

*THROUGH THE EYES OF THE JUROR:*

*A MANUAL FOR ADDRESSING JUROR STRESS*

National Center for State Courts

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ISBN 0-89656-193-3

NCSC Publication Number R-209

This document was developed by the National Center for State Courts under a grant from the State Justice Institute (No. SJI-94-12K-B-320). The points of view expressed do not necessarily represent the official position or policies of the National Center for State Courts, or the State Justice Institute.

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## ACKNOWLEDGMENTS

Project staff are indebted to the many individuals who gave so generously of their time and expertise in the preparation of this manual. At the top of the list is the dedicated advisory committee, whose members provided guidance and support during all stages of the project. We learned much from them and appreciate their thoughtful reviews and suggestions.

We also thank the chief judges, their colleagues, and staff from the six courts participating in the project:

- Superior Court of Orange County, California (Santa Ana),
- First Judicial District of Pennsylvania (Philadelphia),
- Second Judicial District of Minnesota (St. Paul),
- Fourth Judicial District of Minnesota (Minneapolis),
- Circuit Court of the 20th Judicial District of Tennessee (Nashville), and
- Superior Court of Maricopa County, Arizona (Phoenix).

They graciously granted us interviews, provided us with relevant documentation, and allowed us access to their jurors. Their assistance was invaluable. In addition, the Third Judicial Circuit (Baltimore County) and the Fifth Judicial Circuit (Howard County) in Maryland provided pilot information on which the current study was based. We also had an opportunity to obtain information from jurors in the Sixth (Montgomery County) and Seventh (Prince George's County) Judicial Circuits in Maryland.

Hundreds of judges from across the country and hundreds of jurors from the project sites also took time to complete questionnaires on their perceptions of and experiences with juror stress. Their insights and suggested strategies for alleviating juror stress are woven throughout the manual.

In addition to the project staff, several other staff members from the National Center for State Courts participated in various aspects of the project. These individuals include Charlene Daniel, Courtenay Davis, Hillery Efke, Margaret Fonner, Lisa Ghee, Lynn Grimes, Sandra Knife, Pamela Petrakis, Deborah Schutte, Dawn Spinozza, and Marian Stordahl. We thank all of them for their contributions to the project.

Finally, we owe our sincere appreciation to the State Justice Institute, which provided financial and program managerial support for the project. We extend special thanks to Marian Macpherson, Jordan Zimmerman, and Dick Van Duizend for their thoughtful and patient direction.



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## Chapter 1

### Introduction

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A thousand people show up downstairs at 8 am. We don't participate in orientation, and they are not a visible component in our lives. The judicial system is not responsive to jurors.

—Judge

Our system of justice prides itself on protecting the rights of litigants and witnesses, but few protections and little attention are afforded the individuals we rely on to make the system work—individuals who walk into the court and who may subsequently find themselves deciding the fate of others. Despite their vital role to the system, the system can be surprisingly unaccommodating to them. Anecdotal reports of juror mistreatment range from benign neglect to outright disrespect.<sup>1</sup> There are many explanations for this treatment, such as the need to avoid contact with jurors to ensure the integrity of the judicial process, an expectation of civic responsibility, and the practical reality of overburdened court staff facing seemingly ever-increasing caseloads. Such explanations, however, do not excuse the judicial system's failure to meet its responsibility for its jurors.

*"Perhaps someone could have made us feel a little more human—at times I felt like rats in a cage!"*

—Juror

*"If the juror feels invisible, it only adds to the hardship of jury service—the cattle syndrome works to the detriment of the court."*

—Judge

#### JUROR STRESS

Jurors confront numerous sources of stress at every stage of jury duty, even in routine trials. Beginning with the summons to jury service, they experience disruption of their daily routines, lengthy waits with little information and often in unpleasant surroundings, anxiety from the scrutiny of lawyers and the judge during voir dire, tension from sifting through conflicting versions of facts and unfamiliar legal concepts, conflicts during deliberations, and isolation following the verdict and their release from jury service. Notorious trials often involve other sources of stress, including more severe disruptions of daily routine due to lengthier trials and jury sequestration, significant media publicity, and more troubling evidence and testimony introduced at trial. Symptoms of juror stress manifest themselves as a number of

*"Entering a jury box for the first time is entering unknown territory with different rules, limitations and expectations. The jury process is separate and distinct from the trial process. It is a most peculiar isolation. It has no familiar cues and it can be an uneasy experience. Experiencing it is the only possible preparation. The burden of the responsibility is something else you cannot prepare for."*

—Juror

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<sup>1</sup> See, e.g., Mark Curriden, *Jury Reform*, A.B.A. J., Nov. 1995, at 72.

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physical and psychological reactions, including increased anxiety and frustration, disrupted eating and sleeping routines, nausea, depression, and anger and hostility.

### SIGNIFICANCE OF JUROR STRESS FOR THE JUDICIAL SYSTEM

*"They'd have to handcuff me to be a juror again."*  
—Juror

Recent examinations of the institution of the American jury trial suggest that juror stress is one factor contributing to the unwillingness of citizens to serve as jurors.<sup>2</sup> The implications of this effect are troubling for our justice system. As greater numbers of citizens devise ways to avoid jury service and the stress associated with jury service, juries become less representative of their communities. This can contribute to the decline of public trust and confidence in jury verdicts in particular and the justice system in general.

*I think there is a problem driven by the fact that jurors are at the bottom of the totem pole. Judges by their training are more responsive to their contemporaries and lawyers in front of them. . . . Jurors . . . are here and gone; they are not a constituency of the court."*  
—Judge

The jury system presents a unique opportunity for courts to have a positive interaction with individuals from the communities they serve.<sup>3</sup> The Jury Standards Task Force and the ABA Jury Standards Committee described the opportunity in their Guiding Statement:

The significance of the jury is not limited to its role in the decision making process; jury service also provides citizens with an opportunity to learn, observe, and participate in the judicial process. The jury system affords an opportunity for citizens to develop an active concern for and interest in the administration of justice.<sup>4</sup>

It is important for courts to take full advantage of this opportunity by providing a positive jury experience. "A juror, who is present to assist the judicial system and whose participation is also encouraged, should be protected from the potentially negative health effects of the trial process."<sup>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> In a study of individuals reporting for jury duty, 52 percent said they would look back on their jury duty with fondness, and 56 percent indicated they would volunteer again.

<sup>4</sup> COMMITTEE ON JURY STANDARDS, AMERICAN BAR ASS'N, STANDARDS RELATING TO JUROR USE AND MANAGEMENT vii (1993) [hereinafter ABA JURY STANDARDS].

<sup>5</sup> Daniel W. Shuman et al., *The Health Effects of Jury Service*, in LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 949, 960 (David B. Wexler & Bruce J. Winick eds., 1996).

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## THE JUDICIAL SYSTEM'S RESPONSE TO JUROR STRESS

The judicial system and its actors, including judges and court staff, constitute social forces that can exacerbate or help reduce juror stress levels.<sup>6</sup> This manual discusses steps judges and court staff can take at each stage of the judicial process to alleviate rather than exacerbate the inevitable stress that comes with a jury summons.

Many of the suggested strategies will be familiar as standards of good trial court management, as articulated by the Commission on Trial Court Performance, and of good jury management, as recommended by the Jury Standards Task Force and the ABA Jury Standards Committee. For example, Trial Court Performance Standards 1.2, Safety, Accessibility, and Convenience, and 1.4, Courtesy, Responsiveness, and Respect, urge court employees to be responsive to individuals unfamiliar with court facilities and proceedings.<sup>7</sup> Standards 2.1, Case Processing, and 2.2, Compliance with Schedules, urge the prompt resolution of cases and the timely performance of all court activities.<sup>8</sup>

Likewise, Standard 16, Juror Orientation and Instruction, in *ABA Jury Standards* recommends providing information to jurors throughout the jury process – a practice likely to increase an individual's sense of control and predictability.<sup>9</sup> In addition, some jury system reforms currently being tested, such as allowing jurors to take notes and to ask questions during trials, also may increase their perceived control over the process.

This manual views these standards and innovative practices from the perspective of the juror's experience rather than from a management and operational perspective. It identifies court policies, procedures, and practices consistent with these standards that can be used to decrease juror stress.

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<sup>6</sup> The proposition that legal actors are social forces that can have therapeutic or anti-therapeutic consequences is fundamental to the therapeutic jurisprudence heuristic. See *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* (David B. Wexler & Bruce J. Winick eds., 1996).

<sup>7</sup> See BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, *TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY 8-9* (1997) (National Criminal Justice Reference Ctr. No. 161570).

<sup>8</sup> See *id.* at 11-12.

<sup>9</sup> See *ABA JURY STANDARDS*, *supra* note 4, at 140-53.

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## BACKGROUND ON THE MANUAL

The manual is based on a study, funded by the State Justice Institute and conducted by the National Center for State Courts in cooperation with the College of William and Mary's Psychology Department, to determine the extent and sources of juror stress. At the time, issues associated with juror stress had received almost no systematic attention; their formulation was being driven principally by media accounts of notorious cases such as the Reginald Denny and Rodney King beating cases, the rape trial of William Kennedy Smith, the murder trial of serial killer Jeffrey Dahmer, and the fraud trial of television evangelist Jim Bakker.<sup>10</sup> Although much was written and discussed about jurors' experiences in these cases, little empirical information was available to place the media reports of juror stress into a broader context of the prevalence and severity of stress experienced by jurors in general. How widespread is juror stress? What are its primary causes? And what, if anything, should courts do about it?

Through a combination of survey and field research, project staff obtained information from over 1,300 judges, jurors, and unassigned members of the jury panel about the prevalence and causes of juror stress (see Appendix A for more details on the study). Findings indicated that although few individuals experienced *clinical* stress as a result of their juror experience, approximately one-third of *all* individuals who reported for jury duty reported experiencing *some* stress as a result of their jury duty and over half thought other jurors experienced stress during jury duty. The findings supported commonsense notions that stress is higher for jurors sitting on cases involving capital offenses and gruesome evidence. In general, the more severe the offense and the longer the trial, the more jurors reported stress and the more judges suspected stress. Surprisingly, findings also revealed that individuals who report for jury duty and who do *not* have an opportunity to serve as a juror report experiencing stress as well.

Sources and levels of stress varied depending on the individual's particular juror experience. For example, individuals sitting on capital cases rated the decision to give the death penalty as a source of considerable stress, whereas individuals involved in less serious cases reported disruptions of their normal routine as stressful. Symptoms of stress also varied depending on juror

*According to a survey of jurors, 86 percent of the 37 jurors sitting on death penalty cases reported experiencing stress; 25 percent of the 432 unassigned members of the jury panel also reported experiencing stress.*

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<sup>10</sup> See, e.g., *Big Cases Bring Lots of Stress*, NAT'L L.J., Feb. 22, 1993, at S14; Thomas L. Hafemeister & W. Larry Ventis, *Juror Stress: Sources and Implications*, TRIAL, Oct. 1994, at 69.

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experience. Anxiety, irritation, agitation, and boredom characterized the stress experienced by most jurors reporting stress. However, jurors serving on lengthier and more serious cases reported more severe symptoms such as nightmares, feelings of detachment, and disturbing memories.

Although stressors varied across individuals and cases, four general themes emerge from the survey and interview data pertaining to sources of stress regardless of the individual's particular experience. First, individuals who participate in the jury process often perceive a lack of predictability and control over their experience. Research shows that stress is reduced to the extent that an individual perceives control over a situation.<sup>11</sup> Many individuals report anxiety over what is expected of them and what will be happening at each new step in the process (e.g., reporting for jury duty, jury selection, the trial process, and jury deliberations). Second, jurors and potential jurors report frustration over a process that at times seems slow and arcane and does not make the best use of their time. Third, jurors and potential jurors identify discourteous, insensitive, and unhelpful staff as contributing to their level of stress, and fourth, they find the facilities, in which they sometimes spend considerable time, unpleasant and unaccommodating.

*"If there is one key element to the successful melding of a group of strangers into a resonant orchestra, it is, in my opinion, the judge. . . . I was fascinated by the complicated role the judge plays in simultaneously balancing all aspects of the trial so we can have the optimum climate to do our respective tasks well."*

—Juror

## OVERVIEW OF THE MANUAL

The five remaining chapters of the manual identify key stressors and strategies for addressing them within five major stages of the juror process: initial contacts, voir dire, trial, deliberations, and post-trial proceedings. In general, the strategies address the broad categories of stressors outlined above: perceived lack of control and predictability, inefficient use of time, unresponsive court staff, and unpleasant environment. The

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<sup>11</sup> In a classic experiment, participants were asked to rate their preferences and anxiety levels under various situations of threat. The situations varied based on whether the participants could control the administration of a small electric shock and whether they received consistent information to predict the shock's actual occurrence. Results indicated that participants preferred the situations that allowed them to control the shock and accurately predict its occurrence. Predictability allowed participants to prepare for the event and rest when they knew nothing was going to happen. In contrast, in the unpredictable condition (no warning or inconsistent warning), participants reported having conflicting expectations, surprise, frustration, anger, and even depression. See Lawrence A. Pervin, *The Need to Predict and Control Under Conditions of Threat*, 31 J. PERSONALITY 570 (1963).

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strategies are based on findings from the general stress literature, suggestions from judges and jurors, and the results of current jury reform efforts.<sup>12</sup>

To some extent, the strategies depend on the characteristics of a court and its judges and staff. For example, juror orientation might best be accomplished by the jury commissioner, the court manager, a judge, a videotape, or some combination of the above, depending on the size of a court, the number of jury trials it has in a week, and the willingness of judges and other court staff to participate in the orientation. With one caveat, the strategies are presented as suggestions to be modified to best fit the judge and the specific court.

The caveat is not to underestimate the importance of the judge in interacting with individuals reporting for jury duty. A theme that emerged from both the study's data and the Advisory Council's discussions was the positive effect a judge can have on an individual's perception of the jury process. A judge's willingness to welcome jurors at orientation or thank them for their service (whether they sat on a jury or were never selected) sends a message that the jury service is important and that the court values their participation in the process. Thus, although Chapters 3 through 6 address issues of primary concern to judges, judges may wish to review Chapter 2 as well, which addresses more administrative issues.

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<sup>12</sup> At the time of this publication, considerable research on juror effectiveness and satisfaction is underway. The reader is encouraged to keep abreast of this jury reform research to identify new strategies and enhance existing ones.

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## Chapter 2

### Initial Contacts

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#### Lessons Learned

- Receiving a summons for jury duty is unsettling for some individuals.
- The lack of basic information about how to get to the courthouse, where to park, and what to expect when reporting heightens juror anxiety.
- The loss of income and ancillary costs associated with jury service present difficulties for some individuals.
- Individuals reporting for jury duty are often irritated by the extensive amount of time they spend waiting in areas that are small, dingy, and uncomfortable.
- Individuals react negatively and may feel undervalued as a result of the “assembly-line” mentality of some court officials when processing prospective jurors.
- Prospective jurors are frustrated by the seemingly inefficient use of jurors’ time.
- Many individuals are unprepared for, and amazed at, how much time they spend waiting.
- Some individuals have safety concerns about getting to and from the courthouse.

The stress associated with jury duty often begins before the actual commencement of a trial. The unexpected arrival of a jury summons, the confusion of reporting for jury duty, the tedium of waiting to be called for a jury panel, and the anxiety about the costs of jury duty are all notable (albeit, not severe) sources of stress for jurors. This chapter will focus on these stress factors and possible strategies for reducing their negative effects.

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## PROVIDE REASONABLE NOTICE/ALLOW SOME FLEXIBILITY

Juror stress and frustration typically result when jurors are thrust into situations in which they have little control. The amount of notice given to jurors before having to report generally is within the control of local court personnel. Many jurors in the study noted that having sufficient notice in which to arrange for time away from home or work would minimize the stress associated with these disruptions.

Another method of increasing jurors' sense of control is to give them a choice about when to serve. Many courts have a rigid system in which jurors must be exempted or excused for specific, formal reasons or serve the date they are called. Alternatively, some courts permit jurors to defer jury service. ABA Jury Standard 6(c) recommends that "deferrals of jury service for reasonably short periods of time may be permitted by a judge or duly authorized court official."<sup>13</sup> This method allows jurors to serve at a time that is optimal for their schedules, during which they can focus fully on the job at hand.

## PROVIDE BASIC INFORMATION

Individuals reporting for jury duty are often nervous about where they have to go, how they are to get there, and what they will have to do. The American Bar Association recommends that "the information provided to prospective jurors be sufficiently comprehensive and detailed to relieve their anxiety and aid them in their duty as jurors."<sup>14</sup> The ABA suggests that practical information (e.g., court hours, first-day activities, appropriate dress, what to bring to court, compensation, procedures for requesting an exemption or postponement of jury duty) be provided with the initial summons. Information about public transportation schedules, routes to the courthouse, and the location of convenient parking areas relieves jurors' concerns about these immediate items.

Educating jurors about juror service may begin even before a summons is issued in the form of a public outreach campaign that teaches the community about jury duty. Some courts have established a Jury Service Appreciation Week, and others use advertising and media outlets or local school programs to educate the public about jury service.<sup>15</sup> Another approach courts are using

"Need more information from the court about the process and what to expect."

—Juror

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<sup>13</sup> ABA JURY STANDARDS, *supra* note 4, at 49.

<sup>14</sup> *Id.* at 143.

<sup>15</sup> For more information about public outreach strategies, see JURY TRIAL

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is to broadcast jury orientation information over public access cable channels to provide information on jury schedules, parking, compensation, and security concerns.<sup>16</sup>

Once jurors arrive at the courthouse, the juror registration site should be easy to find and adjacent to the juror lounge/waiting area.<sup>17</sup> Many courts provide jurors with handbooks detailing various aspects of jury duty. Other courts show videos or conduct question-and-answer sessions to help jurors acclimate to courthouse procedures. One court official noted that it was important to provide the information through a variety of media – handbooks, verbal instructions with questions, and videotapes – because different jurors respond better to different media.

In general, court officials agreed that the more information provided the better. In response to a question about what’s needed to help minimize juror stress, one judge emphasized this need at all steps in the process:

[We need] general public service statements on the importance of jury service, educational programs on the subject, better initial communication, and better communication during the period of service.

## BE SENSITIVE TO FINANCIAL CONCERNS

Some employers do not compensate employees who take leave for jury duty, causing jurors to lose income for the period they serve. Daily flat-rate juror fees rarely offset lost wages. Other employers continue to pay employees while on jury duty but require them to make up for work they have missed. Self-employed and unemployed individuals and full-time homemakers often experience an even greater hardship. One self-employed juror explained the frustration:

There was no consideration or compensation for the self-employed. We have no employer paying us while we do jury duty. If we don’t work, we don’t have money coming in. We have to do jury duty all day and then go and do our self-employ work at night. We still have due dates and

*When asked about other sources of stress, one juror said “My boss back at work.”*

—Juror

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INNOVATIONS 25–28 (G. Thomas Munsterman et al. eds., 1997)

[hereinafter JURY TRIAL INNOVATIONS].

<sup>16</sup> See *id.* at 46.

<sup>17</sup> See ABA JURY STANDARDS, *supra* note 4, at 129.

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people depending on us to get the work done and no one to fall back on.

The amount of monetary compensation jurors receive varies across jurisdictions, usually ranging from \$5 to \$40 per day. Based on the median household income of jurors, a conservative estimate of lost wages is approximately \$86.<sup>18</sup> Fortunately, many employers make up the difference between court compensation and lost wages, but court officials should be sensitive that some jurors may be under more financial pressure than others.<sup>19</sup>

Jurors also view incidental costs while on jury duty, such as transportation and parking costs, meals, and child care costs, as sources of stress and financial hardship. In rural settings, transportation may be difficult because of the greater distance between one's home and the courthouse. In urban settings, accessible public transportation and parking fees become more cogent issues.

ABA Jury Standard 15 recommends a balance among civic duty, length of jury service, and compensation.<sup>20</sup> It suggests limiting the term of service to one trial/one day, if possible; asking citizens to serve the first day as part of their civic obligation with only nominal compensation for out-of-pocket expenses; and compensating jurors with a reasonable fee for each subsequent day of service. In addition, some recognition by court officials that jurors are contributing to the system and are providing a valuable service may help jurors see the experience as worthwhile rather than strictly a hardship. In this context, court officials should ensure that all individuals who appear for jury duty, *whether they actually serve on a jury or not*, are acknowledged for their contributions. A few words of appreciation from a judge can mean a lot to some jurors and can help offset the more disruptive aspects of jury service.

*"If our goal is access to the courts and greater diversity, we need to examine the funds we make available for jury duty."*  
—Judge

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<sup>18</sup> This figure was determined by assuming that the juror contributed half of the family income in a full-time position (i.e. \$45,000/2 = 22,500). This figure was then divided by the number of working days in a year (260).

<sup>19</sup> A 1990 nationwide study examined the incidence of employer compensation for jury duty and found that approximately 85 percent of full-time salaried employees receive compensation for jury duty; however, only 34 percent of part-time employees are compensated, and commission-based employees often lose all commission income. See JANICE T. MUNSTERMAN ET AL., NATIONAL CTR. FOR STATE COURTS, THE RELATIONSHIP OF JUROR FEES AND TERMS OF SERVICE TO JURY SYSTEM PERFORMANCE 58 (1991) [hereinafter JURY SYSTEM PERFORMANCE].

<sup>20</sup> See ABA JURY STANDARDS, *supra* note 4, at 134–35.

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## CREATE A GOOD FIRST IMPRESSION

The juror assembly room may be the first direct contact a juror has with the court. Jurors gain their first impression of the entire process from their juror assembly room experience. Comments from judges, other court officials, and jurors indicate that this first impression is often mixed at best.

Many juror assembly rooms are too small, austere, and generally uninviting. In contrast with the imposing décor of most courtrooms, a small or dingy juror assembly room may send jurors an unintended message about their role and worth in the justice process. Juror rooms should have comfortable furniture, adequate lighting, appealing décor, telephone access, ample space, and easy access to vending machines, smoking areas, and clean restrooms. Several jurors also indicated that the availability of reading material, games, or a television would help pass the time more quickly. In addition, some jurors noted that merely providing tables and access to outlets would allow them to do some work while they are waiting.

Jurors also base their first impressions on their interactions with court staff. Faced with the press of business, some court officials get caught up with the “cattle call” aspect of just moving sometimes hundreds of people through the system. One jury assembly room official noted the problem:

I don't even see their faces anymore. I have had people I know complain that I ignored them when they came in for jury duty. I said sorry – I never even look at the faces.

Notwithstanding the large number of individuals reporting for jury service in some jurisdictions, court officials should make every effort to be polite and sensitive to jurors' unfamiliarity with the situation. Staff should try to keep jurors informed about the process, explain necessary delays, and give jurors choices and control over their experiences when feasible.

During the orientation, court officials should acknowledge the importance of juries to the legal system and to democracy and should thank the jurors for their willingness to serve. As one jury manager noted:

It makes a big difference who does the orientation. If the person is positive and confident, it creates an atmosphere that rubs off on jurors. If not, the jurors are very sensitive and will reflect it all day.

*“Provide a nicer, more comfortable waiting area and refreshments. We are going out of our way for this service.”*

—Juror

*“Treat people like you want to be treated.”*

—Bailliff

*“Take extra time in orientation, repeat things . . . joke once in a while to relax.”*

—Court official

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## STRIVE FOR EFFICIENCY

"[It was] very tiring just sitting in the jury panel room."

—Juror

Adequate staffing is essential for an efficient and fairly administered jury system. The ABA suggests that a single administrator should be responsible for administering the jury system<sup>21</sup> and recommends that the court monitor the jury system to ensure "the efficient use of jurors."<sup>22</sup> Jurors become frustrated with jury service and the justice system generally when asked to serve a long term during which they witness inefficient use of potential jurors.<sup>23</sup> The seemingly cavalier attitude on the part of some judges and other court officials regarding the juror's time does not help. One judge commented that more planning into how many jurors are needed per week would help address the problem of excessive waiting time.

"Plan more in advance how many jurors are needed to cover cases for the week."

—Juror

The ABA recommends that "jurisdictions reduce to the shortest extent possible both the amount of time during which persons are required to remain available for jury duty and the time spent at the courthouse."<sup>24</sup> One approach to limiting the term of jury service is to implement a one-trial/one-day system in which jurors serve for one day or for the length of one trial. If a one-trial/one-day system can be not feasible, jury service that is limited to one week can still have a beneficial effect on juror satisfaction.

ABA Standard 13 deals entirely with efficient use of jurors:

- (a) Courts should employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
- (b) Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.<sup>25</sup>

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<sup>21</sup> See Standard 10(c), in ABA JURY STANDARDS, *supra* note 4, at 95.

<sup>22</sup> See Standard 12(d), in ABA JURY STANDARDS, *supra* note 4, at 111. See also Standard 13, in ABA JURY STANDARDS, *supra* note 4, at 115-16.

<sup>23</sup> See JURY SYSTEM PERFORMANCE, *supra* note 19, at 37-47.

<sup>24</sup> ABA JURY STANDARDS, *supra* note 4, at 43.

<sup>25</sup> *Id.* at 115.

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Although predicting the precise number of jurors that a court will need at any given time is a difficult task, a careful evaluation of past juror usage can provide an accurate basis to estimate the optimal number of persons to summon for jury duty.<sup>26</sup> This prevents severe overcrowding in juror waiting rooms and utilizes jurors' time more efficiently. Implementation of a call-in system also helps tailor the number of persons summoned for jury duty to daily fluctuations in the needs of the court.

### REDUCE BOREDOM

Despite all efforts, however, waiting time can only be reduced, not eliminated. As noted earlier in the chapter, providing reading materials or other forms of diversion will help jurors pass the time during inevitable waiting periods.

Courts can establish a "self-perpetuating" library by asking jurors to bring in a book they no longer want. Jurors who find a book they want to read can keep it. Magazines and newspapers also help pass the time. Magazines can sometimes be obtained for free through the post office.

Another approach to alleviating juror boredom and frustration is to allow jurors to leave the courthouse during lengthy breaks. To ensure jurors are available when they are needed, courts may provide them with beepers or establish a time when they must return to court.<sup>27</sup> Some courts also provide work areas equipped with telephones, electrical outlets, and modem access for computers.<sup>28</sup>

Court officials also can foster some interaction among waiting jurors by encouraging lunch groups. Snack bars, vending machines and coffee nearby also help break the monotony and provide opportunities for informal conversations.

### ALLEVIATE SAFETY CONCERNS

Finally, courts also need to respond to jurors' concerns about personal safety, especially in urban courts or courts where parking is some distance from the courthouse. Making sure jurors are released before sundown or escorting jurors to parking areas or public transportation stops can address these concerns and alleviate juror stress.

*"Particularly in winter, it is dark and the streets are empty. Some jurors are very uncomfortable going home then."*

—Court official

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<sup>26</sup> See G. THOMAS MUNSTERMAN, NATIONAL CTR. FOR STATE COURTS, JURY SYSTEM MANAGEMENT 101-09 (1996).

<sup>27</sup> See *id.*

<sup>28</sup> See JURY TRIAL INNOVATIONS, *supra* note 15, at 48.



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## Chapter 3

### Voir Dire

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#### Lessons Learned

- Jurors are apprehensive about what the voir dire process entails.
- Jurors are anxious about revealing embarrassing or humiliating personal information in public.
- Jurors worry about revealing identifying information in the presence of the defendant and the defendant's family and friends.
- Jurors are frustrated by how long the process takes and how much time they spend waiting. They would like information and updates on the schedule.
- Jurors get upset when they perceive judges or attorneys as grandstanding, not listening to jurors' responses, or bored by the proceedings.
- Jurors express irritation over the court's cavalier attitude regarding their participation in the process. They do not think the court is aware that they are taking time away from other responsibilities and commitments and that their schedules are important, too.
- Jurors may be confused and uncomfortable when publicly struck from the jury.
- Jurors may experience physical discomfort because of environmental stressors such as temperature, noise level, and lighting.

The voir dire process is intended to ensure that a fair and impartial jury is selected. Although vitally important to the judicial system, the jury selection process can be stressful for

*"The first day of jury selection is one of the biggest stress days."  
—Bailliff*

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prospective jurors who are asked detailed questions about their backgrounds and attitudes. As one bailiff in the study noted:

Sometimes there are 200 people in the courtroom at a time. Sitting in a jury box and talking in front of 200 people can be stressful. . . . Can tell from their faces or how they speak (may speak real rapidly), or from their body language (lips trembling, real fidgety, mouth dry).

Individuals who have been through the process have lamented that they felt as if *they* were on trial. Many fear being embarrassed or humiliated. In addition, individuals are often unfamiliar with the process and unaware of how lengthy it can be. They are apprehensive about a process that requires a loss of privacy and wonder what the extent of that loss will be.

Although choosing a jury requires both parties to know about the jurors' backgrounds and attitudes, there are ways to minimize the stress experienced by individuals participating in the process. No one wants a juror to feel stress, particularly because of one party or the other. This chapter offers some suggestions for reducing stress during this critical stage of the judicial process.

### EXPLAIN THE VOIR DIRE PROCESS

A clear explanation about the voir dire, its purpose, and its importance in trial proceedings removes much of the mystery about the need to ask certain questions. ABA Jury Standard 16(a)(iii) reinforces the importance of providing potential jurors with information on the voir dire process: "Courts should provide some form of orientation or instructions to persons called for jury service upon reporting to a courtroom for voir dire."<sup>29</sup> The standard recommends that the orientation include information such as:

- an explanation of the purpose of the voir dire examination;
- an explanation of the difference between peremptory challenges and removals for cause;
- introductory information on the particular case;
- an estimate of how long the trial may last; and

*"I couldn't understand the voir dire process; I spent two days trying to figure it out."*

—Juror

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<sup>29</sup> ABA JURY STANDARDS, *supra* note 4, at 140.

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- an indication of whether the jury will be sequestered and, if so, for how long and why.<sup>30</sup>

Generally, the judge provides the orientation for prospective jurors. For example:

We are about to start the jury selection process. It is a process of inquiry where I or the lawyers will question you about your lives and viewpoints. We do not mean to be intrusive. Sometimes it is an obligation of lawyers to question. If you are excused, it is nothing personal. Sometimes a juror has had a particular set of experiences or background that may affect the juror's reactions to this particular trial, and one of the attorneys may decide that another juror would be able to focus more on the evidence in this case. If you feel your privacy might be infringed, say so and we can talk about it privately.

#### **BE SENSITIVE TO PRIVACY CONCERNS**

The threat of voir dire to a juror's privacy is a fundamental issue courts must address. Although the disclosure of mental illness, chemical addiction, or extramarital affairs may not be significant to individuals in large cities, these matters may be devastating, if disclosed, to individuals from small or medium-sized communities. The importance of judges being sensitive to these issues and controlling attorneys' use of questions related to these areas cannot be overemphasized. Responses from jurors indicate that some judges and attorneys may view voir dire as an opportunity 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.

Several participants in the study noted the importance of telling prospective jurors in advance about the possibility of meeting with the judge individually if they are uncomfortable about answering a question in open court.<sup>31</sup> Some courts have prospective jurors complete confidential questionnaires on which they can indicate questions they prefer not to answer in open court. One judge commented that providing the prospective juror

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<sup>30</sup> *Id.* at 144-45.

<sup>31</sup> For a description of *in camera* voir dire, see § III-4 *Privacy Considerations in Voir Dire*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 65-67.

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with an opportunity to see the judge at the bench or in chambers makes the individual aware that he or she has some control and is not just a passive participant.

### ADDRESS SECURITY ISSUES

Answering questions of a personal nature in front of a group of strangers can be a stressful experience. It may be particularly stressful if prospective jurors are concerned for their safety. Judges and court personnel should not underestimate jurors' concerns for their safety. Even in less serious cases, jurors may be worried about their safety if the charge involved the use of force or if the parties and/or spectators in the courtroom seem hostile. Fear of retaliation can continue long after the proceeding is completed. The court should be sensitive to and consider ways to alleviate jurors' concerns for safety. One judge notes:

One method I have used to reduce juror stress in this area is to advise the jury at the start of voir dire that the information regarding jurors was only submitted to the attorneys the morning of trial. I then advise them that the computer printout from their questionnaires will be retrieved by the Court after voir dire and will not be left with counsel. At the end of voir dire, as soon as the lawyers have exercised their strikes, I request counsel to deliver back to the bench their copies of the computer printout of juror information. This is done in front of the entire panel, not only the jurors who are seated and have been questioned. The feedback on this procedure has been positive and has helped reduce some juror anxiety.

*"I don't think the defendant and his friend and family have to know what my name is, where I live and where I work. We could have kept some of that information confidential. This information was all given to anyone in that courtroom."*

—Juror

An innovation that has been tried in a few jurisdictions and that may lessen the intrusiveness of voir dire questions to prospective jurors is the use of routine anonymous juries.<sup>32</sup> This technique involves withholding prospective jurors' names and addresses from the parties, their counsel, the public, and the media.<sup>33</sup> If jurors understand that names are withheld on a routine basis, they should not infer from the use of anonymity that particular parties are dangerous — a concern when anonymous

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<sup>32</sup> See Nancy J. King, *Nameless Justice: The Case for the Routine Use of Anonymous Juries in Criminal Trials*, 49 VAND. L. REV. 123 (1996).

<sup>33</sup> § III-8 *Routine Use of Anonymous Juries*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 81. See also J. CLARK KELSO, JUDICIAL COUNCIL OF CALIFORNIA, FINAL REPORT OF THE BLUE RIBBON COMMISSION ON JURY SYSTEM IMPROVEMENT 33-36 (1996).

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juries are used selectively. Anonymity may lessen the stress felt by some jurors when required to reveal private information. In addition, the prospective juror has control over whether to reveal his or her identity to another person once jury duty is completed.<sup>34</sup>

### PROVIDE A CONTEXT FOR VOIR DIRE QUESTIONS

Participants in the study suggested providing the jury panel with more specific information about the case to help prospective jurors understand the reason for specific voir dire questions that might seem odd, argumentative, or too personal otherwise. Some of the judges also suggested informing the prospective jurors that the trial could include gruesome photographs, foul language, and graphic descriptions of criminal acts. Although this preparation may be helpful to the prospective jurors, some judges and attorneys may be apprehensive about discussing the nature of anticipated evidence that has not yet been determined admissible. Yet many jurors may not be able to serve if the evidence is pornographic or could be considered obscene.

One approach some jurisdictions use to inform prospective jurors about the case and the nature of the evidence is to allow counsel to make brief opening statements – or even the entire opening statements – to the jury panel. This approach allows the attorneys to provide jurors some context for understanding the issues as opposed to simply reading the charges or the allegations (which are usually written in legal or statutory language). The opening statements set the stage for the relevancy of the voir dire questions that follow. One advantage of this approach is that the judge and counsel meet prior to voir dire and agree on the nature of the statements and the evidence that can be referenced during questioning.<sup>35</sup>

### SHORTEN THE VOIR DIRE PROCESS

Some courts post a list of the basic voir dire questions and ask each prospective juror to answer the questions. In this way, the parties hear the juror speak and quickly obtain a great deal of information.

*“The waiting was the only stressful part.”*  
—Juror

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<sup>34</sup> For more information on juror privacy, see David Weinstein, *Protecting a Juror’s Right to Privacy: Constitutional Constraints and Policy Options*, 70 TEMP. L. REV. 1 (1997).

<sup>35</sup> For more information on opening statements to the jury panel, see § III-2 *Opening Statements to the Entire Jury Panel*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 57-59.

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ABA Jury Standard 7(a) recommends the use of questionnaires to shorten the voir dire process: “To reduce the time required for voir dire, basic background information regarding panel members should be made available in writing to counsel for each party on the day on which jury selection is to begin.”<sup>36</sup>

There are two types of pretrial questionnaires. The first is included with the initial questionnaire or summons for jury duty and “should be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for providing basic background information ordinarily sought during voir dire examination.”<sup>37</sup> This information includes “the age, gender, occupation, educational level, marital status of the prospective juror, the dates of any prior jury service, the geographic area in which he or she lives, the occupation of his or her spouse, and the age(s) of his or her children, if any.”<sup>38</sup>

The second type of questionnaire requests case-specific information.<sup>39</sup> Typically the questionnaire seeks the following kinds of information:

- biographical and demographic information;
- knowledge of the parties in the case, including the attorneys representing the parties and witnesses testifying for the parties;
- awareness of the case, including first-hand knowledge or knowledge gained from pretrial publicity;
- opinions about the case, including pre-existing attitudes and beliefs about relevant case information; and
- pre-existing attitudes, beliefs, values, and experiences, including prior jury service or prior experience with the justice system as a victim, party, or witness.<sup>40</sup>

Case-specific questionnaires can speed the voir dire process and solicit more honest answers. The questionnaires should be kept short, though. Otherwise, the time required for

*“The jury questionnaire is a big improvement; things move quicker.”*  
—Juror

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<sup>36</sup> ABA JURY STANDARDS, *supra* note 4, at 58.

<sup>37</sup> *Standard 11(c)(ii)*, in ABA JURY STANDARDS, *supra* note 4, at 101–02.

<sup>38</sup> *Id.* at 107 (citation omitted).

<sup>39</sup> Some jurisdictions combine general and case-specific questions into one questionnaire and ask prospective jurors to complete it prior to voir dire.

<sup>40</sup> JURY TRIAL INNOVATIONS, *supra* note 15, at 61. For a full description of using questionnaires to assist in voir dire, see § III–3 *Questionnaires to Assist Jury Selection*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 60–64.

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counsel to copy and study lengthy questionnaires will translate into more waiting time for jurors.

The use of brief pretrial questionnaires aids the judge and counsel in efficiently using voir dire time. The questionnaire data can help judges and attorneys identify individuals who should be excused early in the process and can help focus subsequent voir dire questions to the remaining panel members on the most relevant issues. Prospective jurors in the study indicated boredom and even anger over repeatedly asking each juror for the same information. As one juror remarked:

The judge's questions were very verbose, lengthy, and boring (15-20 questions). Everyone in the room heard them over and over; always the same questions. There should be a more efficient way – prepare questionnaires in advance to be filled out.

Although the use of case-specific questionnaires can facilitate the voir dire process, their use may not be warranted in all cases. For example, they may not be practical for short trials because of the time needed to develop the questionnaire and review the results.

In addition, the use of case-specific questionnaires raises concerns related to the confidentiality of questionnaire information. Some jurisdictions destroy the questionnaires as soon as the trial is over; others include the questionnaires as part of the public record. During notorious trials, members of the press may request the questionnaires.<sup>41</sup> One judge in the study decided against using questionnaires because of concerns about confidentiality:

I'm backing off from use of the questionnaire because they may be released to the public. Not sure if I can guarantee anonymity. Seems unfair to use questionnaire and then release it to the press. A transcript is more expensive to the press than obtaining a copy of the questionnaire. If media's deadline passes, they lose interest.

In general, the court should inform prospective jurors about the confidentiality of their questionnaire information. Providing an option to "check a box" if the prospective juror wants to discuss something privately, or allowing prospective

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<sup>41</sup> TIMOTHY R. MURPHY, NATIONAL CTR. FOR STATE COURTS, A MANUAL FOR MANAGING NOTORIOUS CASES 66 (1992).

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jurors to notify the court if they want a specific piece of information deleted before the questionnaire becomes part of the public record, may help ensure that questionnaires yield candid information as well as facilitate the process.

### **MAINTAIN CONTROL OF THE PROCESS**

Judges in the study noted the importance of having the judge maintain control over the voir dire process:

*“Some judges go on auto-pilot during voir dire or will be busy doing something else. Seventy percent of the questions are repetitious.”*

—Judge

Juror stress is often caused by the judge not having control in the courtroom. If attorneys grandstand once, TV cameras should be out of there. Taking control doesn't mean being a tyrant. Always be nice to jurors. Just so they can tell the judge is the boss, not the attorney.

This recognition of the judge's ultimate responsibility for the voir dire process is consistent with ABA Jury Standard 7.<sup>42</sup>

Several judges emphasized the need to be vigilant regarding attorney behavior during voir dire. If attorneys are not listening closely to juror responses or are asking for information already provided on a questionnaire, some jurors become frustrated and angry. The judge should instruct the attorney that the information has been provided already and to refrain from repetitious questions.

### **SET A COMFORTABLE TONE**

Interviews with judges, court staff, and prospective jurors indicate the importance of the judge in setting the tone of the voir dire process. As staff from one court's juror assembly room noted:

The way jurors come back from voir dire varies with the judge; some come back happy, others very grumpy. Some judges are considerate: let them know what's going on. On Tuesday, one panel was left to sit in the courtroom for one and one-half hours because no one told them to go back to the jury assembly room.

Judges in the study suggested using an informal and conversational tone when questioning prospective jurors. They advised avoiding an “air of aloofness and stiffness.” For example, one judge commented:

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<sup>42</sup> See ABA JURY STANDARDS, *supra* note 4, at 58–73.

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Try to have a real friendly conversation as opposed to an interrogation. Look at them, scribble notes, don't look like recording; nod, smile, give eye contact. Explain that a question applies to many.

In one court observed, the judge attempts to alleviate juror "stage fright" by responding to the "posted" voir dire questions first and then asking the jurors to follow his example.

Although the pretrial process may be lengthened, maintaining a less formal atmosphere may be easier if individualized voir dire is used.<sup>43</sup> With this technique, panel members are questioned individually by the judge and/or counsel. Among the advantages of this technique are:

- Individualized voir dire typically takes place in a less formal setting and requires a less formal conversational tone by the judge and attorneys. The relative lack of formality tends to place panel members more at ease, encouraging them to respond to questions more candidly than they might otherwise respond.
- Individualized voir dire takes place out of the presence of other panel members, relieving panel members' discomfort about revealing personal information in front of each other.<sup>44</sup>

Judges suggested starting the voir dire with an individual panel member using general, non-threatening questions to lessen the individual's anxiety and build rapport. They also suggested framing sensitive questions in a way that allows the individual to affirm without necessarily admitting to specific behaviors. For example, "Have you, a spouse, or family member ever been arrested?" allows the individual to say "yes" without admitting to an arrest record.

*"Always start with general questions. Tell them that you are not there to pry."*

—Judge

Some judges' demeanors may be intimidating to prospective jurors. One approach for overcoming this is to have counsel conduct the voir dire questioning.<sup>45</sup> The judge still maintains control over the process to ensure that questions do not inappropriately infringe on panel members' privacy, that counsel

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<sup>43</sup> For a complete description of individualized voir dire, see § III-5 *Individualized Voir Dire*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 68-70.

<sup>44</sup> JURY TRIAL INNOVATIONS, *supra* note 15, at 69.

<sup>45</sup> For a full description of lawyer-conducted voir dire, see § III-1 *Lawyer-Conducted Voir Dire*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 53-56.

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*“Always be courteous to jurors—understand that they are taking time away from family and job to be here. They are the backbone of the legal system. Give them a chance to talk to you.”*

—Bailliff

do not unnecessarily delay the process, and that counsel do not engage in pretrial argument.

Both judges and other court staff also indicated the importance of paying attention to panel members’ facial expressions and body language during voir dire. Nonverbal cues may help the judge determine if clarification of a point of information is necessary, if a prospective juror is worried about disclosing information and thus may need to talk in private, or if a break is warranted. Sometimes little gestures, such as providing a glass of water to someone coughing or tissues to someone sniffing, can help establish an environment in which panel members are more comfortable about informing court staff when a problem or need arises.

Finally, letting the jury panel know the basic schedule and providing updates throughout the day helps give the panel members a feeling of control and predictability. They have some idea when lunch and breaks are coming, and they can make better-informed decisions about matters such as the need to extend day care for a child. Such basic information can help ease the prospective juror’s mind and, consequently, allow better focus on the voir dire process.

### CONSIDER OPTIONS FOR “STRIKING”

Judges and counsel should consider the effect of various procedures for “striking” a prospective juror from the panel. Being struck from the panel in front of others in the courtroom with no explanation can be confusing, embarrassing, and/or frustrating. ABA Jury Standard 9(h) recommends the following procedure:

Following completion of the voir dire examination, counsel should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.<sup>46</sup>

With this approach, the court announces which individuals comprise the jury rather than who is omitted. In addition, the striking is done in a written manner rather than verbally in front of the court.<sup>47</sup>

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<sup>46</sup> See ABA JURY STANDARDS, *supra* note 4, at 77.

<sup>47</sup> See G. Thomas Munsterman et al., *The Best Method of Selecting Jurors*, JUDGES J., Summer 1990, at 8.

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## LIMIT COURTHOUSE WAITING TIME

Many individuals in the study, including court staff, were frustrated with the amount of time prospective jurors were kept waiting during the voir dire process. Study participants provided several examples of individuals waiting for hours to be interviewed and waiting for hours for other panel members to be interviewed before all panel members were allowed to leave. The dissatisfaction is represented by the following prospective juror's comment:

*"They get irritated over just sitting in the courtroom all day; hallways hot and facilities bad."*

—Court staff

We were all required to stay all day and sit through the whole panel. Groups of 7 or 8 went up front for questioning, but everyone else had to sit in the gallery the entire time. I never even got to the point of going up front. I didn't feel very useful being there. There must be a better use of my time than to sit around mindless.

As discussed in Chapter 2, much of the dissatisfaction of prospective jurors, in this case panel members, could be alleviated by following ABA Jury Standard 13, which addresses the efficient use of jurors' time. Standard 13(b) and (c) specifically address the voir dire situation:

- (b) Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust . . . the number assigned to jury panels.
- (c) Courts should ensure that each prospective juror who has reported to the courthouse is assigned to a courtroom for voir dire before any prospective juror is assigned a second time.<sup>48</sup>

Several judges in the study suggested practices to reduce the amount of time prospective jurors spend waiting in the courthouse. For example, one judge noted that for difficult trials that require questioning prospective jurors individually,<sup>49</sup> the court assigns numbers to panels. The judge asks the panel members to call in each day to see when they are needed. This

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<sup>48</sup> ABA JURY STANDARDS, *supra* note 4, at 115–16.

<sup>49</sup> See § III–4 *Privacy Considerations in Voir Dire*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 65–67. See also § III–5 *Individualized Voir Dire*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 68–70.

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procedure results in seven jurors being called per half day rather than 40 or 50, many of whom would not be questioned until subsequent days. The end result is there are fewer individuals "just sitting around and asking questions and feeling antsy."

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## Chapter 4

### Trial

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#### Lessons Learned

- Some jurors are intimidated by the formality and procedural complexity of the trial process.
- The role of the juror as strictly a passive listener is uncomfortable, boring, and frustrating for some individuals.
- Juror stress occurs most in cases (both civil and criminal) that involve actions causing severe harm to an individual.
- Viewing gruesome evidence can be particularly stressful for some jurors, especially when presented with no forewarning.
- Trials that are tedious or long can challenge jurors' concentration. The struggle to remain attentive can be stressful for jurors.
- The emotional tone and level of tension in the courtroom influence jurors' stress levels.
- Some jurors may be concerned about their privacy and safety.
- Some jurors may be anxious about a media presence in the courtroom and may be unaware of any parameters governing media behavior.
- Unexplained and frequent interruptions of the trial schedule increase juror frustration and irritation with the trial process.

Just as juror bias is a legitimate concern during voir dire, a principal concern during the evidentiary portion of jury trials is that jurors remain "untainted" by factors other than properly

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admitted evidence, thus preserving their ability to function as impartial decision makers. Paradoxically, many procedures used to protect the integrity of the jury – such as no-contact rules between attorneys and jurors; prohibitions on discussions about the case with family, friends, and even other jurors; and sequestration – contribute to juror stress.<sup>50</sup>

*“Not being able to talk with my family was tough—particularly if tears started to well up in my eyes, and I couldn’t explain why. I couldn’t participate in family dinners at home.”*

Jurors are placed in an unfamiliar role and environment and deprived of their usual coping strategies such as turning to family and friends for support. Moreover, some of the cases presented to juries for resolution provoke strong emotional and psychological responses by jurors. Cases involving extreme violence, severe injury, or graphic sexual material, by their very nature, can cause feelings of anger, shock, sadness, and even fear by jurors. This chapter offers suggestions for reducing the frustration and stress jurors experience as a result of these kinds of factors during the evidentiary stage of jury trials.

## EXPLAIN THE TRIAL PROCESS

*“The biggest source of stress for jurors is coming into an unknown environment: They don’t know the system or what is expected of them.”*

—Bailliff

The intricacies and formalities of the trial process may be confusing and intimidating to many jurors, particularly those who are experiencing their first contacts with the court system. Perhaps this is one reason why judges reported maintaining rapport with and explaining the trial process to jurors as the strategies they used most often to minimize juror stress. As one judge remarked:

*“I warn them that attorneys and court officials may move away from them in the hallways or on the elevators. It’s not personal; they’re following my instructions to avoid contact with jurors while the trial is ongoing.”*

—Judge

Being human makes a big difference. When they walk in, they’re nervous. Welcome them, explain what’s going to happen and communicate with them throughout the process. A judge can get caught up in the numbers and forget that, for the jury, it’s a unique experience.

Providing an explanation of the trial process is consistent with ABA Jury Standard 16, which reads in part that preliminary instructions “should explain the jury’s role and responsibilities, the basic underlying principles of law to be applied in the case, and the order and nature of the presentations.”<sup>51</sup> Preliminary instructions about the applicable law governing the case give jurors a conceptual framework in which to evaluate the evidence presented at trial.<sup>52</sup>

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<sup>50</sup> See Roger A. Bell & Theodore B. Feldmann, *Crisis Debriefing of Juries: A Follow-up*, 3 Am. J. PREVENTIVE PSYCHIATRY & NEUROLOGY 55, 57 (1992).

<sup>51</sup> ABA JURY STANDARDS, *supra* note 4, at 148–49.

<sup>52</sup> See generally William W. Schwarzer, *Communication with Juries*:

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Several judges in the study inform jurors about the trial process even before jurors are officially sworn in. Typically the judges cover topics such as the proper conduct of jurors (including no-contact rules); the importance of maintaining an open mind until all evidence is heard; the role of the judge and attorneys during the trial; the fact that attorneys are supposed to be adversarial; definitions of the charges, such as fraud, so the jurors know what to focus on during the trial; the concepts of burden of proof and reasonable doubt in criminal cases and similar terms in civil cases; and the differences between law and fact and the reason why sidebars are sometimes necessary. Some judges provide jurors copies of the instructions in writing.

Although providing such basic information may seem insignificant, it can improve juror performance by having better-informed and more relaxed jurors. One judge noted that his efforts to keep jurors informed do not go unnoticed:

Attorneys and jurors frequently remark that they very much appreciate instructions in writing after they have been given orally. Jurors also frequently comment upon how helpful it is to have been given a well thought out and carefully organized explanation of the trial process.

The fact that such efforts are noticed may mean that they are not done as routinely as they should be.

### **ALLOW ACTIVE JUROR PARTICIPATION**

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. However, contemporary research about juror decision making reveals that this passive role is actually unfamiliar and very uncomfortable for most jurors.<sup>53</sup> Traditional jury admonitions, such as prohibitions on juror note taking and questioning of witnesses, often make the jurors' task more difficult by hindering their ability to concentrate and to process new information. One juror in the study noted that taking notes helped him remain more objective, thus reducing his stress levels.

*"I tell new bailiffs to think how it would feel if you had to sit there and couldn't ask questions. You have to just sit there listening to other people talk."*

—Bailiff

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*Problems and Remedies*, 69 CAL. L. REV. 731, 755–58 (1981) (discussing the importance of timing and delivery of jury instructions).

<sup>53</sup> See The Honorable B. Michael Dann, *"Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries*, 68 IND. L.J. 1229, 1238–47 (1993); JURY SYSTEM PERFORMANCE, *supra* note 19, at 14–15.

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Based on studies indicating that juror comprehension and satisfaction are increased if jurors are allowed a more active role in trials,<sup>54</sup> the Commentary to ABA Jury Standard 16(C) recommends that jurors be permitted to take notes and submit questions in writing to the judge to ask witnesses during trials.<sup>55</sup> The procedures for both of these techniques are described in *Jury Trial Innovations*.<sup>56</sup>

One caveat related to the application of these techniques is to emphasize that the activities are allowed but are not required. Some jurors indicated that they were given notepaper and a pen but no guidelines for using them. One judge said she makes very clear that note taking is an option:

I tell them to take as many notes as they like, but that if they're not a note taker, don't be intimidated by your neighbor who is. Do what you are comfortable with. We will read back the transcript if your memory fails. For some jurors who are not real literate, note taking can increase stress levels, and some jurors can't listen and take notes.

Thus, while some jurors might welcome a more participatory role, it may be threatening to others if it is not accompanied with specific instructions.

*"There were crime scene photographs of bodies not found for two weeks projected on a large screen—very sickening and not necessary."*

—Juror

## CONTROL PRESENTATION OF GRUESOME EVIDENCE AND TESTIMONY

Viewing particularly grisly evidence or listening to emotionally disturbing testimony was reported by some jurors as one of the most stressful aspects of serving on jury duty.<sup>57</sup> This applies as much to evidence presented in civil trials, such as personal injury cases, as to evidence presented in criminal trials. As one jury commissioner noted: "Civil trials often get the most gruesome evidence — attorneys try to work on the sympathies of the jurors to increase the damages awarded."

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<sup>54</sup> See, e.g., Larry Heuer & Steven Penrod, *Juror Note-taking and Question Asking During Trials*, 18 LAW & HUM. BEHAV. 121 (1994); David L. Rosehan et al., *Note taking Can Aid Juror Recall*, 18 LAW & HUM. BEHAV. 53 (1994).

<sup>55</sup> See ABA JURY STANDARDS, *supra* note 4, at 150–51.

<sup>56</sup> See JURY TRIAL INNOVATIONS, *supra* note 15, at 141–47.

<sup>57</sup> In the juror survey, 28 percent of jurors who reported that disturbing evidence was presented at trial found the evidence moderately to extremely stressful.

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Being unprepared to see gruesome evidence and testimony can exacerbate the sense of shock and stress experienced by jurors. Several judges in the study recommended warning jurors about upcoming evidence:

Warn jurors before the photos are shown. Let them know the photos are coming rather than just slapping the photos in front of them. That way they can brace themselves. Just by saying the photos are coming, you blunt their edge.

*“It would help if they would tell us in advance—warn us that it’s something we’re going to remember for the rest of our lives.”*  
—Juror members

In fact, some judges argued that these warnings should be made as early in the trial as possible (even during voir dire) and should be repeated once or twice before the evidence or testimony is presented to the jury. These warnings help jurors become “desensitized” to the gruesomeness of the evidence.

Judges also view timing as an important factor in reducing the shock associated with gruesome evidence. For example, several judges noted that they avoid having such evidence presented immediately before or after lunch, and some judges order a recess immediately following the presentation of disturbing evidence to give jurors an opportunity to compose themselves. Other judges monitor juror facial expressions and body language and call recesses if warranted:

For graphic photos, jurors will look down or make faces. They may cry and that’s ok. If they’re embarrassed or distraught, I’ll take a recess.

Limiting the volume of gruesome evidence is another technique used to reduce the emotional effect on jurors. The purpose of photographs that depict gruesome evidence (or any evidence, for that matter) should be to give the jury new information, not just to amplify the gore or work on the sympathies of the jurors. Blocking out particularly offensive or disturbing parts of photographs is also an option for minimizing the impact of gruesome evidence. Similarly, the judge should admonish the attorneys to avoid having witnesses testify about the same disturbing event needlessly.

*According to a survey of judges, 75 percent of trial judges who did not allow certain evidence to be admitted at trial found the strategy to be moderately to extremely effective in reducing juror stress.*

Reducing the length of time jurors are exposed to gruesome evidence is another approach for alleviating juror stress in these types of trials. Demonstrative evidence should not remain in front of jurors indefinitely. One juror, for example, protested that the prosecutor displayed photographs of the victims and crime scene for several days at a time:

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*“Don’t leave photos right up in front of the jury for a long time. Adds stress and distracts from the testimony. It can be counter-productive for attorneys who may be blamed for introducing them and leaving them up there.”*

—Judge

It was a really sleazy thing to do. The photo showed the victim’s dead, nude body – a total lack of respect for the dead. I had nightmares about it. I called out in my sleep, but I couldn’t tell my husband what was wrong. It was very disturbing – offensive and unnecessary. The prosecutor is supposed to be for the people, but he wasn’t acting for me.

In some instances, gruesome photographs are handed directly to jury members for their viewing. Several judges in the study inform jurors that they have to look at the photographs only once and then avert their eyes or turn the photographs over.

### **REDUCE BOREDOM DURING TRIALS**

The vast majority of jurors take their duties very seriously and make a concerted effort to pay close attention to the evidence and testimony of witnesses. Nevertheless, some cases – because of either the tedious nature of the material or the presentation skills of the attorneys – tax jurors’ (and even judges’) ability to maintain their concentration on the trial proceedings. For example, attorneys sometimes read lengthy depositions to the jury when witnesses are unavailable to testify. Although boring trial proceedings do not provoke the shock and fear associated with gruesome evidence, the struggle to keep awake and attentive is stressful for many jurors.

The ideal solution to relieving juror stress during these cases is to make the trials more interesting. During pretrial conferences, for example, the judge can encourage attorneys to prepare deposition summaries to present to the jury rather than reading the whole deposition.<sup>58</sup> Using demonstrative evidence such as charts, graphs, and video technology also can communicate a great deal of information in an effective and efficient manner, thus saving the jury from long witness presentations.<sup>59</sup> Stipulating to the admissibility of exhibits and deposition testimony also streamlines the trial proceedings by eliminating the need to present foundational evidence during trial.<sup>60</sup>

*Eighty-seven percent of the trial judges surveyed found that providing additional breaks for jurors is a moderately to extremely effective strategy for reducing juror stress.*

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<sup>58</sup> See § IV-10 *Deposition Summaries*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 120-22.

<sup>59</sup> See § IV-9 *Computer Simulations*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 117-19.

<sup>60</sup> See § IV-2 *Pretrial Admission of Exhibits and Deposition Testimony*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 95-97.

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In many cases, however, the nature of the evidence does not lend itself to a more riveting presentation format. In these cases, judges can attempt to break up the proceedings with more frequent recesses to permit jurors an opportunity to stretch and get coffee or snacks before returning to trial. Judges and court staff also should be attentive to the courtroom environment for characteristics that would add to the difficulty in concentrating. For example, dim lighting, background noise from air conditioners or radiators, and overly warm or stuffy courtrooms can make jurors sleepy or easily distracted.

### CONTROL COURTROOM DISRUPTIONS

Jurors quickly become attuned to the emotional tone of the courtroom, which in most instances is one of controlled solemnity. Occasionally, however, unexpected things happen that interrupt the proceedings and threaten the decorum of the courtroom. On such occasions, the judge needs to maintain control of the courtroom. As one judge noted: “A weak judge causes juror stress.”

Persons appearing as witnesses or sitting in the gallery can disrupt trial proceedings and jurors’ sense of safety and purpose. A judge in a murder trial related one example when the mother of the murder victim became hysterical during the trial and had to be forcibly escorted from the courtroom. The jurors were visibly upset by the disturbance. Rather than just proceeding with the trial, the judge, with the attorneys’ permission, took a few minutes to talk with the jury about the outburst. He noted that the jurors might understandably feel sympathy for the victim’s mother, but that they should not let those feelings interfere with their rational decisions during the trial and deliberations.

Such disturbances are not uncommon in high-stress trials. Even in cases in which members of the audience are not uncontrollably disruptive, reactions such as weeping, glaring, and whispering among themselves can still distract the jury. To minimize the amount of disruption, the judge or court staff can ask these individuals to seat themselves out of the jury’s immediate line of sight.

In some instances, attorney actions cause disruptions. Although a certain amount of confrontation between attorneys is expected, jurors sometimes become overwhelmed at the level of bickering and sniping displayed by attorneys. One judge commented that he calls attorneys into his chambers if he thinks the arguing is gratuitous. He tells the attorneys that it is

*Seventy-six percent of trial judges who personally addressed stress with jurors during the trial considered the strategy moderately to extremely effective for reducing juror stress.*

*“I had a civil case where the attorneys were totally antagonistic, arguing every point. It made the jury very uptight.”*

—Judge

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unnecessary and that it is “turning the judge and the jury off.” Another judge indicated that she “made an attorney apologize to the jury and the court for sniping.” Her perception was that the jury understood what she was doing and appreciated it.

Pro se cases also can be a source of stress for jurors. Pro se parties can be overly repetitious, ignore rulings by the judge, and talk over the opposing attorney or witnesses. In addition to monitoring such behaviors, judges may want to offer more frequent breaks during such trials.

## DISCUSS SAFETY ISSUES

*“Our names got out.  
They’d call our names  
when we were  
seated.”*

—Jury

Listening to testimony in criminal trials, especially those dealing with violent crime, can heighten jurors’ sense of anxiety for their own safety and well-being. One jury described their heightened sensitivity to their environment:

During breaks and lunches, you felt like everyone was looking at you and following you. In the lunchroom you could see, through the curtain, the defendant’s family. We’d come out of the elevators and they’d be waiting.

Courts routinely take precautions to protect the safety and privacy of jurors. In extreme cases, courts even authorize the use of “anonymous juries” in which identifying information about the jurors is withheld from the parties, their attorneys, and the public.<sup>61</sup> Some courts provide escorts to parking lots and other court areas, and some court facilities are specifically designed to protect jurors from routine interaction with the public; for example, with private doors from the jury room to courthouse exits, private bathrooms for jurors’ use, and separate seating areas in courthouse cafeterias.

*“We were never told  
what protection was  
available to us. It  
would’ve helped to  
know the options.”*

—Jury

In addition to possibly prejudicing the jury toward the defendant, some judges and court staff intentionally do not tell jurors about special safety precautions to avoid raising jurors’ anxiety levels unnecessarily. However, jurors are usually sufficiently attuned to their environment to realize when the situation warrants extra security. Thus failing to inform them

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<sup>61</sup> See generally 18 U.S.C. § 3432 (Supp. 1996) (authorizing the use of anonymous juries in capital cases to protect the life or safety of the jurors and their families); *Hamer v. United States*, 259 F.2d 274 (9th Cir. 1958) (holding that use of an anonymous jury did not deprive the defendant of his Sixth Amendment rights since voir dire was sufficient to ensure the selection of an impartial jury).

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about steps taken may actually have the opposite effect of heightening jurors' fears.

Judges and court staff should balance the need to avoid jury prejudice toward the defendant with the need to inform jurors of special safety precautions. To be helpful without being prejudicial is a delicate balance and case-specific. Judges and court staff can, if deemed appropriate, inform jurors about the security measures taken on their behalf and advise jurors to alert court staff in the event that they feel uneasy or threatened. Such discussions reassure jurors that court staff have given appropriate consideration to security issues and will consider additional measures if necessary.

### **PROVIDE INFORMATION ABOUT MEDIA CONTACTS**

Only the most high-profile trials generate extensive media coverage. Even cases that have received considerable local publicity rarely have more than a reporter or two sitting unobtrusively in the gallery. Nevertheless, the extensive attention given to the jury in recent high-profile trials (e.g., the O.J. Simpson murder trial; the Oklahoma City bombing trials of Timothy McVeigh and Terry Nichols) has prompted both jurors and court staff to seek appropriate measures to shield jurors from offensive or harassing contacts by the media.

Except under the most limited circumstances, information concerning individuals serving as jurors is a matter of public record to which the media have a right of access.<sup>62</sup> Media do not, however, have a right to interfere with the efficient administration of justice or the integrity of the trial process. The trial judge is thus entitled to impose some restrictions on the media, such as prohibiting any photography in the courtroom, prohibiting media interviews in courthouse corridors, prohibiting disruptions from reporters while in the courtroom (e.g., when exiting to file their stories), and prohibiting contact with jurors during the trial.

Most media personnel understand and respect these basic rules of trial conduct. Most jurors, however, are unaware of restrictions on the media and may be fearful of media attention. Judges and court staff can alleviate fears by informing jurors of the rules governing media coverage of trials, particularly those concerning jurors. Jurors should be advised to alert the judge or court staff immediately if a reporter attempts to contact the jurors or their families while they are on jury duty. It is also helpful to

*Eighty percent of judges who took steps to shield jurors from the media found the strategy to be moderately to extremely effective for relieving juror stress.*

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<sup>62</sup> See *Press Enterprise, Inc. v. Superior Court*, 464 U.S. 501 (1984).

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assure jurors that the court will provide them with information and advice for dealing with media attention after their jury service is complete (see Chapter 6).

### MINIMIZE DISRUPTIONS OF THE SCHEDULE

*“The delays seem to enhance the uncertainty, the unknown, and stress.”*  
—Judge

A trial does not necessarily have to be a stirring courtroom drama to keep jurors interested and engaged in the proceeding. Most jurors report that jury service was a positive and educational experience, even for the most mundane cases. As a practical matter, most trial proceedings progress at a reasonable pace (particularly in contrast to the pace that normally characterizes juror orientation and voir dire procedures).

*Eighty-six percent of judges who required (and 85 percent who encouraged) attorneys to make motions outside the presence of the jury found the strategy to be moderately to extremely effective for reducing juror stress.*

Even with the best managed trial calendar, however, unavoidable disruptions occasionally occur that must be resolved outside the presence of the jury. Short recesses during the trial are not upsetting to jurors and sometimes are welcomed as much-needed breaks. However, frequent disruptions or breaks for long periods of time can be tedious and stressful for jurors.

Many judges routinely schedule non-jury matters with an eye toward using jurors’ time as efficiently as possible. For example, they will set aside time at the beginning of the day before jurors arrive or at the end of the day after jurors have left to hear trial motions or attend to administrative matters.

*Eighty-seven percent of trial judges who asked jurors about their wishes about lunchtime, quitting time, and so forth considered the strategy moderately to extremely effective for reducing juror stress.*

Despite the best efforts of judges and attorneys, most trials involve some “downtime” for jurors. For those periods, the jury’s accommodations, either the jury deliberation room or the jury assembly room, should be as pleasant as possible (e.g., comfortable seating, conducive to working, well-ventilated, good lighting). If a disruption in the trial will be substantial, the judge should consider allowing jurors to leave the courthouse with instructions to return at a specific time.

Because the disruption of everyday routine is one source of juror stress, informing jurors about the expected trial schedule, and sticking to that schedule, is one effective strategy for alleviating stress, especially in longer trials.<sup>63</sup> Ideally, trial schedules should include sufficient time for jurors to conduct private business, such as doctors’ appointments or household errands. Some judges, for example, reserve one afternoon or one day a week in lengthy trials as “non-jury” time to give jurors an

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<sup>63</sup> In one court, a schedule is printed for cases that last more than a week. The schedule includes the name and phone number of the bailiff, secretary, and judge associated with the case.

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opportunity to attend to personal affairs. Before making major adjustments in the trial schedule, such as those that entail staying late or working through lunch to accommodate a witness's availability, judges should consult with the jurors to ensure that the revised schedule will not disrupt jurors' prearranged plans (e.g., picking up children from childcare).



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## Chapter 5

### Jury Deliberations

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#### Lessons Learned

- Jurors are concerned about participating in jury deliberations.
- Jurors worry about making a mistake when reaching a verdict.
- Confusing jury instructions can increase the level of tension in the deliberation room.
- Jurors are apprehensive about sequestration.
- Alternate jurors often feel excluded from the process and thus have no sense of closure.
- Jurors are frustrated by jury deliberations that are unproductive and disorganized.
- Jurors may behave quite differently during the deliberation process when tensions are much higher.
- Jurors appreciate the small gestures of court staff to make their experience less stressful.
- Jurors can feel claustrophobic and uncomfortable in jury deliberation rooms without sufficient light, ventilation, or space.

Deliberating on the case is the culmination of the jury's purpose in the courts. Understandably, it is also one of the most stressful aspects of jury duty for most jurors. Jury deliberations and discussions, deciding on a verdict, and the fear of making a mistake were ranked among the top sources of stress by the study participants. One juror commented on some of the inherent stresses of juror decision making:

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The majority disagreed with me at first, then began to agree which made me equally uncomfortable. There were a couple of jurors who never said anything. I worry that they will regret their decision later and that memory will stay with them.

Jurors have a tremendous responsibility placed on them. Some of the difficulties they face are unavoidable, but there are strategies courts can take to alleviate the stress of jury deliberations.

### PROVIDE CLEAR INSTRUCTIONS

*Eighty-eight percent of trial judges surveyed indicated that explaining jury instructions clearly is moderately to extremely effective for reducing juror stress.*

Actively orienting jurors to the trial process and helping them understand their roles are important tools for reducing juror stress. Before the jury retires to deliberate, the trial judge should “instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberations.”<sup>64</sup> Unclear jury instructions can contribute to jurors’ overall feelings of confusion and stress. Research has demonstrated that juror comprehension of instructions is low.<sup>65</sup> One judge reported that the most common juror question is whether they can use a dictionary during deliberations.

*“Jury instructions not real clear . . . didn’t provide anything on the process; we took turns reading them out loud which seemed to make them more clear.”*  
—Juror

Jurors need instructions that are written in plain English. *ABA Jury Standards* recommends that judges deliver instructions that are readily understood by individuals unfamiliar with the legal system.<sup>66</sup> Writing instructions in language that avoids legal abstractions and using case-specific language helps jurors understand the instructions in the context of the case and avoids the confusion that generic terms can cause.<sup>67</sup> Instructions should use easily understandable (“jury-friendly”) and consistent terminology instead of the traditional legal jargon.<sup>68</sup> The content of the instructions can be simplified by deleting any unnecessary

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<sup>64</sup> *Standard 16(c)(ii)*, in *ABA JURY STANDARDS*, *supra* note 4, at 141.

<sup>65</sup> See AMIRAM ELWORK ET AL., *MAKING JURY INSTRUCTIONS UNDERSTANDABLE* 12 (1982); Walter W. Steele, Jr. & Elizabeth G. Thornburg, *Jury Instructions: A Persistent Failure to Communicate*, 74 *JUDICATURE* 249 (1991).

<sup>66</sup> See *ABA JURY STANDARDS*, *supra* note 4, at 148.

<sup>67</sup> In complex cases, judges should consider providing each juror with a copy of the instructions and, if applicable, a copy of complex special verdicts. See § VI-5 *Written or Recorded Instructions for Jurors*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 174-76.

<sup>68</sup> See § VI-2 *Plain English Jury Instructions*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 163-67.

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information and focusing on the factual issues and legal rules that must be used by the jurors.

Using an informal, conversational tone when giving the instructions aids juror comprehension. Participants in the study suggested using short sentences and taking the time to carefully explain instructions to jurors. Short breaks also can be helpful, especially if the instructions are lengthy. Audio-visual aids (overhead monitors, visual aids) as well as written copies of the instructions also can assist understanding and retention of instructions. Finally, judges should inform jurors of the proper procedures for requesting clarifications of the instructions once deliberations are underway.<sup>69</sup>

Before entering deliberations, jurors should feel comfortable about required procedures as well as applicable legal issues. Consider the unnecessary embarrassment described by one juror who participated in an extremely difficult deliberation:

We were all shaking waiting to go back in; everyone was near tears. Then we found out we filled out the verdicts incorrectly – felt foolish. We had to march back into the deliberation room and re-sign.

Full instructions about completing necessary forms and the process for returning the verdict should be provided before the jury retires.

## PREPARE JURORS FOR SEQUESTRATION

Judges rated sequestration for an entire trial as the second most significant source of juror stress.<sup>70</sup> Jurors may worry about how sequestration will affect them, their family, or their jobs. They have practical concerns about where they will sleep and eat and how they will contact their families. Keeping the jury informed about the likelihood of sequestration can help jurors prepare. In fact, jurors should be told about the possibility of sequestration at the outset of jury selection, and the mechanics should be explained clearly. They should be updated throughout the trial of the likelihood of sequestration and encouraged to make advance preparations. For example, one judge surveyed said he

*"We received a ream (102 pages) of jury instructions that we were told not to write on. . . . For every page of this, had another page that apparently contradicted."*

—Juror

*"Find a decent place for them to stay. Hand-pick bailiffs that handle them—to the extent you can. It makes a big difference—affects how safe they feel and sends a message regarding the professionalism of the entire operation."*

—Judge

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<sup>69</sup> For more information on juror questions during deliberations, see § VI-6 *Juror Questions About Instructions*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 177.

<sup>70</sup> On a five-point scale beginning with 0 (4 = extremely stressful), the average rating for sequestration was 3.06.

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lets jurors know prior to deliberations that they may be sequestered and recommends that they bring basic necessities and toiletries with them to court.<sup>71</sup> Forewarning gives jurors time to address the personal problems (e.g., childcare) that come with sequestration.

ABA Jury Standard 19 states that the trial judge has “the responsibility to oversee the conditions of sequestration”<sup>72</sup> and that procedures should be promulgated to ensure that “the inconvenience and discomfort of the sequestered jurors is minimized.”<sup>73</sup> To this end, the ABA recommends that guidelines be developed to address all aspects of sequestration: restrictions, lodging, transportation, meals, medical treatment, laundry, exercise, and recreation, including provisions for contact with family, friends, and the general public. If the jury is to be sequestered, having guidelines in place simplifies the process and allows the judge to give jurors full details about what will happen to them. Providing jurors with this information helps them maintain a feeling of control, both in the courtroom and in their personal lives.

### CONSIDER OPTIONS FOR THE ALTERNATE JURORS

It is natural for jurors to want to experience a sense of closure at the end of the case. Some jurors in the study indicated that serving as an alternate juror was frustrating—“like being all dressed up for the prom and not getting to go.” When the trial ends, they suddenly are excluded from the deliberation process. These feelings may be exacerbated in courts where jurors are not informed of their status until just prior to closing remarks or immediately before jurors begin deliberations.

One suggestion for reducing disappointment and frustration is to inform jurors of their status early in the proceedings. Another option is to allow alternates to observe, but not participate in, deliberations.<sup>74</sup> A third option, for use in civil cases, is to select a jury that is larger than the minimum jury size necessary.<sup>75</sup> All jurors are sworn in and participate in

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<sup>71</sup> It would be the *highly unusual* trial that results in the issue of sequestration being revealed to the jury only at the trial’s conclusion.

<sup>72</sup> *Standard 19(b)*, in ABA JURY STANDARDS, *supra* note 4, at 173.

<sup>73</sup> *Standards 19(c)(ii)*, in ABA JURY STANDARDS, *supra* note 4, at 173.

<sup>74</sup> See § VI-7 *Permitting Alternates to Observe Deliberations*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 180.

<sup>75</sup> This option is subject to local procedural rules.

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deliberations. If one juror is excused, the trial continues with the smaller jury (a minimum jury size is set by law).<sup>76</sup>

## PROVIDE GUIDANCE ON DELIBERATION PROCESS

Lengthy deliberations, fear of making a mistake, and conflict with other jurors all contribute to making time spent in the deliberation room difficult. Although courts must consider the integrity of the deliberation process and avoid interference in juror decision making, there are ways to improve the efficiency and civility of the process.

Many jurors related stories about the difficulties of deliberations. One said the jury “reached a point where we didn’t know what to do – not deadlocked; we just needed a suggestion for group dynamics, on how to approach.” As part of the pre-deliberation instructions, the judge could suggest procedures to help deliberations proceed with efficiency and focus. These may include guidance on applying the instructions or recommending a general framework with which to approach deliberations. *Jury Trial Innovations* identifies several areas in which juries may benefit from judicial assistance, including advice on “selecting a presiding juror (if not previously selected), avoiding early public votes on the verdict, conducting small group discussions that provide all jurors with an opportunity to present their opinions, allocating tasks (such as taking notes on deliberations) among jurors, and handling disagreement or deadlock.”<sup>77</sup> In tense criminal trials or in situations in which jurors are not jelling well, one judge tells jurors that they may find it helpful to set some ground rules: “Do not interrupt one another; listen to each other; if you disagree, disagree respectfully; don’t put someone down because we all feel bad when we are put down by someone.” Providing jurors with this kind of general guidance as they begin deliberations may increase the efficiency and ease of deliberations.

Court officials acknowledged the need to advise the jury on how to get along and to reinforce the importance of the jury’s job. Several jurors indicated that they nearly came to blows in the deliberation room. Participants told stories of single jurors feeling slighted and holding up deliberations and of “bully jurors” who tried to influence others as demonstrated by the following juror’s comments:

*“Judges and attorneys are not very good with process. We assume jurors come equipped to do the job.”*

—Judge

*“There should be more guidelines on what is expected of jurors; don’t really understand responsibilities . . . No one knows how to go about it.”*

—Juror

*“No plan or instructions on how to deliberate was very stressful; no guidelines on juror conduct.”*

—Juror

*“When they go to deliberate, jurors don’t always treat each other nicely; can be a very ugly life experience for them. Should explain what we won’t tolerate in that situation.”*

—Judge

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<sup>76</sup> See § III-10 *Variable Jury Size/No Alternate Juror*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 87.

<sup>77</sup> § VI-4 *Suggestions for Jurors on Conducting Deliberations*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 171.

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The deliberations brought out the ugly side of people – too much emotions, pounding the table, throwing pencils around, and misdirected emotion if they didn’t get their own way. It’s been a long time since I had to deal with temper tantrums. They became personal in their attacks toward one another. . . . I felt like a nursery school teacher trying to lead kids back to control of their tempers. . . . I was alarmed at the way people would go after others. Some jurors appeared traumatized by the personal attacks. . . . I wasn’t prepared for Mid-East type negotiations.

*“I think jurors need greater guidance in how to conduct deliberations to work toward a unanimous verdict.”*

—Judge

One judge suggested building a more cooperative work environment by asking jurors to decide on scheduling logistics such as when to go to lunch or take breaks. The process of building rapport and achieving consensus on these easier decisions may be helpful as a starting point for deliberating more difficult questions.<sup>78</sup> He also suggested stressing goals jurors have in common, such as justice, equity, and public good, and encouraging jurors “to take ownership and responsibility in the process.” Although the court can do little to help jurors while they are deliberating, guidance from the judge before starting can help manage group dynamics and avoid an impasse.

Another approach to managing the deliberation process efficiently is to provide jurors with written or recorded jury instructions. In addition to increasing comprehension, written instructions can help jurors deliberate.<sup>79</sup> Avoiding discussion over the meaning or application of instructions also may reduce deliberation time and avoid interrupting discussions to consult the judge.

## MAKE JURORS MORE COMFORTABLE

Some factors that make deliberations stressful, such as disturbing details of cases jurors must hear and discuss, are beyond the control of the court. Although the judge and court

*“Through bailiff and court, let jurors know they are important and court staff are even ready to respond to any need they may have.”*

—Judge

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<sup>78</sup> During lengthy trials, partial sequestration – keeping jurors together during the court-day, including breaks and lunches – also helps develop rapport among jurors and aids in better deliberations.

<sup>79</sup> See SPECIAL COMMITTEE ON JURY COMPREHENSION, AMERICAN BAR ASSOCIATION, JURY COMPREHENSION IN COMPLEX CASES 51–52 (1989). There are other advantages to providing each juror with a copy of the jury instructions. See § VI–5 *Written or Recorded Instructions for Jurors*, in JURY TRIAL INNOVATIONS, *supra* note 15, at 174–75.

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staff are limited in their ability to help with these major stressors, study participants frequently indicated the importance of small gestures by court staff in improving their deliberation experience.

Several jurors noted the importance of a relaxed courtroom environment. Courts that follow the rules, but maintain a more informal atmosphere, help lessen juror anxiety. Jurors are already apprehensive about the deliberation process, and a relaxed staff can increase juror comfort.

Maintaining a positive rapport with jurors was the most frequently cited judicial strategy for alleviating juror stress. Judges can set a positive tone and atmosphere in the courtroom, encouraging jurors to communicate when they have needs, concerns, or questions. Bailiffs can also help monitor tension levels and keep the judge informed of problems.

Many judges let the jurors decide their own deliberation schedule. One judge informs jurors that “the schedule is up to them—roughly 9:00–4:30, but it’s ok to work around traffic, meet dentist appointments, go out for lunch, take Friday off.” Several court staff noted that such policies seem to relieve some of the feelings of tension in the deliberation room. It is also consistent with ABA recommendations that the judge consider the preferences of jurors when setting hours for jury deliberations:

The judge should make the options known to the jury and give them time to discuss these options among themselves. . . . [T]he judge should ascertain whether the jurors appear to be fatigued and should inquire . . . whether the deliberations would interfere with the religious beliefs or practices of any member of the jury.<sup>80</sup>

Courts can establish routine policies to facilitate decisions on the length of daily deliberations, break schedules, and procedures for how jurors can communicate with the court. Soliciting input and accommodating juror needs foster a sense of control over the process. The best interests of all parties are served when jurors are satisfied with their schedule, can plan their personal lives accordingly, and are focused on the job at hand.

Finally, providing a pleasant physical environment and amenities for jurors, such as coffee in the jury room, improves the jury experience. At a minimum, the court should provide for the basic needs of the jurors so that they can do their job. ABA Jury Standard 14(c) describes the deliberation room:

*“We need to be more proactive in making them comfortable.”*  
—Judge

*“Deliberation room should be their space during the trial . . . their sanctuary. By making them more comfortable, helps them through the process.”*

—Judge

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<sup>80</sup> ABA JURY STANDARDS, *supra* note 4, at 170–71 (citation omitted).

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[A] well-ventilated room large enough to accommodate a conference table and chairs as well as to allow some freedom of movement. Adequate writing facilities should be provided. . . . Closets and restrooms should be near the room entrance. . . . Jury deliberation rooms should be designated as nonsmoking areas.<sup>81</sup>

If possible, private juror restrooms are preferable so that jurors are not forced into contact with the victim, lawyers or other parties involved in the case.

In addition to providing for these basic needs, courts should make the jury room as pleasant as possible. Participants noted several small amenities, such as good lighting, space to leave food or books, and a microwave, that improve the quality of time spent in the deliberation room. One court hung travel posters on the walls of the deliberation room to give jurors something “peaceful and serene” to look at when deliberations become stressful.

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<sup>81</sup> *Id.* at 130.

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## Chapter 6

### Post-trial Proceedings

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#### Lessons Learned

- ❑ Jurors have questions about procedures and decisions made during the trial that they do not understand.
- ❑ Jurors worry about the accuracy of their verdict.
- ❑ Jurors may fear retribution by the defendant or family and friends of the defendant.
- ❑ Jurors are anxious about meeting the press after the trial.
- ❑ Jurors are concerned about their privacy after the trial and worry that their conversations during deliberations will be discussed publicly.
- ❑ Jurors may not understand stress symptoms they are experiencing or may not be prepared for symptoms that occur following the trial.
- ❑ In addition to providing feedback for improving the jury system process, exit questionnaires allow jurors to release pent-up feelings about their jury experience.

The trial is over, the verdict has been given, and the court has officially dismissed the jury from service. This time holds mixed emotions for many jurors. They may feel a sense of relief that their term of service is over and enjoy feelings of accomplishment for completing the job. Jurors also may experience a flood of difficult emotions, particularly following long trials, trials with high levels of stress, and/or complex trials. These emotions stem from several sources, and each emotion is a normal reaction to the unusual experience of serving on a jury. Judges in the survey recognized the importance of this period: They ranked judicial post-trial debriefing of jurors as fourth among 42 strategies for effectively addressing juror stress. The

*"There needs to be a debriefing process after deliberations! This would help greatly in reducing stress or adverse after effects."*

—Juror

*"Judge . . . debriefed for one hour after trial and that made the whole thing worthwhile; now willing to do again."*

—Juror

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nature of post-trial communications to alleviate juror stress is the subject of this chapter.

### CONSIDER WHAT TYPE OF DEBRIEFING IS NEEDED

Three main techniques are used to address the jury after the trial: discharge instructions, post-trial debriefings by a judge, and post-trial debriefings by a mental health professional.<sup>82</sup> Jurisdictions, as well as judges within jurisdictions, vary with regard to the method or combination of methods they use to address jurors after the trial.<sup>83</sup>

For trials that involve relatively low levels of stress, jurors may need only general discharge instructions from the trial judge prior to being dismissed. Discharge instructions can help jurors in relatively low-stress trials by providing information on what to expect once the trial is finished.<sup>84</sup> This includes instructions regarding what they can say to whom and tips for dealing with and/or avoiding the media. For criminal trials with a separate sentencing date, jurors should also be informed when to return if they wish to hear the sentence. During discharge instructions the judge should thank jurors for their service and reinforce the court's appreciation of their time investment. In general, informal meetings with the trial judge provide a sense of closure for the jurors.<sup>85</sup>

In other cases where moderate or more severe levels of stress occur during the trial, judges may choose to hold a more lengthy discussion with the jurors (a judicial debriefing) or bring in a mental health professional to conduct a debriefing.

A debriefing session is often needed when the trial provokes a great deal of media attention, the testimony is especially gruesome, or the trial is exceptionally long. The

*"No one else understands as well as other jurors; helps being able to talk to other jurors after its over."*

—Juror

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<sup>82</sup> For some trials, it may be helpful to have the debriefing done by a judge *and* a mental health professional or have a mental health professional easily available, if needed, for consultation with the judge and/or the jury.

<sup>83</sup> This chapter presents options for material that can be presented during debriefing sessions. The various techniques and the kinds of topics covered can be combined to address the individual needs of each case within the procedural and statutory guidelines of each jurisdiction.

<sup>84</sup> See ABA JURY STANDARDS, *supra* note 4, at 151–52.

<sup>85</sup> See generally the Honorable James E. Kelley, *Addressing Juror Stress: A Trial Judge's Perspective*, 43 DRAKE L. REV. 97, 116 (1994) [hereinafter *Addressing Juror Stress*] (suggesting that "even a brief intervention, such as short conversation with the trial judge" may help avoid a serious stress reaction).

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primary advantage of a mental health debriefing is the presence of someone with professional expertise who can immediately address any serious or severe reactions to stress, such as depression, nightmares, and insomnia. A debriefing by a neutral party also avoids any question of the appropriateness of judicial involvement in a debriefing.

Only 15 percent of the 118 judges responding to the second judge survey reported the use of a mental health expert in conducting a post-trial debriefing. In comparison, 74 percent reported conducting judicial debriefings. The infrequent use of mental health experts may be explained, in part, by the relatively few reports of severe stress among jurors. Based on the jurors' reports of stress, a distinct minority of high-stress cases warrant a professional mental health debriefing. Judges, however, should be aware of the alternative and know where to access a qualified professional (i.e., psychologist, psychiatrist, or social worker with expertise in post-traumatic stress disorder) to conduct a jury debriefing when necessary. If the court has a victims' assistance program (or other component of the court that deals with mental health issues, such as a court clinic), the staff may be familiar with local mental health professionals experienced in helping individuals deal with post-traumatic stress. Although these mental health professionals may not have conducted juror debriefings per se, they probably will have a better sense of what a debriefing, should cover.<sup>86</sup> If a jurisdiction does not have a victim assistance program or other in-house or contractual source of mental health services, court officials can seek references from mental health centers, nearby medical schools, university departments of psychology and social work, professional associations with referral services,<sup>87</sup> or other sources of mental health services.

Some judges use the judicial debriefing as an opportunity to "screen" the jury to determine if an additional mental health debriefing is necessary for the full jury or if additional assistance may be necessary for some jury members. Some judges follow up with jurors who seem particularly disturbed by the trial or ask the

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<sup>86</sup> The court can increase the effectiveness of the mental health professional by providing information on the jury process, the specific stressors or issues involved in the trial, and the most frequent problems experienced by jurors.

<sup>87</sup> Some professional associations have referral services that can provide the names of mental health professionals with knowledge of the court process and juror stress.

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jurors to call the judge or someone else within a set period of time.<sup>88</sup>

In general, good debriefing sessions 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. The next section offers suggestions for optimizing the debriefing process.

### OPTIMIZE THE DEBRIEFING SESSION

- *Consider the best time to debrief.* Timing the debriefing is important. If the verdict is returned early in the day, remaining for the debriefing can provide jurors an excellent opportunity to decompress before meeting the press. However, if it is late in the day, jurors may be tired or burned out from their deliberations and thus should be directed to return the following day for debriefing. The latter is typically easier to arrange when a professional from outside the court conducts the debriefing, as the exact time a jury will bring the verdict in is uncertain. In addition, some jurors reported being numb and emotionally exhausted immediately after the trial and thus could not take full advantage of what was being said.<sup>89</sup>
- *Make the juror feel comfortable.* The judge should set the stage for the debriefing process. Debriefings may be held in the courtroom, the judge's chambers, or in the deliberation room. There are advantages and disadvantages to each choice—judges can determine the best location considering available space and the individual experiences of each jury.<sup>90</sup> In any location, the judge should take steps to diminish the psychological distance between judge and juror—removing the judicial

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<sup>88</sup> Judges may find it helpful to speak with a mental health professional about the likely symptoms of stress that would warrant a referral to a mental health professional.

<sup>89</sup> One juror suggested that the court provide exiting jurors with written information about what they can expect so that they can take this information with them and read it later. She also suggested providing a number they can call for assistance. "All coping skills are not equal, and if the state can ask people to make the sacrifices we must make to serve, then it seems appropriate that they have something in place to assist those who don't carry the burden as well as others."

<sup>90</sup> For more information, see *Appendix 12: Suggested Procedures for Judges Conducting Juror Debriefings*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 297–302.

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robe or coming down off the bench to speak to jurors on the same level.

Many judges may feel uncomfortable conducting jury debriefings. Judge James Kelley suggests several strategies judges can use to increase the judge's effectiveness: listen with an empathetic attitude, do not interrupt jurors, occasionally repeat back what was said by a juror to show you are listening, and censor any "put down" statements.<sup>91</sup> While study participants generally agreed that the presiding judge should conduct the debriefing, they did acknowledge that some judges "don't have the personality for it," in which case the debriefing should be conducted by another court official or mental health professional.

The judge or mental health professional should make it clear that participation in a debriefing is voluntary and no one should be singled out or questioned if he or she does not choose to participate actively in the discussion. Some jurors, although quiet, may be relieved to hear their concerns expressed by other jurors. One judge indicated that jurors may "need to understand that this conversation is not on the record and that the trial is over now." To help jurors feel comfortable and encourage conversation, some judges clear the courtroom entirely; others indicated that they allow attorneys to remain for the purpose of education, dismissing them only if the jurors seem nervous or request that the attorneys not be present.

- *Encourage productive communication.* Jurors may need some encouragement to begin the post-trial debriefing. One judge suggested asking a direct question to "prime the pump." Get the conversation started using open-ended questions – ask jurors if they have any questions about the trial process or comments about their experience. The jurors should drive the content of the debriefing, and any appropriate questions should be answered.<sup>92</sup>

Though the object is to encourage open communication, the judge and/or mental health professional conducting the debriefing needs to maintain control over the discussion. Judges suggested introducing the debriefing process by stating the purpose of the meeting and setting any ground rules for the discussion

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<sup>91</sup> See *Addressing Juror Stress*, *supra* note 85, at 120.

<sup>92</sup> Subject to ground rules, some questions and comments can be put into writing. This approach may increase juror participation in the process, as well as facilitate more open and honest comments.

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(e.g., only one person speaks at a time, be sensitive to the confidentiality of others' remarks, talking about the deliberation process is "off-limits"). Do allow jurors to vent some feelings about the process, but do not allow them to start discussing other jurors' behavior or allow the debriefing to degenerate into a conflict between two jurors or a continuation of arguments from the deliberation room. Judges may watch for signs that jurors are uncomfortable—facial expressions or avoiding eye contact with the jurors who are talking. Judges reported that by controlling the process carefully, they rarely hear about possible juror misconduct or information that may lead to a new trial.

### ENSURE DEBRIEFING ADDRESSES JUROR NEEDS

- *Cover "lingering" questions.* A debriefing session is an excellent time to answer questions that were not appropriate for discussion during the trial. Many jurors in the study described their frustration over delays and frequently felt that their time was wasted waiting for the judge or attorneys. Judges may take this opportunity to explain the reasons for the delays. Jurors also may be curious about conversations conducted outside of their presence or may wonder why certain evidence was not presented. The debriefing is an opportunity to explain trial procedures or rules of evidence that jurors may not have understood.

Some judges are comfortable discussing their opinions about jurors' specific questions; for example, the reasons why a certain witness did not testify. In criminal trials, jurors often want to know what will happen to the defendant next; some judges use the debriefing to tell jurors about the defendant's prior record or explain how the sentencing process works.<sup>93</sup>

- *Reassure jurors.* Some jurors have questions about their verdict. Concerns about having made the wrong decision can haunt jurors long after the trial is over. A debriefing enables the judge to assure jurors that they did a good job, without commenting on the verdict.<sup>94</sup> Judges may take this opportunity to empathize with jurors about how hard it is

*"Jurors appreciate the concern for their well-being and comfort; jurors like the attention given to questions they have about the process."*

—Judge

*"Whether you agree or not, you can't comment. . . . Their job is tough enough as it is."*

—Judge

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<sup>93</sup> See *Addressing Juror Stress*, *supra* note 85, at 118.

<sup>94</sup> See *id.* at 117.

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to be a juror and to note that most cases that go to trial are sharply contested and difficult to decide. One judge tells his jurors that “juries make the best decision 99% of the time, and if they didn’t it’s because they got bad evidence or testimony and that’s not their fault, but the fault of the attorneys or the judge.” Judges can emphasize that jurors fulfilled their duties to the court and can encourage them to take pride in the process, de-emphasizing the verdict. In the study, several jurors reported that the debriefing process made them feel better about the verdict.

Jurors also may have concerns about retribution, either by the defendant or the defendant’s family and friends. These fears are especially prevalent in trials involving violent or gang-related crimes. One juror described “concerns that the attorney was passing names on to the defendant – worried about the defendant coming back and getting me.”<sup>95</sup> After the verdict, jurors should be informed of precautions to protect their privacy and any additional security precautions that are being taken. Judges can reassure jurors that incidents of retribution are extremely rare but provide them with information about contacting the court if a threat does occur.

- *Help jurors deal with media and attorneys.* After the trial, jurors are sometimes anxious about meeting the parties involved in the trial or with reporters. They worry that their discussions in the deliberation room will not remain private. Some express confusion about whether they are required to speak to the media. ABA Standard 16(d)(i) and (ii) recommend that judges “release the jurors from their duty of confidentiality” and also “explain their rights regarding inquiries from counsel or the press.”<sup>96</sup> Several of the judges in the study also take this opportunity to remind jurors to respect the privacy of the other jurors when discussing the case with the media or attorneys.

To protect jurors from harassment, some courts inform jurors of constraints on the parties and their attorneys regarding future contact with jurors and provide instructions on how to invoke the protection of the court, if needed.<sup>97</sup> Some courts also provide alternate exits for jurors who want to avoid the press.

*“Stressed from deliberation and verdict, didn’t want to have to explain to reporters.”*

—Juror

*“I still have nightmares about what I heard. It was after the trial that I was bothered the most—no nightmares during the trial.”*

—Juror

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<sup>95</sup> See discussion *infra* Chapter 3, “Address Security Issues.”

<sup>96</sup> ABA JURY STANDARDS, *supra* note 4, at 141.

<sup>97</sup> For more information, see § VII-1 *Advice Regarding Post-Verdict Conversations*, in JURY TRIAL INNOVATIONS *supra* note 15, at 197-99.

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“The night we stayed in the motel, I dreamed [the defendant] had gotten loose and was there in the room with us while we were deliberating on the verdict. I was terrified.”  
—Juror

- *Normalize juror stress.* Many jurors experience similar symptoms of juror stress. These may include insomnia, anxiety, guilt, intrusive thoughts, nightmares, or depression. Talking to jurors about these symptoms validates their feelings and helps them understand that what they are experiencing is normal. It is also important to warn jurors that even though they haven’t experienced these signs of stress during the trial, they may in the future. People react differently to stressful situations. Some may continue to have symptoms for a while after the trial.<sup>98</sup> Some may have a reoccurrence of symptoms at specific times, such as the anniversary of the trial or sentencing. In a mental health debriefing, the facilitator may go beyond simply discussing stress symptoms to help jurors reflect on and express feelings to relieve them of the efforts needed to suppress them. Reassuring jurors that stress symptoms are a normal reaction to an abnormal experience can in itself bring considerable relief of stress.

### SEEK POST-TRIAL JUROR FEEDBACK

A variety of post-verdict procedures allow the court to identify areas in which the court can improve services to jurors. Communicating with jurors through debriefings, individual meetings, or exit questionnaires can reveal areas in which the court can help jurors now and in the future.

Although once the trial is over it may be too late to respond to some juror concerns, juror feedback about the process may be helpful for improving the experience of future jurors. Some courts use exit questionnaires to track jurors’ feelings about jury duty and to identify areas of juror dissatisfaction. Although questionnaires are not necessary for every trial, they provide another forum for jurors to release pent-up feelings about their experience of juror duty. *Jury Trial Innovations* suggests that to be useful to the court, questionnaires should be distributed often enough to monitor juror attitudes about jury service during periods of high and low juror usage. Questionnaires should be administered to people at all stages of the juror selection and trial process, including alternate jurors, excused jurors, and individuals who were not selected for jury service.<sup>99</sup>

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<sup>98</sup> Judges may find it appropriate to inform jurors of additional mental health resources.

<sup>99</sup> For more information, see § VII-5 *Juror Exit Questionnaires*, in *JURY TRIAL INNOVATIONS*, *supra* note 15, at 209-10.



