

**HB**

**52**

**Kristen Peterson**

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**From:** Hannah McCarty  
**Sent:** Wednesday, April 07, 2010 8:08 AM  
**To:** Kristen Peterson  
**Subject:** HB 52

Hey Kristen – forgot to say that Doug Wooliver from Courts will be there to answer questions re fiscal note on HB 52 as well.

Thanks,

**Hannah McCarty**  
**Rep. Beth Kerttula**  
**State Capitol**  
**Juneau, AK 99801**  
**(907) 465-4766**  
**(907) 465-4748 Fax**

## **Kristen Peterson**

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**From:** Hannah McCarty  
**Sent:** Tuesday, April 06, 2010 2:02 PM  
**To:** Kristen Peterson  
**Cc:** Nicole Carlson; Hannah McCarty  
**Subject:** Testify

Hi Kristen – Here is the list of who is going to testify for our two bills that are up in SJUD tomorrow. I am copying Nicole because Gerad Godfrey will be calling in OFFNET from Anchorage.

### **HJR 48**

- 1) Gerad Godfrey – Chair - Violent Crimes Compensation Board – offnet calling from Anchorage
- 2) Lauree Morton - Program Coordinator II for Council on Domestic Violence and Sexual Assault – here in JNU

### **HB 52**

- 1) Mindy Lobaugh – constituent who requested the bill – here in JNU

Thanks,

**Hannah McCarty**  
**Rep. Beth Kerttula**  
**State Capitol**  
**Juneau, AK 99801**  
**(907) 465-4766**  
**(907) 465-4748 Fax**



# Representative Beth Kerttula

House Minority Leader

## Sponsor Statement

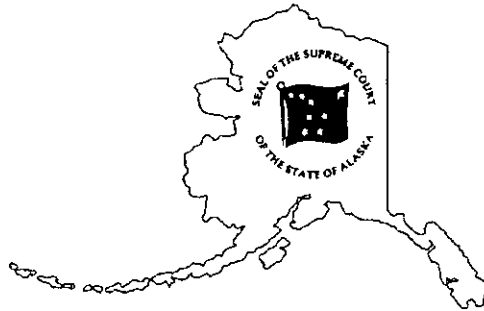
### House Bill 52

**"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.



ALASKA COURT SYSTEM  
State of Alaska  
Office of the Administrative Director

Doug Wooliver  
Administrative Attorney

820 West 4th Avenue  
Anchorage, Alaska 99501-2005  
(907) 264-8265  
FAX (907) 264-8291

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.

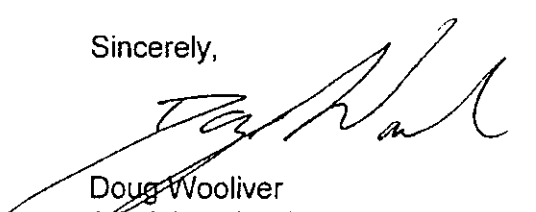
Based on that information, and for purposes of this note, I estimated that 10 jurors a year would receive 10 hours of individual counseling at an average cost of \$150 an hour. But individual counseling is not the only type of counseling available, and, in some cases, may not be the most appropriate.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

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.

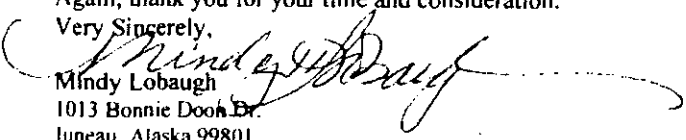
I asked her with tears in my eyes, how am I supposed to get all this out of my head? I feel like I have lived this event and I don't know what to do with it. I wanted my peaceful life back; I want to be able to feel the peace I had before the trial. She apologized and said there was nothing she can offer.

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 Dook Dr.  
Juneau, Alaska 99801

# STATE OF ALASKA

SEAN PARNELL, GOVERNOR

## DEPARTMENT OF ADMINISTRATION

### VIOLENT CRIMES COMPENSATION BOARD

P.O. BOX 110230  
JUNEAU, ALASKA 99811-0230  
PHONE: (907) 465-3040  
TOLL FREE: 1-800-764-3040  
FAX: (907) 465-2379

February 22, 2010

Representative Beth Kerttula  
State Capitol  
Juneau, AK 99801

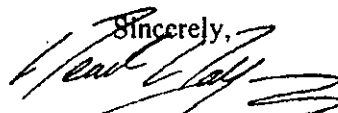
Dear Representative Beth Kerttula:

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 Goefrey

Chairman

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 \* 9400 Main 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

**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 [HannahMcCarty@legis.state.ak.us](mailto:HannahMcCarty@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

## 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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Correspondence concerning this article to: Laurence Miller, PhD, Plaza Four, Suite 101, 399 W. Camino Gardens Blvd., Boca Raton, Florida 33432, 561-392-8881. docmilphd@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-

elled 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 & Cacioppo, 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; Roschan, 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 reseat 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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# Representative Beth Kerttula

House Minority Leader

DATE: April 1, 2010

TO: Senator Hollis French  
Chair, Senate Judiciary Committee

FROM: Representative Beth Kerttula

RE: House Bill 52 POST-TRIAL JUROR COUNSELING

*Thank you!*  
*Beth*

I respectfully request that the Senate Judiciary Committee schedule House Bill 52 Post- Trial Juror Counseling for a hearing.

Please find attached:

- House Bill 52
- Fiscal Note
- Sponsor statement
- Letters of Support
- 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).