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A DISTURBING VERDICT: THE NEED FOR A MORE PROACTIVE APPROACH TO JURY TRAUMA

Meredith Claunch*

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I. INTRODUCTION

For many Americans, serving on a criminal or civil jury may be the first time they are exposed to the legal system in detail, and the experience can transform an individual's opinions and understanding of the legal system. Overall, research on juror attitudes reports many jurors view the experience of serving on a jury as a positive one.¹ However, serving on a jury may also be stressful, unpleasant, and extremely emotional depending on the case at hand.² In high stakes trials, jurors are given an immense responsibility and are required to make very difficult, life-altering decisions.³ They are removed from their daily routines and often must familiarize themselves with complex legal terminology and procedure.⁴ The sacrifices jurors make should not be taken for granted, especially when the effects of jury service may linger long after the trial has ended.⁵

Juror trauma has been recognized as a serious issue in the legal system for decades.⁶ Unfortunately, the response to this issue has remained largely unchanged, especially in state courts.⁷ Support for jurors remains piecemeal across jurisdictions, as there is no federal statute mandating such services, leaving it up to individual judges to decide how to assist their juries.⁸ Currently only two states have statutes that explicitly provide for juror counseling after difficult trials, with both statutes limiting the amount of counseling provided to no more than 10 hours.⁹ In jurisdictions with no statutes or guidance, even deciding what types of trials are stressful or traumatic enough to warrant additional juror support can be difficult.¹⁰

1. Liana Pennington & Matthew J. Dolliver, *The Effect of Deliberation on Jurors' Attitudes Toward Jury Service in Criminal Cases*, 46 LAW & SOC. INQUIRY 391, 402 (2021) (finding that belief in fairness and legitimacy of the jury system "increased significantly" after deliberating on a criminal case); see also Michelle Lonergan et al., *Prevalence and Severity of Trauma and Stressor Related Symptoms Among Jurors – A Review*, 47 J. CRIM. JUST. 51, 52 (2016).

2. Marjorie O. Dabbs, *Jury Traumatization in High Profile Criminal Trials: A Case for Crisis Debriefing?* 16 LAW & PSYCH. REV. 201, 216 (1992).

3. *Id.* at 202.

4. *Id.*

5. Daniel W. Shuman et al., *The Health Effects of Jury Service*, 18 LAW & PSYCH. REV. 267, 268 (1994).

6. See generally *id.*; James E. Kelley, *Addressing Juror Stress: A Trial Judge's Perspective*, 43 DRAKE L. REV. 97 (1993); Lonergan et al., *supra* note 1, at 53.

7. *Trauma-Informed Practices and Jurors*, NATIONAL JUDICIAL TASK FORCE TO EXAMINE STATE COURT'S RESPONSE TO MENTAL ILLNESS (2022), https://www.ncsc.org/__data/assets/pdf_file/0026/77714/Trauma-Informed-Practices-and-Jurors.pdf

8. Monica K. Miller & Brian H. Bornstein, *Juror Stress: Causes and Interventions*, 30 T. MARSHALL L. REV. 237, 237 (2004).

9. See Alaska Stat. Ann. § 12.45.018; Tex. Code Crim. Proc. Ann. art. 56A.205 (West 2021).

10. Kelley, *supra* note 6, at 122.

Several reasons exist for why our current legal system must not continue to neglect the trauma that can accompany jury service. Most recently, the COVID-19 pandemic has prompted unprecedented changes in jury selection and juror attitudes, making it more difficult to find diverse jury pools of individuals who are willing to serve.¹¹ Concurrently, the pandemic increased psychological stress, anxiety, and depression levels among Americans.¹² Although an individual must “have no disqualifying mental or physical condition” to be qualified for jury service, there is no universal rule that prohibits those with mental health issues from serving on a jury.¹³ Potential jurors hoping to be dismissed from consideration may disclose these conditions if they feel unfit to serve, but dismissal remains up to the discretion of the court.¹⁴ In the wake of the pandemic, the narrative of protecting one’s mental health and emotional well-being is becoming more of a priority, which may make some individuals less willing to engage in service that can potentially cause them stress or harm.¹⁵

Additionally, the last decade has seen an unprecedented boom in social media usage, a phenomenon that has had an immense impact on jury trials.¹⁶ Social media usage is now used in many cases to vet potential jurors during *voir dire* and is recognized as a serious threat to juror impartiality during and after trial.¹⁷ Social media also has a significant impact posttrial, and as these platforms continue to expand, jurors can more easily share their negative or traumatic experiences online to reach a much wider audience.¹⁸ These social media commentaries on jury service may have a detrimental effect on an individual’s willingness to serve on juries, especially for younger audiences. One recent example is a video posted in August

11. Brandon Marc Draper, *And Justice for None: How Covid-19 is Crippling the Criminal Jury Right*, 62 B.C.L. REV. E-Supplement 1.-1 (2020); Tarika Daftary-Kapur et al., *Covid-19 Exacerbates Existing System Factors that Disadvantage Defendants: Findings from a National Survey of Defense Attorneys*, 45 LAW & HUM. BEHAV. 81, 88 (2021) (noting that older individuals are less willing to serve, juries are less representative, and jurors can be nervous or mentally distracted).

12. *Mental Health and COVID-19: Two Years into the Pandemic Mental Health Concerns Continue to Increase*, MENTAL HEALTH AM. (April 2022), <https://mhanational.org/mental-health-and-covid-19-two-years-after-pandemic> (2022).

13. *Juror Qualifications*, U.S. CTS., <https://www.uscourts.gov/services-forms/jury-service/juror-qualifications#:~:text=have%20no%20disqualifying%20mental%20or,rights%20have%20been%20legally%20restored>).

14. *Id.*

15. Javed Latoo et al., *The COVID-19 Pandemic: An Opportunity to Make Mental Health a Higher Public Health Priority*, 7 BJPSYCH. OPEN 1, 1–2 (2021).

16. Nancy S. Marder, *Jurors and Social Media: Is a Fair Trial Still Possible?*, 67 SMU L. REV. 617, 617 (2014).

17. *Id.* at 625–26 (noting that social media poses an extreme risk of both inadvertent and intentional exposure to outside information and that a juror who chooses to use social media to express their opinions raises questions about a trial’s fairness).

18. *Id.* at 628–29.

2022 on the social media platform TikTok which garnered 4.8 million views.¹⁹ The video, posted by user @ktferreri (Katie Ferreri), discusses her “traumatizing” experience serving on a criminal jury.²⁰ Numerous comments on the post, several with thousands of likes themselves, echoed similar experiences or expressed concerns regarding juror trauma.²¹ The initial post going viral prompted Katie to post a series of nine more videos²² describing her time serving on the jury in a Massachusetts murder-kidnapping case,²³ each with upwards of 100,000 views.

Aside from posts by jurors, the expansion of access to large media platforms also heightens the stakes of many trials, as a single viral post or article can thrust a case into the spotlight.²⁴ As a result, jurors are now receiving more national media attention and scrutiny starting before the trial begins and lasting long after they deliver a verdict.²⁵ This, in itself, is an anxiety provoking and stressful aspect of service, especially when there is a risk of threats or hostility.²⁶

19. Katie Ferreri (@ktferreri), *Jury Duty Pt. 1*, TIKTOK, (August 15, 2022), https://www.tiktok.com/@giraffeswhip/video/7132274217394900267?is_from_webapp=1&sender_device=pc&web_id=7119966019033515563.

20. *Id.*

21. See, e.g., Josephine’s Fan Club (@downher), Comment to *Jury Duty Pt. 1*, TIKTOK (August 2022), https://www.tiktok.com/@giraffeswhip/video/7132274217394900267?is_from_webapp=1&sender_device=pc&web_id=7119966019033515563 (“I had jury duty in Massachusetts for a child SA conviction and I couldn’t sleep for two weeks.”); kyylees (@xkyylees), Comment to *Jury Duty Pt. 1*, TIKTOK (August 15, 2022), https://www.tiktok.com/@giraffeswhip/video/7132274217394900267?is_from_webapp=1&sender_device=pc&web_id=7119966019033515563 (“[I] can’t imagine how traumatizing it must’ve been for you ,, did they provide you therapy afterwards ??”).

22. See generally Katie Ferreri (@ktferreri), TIKTOK, <https://www.tiktok.com/@ktferreri> (last visited Feb. 5, 2023).

23. *Id.*; see also Paul Feely, *Manchester Man Gets Life in Prison for 2015 Murder of Mass. Woman*, NEW HAMPSHIRE UNION LEADER (June 9, 2022), https://www.unionleader.com/news/courts/manchester-man-gets-life-in-prison-for-2015-murder-of-mass-woman/article_e2d1d98d-4a14-5552-b3b7-b091c8e7377d.html.

24. Rachel Monroe, *The Crime in Turning Murder into Social Media Content*, STARS AND STRIPES (Sept. 23, 2021), <https://www.stripes.com/opinion/2021-09-23/gabby-petito-murder-true-crime-social-media-content-2996086.html> (describing the effect of social media virality on the Gabby Petito murder case, which reached an audience of close to one billion social media users).

25. Justin C. Dawson et al., *Strategies to Mitigate the Impact of Electronic Communication and Electronic Devices on the Right to a Fair Trial*. RAND (2018), https://www.rand.org/content/dam/rand/pubs/research_reports/RR2100/RR2155/RAND_RR2155.pdf (2018).

26. *Id.* at 2 (describing an instance in Pennsylvania where a defendant instructed his girlfriend to post the witnesses’ identities and statements from his grand jury trial on Facebook, and a Louisiana case where defendants used Instagram to threaten to harm a witness in a federal trial).

Despite these obstacles, the right to trial by an impartial jury remains a fundamental cornerstone of the American legal system.²⁷ Any proposed protections for jurors must be balanced against our desire for a fair legal system, which can create a barrier to change.²⁸ Because the right to trial by jury is so sacred, many legal professionals are apprehensive about implementing certain protective measures that benefit jurors but could be seen as compromising the integrity and legitimacy of trials.²⁹ Examples this note will analyze are the anonymous jury, pretrial briefing and posttrial debriefing, as well as deciding evidentiary issues in favor of excluding disturbing subject matter.

This note aims to provide an overview of juror trauma and the potential benefits of implementing more protections for jurors at the pretrial, trial, and posttrial stages. Part II of this note will explain the different types of traumas and stresses that may be caused by jury service, their sources, and their prevalence in various instances. Part III will discuss how the procedural considerations of a trial often play out in cases that include potentially traumatizing evidentiary material and the tension between procedural integrity and enhanced juror protections. Part IV will provide an overview of the various methods and programs that have currently been proposed or implemented to address the issue of juror trauma, and the changes that may be implemented at trial based on this research. Finally, Part V will present the case for implementing more proactive programs aimed at reducing juror trauma, and highlight feasible recommendations for trauma prevention going forward.

II. TRAUMA CAUSED BY JURY SERVICE

The main form of trauma seen in jurors and other courtroom personnel is known as secondary trauma syndrome, often also referred to as “vicarious trauma”³⁰ or “compassion fatigue.”³¹ Secondary trauma syndrome is prevalent in human services careers and is described generally as trauma that occurs when exposed to the traumatic incidents of others.³² Individuals affected by secondary trauma syndrome may start to feel the impact of a traumatic event as if it had happened to them

27. See U.S. CONST. art. III, § 2, cl. 3.

28. See Andrew G. Ferguson, *The Trauma of Jury Duty*, ATLANTIC (May 17, 2015), <https://www.theatlantic.com/politics/archive/2015/05/the-trauma-of-jury-duty/393479/>.

29. *Id.*

30. See Samuel D. Hodge, Jr. & Lauren Williams, *Vicarious Trauma: A Growing Problem Among Legal Professionals that May Become a More Prevalent Cause of Action*, 53 TEX. TECH. L. REV. 511, 513 (2021).

31. Major Evan R. Seamone, *Sex Crimes Litigation as Hazardous Duty: Practical Tools for Trauma-Exposed Prosecutors, Defense Counsel, and Paralegals*, 11 OHIO ST. J. CRIM. L. 487, 497–98 (2014).

32. Laura K. Jones & Jenny L. Cureton, *Trauma Redefined in the DSM-5: Rationale and Implications for Counseling Practice* 4 PROF. COUNS. 257, 267 (2014).

directly, and its symptoms are comparable to those of Post-Traumatic Stress Disorder (PTSD).³³ It has been recognized as a source of exposure for PTSD since the publication of the *DSM-5* in 2013.³⁴ However, the portion of the *DSM-5* addressing secondary trauma syndrome includes the caveat that “exposure through media, television, movies, or pictures does not qualify unless for work.”³⁵ Although jury service is paid work, most would not consider it a job in the traditional sense. It follows that most of the existing discussions around courtroom trauma usually center on judges, attorneys, and other permanent courtroom personnel, with juror trauma often seen as an afterthought.³⁶ This focus is understandable, as legal professionals have a higher likelihood of repeated exposure, and their symptoms may be exacerbated by other career stressors;³⁷ however, it ignores the vulnerability of jurors who are not used to processing this type of content.³⁸

The reality is that jury duty is not a “job” in the traditional sense. The unique role places jurors in a particularly overwhelming position and because jurors often do not know what to expect, it can impact the way they experience trauma as opposed to other courtroom players.³⁹ Jurors, unlike lawyers and judges, are ordinary citizens summoned to court for service. Therefore, they may be less mentally prepared to experience what legal professionals deal with regularly, including disturbing evidence or testimony.⁴⁰ Without proper briefing and education, a juror has little to no inclination of how they will react to this situation beforehand.⁴¹ This unpreparedness is one of the reasons jurors may experience extreme physical reactions at trial, including vomiting, fainting, or sobbing, despite judges and attorneys remaining more composed.⁴² Jurors are also not compensated in the same way as other courtroom personnel, typically receiving between four and

33. Hodge & Williams, *supra* note 30, at 513.

34. *Id.*

35. *Id.*

36. *See id.* at 526.

37. *Id.* at 522 (stating examples of other career stressors include high caseloads, working outside of normal work hours, and helping clients with nonlegal matters).

38. *Id.*

39. *Id.* at 527.

40. Dawn E. McQuiston et al., *Vicarious Trauma in the Courtroom*, 58 JUDGES' J., 32, 32–33 (2019).

41. *Id.* at 33.

42. *Id.* at 34; *see e.g.*, Rebecca Rosenberg, *Juror Faints During Gruesome Testimony in Wife-Murder Trial*, NY POST (Feb. 27, 2019, 4:23 PM), <https://nypost.com/2019/02/27/juror-faints-during-gruesome-testimony-in-wife-murder-trial/>; Seam Mills, *Juror Faints During Gruesome Testimony in Westcott Trial*, DAILY SENTINEL (Dec. 7, 2022, 5:15 PM), <https://romesentinel.com/stories/juror-faints-during-gruesome-testimony-in-westcott-trial-doctor-on-witness-stand-able-to-lend-aid,153433>.

fifty dollars for each day of service.⁴³ Some jurors may be excused for financial hardship, but those who are not may suffer significant loss, especially throughout longer trials.⁴⁴ This fact alone can serve as a major amplifier of the stress and anxiety a juror may feel during a trial.⁴⁵ Getting such little benefit for serving during a disturbing trial may also leave jurors feeling it was simply not worth the mental toll they experienced, which then contributes to posttrial feelings of depression.

A. Cases posing a high risk of juror trauma

Most of the data compiled on juror stress and trauma comes from jurors who served in criminal trials. The most frequently examined trials are murder, capital murder, and sexual assault cases as well as some cases involving children.⁴⁶ Capital cases are often regarded as the most difficult for jurors, with one study reporting at least eighty-one percent of jurors questioned after serving on a capital case found their role “very stressful.”⁴⁷ Not only do capital cases often include gruesome evidence and testimony, but making a decision of guilt in a capital case can also be extremely difficult emotionally, even if jurors are instructed not to consider sentencing in their determination.⁴⁸ Although initial *voir dire* screenings in capital cases include questions about juror attitudes towards the death penalty, it is nearly impossible to account for how sitting through a trial may impact or alter these views.⁴⁹ In another study with a larger sample size (1198 jurors), thirty-six percent reported physical symptoms of insomnia and loss of appetite following their service in a capital case.⁵⁰ Other symptoms reported in the same study included flashbacks, increase in drug, nicotine, and alcohol use, and nightmares related directly to the trial.⁵¹

Much less research has been done addressing juror trauma arising from civil suits. However, civil wrongful death or catastrophic accident cases can often contain exhibits and photographs that are just as traumatizing as in criminal cases,

43. State v. Walker, No. A-5613-12T2, 2014 WL 7912870, at *4 (N.J. Super. Ct. App. Div. Feb. 25, 2015).

44. *Id.*

45. Miller & Bornstein, *supra* note 8, at 266; see also *Jurors Report Experiencing Continuing Trauma After Serving in South Carolina Death-Penalty Trial*, DEATH PENALTY INFO. CTR. (Oct. 3, 2019), <https://deathpenaltyinfo.org/news/jurors-report-experiencing-continuing-trauma-after-serving-in-south-carolina-death-penalty-trial> (“There were people on the jury living paycheck to paycheck . . . There were single parents and young men with families[,] it was a hardship.”).

46. Lonergan et al., *supra* note 4, at 55.

47. *Id.* at 53.

48. *Id.* at 53–54.

49. See DEATH PENALTY INFO. CTR., *supra* note 45.

50. Lonergan et al., *supra* note 4, at 53.

51. *Id.*

and these trials may be just as emotional for jurors.⁵² Civil plaintiffs may be motivated to present accident photos at trial to prove the severity of an injury, or with the hope of securing a larger award in damages.⁵³ However, one of the most comprehensive studies on such vivid evidence in civil trials found that viewing such photo of a hypothetical plaintiff's injury had no significant impact on the damages awarded by participants.⁵⁴ Another type of evidence not directly examined in the study but also flagged as being potentially emotionally overwhelming for jurors is "day in the life" films.⁵⁵ These films are intended to depict how an injury has affects a plaintiff's daily life and such films have been highly criticized as prejudicial due to the sympathetic emotions they can elicit.⁵⁶ When deciding whether to admit this type of evidence in a civil case, the emotional responses of the jurors should be a significant consideration for the judge, though currently there is very little, if any, comprehensive data on how judges often rule on these evidentiary issues in civil cases.⁵⁷

B. Juror trauma at each stage of the trial process

Although the most predictable source of juror trauma may be disturbing evidence or presentations at trial, the reality is that each step of jury service poses unique challenges, which may build upon each other.⁵⁸ The existing research on juror trauma and stressors shows that jurors reported stress or anxiety at every phase of the process, from when they receive a summons until long after their service has concluded.⁵⁹

At trial, evidence often comes in that triggers a visible emotional response by jurors, and stories of sobbing, fainting, vomiting, and panic attacks are not uncommon.⁶⁰ Though these emotional reactions are natural, jurors may feel like they are failing at their job of being impartial.⁶¹ Disturbing evidence is not limited to photographs, videos, or witness interviews, but exhibits containing bloody

52. Jessica M. Salerno & Hannah J. Phalen, *The Impact of Gruesome Photographs on Mock Jurors' Emotional Responses and Decision Making in A Civil Case*, 69 DEPAUL L. REV. 633, 636 (2020).

53. *Id.*

54. *Id.* at 651.

55. *Id.* at 652-53.

56. *Id.*

57. *Id.* at 654.

58. Stanley M. Kaplan & Carolyn Winget, *The Occupational Hazards of Jury Duty*, 20 BULL. AM. ACAD. PSYCHIATRY & L. 325, 328 (1992).

59. See Miller & Bornstein, *supra* note 8, at 239-42.

60. See Ferguson, *supra* note 11; see also McQuiston et al., *supra* note 40, at 33.

61. See generally Kaplan & Winget, *supra* note 58.

clothing, and murder weapons may often be presented as well. Even during the sentencing phase, being face-to-face with a victim or their family and hearing how they were impacted by the crime can be the most emotionally taxing—this has also shown to increase levels of anger and sadness in jurors.⁶² These types of evidence can have an even more profound effect on jurors who have previously experienced any kind of similar trauma.⁶³ One military veteran who served as an alternate juror in a recent South Carolina capital case shared that the evidence presented during trial brought back memories of death and war crimes he witnessed during his service “like it was yesterday.”⁶⁴ Abuse survivors, or those who have been in serious accidents could be impacted as well. Unfortunately, these individuals may not understand the potential effects of trial until they are already in the midst of jury service.⁶⁵

The isolating experience of jury duty is another main contributor to juror trauma.⁶⁶ Limiting jurors’ access to outside information and opinions is viewed as a key factor in keeping them impartial.⁶⁷ Both sequestered and non-sequestered jurors are prohibited from discussing the case with anyone during their service.⁶⁸ This prohibition can make it even more difficult for jurors to process strong emotions and separate themselves from the case.⁶⁹ Jurors in the most high-stakes trials are often sequestered for long periods of time, completely upending their normal routines.⁷⁰ Sequestration has been reported as one of the most significant stressors for jurors.⁷¹ Such isolation can make an experience that is already very mentally exhausting even worse by amplifying stress and feelings of unease, and some jurors have voiced the frustration that sequestration treats them “more like prisoners” than the individual on trial.⁷² By isolating jurors from their family and

62. Narina Nunez et al., *Negative Emotions Felt During Trial: The Effect of Fear, Anger, and Sadness on Juror Decision Making*, 29 APPLIED COGNITIVE PSYCH. 200, 208 (2015).

63. See DEATH PENALTY INFO. CTR., *supra* note 45.

64. *Id.*

65. Dabbs, *supra* note 2, at 205 (discussing one juror who had served in WWII stated that the evidence he saw during trial “was about as rough a stuff” as he had ever seen).

66. *Id.* at 207.

67. Marder, *supra* note 7, at 624.

68. *Id.*

69. *How Courts Care for Jurors in High Profile Cases*, U.S. CTS. (Jan 24, 2020), <https://www.uscourts.gov/news/2020/01/24/how-courts-care-jurors-high-profile-cases>.

70. *Id.*

71. Lonergan et al., *supra* note 4, at 54.

72. Dabbs, *supra* note 2, at 207.

the comforts of home, sequestration deprives such jurors of many coping mechanisms that may help them destress.⁷³

Another potential source of trauma arises in the jury room via the deliberations process, even after the lawyers have rested their case. This stage presents several challenges, and various factors associated with deliberation are often linked to more long-term stress carried by jurors.⁷⁴ During deliberations jurors must revisit and analyze the evidence from trial, and they may begin to feel immense pressure or guilt over the verdict.⁷⁵ In lengthy or high profile cases, the members of a jury become bonded by the shared experience and time they have spent together, but these bonds do not typically translate to a harmonious deliberation process.⁷⁶ The power dynamics that may manifest among a group of jurors during deliberations have been reported by many jurors as particularly stressful.⁷⁷ Male jurors are statistically much more likely to fill the role of jury foreperson and are also more likely to use aggression and force in their efforts to persuade other jurors.⁷⁸ Female jurors specifically may face unique pressures during deliberation due to gender inequality or past traumas and have been found to more strongly identify with victims.⁷⁹ One meta-analysis of juror trauma studies further found that female jurors consistently demonstrated more severe symptoms than men both during trial and posttrial.⁸⁰ Racist behavior and remarks being made during deliberations is also widely recognized as a serious issue in jury trials.⁸¹ Racial tension in the jury room not only impacts the fairness of verdicts, but can also lead to extremely upsetting and even frightening experiences for minority jurors. There remains little redress available in these situations due to the justice system's desire for finality of verdicts

73. *How Courts Care for Jurors in High Profile Cases*, *supra* note 69 (Judge I. Leo Glasser who presided over the John Gotti trial describes how he dealt with sequestered jurors requests for conjugal visits.).

74. Lonergan et al., *supra* note 4, at 56.

75. Kaplan, *supra* note 23.

76. Sara Weisfeldt et al., "'It Got Ugly.' Jurors in Parkland School Massacre Case Report Feeling Threatened, Disrespected During Tense Deliberations," CNN (Oct 14, 2022, 5:33 PM), <https://www.cnn.com/2022/10/14/us/parkland-nikolas-cruz-jury-verdict-friday/index.html> (one female juror in the Parkland shooting trial described the hostile environment created during deliberations, calling the process "heated" and "ugly" and another female juror reported to court staff she received a perceived threat from another juror).

77. Sandra Benlevy, *Venus and Mars in the Jury Deliberation Room: Exploring the Differences That Exist Among Male and Female Jurors During the Deliberation Process*, 9 S. CAL. REV. L. & WOMEN'S STUD. 445, 456 (2000).

78. *Id.*

79. *Id.*

80. Lonergan et al., *supra* note 4, at 57–58.

81. *Racist Juror Misconduct During Deliberations*, 101 HARV. L. REV. 1595, 1597 (1988).

and hesitancy to put jurors on trial.⁸² Federal Rule of Evidence 606(b) prohibits juror testimony concerning the discussions, statements, or mental processes that occur during jury deliberation, as well as the emotions or attitudes of the jurors.⁸³ This is seen as a positive for jurors in most situations, as it allows them to move on from service at the close of trial.⁸⁴ Recent caselaw has expanded exceptions for this rule when it comes to overt racial prejudice, which can be helpful for defendants who believe racism impacted their trial.⁸⁵ However, the average juror is likely not aware of the full scope of the law on this issue, and it follows that this may not aid in preventing racism between jurors during deliberations.

By the close of a trial, jurors may be left feeling exhausted and not fully understanding how the experience will affect them long term or how to handle their emotions.⁸⁶ Specific feelings reported soon after jury service include numbness, extreme fatigue, and even an inability to drive home after dismissal.⁸⁷ Two other main emotions reported by jurors posttrial included anger, mostly directed at the defendant or the justice system, and fear.⁸⁸ Jurors may fear pressure or questioning from their community, retaliation from the defendants or their family, or that a similar crime to the one at trial will be committed against them or a loved one.⁸⁹

III. PROCEDURAL BARRIERS TO JUROR PROTECTIONS

Despite the important service they provide, jurors are only one component of the workgroup that keeps our trial system running smoothly and fairly. This means that any specific concessions or provisions made to aid jurors must be balanced against the rights of the defendant, the ability of the attorneys to present their case, and the time and resources of the judge. Each stage of trial can present its own back and forth between the way a lawyer wants to proceed in the interest of fairness for their client and how that may impact members of the jury.

A. Pretrial Issues

Beginning with *voir dire*, lawyers evaluate potential jurors based on both their fitness to serve and how they may influence the outcome of their case. A juror may

82. Lee Goldman, *Post-Verdict Challenges to Racial Comments Made During Juror Deliberations*, 61 SYRACUSE L. REV. 1, 8 (2010).

83. *Id.* at 4.

84. *Id.* at 11.

85. Peña-Rodriguez v. Colorado, 137 S. Ct. 855, 859 (2017).

86. Dabbs, *supra* note 2, at 214.

87. Dabbs, *supra* note 2, at 206.

88. *Id.* at 211.

89. *Id.*

be disqualified during the *voir dire* process if they testify to the fact that they are nervous about serving on the case, or that they have an anxiety or panic disorder.⁹⁰ While procedures vary based on jurisdiction, most require a note from a physician from jurors seeking dismissal for mental illness at the outset of the selection process, which may be difficult to obtain.⁹¹ The *voir dire* process often falls short when it comes to addressing mental health concerns of jurors and preparing them for trial. This may be because lawyers either want to save time and avoid deterring jurors, the lawyers do not believe jurors, they do not know how to address these issues, or do not consider these issues significant.

Another pretrial protection frowned upon by some legal professionals is the anonymous jury.⁹² Anonymous juries allow any identifying information about jurors to be withheld from the parties at trial as well as the public for a certain amount of time.⁹³ The practice remains fairly rare, but may be used in high-publicity cases to help jurors feel more at ease during and after trial.⁹⁴ Though this seems logical, the use of anonymous juries has been highly criticized as having the potential to compromise trial strategy and the defendant's presumption of innocence. Lawyers assert that by keeping so much juror information private, the *voir dire* screenings and challenges become much less effective.⁹⁵ Some evidence indicates that when jurors are kept anonymous, they feel less responsible for their decisions and are slightly more likely to convict.⁹⁶ However, more current studies are needed to reach a definitive conclusion on this issue, and jurors are likely, now than ever, to be exposed or harassed due to the prevalence of social media and internet coverage of trials.⁹⁷ If jurors are anxious or fearful during trial, this may also impact their deliberations in a negative way. A related issue is that of sequestration, and tensions may arise in the courtroom when deciding whether to order the sequestration of a jury. As discussed above, sequestration can seriously impact jurors' experiences and the way they process trauma.⁹⁸ In order to maintain fairness and impartiality, a judge must weigh these concerns against each other.

90. See 20 A.L.R. 3d 1420 § 2 (1968).

91. Marcia Purse, *Bipolar Disorder and Being Excused from Jury Duty*, VERYWELL MIND, (Oct. 11, 2021) <https://www.verywellmind.com/can-bipolar-disorder-get-you-out-of-jury-duty-380269#:~:text=If%20you%20speak%20as%20a,to%20be%20granted%20an%20excusal>.

92. Leonardo Mangat, *A Jury of Your (Redacted): The Rise and Implications of Anonymous Juries*, 103 CORNELL L. REV. 1621, 1627 (2018).

93. *Id.*

94. *Id.* (One recent example being the trial of Derek Chauvin for the murder of George Floyd.).

95. *Id.* at 1639.

96. See D. Lynn Hazelwood & John C. Brigham, *The Effects of Juror Anonymity on Jury Verdicts*, 22 LAW & HUM. BEHAV. 695, 704 (1998).

97. See Dawson, *supra* note 25.

98. See *How Courts Care for Jurors in High Profile Cases*, *supra* note 69.

With the ease of access to information through smartphones, the risk for inadvertent exposure to prejudicial information has increased, making this balancing act increasingly challenging.⁹⁹

B. Evidentiary Issues

Evidentiary rulings on traumatic evidence also play a large role in reducing or increasing juror trauma.¹⁰⁰ The decision to admit certain disturbing evidence hinges upon the potential probative value of the evidence versus its prejudicial effects.¹⁰¹ Federal Rule of Evidence 403 governs these evidentiary decisions, stating that the evidence's potential for prejudice must "substantially outweigh" its probative value.¹⁰² The rule favors admissibility and gives judges considerable deference in deciding these evidentiary issues, with no requirement to consider juror trauma in making a decision.¹⁰³ This broad standard has resulted in substantial litigation regarding evidence that is considered "gruesome."¹⁰⁴ One example illustrating just how difficult these evidentiary decisions can be is the case of Christopher Bizilj.¹⁰⁵ Bizilj was only eight years old when he died at a gun show due to an accidental self-inflicted gunshot wound.¹⁰⁶ Bizilj was handling an Uzi gun at the encouragement of his father, who ended up recording the tragic incident on video.¹⁰⁷ Edward Fleury, a former Massachusetts police chief who owned the company that organized the gun show, was charged with the death and pled not guilty.¹⁰⁸ After a heated debate between the prosecution and defense attorneys regarding how viewing the video would impact the jurors, the trial judge made the decision to admit it into evidence.¹⁰⁹ The admission was granted despite defense counsel's arguments that the video was unduly prejudicial, that jurors who "can't handle it" should not have to view the video, and that even if admitted, the audio portion of the tape should not be played.¹¹⁰ Judges have broad discretion in deciding 403 issues

99. Marder, *supra* note 16, at 624.

100. Shuman et al., *supra* note 5, at 281.

101. *Id.*

102. FED. R. EVID. 403.

103. Shuman et al., *supra* note 5, at 281.

104. *Id.*

105. *Dad's Video Key Evidence in 2008 Gun Show Death of Christopher Bizilj*, MASSLIVE (Dec. 3, 2010, 1:05 PM), https://www.masslive.com/news/2010/12/dads_video_key_evidence_in_chr.html.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

for several reasons.¹¹¹ The main reason being that these evidentiary rulings are often very fact-specific and depend on the way a case is playing out in the courtroom.¹¹² However, the impact of the evidence on the jury should be a main factor considered by the judge in making a 403 ruling, even if the issue is not specifically raised by either party. Certain “compromises” may be made but often garner significant pushback.¹¹³ One example is the Utah Supreme Court’s introduction of a “presumption of inadmissibility” for gruesome photographs, criticized by those who believe it increases error and undermines the purposes of the rules of evidence.¹¹⁴

C. Posttrial Issues

Even after a trial has concluded, the judicial system may present barriers to jurors getting the help they need.¹¹⁵ Although posttrial debriefing may help jurors gain a sense of closure, some judges are hesitant to engage in extensive posttrial debriefing of a case for fear that it could have implications if the case goes up on appeal.¹¹⁶ They want themselves and the jurors to keep up the appearance of impartiality following the trial and to avoid juror discussions of what evidence or moments at trial may have been prejudicial.¹¹⁷ Although posttrial debriefing does not have to occur in the presence of the judge, finding psychiatric professionals or counselors to conduct debriefing sessions with jurors is difficult in the absence of a standardized program and with limited resources.¹¹⁸ Taking care of jurors after their job is done is not often seen as a major priority in most jurisdictions.¹¹⁹ Reports about misconduct or tensions between jurors during deliberations are often also disregarded unless the conduct is very serious and could have clearly impacted the outcome of the trial.¹²⁰ If at all possible, courts want to preserve their verdicts and

111. Amy S. Thomas, *Utah Rule of Evidence 403 and Gruesome Photographs: Is a Picture Worth Anything in Utah?*, 1996 UTAH L. REV. 1131, 1143 (1996).

112. *Id.*

113. *Id.*

114. *Id.* at 1133–34.

115. *Who’s Taking Care of the Jurors? Helping Jurors After Traumatic Trials*, U.S. CTS. (May 20, 2015), <https://www.uscourts.gov/news/2015/05/20/whos-taking-care-jurors-helping-jurors-after-traumatic-trials..>

116. *Juries Need Debriefing After the Verdict*, NY TIMES (May 31, 1991), <https://www.nytimes.com/1991/05/31/opinion/1-juries-need-debriefing-after-the-verdict-608591.html>.

117. *Id.*

118. Paula Hannaford-Agor, *A New Option for Addressing Juror Stress?*, 26 CT. MANAGER 50, 52 (2011).

119. *Id.*

120. See Goldman, *supra* note 82.

avoid drawing out the posttrial process or having to elicit juror testimony regarding what occurred in the jury room.¹²¹

IV. MITIGATING JUROR TRAUMA: AN OVERVIEW OF CURRENT RECOMMENDATIONS AND PROGRAMS

Most legal-centric research on juror trauma consists of interviewing real jurors after they served on a jury in a particularly difficult case.¹²² Jurors may self-report any physical or psychological symptoms of stress or trauma they experienced following service to help our understanding of how juror trauma manifests and its longevity.¹²³ Other articles compile opinions of judges on the presence of severity of juror trauma in their courtrooms.¹²⁴ This research is helpful in that it helps us understand the range of symptoms associated with juror stress and the true impact it may have. However, the downsides of this type of research are that it is mostly anecdotal, only represents small samples of those who serve on juries, and is reactive rather than proactive. Some empirical research has emerged recently addressing trauma in the courtroom, how it influences verdicts, and what new protections for jurors may be effective. By examining these recommendations from medical and psychiatric professionals, we get a clearer picture as to the options for addressing juror trauma in the future.

Current programs aimed at addressing and alleviating juror trauma vary in their levels of effectiveness, which is difficult to gauge. At the least, most jurisdictions provide jurors with brochures or literature on how to manage potential trauma symptoms post trial.¹²⁵ But for many jurors, the pamphlet might be the only resource they receive.¹²⁶ Most heightened protections for jurors are implemented due to efforts made by individual judges and lawyers in specific cases, usually high-profile cases which include the presentation of graphic evidence.¹²⁷ These measures include the implementation of anonymous juries and other protections during trial such as sequestration and transportation of jurors to and from court.¹²⁸ To make a juror's experience more positive, compromise measures such as partial sequestration, where jurors are permitted to sleep at home but otherwise remain

121. *Id.*

122. *See generally* Kaplan & Winget, *supra* note 57.

123. *Id.*

124. McQuiston et al., *supra* note 40.

125. Hannaford-Agor, *supra* note 118, at 50.

126. *See* Joe Forward, *Vicarious Trauma in Jurors: Our Civic Duty's Emotional Impact*, STATE BAR WIS.: INSIDE TRACK (Aug. 5, 2020), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=12&Issue=13&ArticleID=27879>.

127. *How Courts Care for Jurors in High Profile Cases*, *supra* note 69.

128. *Id.*

isolated, are also sometimes implemented.¹²⁹ In one anonymous jury case, pro-bono legal services were offered to jurors who wished to maintain their anonymity after the trial had concluded, an extremely valuable but rare resource.¹³⁰ Most importantly, more courts are beginning to understand the importance of offering posttrial counseling immediately after the trial ends and are implementing more posttrial debriefing.¹³¹ These debriefs may or may not have a licensed counselor present, but they provide jurors with the opportunity to discuss their feelings as a group and are the best time to share information with jurors on coping strategies and how they may process trauma.¹³² For jurors who prefer an individual setting, posttrial counseling may be a better option.¹³³ While federal courts have recently expanded counseling opportunities for jurors through their Employee Assistance Program, most state courts have faced challenges in attempting to provide comparable services.¹³⁴ However, as more attention is drawn to the issue of juror trauma, more stories have emerged about victim's services officers and psychiatric professionals willing to provide services for jurors.¹³⁵ One example is Dr. Sandra Eugster, a Wisconsin psychiatrist who, recognizing the need for early intervention in cases of trauma, decided to offer pro-bono therapy to jurors without insurance.¹³⁶

A. Replacing gruesome photographs with medical-legal illustrations

A body of recent studies has examined how replacing gruesome photographic evidence with medical illustrations may influence the feelings of jurors.¹³⁷ In one study, mock jurors were presented with illustrations of graphic evidence in varying degrees of detail and coloring and asked to describe their emotional response and preferred level of detail.¹³⁸ Overall, participants preferred the images with a medium level of detail and coloring and more simplified backgrounds. Unfortunately, a change such as this one, like the measures suggested in Part III¹³⁹, is poised to garner substantial pushback from lawyers and judges alike. As this paper emphasizes,

129. *Id.*

130. *Id.*

131. McQuiston et al., *supra* note 40, at 33.

132. *Id.*

133. *Id.*

134. *Trauma-Informed Practices and Jurors, supra* note 7, at 1.

135. Forward, *supra* note 126.

136. *Id.*

137. Makiko Haragi et al., *Questionnaire Survey of a Mock Jury on Their Impressions of Medical-Legal Illustrations Aimed at Reducing Trauma and PTSD of Jurors*, 43 J. OF VISUAL COMMUN MED. 67, 68 (2020).

138. *Id.*

139. See *supra* Part III (Examples being the anonymous jury and Utah's presumption against admissibility of gruesome photographs.).

graphic evidence may elicit extreme emotional responses from jurors.¹⁴⁰ However, this emotional response may be exactly what prosecuting attorneys need to win a case. This evidence and the subsequent emotional response to it is most likely to be remembered during deliberations and guide decision making for better or for worse. Many cases also involve a very large body of evidence, and the costs or delay associated with rendering medical-legal illustrations for all the evidence being presented during a trial may not be feasible in most cases.

B. EAP Assistance in the Federal System

One new resource to help jurors recover from a traumatic trial addresses the disparity between the treatment of juror trauma and of full-time courtroom personnel trauma.¹⁴¹ Federal judges now have the authority to extend the health benefits offered to federal employees through their Employee Assistance Program (EAP) to jurors.¹⁴² Through this program, a judge can “extend” a juror’s service posttrial to allow them to take advantage of EAP services for free, which include debriefing sessions and up to six free counseling sessions.¹⁴³ If jurors still feel they need further help after receiving EAP services, the program can also help connect them with other mental health professionals in the area.¹⁴⁴ Most importantly, receiving EAP services does not require insurance or leave a “paper trail,” helping reduce the apprehension around seeking help due to mental health stigmas.¹⁴⁵ The response to EAP counseling has been very positive.¹⁴⁶ Because EAP services vendors for state employees vary, they may not allow the extension of services to jurors like in the federal system, and it has been more challenging for state courts to provide adequate juror support.¹⁴⁷ Some states, like Massachusetts, have managed to solicit mental healthcare providers to develop juror trauma protocols and implement similar confidential short-term counseling services for jurors.¹⁴⁸

V. THE CASE FOR MORE PROACTIVE PROTECTIONS AGAINST JUROR TRAUMA

This note has highlighted the many factors that put jurors in such a vulnerable position—lack of compensation, emotional unpreparedness, disruption of daily

140. Rebecca Hofstein Grady et al., *Impact of Gruesome Photographic Evidence on Legal Decisions: A Meta-Analysis*, 25 *PSYCHIATRY, PSYCH. & L.* 503, 504 (2018).

141. See generally Paula Hannaford-Agor, *supra* note 118.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. See *Who’s Taking Care of the Jurors? Helping Jurors After Traumatic Trials*, *supra* note 115.

147. *Trauma-Informed Practices and Jurors*, *supra* note 7.

148. *Id.*

routine, and isolation. Although widespread access to posttrial counseling and mental health services is imperative, the legal system should be doing more to minimize and prevent this trauma before it begins rather than pushing the bulk of responsibility onto jurors to seek services posttrial. After a trial, jurors are anxious to get back to family and work and are busy readjusting to their normal lives.¹⁴⁹ As a result, they may not understand the gravity of what they experienced until days or weeks later but feel as though too much time has passed since trial to take advantage of resources.¹⁵⁰ Only a small amount of jurors offered pro-bono therapy may accept.¹⁵¹ Because of the uncertainty surrounding whether a juror may have access to or take advantage of adequate posttrial assistance, the most ethical approach to juror trauma would be to aim to prevent it before service, rather than taking a purely retroactive approach.

A. *How Lawyers Can Work to Prevent Juror Trauma*

During *voir dire* lawyers often hesitate to bring up issues surrounding mental health and the potential trauma that can arise from jury service, both because these are sensitive and personal topics and because they do not want to make potential jurors apprehensive about serving.¹⁵² Jurors may also be hesitant to disclose their own mental health issues or past traumas for fear they will be questioned further or because of a lack of privacy.¹⁵³ Distributing a simple written juror questionnaire is an easy and effective solution to these common problems.¹⁵⁴ Juror questionnaires are already common practice in many jurisdictions, and tailoring them to address mental health concerns is not an overwhelming task, as many sample questions are readily available.¹⁵⁵ Allowing jurors to answer questions privately about their experience with mental health issues or concerns regarding service prompts more candid responses which benefit both jurors and lawyers.¹⁵⁶ Although taking into account jurors' self-reported mental health and fitness concerns may result in more dismissals, this can be countered by calling larger jury pools in high-profile or potentially disturbing cases. Courts should be eager to approve these types of questionnaires because taking a proactive approach during jury service has the

149. Forward, *supra* note 126.

150. Hannaford-Agor, *supra* note 118, at 52.

151. See Goldman, *supra* note 82.

152. Denise de La Rue, *Who Thinks a Mental Health Disability Defense is Bulls*it? And other Candid Conversations in Voir Dire*, 44 CHAMPION 12, 13 (2020).

153. *Id.* at 14.

154. *Id.*

155. Diane Wiley, *Are You Now, or Have You Ever Been Crazy: Questions About Mental Health for Supplemental Juror Questionnaires*, 23 JURY EXPERT 1 (2011).

156. de La Rue, *supra* note 152, at 15-16.

potential to help a trial proceed more quickly and smoothly, with less issues in the jury box.

Lawyers are required first and foremost to be advocates for their clients,¹⁵⁷ which requires making the best case they can, even if this includes presenting gruesome or traumatic evidence. However, being cognizant of juror emotions is still something a lawyer should consider when deciding what evidence to present and when. Overall, a verdict based on the facts and evidence rather than raw emotion should be the goal of trial.

B. How Judges Can Work to Prevent Juror Trauma

Judges are in an arguably better position than attorneys to prevent juror trauma as they are the primary authority in the courtroom and are not obligated to advocate for a client. Judges control the atmosphere of their courtrooms and keeping the mood lighthearted and comfortable for jurors when the trial is not actively going on can make a big difference in the moods of their jurors.¹⁵⁸ A judge can be attentive to jurors' emotions without risking impartiality simply by making sure proceedings run smoothly and letting jurors have breaks as needed if they are processing particularly disturbing material.¹⁵⁹ When ruling on evidentiary issues that may seriously impact the emotional well-being of a juror, a judge should keep in mind compromise efforts such as presenting photographs in black and white, reducing sound of videos, and playing videos in real time rather than slow motion. Taking these steps helps ensure jurors are equipped for the difficult job they are performing during trial.

VI. CONCLUSION

As our legal system evolves in response to technology and societal developments, the way we treat jury service should not be overlooked. By failing to implement more widespread and uniform protectors for jurors, our courts are sending a message that these citizens are disposable, despite the extremely difficult and important job they are often tasked with. As new generations reach the age of eligibility for jury service, lack of attention to juror wellbeing risks permanent impairment to our justice system. Programs, like EAP assistance, are a step in the right direction, but implementing a proactive rather than reactive approach is more ethical when considering the growing number of Americans who may have a traumatic or unpleasant experience carrying out their civic duty.

157. MODEL RULES OF PRO. CONDUCT, Preamble and Scope (A.B.A. 2019).

158. *How Courts Care for Jurors in High Profile Cases*, supra note 69.

159. *Id.*

On an individual level, attorneys must recognize the areas in their case with the potential to cause juror harm and make efforts to both prepare the jurors for what they must see and refrain from presenting unnecessary or excessive disturbing evidence. Judges should act as an additional check on attorneys' conduct and be cognizant of how jurors are feeling and when breaks are needed. Further education from bar and judicial associations and within court systems regarding emerging methods to reduce juror trauma, such as the use of illustrations, is imperative to begin making significant progress in reducing juror trauma. Additional precautions would benefit both jurors and the justice system as a whole by helping jurors to make more rational decisions in reaching a verdict rather than decisions guided by emotion, and helping preserve the willingness of Americans to participate in jury service.