43 Drake L. Rev. 97

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ADDRESSING JUROR STRESS: A TRIAL JUDGE'S PERSPECTIVE

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TABLE OF CONTENTS

I. INTRODUCTION

The public stage of the legal system is the courtroom. The actors include lawyers, judges, witnesses, bailiffs, parties, and jurors. All have a role, some more than one. The intended result of the system's activity is a decision: the conclusion of a controversy. Most controversies do not result in a public trial; they are settled or compromised before the public phase of a trial begins. [1] The cases that do go to trial are the ones in which either the stakes are too high for compromise, or the principles involved seem too important to be negotiated. Thus, juries, and sometimes judges, are asked to decide disputes not otherwise solvable.

The jury trial method for deciding disputes presents “evidence” to a group of nonexpert lay persons, gives them some guiding legal rules, and tells them to make a decision about the facts presented in the trial on the basis of the given legal rules. Lawyers present a story to the jury in order to persuade them that a ***98** particular view of the case is its reality. [2] In effect, a trial is an exercise in creating a reality as a basis for a decision.

Reality is not always neat, pretty, or comfortable to observe, either in everyday life or in the courtroom. Psychiatry and psychology teach that persons exposed to traumatic experiences can have adaptive reactions others may not experience. [3] The most well-known example is what was called “shell shock” in prior wartime, now generally referred to as posttraumatic stress disorder. [4] Some evidence indicates jurors in very difficult cases may exhibit symptoms of stress similar to those seen in persons clinically diagnosed as suffering from posttraumatic stress disorder. [5] Recent attention from journalists [6] and therapists [7] highlight a growing public perception of the stress of jury service in difficult cases. Judges also observe the stress jurors manifest during trials. Some judges regularly talk to jurors after the verdict in particularly difficult trials in order to reduce distress and “close” the jury process. Even these judges often question whether such contacts are appropriate or even helpful.

This Article considers possible judicial responses to juror stress. The Article begins by examining the trial judge's role in jury management and the existing legal rules regarding postverdict contacts with jurors. The Article then discusses media accounts of juror stress and reviews some professional literature suggesting postverdict contacts between judge and jury can effectively reduce juror stress. Next, the Article surveys reports of professional psychological debriefing of jurors. The following section

presents the author's own study of juror stress, which began by sending a questionnaire to jurors who deliberated to verdict in forty-four recent murder trials in Iowa. The study tests two hypotheses: (1) Jurors who decide criminal murder trials are likely to experience stress symptoms related to the case; and (2) jurors in murder cases who have informal postverdict conversations with the trial judge are less likely to experience severe stress symptoms than jurors not provided that opportunity. Finally, the Article recommends standards and techniques for both informal judicial debriefing and formal professional debriefing of jurors.

II. JURY MANAGEMENT

Trial judges manage many facets of the judicial process,[8] including cases and juries.[9] Managing has many meanings. When applied to juries, managing **99* means the judge must plan for the trial, communicate with the jury, lead the jury through the case, and guide the jury in applying the law for the decision.

Trial judges manage a substantial amount of the planning for jury intake. Judges often control the size of the panel needed. They may determine some of the procedures for calling jurors.[10] Juror orientation is often the trial judge's first contact with the jury panel. Many judges actively manage the voir dire process by controlling the scope and content of the questioning.

The trial judge controls, and therefore manages, the jury during trial through evidentiary rulings, admonitions and instructions, recesses, and handling trial interruptions.[11] Judges take responsibility for the comfort[12] and health[13] of jurors while in court. At the end of the trial, the judge controls the jury's exist from the system by determining when and how the jurors are discharged. Postverdict contact with jurors poses certain problems, some with more systemic ramifications than others. Judges still manage these contacts, including the “who” and the “how” of the process.

**100* Judges also make and enforce rules regarding lawyers' contacts with jurors after trials. These rules include ethical strictures,[14] court rules,[15] and general trial standards.[16] In addition, judges attempt to limit intrusions by the news media into the lives of jurors after trial.[17]

Judges are required to follow ethical restrictions regarding their own contact with jurors after trial. Canon 3 of the ABA Model Code of Judicial Conduct prohibits a judge from making any public comment that might reasonably be expected to affect the outcome or fairness of any pending case in any court.[18] The Canon also prevents a judge from making any nonpublic comment that might interfere with a fair trial or hearing in any pending or expected case.[19] This ethical rule further addresses whether a judge may explain the procedures of the court for public information. The relevant portion of the Canon states, “A judge should abstain from public comment about a pending or impending court proceeding in any court.... This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.”[20] When judges attempt to follow the ethical rules and promote public understanding of the legal system, they are often **101* put in an awkward position because they cannot ethically comment on the cases they are most familiar with until all appeals are final.[21]

The new Model Code of Judicial Conduct, adopted by the American Bar Association in 1992, affects a judge's duty when talking to jurors after a verdict. Section B(10) of Canon 3 now provides, “A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.”[22]

The commentary of the ABA Advisory Committee on the Criminal Trial accompanying Standards Relating to Trial by Jury decries the practice of some judges who have been heard, on occasion, to tell the jury they “did the right thing,” or they acquitted a guilty recidivist.[23] If these jurors are immediately assigned to another case, such comments from a judge could influence them in those cases. Avoiding commendation or criticism of the verdict does not mean, however, a judge should avoid all contact with jurors postverdict. If judges understand the reasons for controlling postverdict contact with jurors, they will be able to determine whether and what type of judicial contact is appropriate.

Restrictions on postverdict contacts with jurors generally reflect the long held common-law rule against inquiry into jury deliberations. One commentator posits the rule originating in an English opinion in 1785 and becoming a nearly unquestioned rule in the United States. [24] The rule has now been adopted in Rule 606(b) of the Federal Rules of Evidence and in various states. [25] Rule 606(b) provides:

> Upon an inquiry into the validity of a verdict ... a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict ... or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or ***102** evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes. [26]

The United States Supreme Court upheld this Rule against the argument the Rule prevented a criminal defendant from proving a violation of his Sixth Amendment right to a competent jury. [27] The Court held that prohibiting use of juror affidavits about juror intoxication advances three policies crucial to the jury system. First, the prohibition promotes open and frank discussion during jury deliberations. [28] Second, the rule maintains the community's trust in the jury system. [29] Third, it protects jurors from harassment if they return an unpopular verdict. [30] These reasons all focus on protecting the deliberative process by cutting off some types of inquiry into the dynamics of actual jury deliberations in real cases. [31]

When trial courts apply these policy reasons to the question of whether the judge should meet and talk privately with the jury postverdict, the analysis leads to some confusion. If trial judges focus on helping the jury understand its function and duties, while promoting public acceptance of the jury system, then the reasons supporting Rule 606(b) seem irrelevant to the trial judge's problem.

Lessening potential distress in jurors, however, does not impinge on the policies supporting prohibitions on some types of postverdict contact. In fact, one reason for debriefing jurors postverdict is consonant with protecting jurors from harassment. Harassment produces stress. Stressed jurors are less likely to want to be on another jury. Therefore, a rule preventing harassment suggests another reason favoring postverdict contact: reducing juror stress. The basic policy supporting both the rule preventing harassment and a preference for debriefing juries is to preserve the jury system and to promote wide acceptance of jury service.

III. PRIOR STUDIES OF JUROR STRESS

In an article in the Riverside, California Press-Enterprise, four jurors who deliberated to verdicts in different murder trials were interviewed some time after the trials. [32] One juror described violent nightmares about attacks on family and ***103** friends; these nightmares recurred for a year after the trial. [33] Another described his jury service as so emotionally taxing he would rather relive his two active duty years in Vietnam than go through the trial again. [34] A third juror was fearful fourteen years after the trial. [35] The fourth juror, interviewed three and one-half years later, had strong emotions about the trial. The press interview was the first time the juror had been asked how she felt about the experience. She stated how important it was "to talk to somebody about how I feel about it." [36]

A juror interviewed five months after a Connecticut murder trial discussed her anxiety when something on television reminded her of the murder. [37] The same juror complained that although " l ots of work goes into the selection of a jury, ... nothing is done to help with how upset you can feel." [38]

Print journalists are not the only ones intrigued with jurors' reactions to difficult trials. In 1987, the experience of a Lowell, Massachusetts, murder trial jury was the subject of a television documentary. The documentary was shown on ABC's Nightline during the sequestered deliberations of the Oliver North trial jury. [39] After the murder case verdict, the documentary's reporter

interviewed some of the jurors about their experiences. Some jurors reported suffering irritability, sleeplessness, and flashbacks to the scene of the dump where the victim's body was found. [40]

The reactions of jurors who decide difficult issues in murder trials resemble certain clinical signs of posttraumatic stress disorder. [41] Psychiatric literature and studies propose that persons experiencing an event outside the normal range of human events and quite distressing to most people will have similar responses during the process of working through the stressful event. [42] Strains to a person's psychological system can produce a large number of responses, not all of which are maladaptive. Repetition and chronic recurrence of a number of these responses over a long period of time, however, can be signs of a clinical disorder. [43]

A study of jurors after a murder trial in Cincinnati, Ohio, found evidence of stress disorders in some jurors, and stress responses in many. [44] After three sessions with ten of the fifteen jurors, including alternates, psychiatrist and author Dr. Stanley Kaplan determined that four of the jurors fit all of the standard psychiatric ***104*** criteria for diagnosis of posttraumatic stress disorder six months after the trial was over. [45] The jury was "death qualified," and, as part of its verdict, it returned a death sentence. [46] Stress responses included recurrent frightening dreams, upsetting thoughts, anxiety brought on by everyday occurrences reminding them of an aspect of the evidence, and even phobic reactions to places similar to the murder scene. [47] Not all the results were negative. Some jurors emerged with more self-confidence and maturity. [48] Others stated they spent more time with their children, dealing thoughtfully with the children in hopes of preventing them from turning out as badly as the defendant. [49]

Dr. Kaplan noted an interesting phenomenon. Although some of the sessions "reawakened memories of the trial and evoked transient increases in symptoms in some jurors, most said they had benefited from the discussions. They were particularly grateful for the opportunity to discuss their experiences with someone who could understand their thoughts...." [50]

Dr. Kaplan and a colleague have separately reported interviews with forty jurors from this case and three other criminal trials. [51] Twenty-seven of the jurors exhibited one or more physical or psychological symptoms the authors thought were related to their jury duty. [52] Complaints ranged from sleep disturbances, reported by thirteen jurors, to overt physical illness, including headaches, hives, and peptic ulcer flare-up. [53] The report commented on symptoms of posttraumatic stress found in several jurors who served on murder trials. One juror reported that after seeing graphic photographs of the murder victim, she "went home ill" and could not eat for three days. [54] Six weeks after the verdict, this juror said that when someone mentioned the case, she experienced "nervous, unstable feelings inside." [55] She also reported she still dreamt about the case. [56] Another juror mentioned anything reminding her of the trial made her tearful. [57] The same juror reported having trouble sleeping during sequestered deliberations. [58]

Some experimental evidence suggests positive effects accrue from talking with an accepting and trustworthy confidant about traumatic events. [59] These effects can include both reductions in reported physical illness [60] and improvement ***105*** in immune system functioning. [61] Benefits derived from discussing shared traumatic experiences lie at the heart of recommendations from psychiatrists that jurors exposed to disturbing evidence in high profile criminal cases be debriefed by mental health professionals after the trial. [62]

One professional debriefing of a jury has recently been reported. [63] After a six week murder trial in Kentucky, which involved an alcohol-related traffic accident resulting in the death of twenty-seven people, mostly school children, the judge engaged a crisis debriefing team to help the obviously distraught jury. [64] Two psychiatry professors conducted a voluntary two-hour session immediately after sentencing. Eleven jurors, the judge, the court reporter, a bailiff, and one jailer attended. [65] The debriefers described the session's start as follows: "We began the session by acknowledging the amount of stress that the jurors

had been under and by emphasizing the importance of talking about their experience. We also outlined common reactions to stress and their clinical manifestations. The jurors were then invited to share their feelings and perceptions." [66]

The trial occurred in a rural community, where most of the jurors knew either relatives or friends of the defendant. [67] The victims were from a small town almost eighty miles away. [68] Most of the debriefing session focused on the jury's anger at being "caught in the middle." [69] The debriefers moved the discussion towards allowing the jurors to accept that they had done their job as jurors in a way that ensured a fair trial and verdict. [70] The discussion then turned to the cognitive and emotional reactions the jurors could expect. The psychiatrists suggested the jurors might experience sleep disturbances, decreased appetite and concentration, irritability, and intrusive thoughts. [71] Some jurors already had these complaints. [72] The facilitators encouraged the jurors not to misinterpret these signs as anything but a normal response to a stressful event. [73]

The intensity of the session surprised the psychiatrist-debriefers. [74] They thought the jurors' responses were as severe as that of rescue workers or law enforcement officers who are debriefed after working at disaster scenes. [75] The ***106** psychiatrists wrote that the stress placed on jurors had not been fully appreciated in the past, at least in the psychiatric profession. [76] Some of the factors leading to this level of stress, in their opinion, included the length of the trial and the jurors' inability to obtain any emotional release by talking about it during the trial. [77]

Mental health professionals suggest debriefing sessions with jurors after trial should include information about coping with stress and its normal effects. These sessions should offer mutual support and validation of the jurors' shared experience. If jurors can realize they are not alone in their powerful feelings, they can be more comfortable with these feelings and therefore avoid future adverse reactions. [78]

Judges throughout the country apparently have been helping jurors overcome the effects of stress in the jury box. [79] I have routinely debriefed jurors in criminal cases since 1984, and the intensity of the reaction of the jurors in the Kentucky study is not surprising. I have seen the same intensity of reaction in jurors deciding both murder and sexual abuse cases. The reactions I have observed do not appear to depend upon either the size of the community or the amount of publicity about the case. Informal contacts with judges from around the United States indicate some judges do regularly talk to jurors after a verdict is announced in criminal cases. These trial judges are concerned about the effects these informal debriefings have on jurors and whether the practice is effective. They also feel ill-equipped to engage in this type of discussion. [80] No known studies have explored the effects on juror stress levels of private, postverdict conferences with the trial judge.

Psychiatric [81] and psychological [82] literature predicts that encountering an event generally beyond the range of common human experience may produce stress symptoms in susceptible people. The criteria for diagnosing a post-traumatic stress disorder [83] require the subject to experience a very serious stressful event. Such events include assault, rape, flood, earthquake, bombing, torture, airplane crash, military combat, or motor vehicle accidents with serious physical injury. [84] One author indicates his studies show less serious life experiences ***107** also may induce stress symptoms. [85] Certain persons may be more disposed to having stress symptoms because of these experiences. [86] Other studies suggest stress responses may be lowered by a person discussing the stress-producing event. [87] The literature therefore suggests postverdict discussions between the trial judge and jurors could have an effect on jurors' stress levels and later reactions.

IV. A STUDY OF IOWA JURORS

A. Design and Methodology

The Iowa jury study was designed to assess stress levels in a large number of jurors involved in serious criminal cases. A questionnaire was sent to jurors who decided forty-four murder cases in Iowa. The names and addresses of jurors who deliberated to verdict in these Iowa cases between January 1, 1989, and January 30, 1991, were obtained from public records. [88] A three-

page questionnaire was sent to all 528 jurors. All jurors' names and personal information were omitted from the questionnaires. The jurors were assured anonymity. Each questionnaire was coded for the county and case number only. Questionnaires were given serial numbers based on the order received from each trial. Three-hundred fifty responses were received. No follow-up letters were sent. The response rate of sixty-five percent without a follow-up request was unusually high, and greater than reasonably expected. This rate may have been due to the nature of the inquiry, the source of the request (a judge), or a perceived (or unconscious) need of the responding jurors to communicate with someone about their experience. It can be interpreted as partial confirmation that jurors are concerned about the legal system and their part in it.

None of the juries in the Iowa study were sequestered. Two juries heard cases removed from the original county on change of venue. At least two cases were retrials after appellate court reversals; none were repeats of the same case. Juries in Iowa have no responsibility for recommending sentences. Many jurors seemed aware that first degree murder is punished in Iowa by life imprisonment without parole. Dr. Kaplan's work suggests sequestration and death penalty sentencing functions place special stress on jurors.[89] These variables could not be controlled in the study. Their effect must be evaluated in future inquiries.

B. Analysis

The questionnaire was designed to determine the jurors' reactions to the trial and to the trial judge's closing conference with them, if any. Six numbered questions were placed on three sheets. The first question asked for the type of ***108** "private" conference the jury had with the trial judge after the verdict was announced. Three types of private conferences were postulated: a question-and-answer session, informal conversations, and an instructional session about whom to talk to or what to talk about after leaving the courthouse. An answer also was allowed to indicate all three had occurred. The final answer option indicated no posttrial private conference with the judge. A pivotal problem with the study was the inability to control the type and content of any post trial conferences between the judge and jury. Many of the juries considered to have been "debriefed" by a judge may only have had an informal talk about jury procedures or ways to leave the courthouse without meeting the press. Responses to the first question are tabulated in Table 1.

TABLE 1[90]

JUROR REPORTS OF TYPES OF JUDGE/JURY CONFERENCE

Type	Number
Question and answer	36
Informal conversations	63
Instructional session	27
All of the above	36
No private conference	229

A subpart of the first question asked each juror to describe the private conference with the judge and to indicate what happened in the meeting. This open-ended request and a later question asking for the jurors' recommendations for discussions with the judge provided insight into jurors' thoughts about the trial process. Many pages of textual responses from jurors were received. They were coded by a questionnaire serial number (1-350) and by county and case number. No textual analysis has yet been attempted on these responses. Some pertinent quotes from these juror responses are included in both text and footnotes.

The second question asked whether the juror discussed the case itself and the juror's feelings about the jury experience with others after leaving the courthouse. The form provided response fields including family members, close friends, work colleagues, neighbors, other jurors, and "any others." Responses are tabulated in Table 2.

TABLE 2[91]

JUROR DISCUSSIONS AFTER LEAVING COURTHOUSE

Discussed case and feelings with:	Number	%
Family members	333	91.7
Close friends	267	73.6
Work colleagues	216	59.5

Neighbors	82	22.6
Other jurors	155	42.7
Any others	34	9.4

***109** The third question had fifteen subparts. The subparts were designed to elicit whether the juror experienced typical stress responses to the evidence presented in the trial. The question used is printed below.

You were a juror in a trial concerning a serious crime. Below is a list of comments made by people after observing evidence of similar crimes. Please check the one box next to each item that most closely describes how frequently these comments were true for you since the trial. If they did not occur, please mark the “Not at all” box.

a. I thought about it when I didn't mean to.

b. I avoided letting myself get upset when I thought about it or was reminded of it.

c. I tried to remove it from memory.

d. I had trouble falling asleep or staying asleep.

e. I had waves of strong feelings about it.

f. I had dreams about it.

g. I stayed away from reminders of it.

h. I felt as if it hadn't happened or wasn't real.

i. I tried not to talk about it.

j. Pictures about it popped into my mind.

k. Other things kept making me think about it.

l. I was aware that I still had a lot of feelings about it, but I didn't deal with them.

m. I tried not to think about it.

n. Any reminder brought back feelings about it.

o. My feelings about it were kind of numb.

After each comment, four boxes appeared in columns headed “Not at all,” “Seldom experienced,” “Sometimes experienced,” and “Often experienced.” [92]

The fourth question asked whether the juror “would hesitate to serve on another jury in the future.” Due to the imprecise wording of the question, the “yes or no” responses were not consistent and therefore not useful.

***110** The fifth question asked the juror to make recommendations for discussions between judges and jurors after verdicts are announced. The textual responses have not been coded or otherwise analyzed, but some are used in the discussion.

The sixth question asked jurors to indicate their gender, age, marital status, and level of formal education. These demographic variables are shown in Table 3, along with certain comparison information about the general demographics of the Iowa population.

TABLE 3

DEMOGRAPHIC VARIABLES

Demographic Category	Number	%	State-wide %	
Gender: [93]				
Female	196	56	52	
Male	152	43	48	
No response	2	1	0	
Totals	350	100	100	
Age: [94]				
18-40 years	154	44	54	
41-60 years	135	38	19	
Over 60 years	59	17	27	
No response	2	1	0	
Totals	350	100	100	
Marital Status: [95]				
Single	37	10	23.7	
Married	282	81	60.6	
Divorced	19	5	7.3	
Widowed	10	3	8.4	
No response	2	1	0	
Totals	350	100	100	
Education: [96]				
Grade school	20	5.6	*	
High school	102	29	*	
Some college	124	35.3	*	
College graduate	79	23	*	
Graduate degree	21	6	*	
No response	4	1.1	*	
Totals	350	100	*	

***112** No attempt was made in the study to investigate the reasons for differences between the demographic make-up of the jurors studied and the state population. The reasons can be explained, however. In Iowa, jurors are drawn from two sources: drivers' license and voter registration lists. [97] Slight variations may result from using these two lists. Voir dire and jury selection by lawyers adds further variables to the selection process. Some judges suggest lawyers will generally remove prospective jurors likely to have severe stress reactions to expected evidence, especially in a serious case. Also, jurors who indicate in voir dire the stress of a gruesome or difficult case would affect their ability to be impartial will usually be excused for cause. Therefore, a close match between the demographics of the community and the final jury seated for any serious case is seldom obtained.

The high percentage of persons responding who were college graduates, 29% of responding jurors, compared to the state average of 13.9% of the general population over age 25 who have more than 16 years of education, is striking. [98] Two explanations suggest the result. The first explanation is lawyers in these cases may choose more educated jurors. Second, a self-selection process could also be involved: college educated persons may respond more readily to a questionnaire in such a study. Both factors probably influenced the divergence of the population demographics.

Analysis of the responses [99] to the first question revealed twelve juries had been “debriefed” by the trial judge. For purposes of the study, a debriefing was any private postverdict conference with the judge in which jurors' questions were answered, informal conversations were held, and instruction was given about to whom the jurors could talk after discharge. No information was received indicating any judge talked with the jurors about typical psychological stress responses. Of the jurors who returned questionnaires, 91 had been debriefed and 258 had not. One response was not able to be assigned.

Because none of the juries were professionally debriefed by psychiatric or psychological clinicians, the study could not compare stress levels of jurors debriefed by such trained persons. Analysis of the data shows there was no statistically significant difference in the aggregate mean stress levels reported by jurors debriefed by judges and those not debriefed. [100] The small number of jurors ***113** experiencing a private postverdict conference with the trial judge made a clear test of the second hypothesis difficult. Data sets comparing 91 responses to 258 responses are not likely to yield statistics with a confidence level of 95%. The inability to control the type or content of the judges' private conferences with jurors was another methodological limitation. The only reasonable conclusion to be drawn from the second question in the hypothesis is that juror stress response is neither increased nor decreased by postverdict judicial debriefing. Confirmation of this hypothesis must await further studies in which the postverdict conferences can be controlled better. [101]

The total stress experienced by a juror was inferred by ranking the questionnaire response to the fifteen stress questions. The frequency of experiencing a stress response was coded numerically, assigning a value of “zero” to the “Not at all” response, “one” to the “Seldom experienced” response, “three” to the “Sometimes experienced” answer, and “five” to the “Often experienced” answer. [102] Under this method, a total stress response of 15 or less would mean the juror experienced very little stress relating to the trial. Of responding jurors, 44% had total stress scores of 15 or lower (n = 156). A total stress response of 60 would indicate a very high level of stress. Only 9/10 of 1% of the responding jurors reported such high stress (n = 3). The mean total stress response for all responding jurors was 19.48, and the standard deviation was 14.623. A breakdown of the total stress scores by quartile is shown in Table 4.

TABLE 4

TOTAL STRESS SCORES—QUARTILE DISTRIBUTION

Stress Score Range	Number	Percentile
0-6	86	0-25%
7-17	82	26-48%
18-28	93	49-75%
28-73	89	76-100%

The raw numbers indicate nodes or clusters of respondents between total stress scores of 2 to 5 (n = 46), between scores of 10 to 15 (n = 50), and between scores of 18 to 20 (n = 32). As predicted by the standard deviation of the total stress scores, 60% of the responding jurors had total stress scores of between 5 and 34.

***114** not been debriefed showed a mean of 19.686. The standard deviation for the debriefed group was 13.069, while for the group not debriefed it was 15.174.

Statistical tests run on the data indicate a difference in stress responses between women and men. On average, women reported statistically significant higher stress responses than men. [103] The explanation offered in psychological literature is that women are more likely to admit stress symptoms than men. [104] An alternate explanation could be women react to stress in the jury trial setting in ways different from men.

The data from the study also show a link between the severity of the stress response and the number of different types of people with whom the juror reported discussing the case experience. [105] The more types of people the juror reported talking to about the case, the higher the reported stress level. This may mean jurors experiencing high stress levels naturally attempt to reduce stress by “talking it out.” The psychological literature encourages discussing traumatic events as an adaptive means of reducing stress symptoms. [106]

In Stress Response Syndromes, [107] Horowitz discusses some studies of self-reported stress responses. [108] A question quite similar to that used in this jury study was given to subjects clinically diagnosed as suffering from stress syndromes. One group of thirty-eight patients had experienced the trauma of violence towards themselves. Another group of forty-three had experienced the sudden unexpected death of someone close to them. A comparison of the mean stress responses to similar questions used in the study is shown in Table 5.

TABLE 5

MEAN ENDORSEMENT—STRESS SYMPTOMS

	Horowitz Studies		Iowa Jury Study
Question	**Violence Group n = 38**	**Death Group n = 43**	**Jury Group n = 350**
1	3.39	3.64	2.35
2	3.32	2.88	1.69
3	3.50	1.95	1.28
4	3.00	2.67	1.13
5	3.95	3.60	2.12
6	1.87	1.09	0.65
7	2.66	2.12	0.73
8	1.18	2.05	0.51
9	2.59	2.33	1.15
10	3.35	3.39	2.20
11	3.29	3.53	1.56
12	3.16	3.52	0.76
13	3.34	2.40	1.15
14	3.78	3.77	1.49
15	2.26	2.53	0.69

***115** The comparison indicates jurors in serious criminal cases do report stress responses related to their jury experience. On the whole, these responses are much less severe than the responses of Horowitz's clinical subjects. The juror responses do, however, indicate stressed jurors.

C. Conclusions

From the study of Iowa jurors, it appears jurors in serious criminal cases suffer stress symptoms as a result of jury service. Postverdict debriefing by the trial judge does not seem to affect juror stress measurably, either positively or negatively. Because Iowa has no death penalty and Iowa juries have no sentencing function, the study may not be replicable in other states. The penalty for first degree murder in Iowa is life in prison without parole. Although some jurors in the study knew this before trial, others asked about the sentence after the verdict. [109] Another circumstance possibly linked to the low observed stress levels is that no juries in the study were sequestered. [110]

The difficulty of defining debriefing by a trial judge, [111] and the small number of debriefed jurors in the study, [112] make this study more suggestive than ***116** definitive. It seems likely even a brief intervention, such as a short conversation with the trial judge, helped some jurors avoid serious stress reaction. No firm conclusions about brief intervention by the judge, however, can be drawn from this study. Given the broad definition of debriefing necessary in the study, [113] the effect of different judicial debriefing methods on juror stress must await further investigation when the debriefing methods can be controlled. One conclusion supported by the study is that jurors obtain stress relief from discussing their jury experience with family, friends, and others after the case is over. [114]

From these conclusions certain useful recommendations about jury debriefing can be extracted. Other recommendations can be made from both experience and the other literature reviewed.

V. RECOMMENDATIONS FOR JUROR DEBRIEFING

The Iowa jury study and the general literature do not conclusively show trial judge debriefing of criminal juries has either an adverse or a positive effect on juror stress. The literature postulates, however, a positive result from therapeutic discussions of stressful or traumatic experiences. [115] If the situation indicates a debriefing would aid the jury, trial judges can initiate the process with confidence.

Some commentators suggest professional debriefing should be considered regularly when a case draws high media attention, when the jury is sequestered, or when the trial is unusually long or difficult. [116] It may be a necessity in a notorious case when the jury has a sentencing function. [117] Whichever type of debriefing is selected, certain issues should be considered by the judge.

A. Debriefing by the Trial Judge

An effective way to begin debriefing a jury is for the judge to offer to answer jurors' questions. The first thing jurors usually want to know is whether the judge believes they did the right thing. The primacy of this question is born out by many responses from the Iowa jurors studied. One interesting, but typical, comment came from a juror in a large county.

I lived & breathed that trial for one and a half weeks. Then it was there with me for weeks afterwards. I park next to the _____ County jail daily & all I could see was the defendant sitting in there. I felt that we could have possibly convicted an innocent man. But, one day, a couple of months after the trial, I had a friend of mine find out the defendant's past and the weight of the whole world was lifted from my shoulders. I felt like it was really over. The defendant had been in a courtroom before and if he hadn't killed ***117** anyone before, apparently, he had tried to. I hadn't convicted someone who was as pure as the driven snow. All of this is leading up to something that I think would have helped me after the trial was over and the verdict was read. If the judge had talked to us & possibly showed some sign of approval over the verdict that was decided or even told us that this wasn't the first time the defendant had been in trouble, I think that I might have had a much easier time dealing with it. If the trial I served on had been more cut & dried than it was, the verdict might have been easier to decide on and live with. But being as it wasn't a drug related murder or even a very sensational murder trial, it made it much closer to home, like something that is more likely to happen in your own neighborhood than in downtown (big city). I really wish the judge had said something. [118]

The need to be reassured they did their duty when exercising an often disagreeable task is understandable. [119] In the 350 questionnaires received, 17 jurors commented on the need to know whether they had made the right decision. One typical response in this vein was:

> I feel it's important to allow the jurors to ask questions after the verdict is rendered. It's also important for the judge to tell the jurors they did a good job in reaching their verdict. It's a very difficult job for 12 people to decide the fate of another person—it weighed upon me for several weeks after the trial. [120]

The best response to this question, without violating judicial ethics, [121] would be to tell the jurors the trial judge's function is different from the jury's, and judicial ethics prevent a judge from commending or criticizing a jury's verdict. One juror in the study suggested a debriefing might not be such a good idea if it resulted in devaluing the jury's decision. The objection was stated:

I'm not sure [debriefing] is a good idea because as a juror you must come to a decision that you can live with—many jurors struggle with this & if a posttrial discussion with the judge were to change their mind (feelings) that person may have a difficult time dealing with the original decision. That original decision is something I must live with for the rest of my life—I want to feel good about it. [122]

The judge should assure jurors that by coming to a unanimous verdict, whether guilty or not guilty, they fulfilled the function of a jury in our system of justice. If jurors have not reached a verdict, but are discharged because they are hopelessly deadlocked, they can also be reassured they have fulfilled the function ***118** of a jury by requiring the State to prove its case by evidence convincing twelve people beyond a reasonable doubt. In this situation, it is also appropriate to discuss with jurors the provisions of 606(b) of the Federal Rules of Evidence [123] and to indicate that the attorneys may want to know what evidence was most bothersome. The judge may properly admonish the jurors to avoid indicating who the minority jurors were in order to avoid harassment and maintain confidentiality. [124] A formal statement to the jury in open court may emphasize these points. Appendix A offers a suggested form for such a statement.

Jurors often want to know how and when defendants will be sentenced.[125] This question allows the judge to explain the presentence report, the state's sentencing laws, and the judge's approach to the sentencing process. Jurors may also ask about the defendant's prior criminal history.[126] In states in which the jury does not decide the sentence,[127] it seems appropriate to advise them of the **119* defendant's known prior criminal record, if any. Many jurors are visibly relieved when the defendant's prior record is disclosed after a guilty verdict.[128] They may ask why the defendant's prior record was not mentioned during the trial. This question allows the judge to explain the law about impeachment[129] and some of the rules of "basic fairness" surrounding criminal evidence and procedure.[130] The jury's relief on hearing about the defendant's prior record provides an opening to discuss why the rule against disclosure may protect persons from being convicted for being a "bad person,"[131] rather than for the act the State claims they committed.

Jurors need to discuss whether, how, and to whom they can talk about the case after it is over. During the trial, they are repeatedly told they are not to discuss the case among themselves or with anyone else. After the trial, they can talk to anyone they wish about the case, or about their reactions to the case.[132] It may be helpful to advise jurors they retain the right to refuse to talk to anyone about the case. The judge may advise the jury that if someone continues to bother them about the case after the juror tells them they do not want to discuss it, they should report the harassment to the court, as the system has the means to protect their privacy.[133] Advising jurors of this in open court after the verdict also sends the message to the defendant's and victim's friends and family that the court will protect jurors from harassment.

The responses of some jurors in the study indicate that sometimes juries debrief themselves. When asked what recommendations they have for discussions between judges and jurors after verdicts are announced, one juror who had no judicial debriefing wrote:

> I never felt like I had the need to talk to the judge afterwards, but after the verdict, about half of the jurors went to a bar/restaurant and talked for about an hour. I felt that was a good thing—we had the chance to share our thoughts & feelings about the intense experience we went through together. Talking about it helped me. I felt like it helped tie up loose ends.[134]

Another juror, who was debriefed, had a similar experience:

> **120* I liked the private conference. Nearly everyone stayed to talk to the judge and also to the lawyers. I was a juror who was of the minority opinion (3-no, 9-yes) when we first began to deliberate. I had to go back through my notes item by item to make up my mind about the case. The conference allowed me time to debrief. The majority of the jurors did go to a place to eat and have a drink after the case was done. This gave us an opportunity to talk and share our feelings.[135]

A judge debriefing a jury should at least mention some of the stress responses a juror might expect. The judge can properly mention typical stress responses: sleep disturbances, dreams about the case or evidence, strong feelings about the evidence, avoidance of reminders of the case, and even unbidden thoughts about the evidence or facts of the case.[136] Even if no questions are asked, it seems proper to advise the jurors these responses are normal,[137] but if they persist for a long period of time,[138] the juror should consult a counselor. It is also appropriate to suggest the jurors talk out their feelings about the case and the evidence with a spouse or other close, trustworthy friend, because these discussions can help them work through the experience.

Many judges may feel uncomfortable holding jury debriefing sessions. Although judges are not trained to be therapists, active listening strategies are useful for judges who debrief. The techniques of tension-reducing dialogue, if used by judges in debriefing sessions, lead to great rewards for both the judge and the jurors. The judge should listen with an empathetic attitude. This encourages jurors to express their feelings. The judge should allow jurors to complete their statements without interruption. Interjecting the judge's own thoughts and feelings is generally counterproductive. The judge should, from time to time, replicate, or repeat back, what was said by a juror. Repetition lets the jurors know the judge is listening to them. The judge should carefully censor any devaluing or "put down" statements. It is never a good idea in a debriefing session to challenge

feelings expressed by any juror. Using these methods, judges confirm that the courts and the legal system hear and act on the valid concerns of the community.

Formalizing the use of these feedback mechanisms may also have other systemic benefits. Professor Patrick Kelley has suggested the jury system helps to form tort law by affirming the community's expected behaviors through jury **121* verdicts. [139] The same analysis may apply to criminal jury verdicts, although attenuated through the lens of legislation. If this is true, then the feedback mechanism of jury debriefing can provide positive systemic benefits. Owen M. Fiss has suggested a community must have a belief in certain shared public values and be willing to act on them. [140] Fiss posits the judiciary has a "responsibility for giving meaning and expression to those values." [141] Although this analysis seems focused on appellate judges, the combination of Fiss's and Kelley's analyses does suggest another reason for trial judges to routinely debrief juries: reinforcement of shared public values.

Judges can also learn much from postverdict debriefing. Jurors often provide insights on which instructions work and which ones need careful revision. [142] The jury's perceptions of some court procedures can also be enlightening. For example, many jurors are quite upset with the unfamiliar process of polling a jury in a criminal case. Without some explanation, jurors may be fearful. As one juror in the study wrote, "Why must the jury be polled? Giving our name and place of employment in front of the accused, also. Some of us were fearful of retribution from friends/family of the defendant—especially since we had to be escorted under police protection from the courthouse to our cars." [143] Another juror thought the procedure was unnecessary, and wrote, "Immediately after the verdict was announced—the criminal's lawyer wanted all of the jury polled as to how they voted—in front of the criminal. I thought that was ridiculous—after all we had just brought in a unanimous verdict of guilty." [144] Considering these responses, judges might well change their procedure and explain the process prior to the actual poll.

Some judges fear if they debrief juries they will impair their proper function as judge. Citing the rules on jury misconduct, [145] judges suggest that during debriefing the jury may disclose some jury misconduct, such as improper experiments, [146] discovery of inadmissible evidence, [147] or outside influences. [148] Neither **122* the rules of judicial ethics nor the necessity for fidelity to the law of the jurisdiction require inquiry by the judge into areas of potential misconduct, or prohibit judges from disclosing evidence of misconduct if it comes to their attention. Because the trial judge will have to rule on any posttrial motions involving alleged juror misconduct, caution is imperative.

At the start of any debriefing conference, the trial judge should announce certain ground rules. One has already been discussed: the judge will not comment on the verdict and will not agree or disagree with it. [149] Another is no one should discuss or comment on the way the jury arrived at the verdict or anything said during deliberations. [150] Suggesting ground rules allows the judge to explain the reasons for protecting jury deliberations and provides the opportunity to discuss the evidence rules regarding jury testimony or affidavits. [151]

If the judge explains the rules that prevent jurors from being brought into court as witnesses concerning jury room deliberations and explains the exception for evidence of outside influences, then it is very unlikely the issue of jury misconduct will ever arise. If misconduct comes to the judge's attention, he or she is under an ethical requirement to disclose it to the attorneys involved so they can take any necessary action.

These recommended rules for judges debriefing juries would be useful in most criminal cases. In fact, they would be effective in most murder or serious felony trials. [152] The high-profile, media-attended case, however, may require more specialized jury debriefing.

B. Debriefing by Professionals

Because the trial judge has ultimate responsibility for jury management, the judge must decide whether to provide the jury with professional debriefing. [153] This decision is difficult for the trial judge. A sensitive judge may be able to determine during

pretrial proceedings whether the case will likely require jury debriefing. The necessity often does not become apparent to the trial judge, however, until the trial is in progress. [154]

Some case attributes known before trial are predictors of potential high juror stress. These include: a case in which a public figure is either the victim or ***123** a defendant, [155] a case receiving national news media attention, [156] or a case involving sensational allegations or potentially disturbing evidence. [157] If the constellation of case characteristics includes a possibly lengthy trial, jury sequestration, or jury sentencing functions, [158] juror stress will likely be heightened. When three or more of these characteristics converge, the trial judge should seriously consider preparing for postverdict professional debriefing.

After voir dire, the trial judge should know a good deal about the jurors' stability and sensitivity levels. During the trial, the judge should remain aware of juror reactions. The final decision about professional debriefing should only be made after balancing the jurors' needs with the added risk of intrusion into the jurors' lives, [159] and the decision would best be made near the end of the trial, or even while deliberations are underway.

Once the judge has decided to provide professional debriefing, the next decision is choosing the debriefer, or the debriefing team. Making this determination is not a usual judicial function. In four reviewed instances of professional debriefings, two judges asked professors of psychiatry to provide the service. The first was in a Kentucky case, discussed previously. [160] The debriefers, Dr. Theodore B. Feldmann and Dr. Roger A. Bell, are professors of psychiatry at the University of Louisville School of Medicine, Louisville, Kentucky. The second judge, in a Wisconsin case, called in the same debriefers at the urging of the state court administrator. [161] The third judge called on psychologists experienced in debriefing police and emergency response teams. [162] The fourth, a judge in Santa Clara County, California, invited a psychiatric social worker to debrief a murder trial jury. [163]

The sparse literature on the subject does not shed much light on deciding whether to use a professional debriefer. If the necessity for professional debriefing is clear before the trial starts, the judge may begin the search by consulting local mental health centers, nearby medical schools, or other community or regional resources. Judges should consult their court administrators when considering debriefing because the administrator will be involved in both the fiscal and physical plant aspects of planning for the debriefing. As with most difficult decisions, advance thought and preparation will smooth the decision process.

The judge should also determine who, aside from the jury, should attend the session. In one reported instance, the trial judge, the court reporter, a bailiff, ***124** and a jailer all attended the session. [164] The debriefers were initially seen as “strangers” to the situation. The reluctance of the jurors to discuss their feelings in the session was overcome by the trial judge's participation. [165] Validation of the process by an authority figure, the judge, may enhance juror participation. It also provides strong evidence that the judicial system pays attention to the needs and feelings of all participants.

VI. CONCLUSION

Jurors in difficult criminal cases often experience stress as a result of their service. The judicial system should be sensitive to this fact and should respond appropriately. Postverdict debriefing of criminal trial juries, either by informal conferences with the trial judge or by formal professional sessions, is an appropriate response.

Trial judges who debrief juries will reap many benefits. The community will learn the court system is concerned with jury participation in the law process. Public relation benefits will lead to more support for the courts and their needs. The debriefing judge will learn which procedures and practices create juror support, and which do not. The early warning function of conversations with jurors can help the trial judge improve the performance of both the judge and the system. A less obvious benefit is that debriefing juries also tends to reduce judicial stress. The judge's job satisfaction will be enhanced by the feedback available in postverdict conversations with jurors.

Professional debriefing can provide many of the same systemic benefits for the courts. If the trial judge participates, the reduction of judicial stress will improve judicial performance. If the rules of judicial ethics are carefully followed, the courts will keep their reputation as fair forums unsullied.

Properly handled, debriefing juries postverdict can help ensure continued public support for the American jury trial system without compromising ethical or legal values. Our trial courts will therefore continue to peacefully settle disputes about appropriate behavior by enforcing shared community values of fairness and the rule of law.

*125 APPENDIX

Now that you have concluded your service on this case, I thank you for your patience and conscientious attention to your duty as jurors. You have not only fulfilled your civic duty, but you have also made a personal contribution to the ideal of equal justice for all people.

You may have questions about the confidentiality of the proceedings. Because the case is over, you are free to discuss the case with any person you choose. However, you do not have to talk to anyone about the case if you do not want to. If you tell someone you do not wish to talk about it and they continue to bother you, let the Court know, for we can protect your privacy. If you do decide to discuss the case with anyone, I would suggest you treat it with a degree of solemnity, so that whatever you say, you would be willing to say in the presence of your fellow jurors or under oath here in open court in the presence of all the parties. Also, if you do decide to discuss the case, please respect the privacy of the views of your fellow jurors. Your fellow jurors fully and freely stated their opinions in deliberations with the understanding they were being expressed in confidence.

Again, I thank you for your willingness to give of your time away from your accustomed pursuits and faithfully discharge your duty as jurors. You are now excused.

Footnotes

a1 District Court Judge, Seventh Judicial District of Iowa. B.A., University of Notre Dame, 1963; J.D., University of Iowa, 1966. This Article is in partial fulfillment of the requirements for the Master of Judicial Studies degree program at the University of Nevada, Reno in cooperation with The National Judicial College.

1 See, e.g., Judith Resnik, Failing Faith: Adjudicatory Procedure in Decline, 53 U.CHI.L.REV. 494, 511-12, 558 (1986) (reporting only 5 to 12% of federal court civil case dispositions are by trial). Settlement conferences in state courts are also reducing the number of civil trials. See Kristena A. LaMar, Pre-Trial Settlement Conferences in Multnomah County, 27 WILLAMETTE L.REV. 549, 556 (1991) (reporting a settlement rate of 88% of civil cases over a three-year span in an urban Oregon state court).

2 Other authors have postulated that the work of lawyers is to create reality in the courtroom by using specifically “legal” rhetorical arts. See, e.g., W. LANCE BENNETT & MARTHA S. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM (1981); JAMES B. WHITE, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW (1985); Gerald B. Wetlaufer, Rhetoric and Its Denial in Legal Discourse, 76 VA.L.REV. 1545, 1559 (1990).

3 MARDI J. HOROWITZ, STRESS RESPONSE SYNDROMES 17-35 (2d ed. 1986).

4 Id.

5 See infra text accompanying notes 41-58.

6 See infra text accompanying notes 32-40.

7 See infra text accompanying notes 45-78.

8 See, e.g., ERNEST C. FRIESEN, JR., ET AL., MANAGING THE COURTS 133 (1971); E. Donald Elliott, Managerial Judging and the Evolution of Procedure, 53 U.CHI.L.REV. 306 (1986); Judith Resnik, Managerial Judges, 96 HARV.L.REV. 374 (1982).

Even the United States Supreme Court has acknowledged trial judges should "manage" litigation. Hoffman-La Roche, Inc. v. Sperling, 493 U.S. 165, 171 (1989). The majority opinion brought, however, a strong dissent from Justice Scalia, joined by Chief Justice Rehnquist, stressing limited judicial power, strict statutory and rule construction, and the purity of the "adversarial" system as opposed to case management by inquisition. Id. at 181 (Scalia, J., dissenting). Some commentators argue the Supreme Court has increased the need for judicial management of cases through amendments to the Federal Rules of Civil Procedure. See, e.g., Paul D. Carrington, The New Order in Judicial Rulemaking, 75 JUDICATURE 161, 164 (1991).

9 In 1982, the National Judicial College, the oldest institution providing specialized training for trial court judges, offered only one course with the word "management" in its title: "Court Management—Managing Delay." In 1992, the College offered six courses related to managing by trial judges.

10 See, e.g., Michael H. Graham & Richard S. Pope, One Day/One Trial or a One Week Term of Jury Service: The Misleading Marketing of Modern Jury Management Systems, 45 MO.L.REV. 255 (1980). Much of the literature is directed specifically at judges. See, e.g., G. Thomas Munsterman, How to Manage Your Jury by Computer, 28 JUDGES' J., Spring 1989, at 22, 24, 52.

11 These judicial functions are presently receiving more study and development. See, e.g., Put Time on Your Side: Modern Trial Techniques Can Help You—If You Master Them, 29 JUDGES' J., Fall 1990 (issue dedicated to studying techniques to make trials more efficient); Howard R. Cabot, Expediting Trials Through Rule 611, DEFENSE, May 1991, at 21.

12 See STANDARDS RELATING TO JUROR USE AND MANAGEMENT Standard 14, Standard 19(c) and commentary (1983); RICHARDSON R. LYNN, JURY TRIAL LAW AND PRACTICE §§ 6.1, 6.5 (1986).

13 See, e.g., United States v. Diggs, 649 F.2d 731, 737-38 (9th Cir.1981) (trial judge allowed jury to separate during extended mid-trial recess due to illness of one juror); People v. Prisco, 326 N.Y.S.2d 65, 66-67 (App.Div.), aff'd, 286 N.E.2d 279 (N.Y.1971), and cert. denied, 409 U.S. 1039 (1972) (trial judge called for medical care for a juror who became ill after the jury had commenced deliberation).

14 IOWA CODE OF PROFESSIONAL RESPONSIBILITY DR 7-108(D) (1971); see also id. EC 7-29 to 7-32; MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-108(D) (1980); id. EC 7-29 to 7-32. For a general discussion of the problem, see LYNN, supra note 12, at 225-29; Dale R. Agthe, Annotation, Propriety of Attorney's Communication with Jurors After Trial, 19 A.L.R.4th 1209 (1983).

15 See, e.g., United States v. Davila, 704 F.2d 749, 753-54 (5th Cir.1983) (citing a local rule in the Western District of Texas that prevented a lawyer from interviewing jurors after trial without prior approval of the court). In Davila, the court admits protecting jurors after trial has been a difficult subject for judges. Id. at 754 n. 8.
In Rakes v. United States, 169 F.2d 739 (4th Cir.), cert. denied, 335 U.S. 826 (1948), the Fourth Circuit stated a lawyer who interviews jurors after trial "acts at his peril, lest he be held as acting in obstruction of the administration of justice." Id. at 745-46. For a comprehensive discussion of this subject, see Note, Public Disclosure of Jury Deliberations, 96 HARV.L.REV. 886 (1983).

16 See, e.g., STANDARDS RELATING TO TRIAL BY JURY § 5.6 (1968). A similar standard has been proposed to apply to prosecutors. STANDARDS RELATING TO THE PROSECUTION FUNCTION § 5.10 (1971).

17 Some federal trial courts have restricted news media interviews of jurors after verdict, ostensibly to protect jurors from harassment. See, e.g., United States v. Doherty, 675 F.Supp. 719, 724 (D.Mass.1987). See generally Tim A. Thomas, Annotation, Validity and Effect of Restraints on Postverdict Communication Between News Media and Jurors in Federal Case, 93 A.L.R.Fed. 415 (1989). The circuit courts of appeal, however, have limited trial court orders that prohibit all press access to jurors after verdict. See, e.g., Journal Publishing Co. v. Mechem, 801 F.2d 1233 (10th Cir.1986) (holding a restriction in a criminal case overbroad); United States v. Sherman, 581 F.2d 1358 (9th Cir.1978) (holding a restriction in a criminal case overbroad). Reasonable restrictions on press interviews, clearly tailored to prevent harassment, have been approved. See, e.g., United States v. Harrelson, 713 F.2d 1114 (5th Cir.1983), cert. denied, 465 U.S. 1041 (1984); In re Express-News Corp., 695 F.2d 807 (5th Cir.1982).

18 MODEL CODE OF JUDICIAL CONDUCT Canon 3 (1990).

19 Id.

20 Id.

21 Id. Canon 3B(9) cmt.

22 MODEL CODE OF JUDICIAL CONDUCT Canon 3B(10) (1992). There is no standard similar to section B(10) in any preceding code of judicial ethics. A fairly equivalent suggestion, however, is found in STANDARDS RELATING TO TRIAL BY JURY § 5.6 (1968). The commentary supplementing § 5.6 indicates a fear that any comment by the judge, favorable or not, might influence the jurors in other cases, especially when the jurors may be called to serve in another case during a long term of jury duty. In areas in which a "one-day, or one trial" term of jury service is in effect, this fear seems unfounded.

23 STANDARDS RELATING TO TRIAL BY JURY § 5.6 cmt. (1968).

24 See 8 JOHN WIGMORE, EVIDENCE § 2352, at 696-97 (John T. McNaughton ed., 1961).

25 See, e.g., IOWA R.EVID. 606(b). The Comment of the Iowa Supreme Court Advisory Committee on Study of the Federal Rules of Evidence noted, "Rule 606(b), like Iowa common law, protects the sanctity of the jury room regarding matters that inured in the verdict, while allowing disclosure of extraneous misconduct." Id. 606(b) cmt.

26 FED.R.EVID. 606(b).

27 Tanner v. United States, 483 U.S. 107 (1987).

28 Id. at 120-21.

29 Id.; see VALERIE P. HANS & NEIL VIDMAR, JUDGING THE JURY 248 (1986).

30 Tanner v. United States, 483 U.S. at 121; see Note, supra note 15, at 888-92.

31 The inability to study real juries deliberating real cases has been decried by some social scientists. See HANS & VIDMAR, supra note 29, at 98-99; HARRY KALVEN & HANS ZEISEL, THE AMERICAN JURY vi-vii (1966). For a discussion of how the Chicago Jury Project created a furor leading to Congressional Committee hearings, see Valerie P. Hans & Niel Vidmar, The American Jury at Twenty-Five Years, 16 LAW & SOC'Y INQUIRY 323, 325-26 (1991). As a result of those hearings, a federal statute now makes it a crime to record or listen to the proceedings of a federal petit jury, but does not prohibit jurors from speaking after deliberations are completed and a verdict rendered. 18 U.S.C. § 1508 (1988). Even without similar state legislation, the urge to protect the process remains strong in our jurisprudence. See, e.g., Doe v. Johnston, 476 N.W.2d 28, 34-35 (Iowa 1991).

32 Steve Pokin, The Jurors' Trial, RIVERSIDE PRESS-ENTERPRISE (Cal.), Apr. 21, 1991, at F1.

33 Id.

34 Id.

35 Id.

36 Id. at F5.

37 Daniel Goleman, For Many Jurors, Trial Begins After the Verdict, N.Y. TIMES, May 14, 1991, at C1.

38 Id.

39 Nightline: Sequestered Juries (ABC television broadcast, May 1, 1989) (transcript on file with author).

40 Id.

41 HOROWITZ, supra note 3, at 17-35. The diagnostic criteria for post traumatic stress disorder are found in AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 309.89 (3d ed. 1987) [hereinafter MANUAL].

42 HOROWITZ, supra note 3, at 17.

43 Id. at 31-34; MANUAL, supra note 41, § 309.89.

44 Stanley Kaplan, Death, So Say We All, PSYCHOL. TODAY, July 1985, at 48.

45 Id. at 50.

46 Id.

47 Id. at 52-53.

48 Id. at 53.

49 Id.

50 Id.

51 Stanley M. Kaplan & Carolyn Winget, Occupational Hazards of Jury Duty, 20 BULL.AM.ACAD.PSYCHIATRY & L. 325 (1992).

52 Id. at 327.

53 Id. at 327-29.

54 Id. at 332.

55 Id. at 328, 332.

56 Id. at 332.

57 Id. at 331.

58 Id.

59 James W. Pennebaker & Joan R. Susman, Disclosure of Traumas and Psychosomatic Processes, 26 SOC.SCI. & MED. 327, 331-32 (1988).

60 Id. at 328, 330.

61 Id. at 330.

62 Kaplan, supra note 44, at 53; Theodore B. Feldmann & Roger A. Bell, Crisis Debriefing of a Jury After a Murder Trial, 42 HOSP. & COMMUNITY PSYCHIATRY 79 (1991).

63 Feldman & Bell, supra note 62.

64 Id. at 79.

65 Id. at 80.

66 Id.

67 Id.

68 Id.

69 Id.

70 Id. Jurors often exhibit a strong need to be assured they “did the right thing” in many situations. See infra text accompanying notes 119-20.

71 Feldman & Bell, supra note 62, at 80; see also HOROWITZ, supra note 3, at 22-34.

72 Feldmann & Bell, supra note 62, at 80.

73 Id.

74 Id. at 81.

75 Id. Between 1986 and 1988, eight states set up Critical Incident Stress Debriefing networks in an attempt to cut the turnover in emergency response team members after especially overwhelming emergency medical incidents. Program Fights Rescue Worker Turnover, GOVERNING, June 1988, at 10. Units composed of mental health professionals and emergency response personnel are used to educate rescue workers about stress symptoms and to help them talk about their reactions. Id. Results are claimed to be positive. Id. at 10-11.

76 Feldmann & Bell, supra note 62, at 81.

77 Id. Jurors are regularly admonished not to discuss the case with anyone, even family members, during all recesses. They are not even to discuss it among themselves until they deliberate. Most jurors take the admonitions of the judge very seriously. See Kaplan, supra note 44, at 52 (stating isolation from usual support systems poses a problem for jurors during trial).

78 Feldmann & Bell, supra note 62, at 81; see also Kaplan & Winget, supra note 51, at 333.

79 See, e.g., TIMOTHY R. MURPHY ET AL., A MANUAL FOR MANAGING NOTORIOUS CASES 77-78 (1992); Feldmann & Bell, supra note 62.

80 Although at least one videotape instructional program is available to courts, its existence is not well-known in many jurisdictions. Jurors Are Victims Too!, presentation by Washington Victim/Witness Services (Media Group Int'l 1987) (copy on file with author).

81 HOROWITZ, supra note 3; Feldmann & Bell, supra note 62; Kaplan, supra note 44.

82 Pennebaker & Susman, supra note 59.

83 MANUAL, supra note 41, § 309.89.

84 Id.

85 HOROWITZ, supra note 3, at 31-32.

86 Id. at 34.

87 Pennebaker & Susman, supra note 59, at 331. See generally HOROWITZ, supra note 3; Kaplan, supra note 44.

88 The author is deeply indebted to the Clerks of Court in all 99 Iowa counties for researching their records and providing the names and addresses of the jurors.

89 See Kaplan, supra note 44; Kaplan & Winget, supra note 51.

90 Response numbers total more than 350 because multiple responses were counted.

91 Response numbers total more than 350 because multiple responses were counted.

92 The wording was adapted from HOROWITZ, supra note 3, at 30 tbl. 3-3.

93 State-wide gender statistics for the State of Iowa are taken from U.S. DEPT. OF COMMERCE, 1990 CENSUS OF POPULATION GENERAL POPULATION CHARACTERISTICS IOWA (1992) [hereinafter COMMERCE REPORT].

94 State-wide age statistics for the State of Iowa are taken from the 1990 census statistics. COMMERCE REPORT, supra note 93. Because the census classifies age groups differently than did the study, the 18-40 age group in the study is compared to the 18-44 age group in the census data. Likewise, the 41-60 age group in the study is compared to the 45-59 age group in the census data. The last age group is the same in each data set.

95 Statistics for state-wide marital status of the Iowa population were obtained from INFORMATION PUBLICATIONS, ALMANAC OF THE 50 STATES 124 (1992).

96 Educational attainment data for the entire Iowa population were not available for the same categories used in the study. The most recent statistics indicate 71.5% of the Iowa population over the age of 25 years have 12 or more years of education, and 13.9% have 16 or more years of education. 1992 COUNTY AND CITY EXTRA, ANNUAL METRO, CITY AND COUNTY DATA BOOK 207 (Courtenay Slater & George Hall eds., 1992).

97 IOWA CODE § 607A.22 (1993).

98 See supra note 96.

99 Statistical analysis of the responses was done on an IBM 3090 computer running the Statistical Package for the Social Sciences-X, release 3.0. By random sample, the data entered in the computer were checked against the questionnaires for accuracy. In 11 randomly selected questionnaires, each consisting of 39 fields of data, only one error was noted, a reasonably low rate. The author is indebted to Dr. E. Altmaier, Assistant Dean, College of Education, University of Iowa, and her graduate students for coding, entering computer data, and helping choose the statistical methodology. Any mistakes in conclusions are solely those of the author.

100 A one-way “t” test was employed to find if the mean stress scores of jurors who had been debriefed by a judge (n = 91) were significantly different from those who were not debriefed (n = 258). The t test gives a probability of whether the two samples were drawn from the same or different populations. A high probability indicates any differences between the two samples likely result from random error. A low probability indicates what is called a “statistically significant” difference between the two samples; that is, it is not likely the result is due to pure chance alone. In general, a probability level of less than .05 suggests the result would occur by chance less than 5% of the time.
The t value for this data was .1845, and the probability level was .8316. Thus, the differences between the two sample populations could only be due to chance.

101 The National Center for State Courts has proposed a research project to study juror stress. Thomas L. Hafemeister & W. Larry Ventis, Juror Stress: What Burden Have We Placed on Our Juries?, 16 STATE CT.J. 35, 43 (1992). One of its goals is to develop recommended procedures for prevention and treatment of juror stress. Id.

102 These are the same values assigned in the study reported in HOROWITZ, supra note 3, at 30 tbl. 3-3.

103 The two-tailed t test showed a t value of 40.9331 and was significant at $p < .01$ ($n = 348$).

104 See Kaplan & Winget, supra note 51, at 3.

105 The t value for this data was .1271 and was significant at $p < .01$ ($n = 350$).

106 Pennebaker & Susman, supra note 59, at 331-32.

107 HOROWITZ, supra note 3.

108 Id. at 30-33.

109 See infra text accompanying notes 125-131.

110 Kaplan and Winget have suggested sequestration is a factor in heightening stress in jurors. See Kaplan & Winget, supra note 51, at 327.

111 See supra text accompanying note 99.

112 See supra text accompanying notes 100-01.

113 See supra text accompanying note 99.

114 See supra text accompanying notes 105-06.

115 Feldmann & Bell, supra note 62, at 79; Kaplan, supra note 44, at 52-53; Pennebaker & Susman, supra note 59, at 331-32; see generally HOROWITZ, supra note 3.

116 MURPHY et al., supra note 79, at 79-81; see also Victoria Slind-Flor, Counties Begin to Help Jurors Cope Afterward, NAT'L L.J., Jan. 20, 1992, at 3.

117 See Kaplan, supra note 44, at 52-53.

118 Quote from questionnaire number 233 (on file with author).

119 See Feldmann & Bell, supra note 62, at 80; Marjorie O. Dabbs, Note, Jury Traumatization in High Profile Criminal Trials: A Case for Crisis Debriefing?, 16 L. & PSYCHOL.REV. 201, 207 (1992).

120 Quote from questionnaire number 298 (on file with author).

121 See supra text accompanying notes 18-23.

122 Quote from questionnaire number 224 (on file with author).

123 FED.R.EVID. 606(b); see supra text accompanying notes 25-31.

124 Jurors appreciate knowing with whom they may speak after the trial. As one debriefed juror put it, “He [the judge] mentioned that the lawyers & the press might want to talk to us—they could even call us at home. However, we did not have to talk to them.” Quote from questionnaire number 298 (on file with author). Another juror stated, “I would have benefitted [sic] from an instructional session on who to talk to and what to avoid disclosing about the deliberations. I felt a tremendous amount of responsibility—I didn't want any of my actions to be cause for mistrial—if that were ever possible.” Quote from questionnaire number 252 (on file with author).

125 As one juror wrote, “Jurors in my estimation are typically not aware of the workings of the judicial system. Maybe a post-verdict meeting would be helpful in broadening their understanding of the system.” Quote from questionnaire number 261 (on file with author). Another debriefed juror commented:
I would have like[d] for the judge to explain better what the sentence would entail. Such as chance of parole, appeals if possible, this sort of thing, but in all I felt comfortable with our decision on this case and how the judge handled our questions after everything was done.
Quote from questionnaire number 056 (on file with author).

126 Many jurors want to know the defendant's prior criminal record. As one juror in the study wrote: “The judge's explanation of the criminal's background and appreciation for and support of our verdict helped allay some of my feelings of discomfort.” Quote from questionnaire number 284 (on file with author). Another juror who was not debriefed commented that a debriefing session would be good, because “[s]pecial details (past crimes of suspect, etc) which weren't allowed to be discussed in our presence could have then been disclosed at that time.” Quote from questionnaire number 068 (on file with author).

127 One juror in the study commented on the standard instruction that members of the jury are not to concern themselves with the sentence the defendant might receive if they find him guilty. The juror thought the instruction was almost insulting, and wrote:
We were told that our responsibility ended with finding him guilty or not guilty—that we had nothing to do with the sentence he would receive. While that's true, it's nearly impossible to separate the two in your mind—you know that if you find that person

guilty, you are indeed responsibility [sic] for the sentencing he will receive—especially in a case of mandatory sentencing. I thought it was a little incredulous that this statement was even made—it certainly was meant to take the pressure off of us and to relieve any "guilt" we might be feeling about taking him away from his family—but it doesn't work. We were all intelligent people—this type of reasoning is meant for the dimwitted!
Quote from questionnaire number 172 (on file with author).

128 This response was found in many of the comments from the jurors. See supra note 118.

129 FED.R.EVID. 609(a); IOWA R.EVID. 609(a).

130 E.g., FED.R.EVID. 609(b)-(d); IOWA R.EVID. 609(b)-(d).

131 See FED.R.EVID. 404; IOWA R.EVID. 404.

132 See Appendix A for a suggested form.

133 See, e.g., CAL.CIV.PROC.CODE § 206 (West 1991). This statute provides, in part, before discharging a criminal case jury, the trial judge must advise them they have an "absolute right" either to discuss or not to discuss the deliberations or the verdict with anyone. Id. It also states the defendant, his or her attorney or representative, or the prosecutor may discuss the jury deliberations or verdict with a member of the jury, "provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place." Id. A violation of the statute is to be "considered a violation of a lawful court order" and may be punished by a fine. Id.

134 Quote from questionnaire number 180 (on file with author).

135 Quote from questionnaire number 050 (on file with author).

136 See HOROWITZ, supra note 3, at 24 (intrusive stress symptoms); Feldmann & Bell, supra note 62, at 80; Kaplan, supra note 44, at 52.

137 In response to the open-ended question of what a postverdict discussion with the judge should include, one juror in the Iowa study suggested "probably something concerning how it is 'normal' to feel after participating in a jury that dealt with such a serious issue. I found myself wondering whether others in the same position felt the way I did." Quote from questionnaire number 064 (on file with author). Another juror responded that the discussion should let them know "about what it is OK to feel." Quote from questionnaire number 040 (on file with author).

138 MANUAL, supra note 41, § 309.89, classifies the Post Traumatic Stress Disorder only when a constellation of symptoms persists for more than one month.

139 Patrick J. Kelley, Who Decides? Community Safety Conventions at the Heart of Tort Liability, 38 CLEV.ST.L.REV. 315, 382 (1990).

140 Owen M. Fiss, The Death of the Law?, 72 CORNELL L.REV. 1, 14 (1986).

141 Id.

142 See, e.g., quote from questionnaire number 172, supra note 127.

143 Quote from questionnaire number 031 (on file with author).

144 Quote from questionnaire number 269 (on file with author). Another juror said, "The only thing I did not like was when they polled the jury after the verdict. If you come back with a guilty verdict then they know everyone agreed that they were guilty, so why ask them in front of everyone?" Quote from questionnaire number 265 (on file with author).

145 See generally, LILLIAN B. HARDWICK & B. LEE WARE, JUROR MISCONDUCT ch. 6 (1990).

146 E.g., State v. Houston, 209 N.W.2d 42, 44-45 (Iowa 1973).

147 E.g., State v. Holland, 485 N.W.2d 652, 655-56 (Iowa 1992). During deliberations the jury found the defendant's parole work release center identification card in the wallet seized from the defendant at the time of arrest. Id. at 655. After the verdict, one juror asked both the prosecutor and the defense attorneys if the jury would be called back to determine if the defendant was a habitual offender. Id. When asked why, the juror related the jury's discovery of the identification card in the defendant's wallet. Id. The trial judge's denial of a new trial was affirmed because the evidence of guilt was nearly overwhelming. Id. at 656.

148 See HARDWICK & WARE, supra note 145, § 7.02[3].

149 See supra text accompanying notes 20-21.

150 One judicial practice committee has strongly suggested no discussion be held about the facts of the case or of the evidence. JURY MANAGEMENT AND UTILIZATION COMMITTEE OF THE NINTH CIRCUIT, MANUAL ON JURY TRIAL PROCEDURES 132 (1990). This recommendation seems unduly restrictive if it is interpreted as prohibiting any postverdict debriefing conferences. Indeed, lawyers can ethically contact jurors after trial for purposes of self-education. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 319 (1967). See generally Joanne Pitulla, Ground Rules for Post-trial Contact with Jurors, A.B.A.J., Apr. 1992, at 102; Agthe, supra note 14.

151 See supra text accompanying notes 24-31.

152 In the author's own experience, these suggested rules have worked well in postverdict jury conferences in over 150 criminal and many civil jury trials.

153 See supra text accompanying notes 8-17; Dabbs, supra note 119, at 215.

154 See Feldmann & Bell, supra note 62, at 79; MURPHY et al., supra note 79, at 81.

155 MURPHY et al., supra note 79, at 3.

156 See, e.g., Feldmann & Bell, supra note 62, at 79, 80.

157 The recent case of Jeffrey Dahmer is an example. See Slind-Flor, supra note 116, at 3.

158 MURPHY et al., supra note 79, at 81; Kaplan, supra note 44.

159 MURPHY et al., supra note 79, at 81.

160 See supra text accompanying notes 63-77; Feldmann & Bell, supra note 62, at 79.

161 Interview with Honorable Laurence C. Gram, Jr., Judge of the Wisconsin Circuit Court, Milwaukee, Wis. (Mar. 12, 1992). Judge Gram presided at the Jeffrey Dahmer trial. He reported that his decision to provide debriefing services to the jury was influenced by the Wisconsin State Court Administrator's offer to supply the psychiatric debriefers without cost to the county.

162 MURPHY et al., supra note 79, at 81.

163 Slind-Flor, supra note 116.

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