the case.

*Immediately after the trial.* In many cases, the stress response came as a "delayed reaction" right after the trial was over. Most of the jurors in this category reported crying at some point, either from the strain of their recent ordeal or out of sheer relief that it was over. Two female jurors in this sample were concerned about the effect the verdict would have on the victim's family.

*Days, weeks, or months after the trial.* Most of the jurors reported that serving in a capital murder trial affected them long after the trial ended. Some jurors experienced changes in their relationships and lifestyles. Many reported difficulty forgetting what they heard or saw during the trial, and a few reported classic symptoms of PTSD, including nightmares, intrusive recollection, and emotional numbing (Antonio, 2006).

## **Alleviating Juror Stress**

Several authorities have proposed recommendations for making the juror system less stressful and more humane, based on their analyses of juror responses to surveys and general experience (Antonio, 2006; Bornstein et al., 2005; Casey, 1998; McAree, 2004; Miller et al., 2007; Nordgren & Thelen, 1999). I have divided these recommendations into procedural measures and clinical approaches.

### *Court Procedural Measures*

These issues relate to changing the courtroom setting and the conditions of jury service (Antonio, 2006; Bornstein et al., 2005; Casey, 1998; McAree, 2004; Miller et al., 2007; Nordgren & Thelen, 1999) and include the following:

*Improve jury notification and reporting for service.* Provide sufficient time for prospective jurors to respond to jury summons. Many courts now provide the option of deferring jury service one or more times, as long as the summons reports within a specified period of time (usually about 6 months). Giving jurors time to arrange their affairs provides a sense of control that may increase juror cooperation and motivation to participate. Provide basic information with regard to how to respond to the summons, where to report, directions, relevant phone numbers, etc. Provide safe transportation and security escort between the courthouse and transportation (parking lot, bus stop). Remember, anything the court can do that makes it easier, not harder, for jurors to report for jury duty will increase compliance rates. Consider adjusted compensation rates for self-employed jurors or jurors whose employers will not compensate the worker for his or her service time.

*Explain the trial process.* All too often, the initial orientation to the legal system consists of a short, prepackaged video played on a screen in a busy auditorium that may be all but incomprehensible to most of the stressed and harried audience in the pre-panel "cattle call" room. Felons' confessions may be thrown out if police cannot affirmatively demonstrate that the suspect made a knowing and informed waiver of his or her Miranda rights at the time of arrest. Similarly, considering that people's legal fates are at stake, shouldn't prospective jurors be required to demonstrate that they understand the relevant law and legal procedures? Judges should take the initiative to explain things to the jurors in a clear, understandable fashion and solicit their feedback with regard to their understanding.

Also, give jurors a head's-up as to what to expect in general from the trial on which they are being selected to serve. Obviously, the nature of the trial, whether criminal (murder, robbery, rape, drug possession) or civil (personal injury lawsuit, contract dispute, family law case), should be explained. Many jurors state that they would have liked to have been forewarned that the trial could include gruesome photographs, foul language, pornographic material, and/or graphic descriptions of criminal acts. This may be contested by some judges and attorneys who are leery of discussing any type of evidence that has not yet been determined admissible. Additionally, many attorneys may actually be counting on the emotional shock value of certain evidence to sway jurors' opinions and don't want them desensitized by previous discussion; other attorneys may not want to "tip their hand" about sensitive forthcoming evidence. Courts should strive to work out some compromise solution that preserves the rules of evidence while assuring that jurors will be in a proper mental state to hear the case.

*Facilitate the jury selection process.* One aspect of the trial system that should be clearly explained is the necessity for attorneys to ask jurors probing questions during voir dire. This should include an explanation of the purpose of the voir dire examination, an explanation of the difference between peremptory challenges and challenges for cause, introductory information on the particular case, an estimate of how long the trial may last, and an indication of whether the jury will be sequestered and, if so, for how long and why.

Be sensitive to jurors' privacy concerns. Responses from jurors indicate that some judges and attorneys may view voir dire as a fishing expedition to gain as much information as possible about each juror rather than just enough information to determine if a juror can be fair and impartial. Questions about mental illness, substance abuse, extramarital affairs, job and salary history, or past run-ins with the law may be shrugged off by some potential jurors but shocking to others. Many jurors may be understandably concerned about who will get their personal information or will have access to court records. Any juror questionnaires should be collected at the end of the selection process and the procedures for assuring juror privacy should be explained.

Basic, commonsense recommendations include reducing waiting time, providing comfortable accommodations, and endeavoring to treat prospective jurors with the kind of respect the court pays lip service to when intoning the sacred civic duty to uphold our system of justice.

*Maintain control of the courtroom and trial process.* When people are under pressure in an unfamiliar environment, they want the grownups to be in charge. Jurors report that much of their stress occurs when they perceive the judge as losing control of the courtroom. Intimidating, bickering, or grandstanding attorneys should be reined in, and TV cameras should be removed if they interfere with the trial process. Loud or obtrusive witnesses or courtroom audience members should be quieted or ejected. Taking control doesn't mean being a tyrant; judges should always be civil with attorneys, jurors, and witnesses, but they should make it clear that they will tolerate no breaches of procedure or decorum in their courtroom. Control also means keeping the trial process humming along so things don't bog down; ironically, boredom is often as much a threat to juror concentration as overstimulation. Finally, in high-profile cases, jurors should be given some guidance on how to deal with the media.

*Modulate the presentation of disturbing evidence and testimony.* As noted above, viewing grisly evidence or listening to emotionally disturbing testimony is reported by many jurors as being among the most stressful aspects of their service. Although gruesome evidence is typically associated with criminal trials, civil trials involving claims of negligent injury or medical malpractice often contain their share of hideous material. I recall testifying in one civil case where the plaintiff's claim of developing PTSD after seeing a loved one killed in a traffic accident was bolstered by full-color accident scene photos detailing what the speeding vehicle had done to the victim's head and body. Again, the purpose of preparing juries for disturbing testimony is not necessarily to lessen the import of the criminal or civilly negligent act, or to bias their view of the evidence in any way, but simply to alert them that such potentially disturbing material is coming. Indeed, juries who are shocked and overwhelmed by blatantly violent or pornographic material may be less capable of rendering a fair decision.

*Allow greater juror participation in the trial process.* Under traditional trial procedures, jurors are expected to play a passive role, quietly listening and absorbing the presented evidence and testimony in preparation for their deliberations. Recalling the point made at the beginning of this article, in no other field – medicine, law enforcement, emergency services, business and industry, government, the military – are critical decisions made in the context of deliberate restriction of relevant information. While certain aspects of a legal trial are

unique, such as the importance of controlling bias, research on juror decision making increasingly shows that this passive role – no note-taking allowed, no questions asked by the jury – is unnatural and uncomfortable for most jurors, hindering their ability to remain objective, to concentrate on evidence and testimony, and to integrate new, unfamiliar material; just imagine trying to pass a high school or college course under these conditions. Conversely, studies show that juror comprehension and satisfaction are increased if jurors are allowed a more active role in trials (Cooper et al., 1996; Dann, 1993; Heuer & Penrod, 1994; Rosehan, 1994).

Accordingly, many courts are now permitting limited note-taking by jurors and the asking of limited questions. The latter usually takes the form of having the juror write the query on a piece of paper which is then passed to the judge for review. If he or she determines that it is an appropriate question, the judge will then read it to the witness (or sometimes have the bailiff or court reporter read it). In my experience, this has almost always occurred in the context of expert witness testimony, where the jury has a legitimate question concerning some technical matter that the expert has just expounded upon. Given that jury verdicts may well be determined by their understanding of such complex material, anything that will increase their understanding should well serve the purposes of a fair and just verdict.

*Facilitate jury deliberations.* Arguably, the jury deliberation process is the most critical aspect of juror activity in the trial because it is here that the fate of the stakeholders is decided. Most jurors rank the process of deciding on a verdict and the fear of making a mistake among the top sources of stress in their trials. One problem often cited is their lack of a clear understanding of the judge's jury instructions, and research has demonstrated generally low comprehension of juror instructions in general (Greene & Bornstein, 2000; Steele & Thornburg, 1991). Accordingly, it is crucial for judges to ascertain that their juries understand the relevant instructions.

After days of listening to complex, confusing, disturbing, and/or boring testimony, just throwing a group of strangers into a room and expecting them to arrive at a just decision may be more a reflection of naive optimism than reality. The conduct of jury deliberations can range from polite and civil to something resembling a dog fight. Most jurors report that they would have liked some guidelines for their deliberations. Especially in tense criminal trials or where jurors are having difficulty getting along, judges should be prepared to

provide some guidelines for cooperative and collaborative deliberation, such as listening to one another's points without interruption, disagreeing respectfully, and not taking arguments about the case personally. Business people take hours of courses and training seminars on decision-making processes, conflict resolution strategies, and how to conduct productive meetings (Miller, 2008d) – shouldn't juries be given some guidance on this as well? If jury sequestration is a possibility in this trial, prepare jurors for this in advance, from the outset of jury selection.

### *Clinical Measures*

The following recommendations entail more of an interface between judicial and mental health professionals in terms of providing specific interventions to help jurors cope with stress. There are some things that judges and court personnel can do; other approaches require the direct or consultative role of a qualified mental health professional (Antonio, 2006; Bienen, 1993; Bornstein et al., 2005; Casey, 1998; Dabs, 1992; McAree, 2004; Miller et al., 2007).

*Pre-trial interventions.* This is the proactive aspect of juror stress management. The purpose of pre-trial interventions is to prepare jurors ahead of time for the stress they may experience during the course of a trial. These measures include informal discussions or prepared educational modules about the potential effects of stress, how to recognize symptoms, and how to utilize a range of coping techniques. The techniques themselves are familiar from stress management applications in other fields, such as law enforcement and emergency services (Miller, 2008a, 2008b).

*Juror stress debriefing.* Sometimes it may not be clear how stressful a trial has been until it has ended, at which time appropriate follow-up mental health services may be required (Goleman, 1991). Although court-sponsored services for crime victims exist in all 50 states (Miller, 2008c) and psychological services for law enforcement have existed in most jurisdictions for decades (Miller, 2006b), prior to 1990 there were few institutionalized programs through the courts for providing any kind of mental health services for jurors (McAree, 2004). Following several highly-publicized trials containing horrific evidence, including the Jeffrey Dahmer serial cannibalism trial, the trial of the Oklahoma City bombers, and the Pam Basu trial, in which a mother was dragged and mutilated during a carjacking, courts have begun offering psychological services to jurors (Bell & Feldman, 1992:

Feldman & Bell, 1991, 1993; Hafemeister, 1993; Hafemeister & Ventis, 1992), largely in the form of one or more clinical varieties of *critical incident stress debriefing* (CISD) approaches, part of the larger domain of *critical incident stress management* (CISM), familiar to most readers of this journal (Everly & Mitchell, 1997; Miller, 1998c, 1999; Mitchell & Everly, 2003).

Developed in the field of public safety and emergency services, the debriefing model has now been applied to a wide range of crises, including crime victimization, natural disasters, and victims of terrorism (Miller, 1998c, 2008c). As developed in the emergency services field, CISD debriefing is a peer-led, clinician-guided process, usually consisting of one or more mental health professionals and one or more peer debriefers, i.e. fellow police officers, firefighters, paramedics, or crisis clinicians who have been trained in the CISD process and who may have been through critical incidents and debriefings in their own careers. The purpose of the debriefing is to normalize and detoxify the immediate traumatic stress reactions being experienced by the subjects and to strengthen resistance to further psychological disability. This is done through a semiformal seven-stage process, including the introduction, fact, thought, reaction, symptom, education, and reaction phases, designed to ease the process of ventilating distress, but then reseal psychological stability and encourage natural healing, aided, if necessary, by follow-up referral to additional mental health services.

Recent applications have expanded the use of CISD techniques with civilian groups. Bell & Feldman (1992) and Feldman & Bell (1991, 1993) developed a post-trial debriefing model specifically for jurors and other court personnel that is essentially similar to the crisis debriefings utilized for victims of crimes, natural disasters, or similar traumas. In general, effective debriefing sessions reduce stress, offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction.

As with most interventions, controversy exists. Bornstein and colleagues (2005) conducted a study that measured jurors' stress before and after a post-trial debriefing and found that, while jurors overwhelmingly said that they found the debriefing intervention helpful, their measured stress levels and symptom indices were similar at pre- and post-debriefing. Juror stress levels were lower at one month post-trial regardless of whether they had received the debriefing service or not. This, in fact, is an intriguing finding that runs through the stress debriefing efficacy literature:

participants frequently say it helps, but formal measurements of distress or symptoms remain unchanged (Arendt & Elklit, 2001).

As with stress debriefing in other contexts, a major part of the problem with using this intervention with jurors probably relates to the appropriateness of its application; mental health clinicians who advise the courts should guide court officials to use this technique only where it is legitimately needed (Casey, 1998). For example, for trials that involve relatively low levels of stress, jurors may need only general discharge instructions from the trial judge prior to being dismissed. In general, informal meetings with the trial judge can provide a sense of closure for the jurors. In more stressful trials, the judge may choose to hold a more lengthy discussion with the jurors or bring in a mental health professional to conduct a formal debriefing. This may be the case in particularly gruesome trials or those which attract a great deal of media attention. However, surveys indicate that some judges like to handle these sessions on their own, only rarely calling in a mental health professional (Bornstein et al., 2005; Casey, 1998; McAree, 2004). Other judges seem to recognize that this is out of their league and are only too happy to find a mental health professional who will take over – if there are any available who do this kind of work (Miller et al., 2007).

Some recommendations for optimizing the juror debriefing session (Bornstein et al., 2005; Miller et al., 2007) include:

- Consider the best time of day for the debriefing. The afternoon the trial ends may leave jurors feeling drained; all they want to do is go home. Set up a separate day for the session, perhaps giving jurors a few days to recoup.
- Make the jurors feel comfortable. Debriefing should be voluntary and there should be no stigma attached. Nothing that goes on in the session should be on the record – the trial is over; this is solely for the jurors' well-being.
- Unlike public safety professionals, jurors may not quite know how to proceed, so prime the conversational pump to get people talking, but maintain control over the discussion, so that it helps, not hurts. Encourage productive venting, not unhealthy spewing or accusing. Keep the focus on the positive.
- Positive focus includes normalizing juror stress. This should be conceptualized as a normal reaction by

normal people to an abnormally challenging situation. Reassure the jurors that they did their best at a difficult job in making a crucial decision.

- Cover any lingering questions jurors may have. Address concerns about safety and fears of retribution. Help jurors deal with the media. Seek juror feedback as to how things could be improved in the future so that they feel part of the solution.

In cases where the judge suspects that jurors are experiencing significant stress or showing symptoms of a serious mental disorder, they can refer the juror to a qualified mental health professional for more individualized counseling -- again, courts should be proactive in identifying clinicians in the community who can serve as resources for these services.

*Combined interventions.* One criticism that has been leveled against debriefing-type interventions is that their standard, one-size-fits-all format lacks the flexibility to deal with diverse types of people and problems. While the CISM model continues to expand and adapt to new challenges, Nordgren & Thelen (1999) have developed a multifaceted intervention program they call *Graduated Jury Stress Management* (GJSM) which contains five intervention levels that are administered according to the stress level of the individual juror. Although GJSM is designed to be a post-trial intervention, some aspects of it (i.e. written instructions) could also be adapted as a pre-trial intervention:

- *Level 1: Basic Information.* Jurors who have not yet evinced any problems simply receive written educational materials about stress reactions and potential coping strategies.
- *Level 2: Stress Management Instruction.* This applies to jurors with mild stress levels. The judge individually gives these jurors basic stress management information along with the standard post-trial discharge instructions.
- *Level 3: "Flexible Defusing."* Jurors with moderate stress receive a 15-20 minute debriefing during which a mental health professional explains normal stress reactions, offers coping strategies, and assesses individual jurors to determine if further clinical services are necessary.
- *Level 4: "Jury Stress Debriefing."* This intervention is adapted from the CISD model commonly utilized

with emergency workers and is applied to jurors who are showing significant levels of stress.

- *Level 5: Individual Psychotherapy.* This may range from a few sessions to ongoing treatment and is intended for jurors who are showing extreme stress reactions and/or clinical symptoms of a mental disorder. Not uncommonly, these may have been jurors who had difficulties in functioning prior to the trial and the trial stresses have exacerbated their preexisting or dormant psychopathology.

Clearly, Nordgren & Thelen's GJSM (1999) appears to formalize the stages of intervention that most clinicians would apply to the treatment of traumatic stress cases. But, as effective as these proactive and responsive clinical measures might be, and as best we may try to make procedural changes within the existing American jury system, perhaps real efforts to increase accuracy and efficiency and reduce stress within the jury system can only come when more fundamental changes are considered.

## Conclusions and Recommendations

Based on a review of the literature and my own clinical and forensic experience, the following recommendations for improving the civil and criminal justice systems in the United States are offered.

*Let judges judge.* Just as we maintain strict training and credentialing criteria for authorizing people to call themselves doctors and attorneys and to practice medicine and law, we should do the same for those who practice jurisprudence; we should let the judges judge. Many countries already do this. In some court divisions, such as family court, judges, not juries, often decide cases. In many other cases, defendants have the option of waiving a jury trial and opting for a *bench trial*, which is having the judge hear the case and render a verdict.

*Utilize professional jurors.* Okay, even doctors have assistants to perform routine clinical tasks and lawyers use paralegals for similar purposes because there just aren't enough physicians and attorneys to go around. But these paraprofessional staff still receive some degree of training and certification to do what they do. So why not recruit reasonably intelligent and educated citizens on a voluntary basis, provide them with specialized training in the law, decision-making, and interpersonal skills, and credential them as *Certified Jurors* or some such appellation.

There could even be board-certified subspecialties within the Certified Juror field, such as "certified medical juror," "certified mental health juror," "certified business-economics juror," "certified industrial-mechanics juror," and so on. The next step would be to compensate them for their service (just as medical assistants and paralegals get paid a fair wage) and utilize them as part of a rotating pool of professional jurors who can objectively decide cases with a basic prerequisite of knowledge and training both in the law and in the subject matter of the case.

Meanwhile, professionals within the legal system, and the mental health clinicians who advise them, must strive to make jury service as efficient, accurate, and comfortable as possible. Whether in the emergency room or the courtroom, people's lives are at stake, in one way or another. We must assure that those who are called to make the crucial decisions are afforded the proper conditions to do so in a manner that serves justice.

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## Vicarious Traumatization as a Consequence of Jury Service

NOELLE ROBERTSON, GRAHAM DAVIES and  
 ALICE NETTLEINGHAM

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**Abstract:** Recent research on post-traumatic stress disorder (PTSD) has highlighted the adverse consequences of trauma, not just for victims, but also for those who interact with them: vicarious traumatization. British citizens are required to sit on juries, where they may be exposed to gruesome exhibits and harrowing testimony. Can such experiences also lead to vicarious traumatization? Previous studies have demonstrated that some jurors do suffer both short- and longer-term trauma from jury service, both from hearing evidence and deliberation in the jury room. A first exploratory survey of British jurors confirms that a minority of jurors are so affected. The article calls for modifications to the current arbitrary allocation of jurors and for greater provision of information and guidance to minimise the negative consequences of an essential civic duty.

**Keywords:** juries; stress; vicarious traumatization

To serve as a member of a jury is considered a civic duty, not only in Britain, but also in the United States and most Commonwealth countries (Vidmar 2000; Kaplan and Martin 2006). In England and Wales, following the Criminal Justice Act 2003, almost all citizens aged between the ages of 18 and 69 years are now eligible for jury service (the exceptions being those with serious mental health problems or significant criminal records). On average, some 390,000 citizens serve on juries each year, selected at random from those on the electoral role (Jury Central Summoning Bureau 2007). Once at court, all prospective jurors are shown a film briefly outlining their duties and allocation of jurors to particular trials is arbitrary. Some jurors will be selected to serve on cases involving crimes against the person and will be exposed to testimony from visibly distressed victims, which will frequently be graphic and shocking. They will be expected to handle exhibits and examine explicit and gruesome photographs. When they return to the jury room, they will have to rehearse such evidence and weigh up its significance for the guilt of the accused before reaching a verdict. They may find themselves in a minority on the jury, trying to change the minds of others while resisting pressures to conform to the

majority view. All these processes have the potential to lead to significant distress, both in the short and longer term, for the jurors concerned. Yet, despite its time-honoured tradition, little research has been conducted to date on the impact of jury service on jurors' mental health and well-being. This article reports a first exploratory study on the stresses experienced by jurors in England and Wales and raises the question as to whether current procedures could have serious long-term consequences for at least a minority of vulnerable citizens.

### Research on the Impact of Stress and Trauma

In recent years, considerable research has been directed toward understanding the consequences of traumatic experience for an individual's mental health (Ozer *et al.* 2003). Experiences yielding traumatic consequences include events with a direct threat to the person involved, such as sexual or physical assaults, and responses to disasters, both natural (the Boxing-Day Tsunami) and man-made (road traffic accidents; the King's Cross Fire). Most information, however, has been derived from studies of veterans of active military service; indeed, it was as a direct result of such research on US survivors of the Vietnam conflict that the condition of post-traumatic stress disorder (PTSD) was formally recognised and defined in the psychiatric literature.

Symptoms shown by patients diagnosed with PTSD can include excessive arousal and irritability, behaviours to avoid reminders of traumatic material, emotional numbing, and impaired memory for the original events, which nonetheless intrude into consciousness as 'flashbacks', with all the vividness and intensity of the original experience (DSM-IV-TR 2004). A more recent development has been the recognition that traumatisation is not confined solely to the victims of overwhelming events: it can also affect those endeavouring to help them. Professionals such as the police, emergency services and medical personnel called to the scene, even the therapists who treat the victims and must empathise with the intensely distressing accounts offered by survivors, may all develop PTSD symptoms: so-called vicarious traumatisation (McCann and Pearlman 1990). The question arises as to whether jurors, too, can suffer such vicarious traumatisation through exposure to and empathy with victim accounts and gruesome evidence at trial. It can be argued that only in long and complex trials is their immersion likely to be prolonged, but the material with which they must grapple will often be shocking and vivid and may have relevance to their own experiences. Some support for this view comes from the limited previous studies which have explored juror stress.

### Individual Juror Reactions: Jury Debriefing

Reports on the impact of stress on individual jurors have figured in many articles in the media (for example, Woolcock 2007; McAree 2004; Trafford and White 2003; Davies 2005) and at least one television programme. In *Juror* (BBC Television 1997), ordinary people involved in jury service in

high-profile trials that she had turned person' but after the front door'. Another exposed: stuck in that their experience they appreciate when prohibitions on speech been impressed upon were given clear instructions to talk to anybody, but

These anecdotes collected by psychologists discuss with jurors has been an issue. 'critical incident stress personnel after employed in the Rosemary West case the trial (Lloyd-Bell

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high-profile trials reflected on its impact on their lives. 'Jenny' reported that she had turned up at the court 'a happy, confident level-headed person' but after ten days of the trial, she was 'too frightened to open her front door'. Another juror reported: 'we all felt terribly vulnerable and exposed: stuck in a nightmare we could not get out of'. Other jurors felt that their experiences and reactions were not understood: 'I don't think they appreciate what it costs an ordinary person to do their civic duty'. The prohibitions on speaking to others embodied in the Law of Contempt had been impressed upon them and this served to increase their isolation: 'We were given clear instructions not to talk to anyone. I wanted desperately to talk to anybody, but I couldn't, not even my husband'.

These anecdotal reports are supported by more systematic accounts collected by psychologists and psychiatrists who have been called in to discuss with jurors their experiences and feelings after trials in which stress has been an issue. Such 'juror debriefing' is modelled on the controversial 'critical incident stress debriefing' sometimes offered to emergency service personnel after major incidents. Such debriefing for jurors is widely employed in the US, but rarely in the UK, although the jury in the Rosemary West serial murder case were offered counselling at the end of the trial (Lloyd-Bostock and Thomas 1999).

Feldmann and Bell (1993) were recruited to debrief the jury following the sensational trial of serial killer, Jeffrey Dahmer. Among symptoms reported by all jurors were sleep disturbances, intrusive thoughts, restlessness and agitation. Jurors attributed these symptoms to the graphic evidence to which they had been exposed, their lack of knowledge of legal procedure, and the insensitive and patronising way in which they were treated by the officers of the court and expert witnesses. Jurors reported that their difficulties were not exclusive to the evidence and exhibits, but also extended to the decision-making process (see also Feldmann and Bell 1991; Bell and Feldmann 1992). Kaplan and Winget (1992) interviewed 40 jurors who had deliberated in four high-profile trials including two murder cases. No fewer than 27 jurors reported stress-related symptoms including depression, sexual problems, headaches, eating disorders and somatic complaints: gastro-intestinal distress being the most frequently cited (ten jurors). Some seven jurors became physically ill during the course of the proceedings and at least one fulfilled DSM-IV criteria for a diagnosis of PTSD.

Clearly, these were high-profile trials, frequently featuring crimes involving extreme violence, where there was sufficient official concern over their impact on individual jurors to warrant professional intervention. While the long-term benefits of juror debriefing remain a matter of controversy (for example, Figley 1995), these studies provide ample evidence that jurors in these trials suffered significant amounts of stress and on occasion, longer-term trauma. However, it can be argued that such cases provide a poor guide as to the likely experiences of the average juror in a typical trial. For a more representative picture, it is necessary to look at surveys conducted on jurors in a wider range of cases, involving both person-centred and property offences.

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### Systematic Surveys of Perceived Levels of Juror Stress

Most of the published survey studies have been conducted with American jurors. In a pioneering study, Shuman, Hamilton and Daley (1994) secured questionnaires from 152 individuals who had served on juries in the Dallas area. Respondents had served on what were defined as traumatic (for example, murder; kidnapping; aggravated sexual assault) and non-traumatic trials (for example, burglary; credit card fraud; drug possession). They provided self-ratings of stress as a consequence of jury service, in addition to background information relating to the trial and themselves, including any pre-existing medical conditions to control for levels of pre-trial stress. Participants who had sat on trials classified as traumatic reported nearly three times as many PTSD-related symptoms as those in non-traumatic trials and overall, women reported significantly more symptoms than did men, but the symptoms persisted longer amongst the men. Deliberation emerged as a particular source of stress for all jurors with the effects being more persistent than for other stressors, such as shocking visual material. A later study by Bornstein *et al.* (2005) underlined the significance of deliberation as a source of stress, both at trial and post-trial as well as examining the impact of professional post-trial debriefing. Whilst the interventions were well received by jurors at the time, they had no noticeable impact on the severity of symptoms at a one-month follow-up, consistent with other evidence noting only transitory effects of debriefing (Arendt and Elklit 2001).

In the most comprehensive study of stress in American jurors, conducted by the National Center for State Courts (NCSC) (1998), judicial opinion was surveyed as well as the views of 401 jurors involved in diverse cases across six jurisdictions. Jurors completed three questionnaires. The *Jury Duty Survey* was modelled on the *Impact of Events Scale* routinely used in PTSD research (Horowitz, Wilner and Alvarez 1979) and required jurors to give a yes/no response to a series of statements covering jury service (for example, 'I look back on my jury with fondness'). The *Jury Environment Scale* covered various aspects of jury duty, including interactions with judges, court officials and fellow jurors. The *Jury Duty Stress Scale* required jurors to rate some 50 potential sources of stress at trial (for example, receiving summons; grisly evidence; media coverage) on a five-point scale; judges, too, completed this scale. In addition, judges were asked to recall their most recent trial where juror stress was an issue, to describe how they detected it and what, if anything, they did to minimise the problem.

The NCSC found that jurors involved in all types of trial reported significant amounts of stress. The highest numbers of respondents reported stress in cases concerning offences against the person, with murder trials involving a decision on the death penalty producing the highest of all (86%). Reported stress increased with length of trial, reaching 92% for cases which lasted for over eleven days. A common response of those under stress was to speak to others regarding their experiences, a reaction also noted in a smaller-scale study of US jurors by Kelley (1994). In general, jurors attributed higher levels of stress to their fellow jurors

than they did to themselves were rated the most distress aspects of the evidence.

This picture of widespread concerns may be contrasted with whom could not recall a sin; been an issue. Over 90% of suffered as a consequence of their duty to minimise and identify the widespread process and instead, single principal cause.

It would be unwise to generalise American juries differ from on a wide variety of dimensions selected (the availability of procedure); the rules on using the death penalty in many states are not bound what questions can be asked

Two studies on juror stress New Zealand underscore the concerns in different jurisdictions. (2004) involved some 80 juror advertisements in Vancouver and an adapted version of in response to different aspects of study: deliberative process seven of the top ten concerns. Levels of stress reported were in the US study and 11.3% consistent with PTSD. Choj to the lack of opportunity to However, the method of disproportionate number disclose.

A government-sponsored study by Cameron and Tinsley 1999 probe negative as well as participants in the sample had found the experience tired and exhausted, which the evidence during the day some respondents reported trial: deliberation again fear intimidation from the accused own personal experiences a jurors is available in New Zealand.

### as of Juror Stress

conducted with American and Daley (1994) secured ved on juries in the Dallas defined as traumatic (for sexual assault) and non-d fraud; drug possession). uence of jury service, in the trial and themselves, control for levels of pre-s classified as traumatic ed symptoms as those in orted significantly more isted longer amongst the ce of stress for all jurors other stressors, such as n *et al.* (2005) underlined ss, both at trial and post-nal post-trial debriefing. rors at the time, they had s at a one-month follow-sitory effects of debriefing

ss in American jurors, s (NCSC) (1998), judicial rors involved in diverse tree questionnaires. The us Scale routinely used in 179) and required jurors covering jury service (for ). The *Jury Environment* uding interactions with *Duty Stress Scale* required ss at trial (for example, ge) on a five-point scale; ges were asked to recall ue, to describe how they imise the problem.

types of trial reported mbers of respondents ainst the person, with penalty producing the length of trial, reaching A common response of ng their experiences, a rors by Kelley (1994). s to their fellow jurors

than they did to themselves. Again, jury discussions and reaching a verdict were rated the most distressing aspects of the trial, more so than harrowing aspects of the evidence.

This picture of widespread concern among jurors over their experiences may be contrasted with the perceptions of the judges, some 30% of whom could not recall a single trial in the preceding year where stress had been an issue. Over 90% of judges believed that fewer than 10% of jurors suffered as a consequence of jury service, but did acknowledge that it was their duty to minimise distress where it occurred. However, they failed to identify the widespread concern among jurors over the deliberative process and instead, singled out type of trial (child abuse; murder) as the principal cause.

It would be unwise to generalise these US findings to juries as a whole. American juries differ from those in the UK and Commonwealth countries on a wide variety of dimensions: for instance, means by which jurors are selected (the availability of peremptory challenge through the Voir Dire procedure); the rules on unanimity and their particular role in determining the death penalty in those states where capital punishment persists (Kaplan and Martin 2006). Once a trial is completed, American jurors in many states are not bound by the rules of confidentiality which constrain what questions can be asked by researchers regarding their experiences.

Two studies on juror stress which have been conducted in Canada and New Zealand underscore the differences as well as the similarities in juror concerns in different judiciaries. An unpublished dissertation by Chopra (2004) involved some 80 jurors who were solicited through newspaper advertisement in Vancouver and who completed the *Jury Duties Stress Scale* and an adapted version of the *Impact of Events Scale*. Patterns of stress in response to different aspects of the proceedings paralleled the NCSC study: deliberative processes generally received high ratings. Indeed, seven of the top ten concerns focused on aspects of group decision making. Levels of stress reported were generally much higher in the Canadian than in the US study and 11.3% of jurors reported a cluster of symptoms consistent with PTSD. Chopra attributes the higher reported stress levels to the lack of opportunity for Canadian jurors to discuss their experiences. However, the method of soliciting the sample may have attracted a disproportionate number of jurors who had negative experiences to disclose.

A government-sponsored study of New Zealand jurors (Young, Cameron and Tinsley 1999) included a number of questions designed to probe negative as well as positive aspects of jury service. While 82% of the sample had found the experience worthwhile, some 23% reported feeling tired and exhausted, which they attributed to the need to concentrate on the evidence during the day and loss of sleep at night. As in the US studies, some respondents reported symptoms of stress both during and after the trial: deliberation again figured as a difficulty, along with concern over intimidation from the accused and their associates, and links between their own personal experiences and aspects of the trial evidence. Counselling for jurors is available in New Zealand, but was rarely taken up.

Surprisingly then, no robust study has been undertaken to examine stress experienced by jurors in England, perhaps because of the prohibitions on questioning jurors embodied in Section 8 of the Contempt of Court Act 1981. A major study of the English jury undertaken for the Home Office (Matthews, Hancock and Briggs 2004) was careful to avoid any questions which might be construed as violating the provisions of the Act, but did include a question on juror stress. Matthews, Hancock and Briggs reported that 20% of women and 16% of men had suffered significant stress, with concerns highest among jurors in their 20s and lowest in those aged over 60 years. As in the North American studies, decision-making processes emerged as the greatest source of concern. The authors acknowledged stress as a significant issue, recommending that concerned jurors should have routine access to counselling services.

The current exploratory study examined the levels of stress among jurors serving in the English legal system. It used a novel technique for recruiting a sample of jurors – a web-based questionnaire – but like earlier research it attempted to establish the extent of distress, trauma symptoms and perceived sources of strain reported, in this study, by a representative sample of English jurors. Using and tailoring a range of measures which have been developed and validated in earlier studies, it aimed to compare and contrast the experiences of English jurors with those from other jurisdictions with rather different rules and conventions regarding the selection, duties and conduct of jurors.

#### The Leicester Study

The web-based questionnaire was compiled with each respondent requested to complete it in its totality. It covered the following:

- (i) *Personal information*, including age, gender, ethnicity, educational level and employment status.
- (ii) *Information about the trial* for which they had served as a juror, including the length of trial, time since participating and the nature of the charges against the defendant.
- (iii) A measure of *Trait Anxiety* derived from the *State-Trait Anxiety Inventory* (Spielberger, Gorsuch and Lushene 1970) consisting of a series of statements, such as: 'I am comfortable; tense; relaxed', for each of which participants were required to rate themselves, using a four-point Likert scale.
- (iv) A *Prior Trauma* questionnaire which invited participants to volunteer any personal history of direct experience of a range of traumatic events (for example: sexual assault/abuse; a major fire).
- (v) A *Trauma Symptoms Check List* (Briere and Runtz 1989) examining whether the juror had experienced any of a range of somatic symptoms (such as headaches, insomnia or weight loss) during and subsequent to the trial.
- (vi) The *Jury Duty Stress Scale* (National Center for State Courts 1998) adapted for use in England. This asked jurors to rate 44 different facets of jury service (for example, disturbing grisly evidence; jury deliberation and

discussion) on a five-point scale (1 = 'not at all stressful' to 5 = 'extremely stressful').

(vii) A measure of *Psychiatric Trauma* requested to consider including: 'Have you or your family had trouble recalling any of the events of the trial?' (nine positive responses).

(viii) A *Jury Deliberation* comment on aspects of a long-term group a

A pilot study revealed that 30 and 45 minutes to be spent by two senior legal academics on the Contempt of Court Act 1981, to ensure compliance with the Act. All questionnaires were carefully reviewed to ensure that identification of either party was not possible for all the clinical measures. Cronbach's alpha: coefficient reliability.

In order to generate a press release which could be a sign of service to the public, studies in the UK and Wales were featured prominently. Wales fully completed which it was available.

#### Characteristics

The respondents consisted of 100 UK and all with jury experience with a mean age of 42 years. 75% were of white ethnicity in some form of public service, just over half (56%) were

The great majority were from one to 25 months of jury service, lasting three days or more. They reported that 75% of the most frequent, including arson, vandalism and guilty verdict.

discussion) on a five-point Likert scale from 'not at all stressful' to 'extremely stressful'.

(vii) A measure of post-traumatic stress disorder derived from the *Mini International Psychiatric Interview* (Sheehan *et al.* 1998). Respondents were requested to consider their jury service and to respond to 15 questions, including: 'Have you noticed that your feelings are numbed?' and 'Have you had trouble recalling some important part of what happened?' A score of nine positive responses or more predicts the presence of PTSD.

(viii) A *Jury Deliberation Questionnaire* for which jurors were invited to comment on aspects of the jury process including the impact of being part of a long-term group and the role of foreman, where appropriate.

A pilot study revealed that the on-line questionnaire took typically between 30 and 45 minutes to complete. The questionnaire was also scrutinised by two senior legal academics with a working knowledge of the Contempt of Court Act 1981, to ensure that none of the content infringed the terms of the Act. All questionnaires were submitted on an anonymous basis and care was taken not to elicit information which might have led to the identification of either the juror or the trial on which they sat. Responses for all the clinical measures were assessed for internal consistency using Cronbach's alpha: coefficients ranging from 0.77 to 0.93, indicating robust reliability.

In order to generate interest in completion of the on-line questionnaire, a press release was produced, raising the general issue of whether jury service could be a significant source of stress and emphasising the lack of such studies in the UK. This generated considerable publicity in both the local and national media in which the web-address of the questionnaire featured prominently. In the event, some 64 jurors based in England and Wales fully completed the questionnaire during the four-month period in which it was available on the web.

#### Characteristics of the On-line Sample

The respondents consisted of 26 males and 38 females, all resident in the UK and all with jury experience. They ranged in age from 18 to 67 years with a mean age of 36.09 years (SD = 12.45 years) and 89% described themselves as of white British nationality. A high proportion (61%) worked in some form of public service and only 10% were retired or unemployed; just over half (56%) were married or cohabiting.

The great majority of participants (95%) had served on criminal trials, while the remainder sat on civil matters, and their jury experience dated from one to 25 months previously. Some 55% had been involved in trials lasting three days or less, but 22% sat on cases which lasted six or more days. They reported that 59% of the trials involved crimes against the person, of which allegations of rape, theft and grievous bodily harm were the most frequent; the remainder sat on trials involving property crimes, including arson, vandalism and burglary. In all, 54% of trials ended with a guilty verdict.

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### Reported Stress and Jury Service

On the adapted version of the *Impact of Events Scale*, participants scored an average of 14.94 (SD = 16.41) which fell below clinical significance for the sample as a whole. However, 23% (n = 15) showed scores indicative of moderate to severe stress and 13% (n = 8), all female, scored above the cut-off point for severe clinical stress. Some 13 respondents acted as foremen: this role was generally associated with elevated stress levels, with four respondents reporting this as 'quite a bit' or 'extremely' stressful.

Female jurors experienced higher levels of stress than males,  $t(62) = 2.53, p < 0.01$ , and females who sat on a case relevant to a past trauma in their own lives reported particularly elevated levels,  $t(62) = 2.37, p < 0.02$ . Trials involving crimes against the person produced higher levels of stress than property crime,  $t(62) = 2.56, p < 0.01$ . The effects of levels of trait anxiety,  $t(62) = 1.67, p < 0.10$ , and prior juror experience,  $t(62) = 1.70, p < 0.10$ , approached significance in predicting an elevation and lowering respectively of stress levels, but age, education and professional background were not significant predictors. There was also a trend for jurors involved in longer trials to report higher levels of stress, but the difference did not reach significance due to inter-participant variability,  $F(2,61) = 1.80, ns$ .

Responses from the *Trauma Symptoms Check List* indicated that jurors experienced a range of symptoms of distress during and after the trial, of which restless sleep (22% during; 8% after); sadness (17% during; 6% after); feeling isolated (14% during; 3% after); headaches (13% during; 3% after); waking at night (11% during; 5% after); flashbacks (11% during; 5% after) and feeling tense all the time (11% during; 5% after) were the most common.

As to the particular sources of stress, the findings from the *Jury Duty Stress Scale* indicated that among the ten most frequently reported sources of stress (see *Table 1*), those relating to jury decision making were the most prominent, though listening to disturbing evidence and being sequestered for the entire trial were also significant sources of concern. There were also significant gender differences on some items: female jurors were more likely than males to highlight being distressed by dissension or differences among jurors,  $t(58) = 2.25, p < 0.03$ ; answering questions in front of other people  $t(61) = 2.78, p < 0.01$ , or disturbing or grisly evidence  $t(33) = 2.69, p < 0.01$ .

As regards longer-term effects associated with PTSD, responses to the *Mini International Psychiatric Interview* indicated that 23% (seven male and eight female) of jurors reported having experienced, witnessed or had to deal with traumatic events in the course of their trial and 5% (three persons) reported that they had responded with intense fear, helplessness or horror. Principal symptoms reported were difficulty with sleeping (17%, n = 11) and concentration (19%, n = 12) and overall, one juror out of the total sample fulfilled the criteria for current PTSD with a score of 9.

#### Source of stress

Deciding on a verdict  
Fear of making a mistake  
Reaching a majority not unani  
Jury discussion and deliberatio  
Being in a minority position in  
Dissensions/differences among  
Sentencing a criminal defendau  
Answering questions in front o  
Disturbing/grisly evidence  
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These results from this fi jury service can be a sig minority, can engender t the longer term, lead to : crimes against the person those involving property vulnerable than men, e traumatic event that has t stress, those most wide: decision-making phases evidence was also highlig so for women, who also : and answering questions

Inevitably, caution r conclusions from a relativ but many of the findir other judiciaries. Studies crimes against the perso: for State Courts 1998; St the deliberative phase : trials (Bornstein *et al.* 20 within the jury populat were somewhat lower t though still substantial fi in extrapolating the figur as a whole, given the nonetheless, they confir and for a small minority



There is nothing in the current findings to suggest that jurors drawn from the general population should not, in principle, continue to play a valuable and essential role in Crown Court trials. Some moderate level of stress is inherent in the legal process, whether as defendant, witness or juror. Much has been done in recent years to provide additional support for witnesses, through the Witness Support organisation and improved facilities (Criminal Justice System 2008). There is much that could be done to improve support for jurors: more extensive preparation and briefing and such simple courtesies as clear directions and an assured parking space, something which is routine in many American judiciaries (for example, Floyd County 2008), but not elsewhere. Currently, those jurors who are troubled by their experiences have little external support: the law, for good legal reasons, precludes jurors from discussing their thoughts and feelings with others, even their loved ones, both during and after a trial. As Chopra (1994) and others have emphasised, this can only increase the sense of isolation experienced by the juror outside the jury room: one of the ten most often cited stressors for the Leicester sample. Undue levels of distress among jurors can also impair the effectiveness of decision making and thus undermine the whole rationale of the citizen juror (Flin *et al.* 1997). The availability at Crown Court Centres of a supporter for jurors, similar to the supporters now available for vulnerable witnesses, could play a useful role in being able to discuss the experiences with troubled jurors under the privileges engendered by a shared and binding legal oath.

The current study has replicated earlier findings from other judiciaries in finding that for a small minority of citizens, jury service may be a significant danger to their mental health. In particular, this study has highlighted the greatly increased levels of stress experienced by women who sit on trials where the events are relevant to their personal history. Currently, persons are allocated by lot to juries; a simple questionnaire focusing on past experiences would be sufficient to eliminate vulnerable jurors from potentially traumatic trials, to the benefit of the criminal justice system and the mental health of the individuals concerned. Finally, the current results replicate others in pointing to discussions and deliberations in the jury room as the single greatest source of stress for most jurors. There may be ways in which that stress can be mitigated without interfering with the independence and confidentiality of such deliberations, through the wider use of guidelines or decision heuristics as occurs in some Australian courts (Goodman-Delahanty and Tait 2006). Sadly, it is not possible to even begin to answer this question as long as social scientists in the UK are legally precluded from either talking to jurors about their experiences or observing juries at work.

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## How Well do Work?: Equity, Consistency and Fine Levels of Error

JOHN W. HODGSON  
*John Raine is Professor of Psychology at the University of  
Dunstan is Research Fellow*

*Abstract: This article considers sentencing consistency specifically in relation to the presented from research with (that is, equality of impact) in the relative seriousness of the between individual sentencing magistrates and district judges of structured fines sentencing developing a satisfactory method objectives of achieving equity findings was the prime imp accordingly the article considers design of guidelines on fine*

**Keywords:** sentencing consistency; equity; fine levels of error

The subject of sentencing discretion afforded to extensively covered in many years (see, for example, 1989, 1995; Hood 1995; et al. 2003; Wooldredge much of the research on disparities in relation to (for example, custody, and concern for sentencing

February 19, 2010

Representative Beth Kerttula  
State Capital  
Juneau, AK 99801

Dear Representative Kerttula:

I'm writing to extend my utmost support for your legislation – HB 52 - "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

As a juror on the 2003 Joshua Wade trial in Anchorage, I can attest to the need for counseling after a trial involving a heinous crime against an individual. Unlike prime time TV where crimes are committed, investigated and solved in 60 minutes, real life murder trials are gruesome, disturbing and in our case, debated in a court room over the course of nearly four months. Blood spatter patterns, rape, death by repeated blows to the head with a rock, torture, dehumanization – I would argue that these may be things judges, prosecutors, police officers, forensic specialists are trained and equipped to psychologically handle, but the average citizen called to jury duty is not.

At the conclusion of our trial, we were given specific instruction on how to process the evidence, on how to deliberate, on how to come to deliver a verdict according to the instruction presented by the court. We were not however, given any instruction on how we might move past the sound of the victim's mother wailing in the courtroom; of the pictures that we were shown day after day of a woman's raped and beaten body; of the testimony from expert witnesses stating that for blood to have traveled "x" feet from a body, it would have had to have been beaten with "y" severity.

Fortunately, I have a friend and colleague who does trauma counseling. At the conclusion of the Wade trial, this individual did one group counseling session (gratis) for all of us; she then saw me (again, gratis) for several other sessions so that I could further process, and move beyond the prior 4 months. Not all jurors will be as fortunate to have access to free services.

Thank you for your leadership in recognizing and addressing the needs of ordinary citizens who find themselves on an extraordinary jury. While it is our duty to serve, I believe that it is also the duty of the court to provide a means of support at the conclusion of a particularly heinous trial.

With thanks,

Anne M. Gore

Anne M. Gore • 9407 Mann Tree Drive • Anchorage AK 99507

Robert H. Edwardson  
3842 Killewich Drive  
Juneau, AK 99801  
March 1, 2009

The Honorable Beth Kerttula  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Kerttula:

Thank you for sponsoring *HB 52, "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."* Throughout my years of as an emergency responder and law enforcement professional, I have witnessed responder trauma caused by reactions to critical incidents. It is appropriate that jurors, as an important component of the law enforcement and judicial systems, become entitled to the same assistance enjoyed by other members of our law enforcement team.

Proper counseling prepares people for their normal reactions to abnormal events. It also provides tools to adapt to those reactions. Loss of sleep, reliving events and disruption of normal routines are just some of the examples of normal reactions to critical incidents that people may not intuitively understand. They may attribute their seemingly abnormal reactions weakness in their own character, or by misattributing their changed behavior to concurrent, yet unrelated events in their lives. Their normal coping skills may be ill prepared to help them, and may actually cause them to turn use mal-adaptive coping mechanisms such as self-medication, or withdrawal from their emotional support networks when they most need them. I can attest that some responders suffer negative life-altering changes by ignoring proper counseling.

Ultimately, the public benefit of providing counseling is the facilitation of jurors' orderly return to daily life, prepared to appropriately respond to their experience. And although they may remain forever changed by vicarious trauma, they will have the skill to properly deal with their reactions. Thank you for your efforts, you have my support.

Sincerely,

Robert (Rob) Edwardson,  
CWO2, USCG (Ret)  
CISM Basic, Peer and Advanced  
Lifelong Alaska Resident

February 24, 2010

Representative Beth Kerttula  
State Capitol  
Juneau, AK 99801

Dear Representative Kerttula:

I believe this is an important bill. As a social worker, I often work through very emotionally difficult situations and problems with clients. This can lead to professional grief, a topic social workers are familiar with and so often form support networks to help them process the challenges of the profession. There are times when I have been very shaken and traumatized by the work I do and I lean on the supports I have developed. However, jurors might not even be aware of the concept of professional grief and likely won't have the networks they need to process what they have been through. I think professional grief can be due to cumulative stress or one particularly stressful event. I think that not only should the counseling be offered, but that jurors participating in traumatic cases should also be advised that counseling should be considered, even if they don't think they will need it.

Professional grief can bring about responses that might not seem to be associated with the cause of the grief. In addition, professional grief often takes the form of hidden grief and is internalized and unexpressed. Individuals experiencing it might feel irritable, angry, anxious, helpless, or guilty without relating it to the experience. Jurors should be made aware of the possibility of professional grief and the importance of working through it.

Please let me know if you have any other questions. Thank you and good luck!

Jeannette Lacey Dunn, MSW

March 8, 2009

Alaska State Legislature  
State Capitol  
Juneau, AK 99801

RE: Support for House Bill 52

Members of the Legislature,

First, I would like to thank the legislature for considering House Bill 52, which will grant some form of counseling for Jurors in a criminal trial. My reason for requesting and supporting this legislation is because of my experiences as a juror on a murder trial. I know I am not the only one who feels this way. Details of the trial are still painful to recall, but if my remembering can help even one future juror begin healing far earlier than I did through this early counseling/intervention, then that may bring me another measure of peace; to know something good can come from something so completely gruesome.

I have lived in Alaska for over 15 years. It is a place of peace and great beauty. However three years ago I answered a jury summons and, suddenly, for two weeks, my mind was saturated with facts no person should have to carry around. It was like watching a horror movie for seven hours (or so) a day and not being allowed out of the theatre except to sleep and get ready for the next day's movie.

I learned in great detail how two men plotted to torture an innocent woman to death. A woman, who served her community, loved her family and had no idea what awaited her. I sat in the same room with the murderers and experienced and watched a level of emotion in that court room that was intense and overwhelming. It was slow torture for me. Every night I cried at home and felt so alone because I had taken an oath as a juror and could not share any details of the horrors I was hearing even with my closest friend and confidant, my husband. For two weeks I took it in. Each night was a challenge to sleep and each morning a test in determination to stay strong and walk into the court room.

What did I learn from my court experience? That there are many ways to break into a house; that breaking a person's neck is not as simple as they make it on television; that you can never be sure what another person's distorted view of you could be; that someone could be lying in wait for you to come home alone so as to abduct you and burn you alive.

I also learned you cannot imagine the challenges you will face as a juror on a criminal trial. That even though what you hear in court did not happen to you, knowing that it did happen to someone, seeing the parties involved and having them see you are more intense than you can expect. That getting over it and moving on is not as simple in practice as it is in theory for a juror.

When the trial was over I approached our Judge, for whom I have great respect as she was the only saving grace of this awful experience. I asked if there was any form of counseling or other resources available to help in transitioning out of this trial. She stated the court system does not provide for counseling or any other kind of support following a criminal trial.

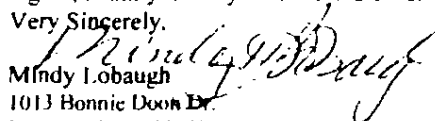
I asked her with tears in my eyes, how am I supposed to get all this out of my head? I feel like I have lived this event and I don't know what to do with it. I wanted my peaceful life back; I want to be able to feel the peace I had before the trial. She apologized and said there was nothing she can offer.

I believe if there had been some form of counseling available to provide jurors tools for processing and releasing the intense and graphic details of a criminal trial, then healing could have started a lot earlier for me and the people I served with. I tried to repress the experience. It wasn't until over a year later when the anxiety and stress became too overwhelming that I finally turned to counseling and was diagnosed with post traumatic stress disorder. Today, I am pleased to report, I have found better tools to help me move on and the beauty of Alaska has returned to my life.

As jurors we live through the details of these violent and disturbing trials essentially in silence. Trying very hard to rationalize and process what we're seeing and hearing. This has an impact... an impact on people such as what I am still dealing with today. I believe passing this bill is a very important step in supporting the jurors of violent trials and helping them find a path back to peace. I urge you to support House Bill 52 and the constituents who have or will serve on jury duty.

Again, thank you for your time and consideration.

Very Sincerely,

  
Mindy Lobaugh  
1013 Bonnie Duon Dr.  
Juneau, Alaska 99801

## Hannah McCarty

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**From:** Lina LePage [mishi@alaska.net]  
**Sent:** Thursday, February 25, 2010 7:33 PM  
**To:** Hannah McCarty  
**Subject:** [Fwd: Fw: HB 52]  
**Attachments:** untitled-[1.2]; HB 52 Juror Counseling Bill.pdf; 10-02-04 Sponsor Statement HB 52.docx

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Hi Hannah,

I just now read this message from my friend Jeanette as I was out of town. Hopefully it is not too late for input/feedback. I am a mental health clinician (MSW), and I also once participated in a murder trial as a juror three years ago. I thought at the time that post-trial psychological counseling for jurors was a necessity, and I am very pleased to find out that Rep. Kerttula has introduced a bill to that effect. I witnessed and experienced great distress from vicarious traumatization as a result of being exposed to graphic images and verbal renditions of the gruesome details involved in a very violent death. In addition, all of us jurors experienced a lot of pressure and stress from the many days of deliberation and from the civil responsibility of deciding of a man's fate. Many jurors were shaken and in tears when all of this was over, and I remember the strong feeling of disconnection I experienced when we were released from our duty after 3 weeks of intense involvement. I thought to myself, "we didn't sign up for this", and this was true, we were "chosen" participants. We were in some sort a "captive audience" trying to fulfill our civic responsibility, which involved being exposed to some disturbing evidences. Vicarious traumatization can lead to Post Traumatic Stress Disorder, and as a result jurors can experience flashbacks, loss of sleep, nightmares or night terrors, and a heightened level of anxiety. Post-trial counseling would be a valuable means to preventing and reducing the trauma jurors of violent acts are subjected to, and it would only make sense for the Court system to prevent harm to citizens who are voluntarily exposing themselves to traumatic evidences out of civic duty. I hope this bill passes,

Thanks,  
Lina LePage

----- Original Message -----

**Subject:** Fw: HB 52  
**From:** "Jeannette Lacey" <j.laceydunn@yahoo.com>  
**Date:** Mon, February 22, 2010 9:40 pm

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Hello Everyone,

Please see the attachments regarding a bill introduced by Rep. Kerttula related to providing counseling for jurors who participate in traumatic hearings. She is looking for input and feedback. There is a hearing this Friday. I know she would appreciate your thoughts. You can email Hannah, her aide, at [Hannah.McCarty@legis.state.ak.us](mailto:Hannah.McCarty@legis.state.ak.us) or you can call the office at 907-465-4767. Please forward on to others who might be able to give feedback. Thank you very much for your time!

Jeannette