

Criminology Research Council Sub-Group on Juror Stress and Debriefing

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Social and Psychological issues:

- **What are the main issues/ causes and manifestation of stress amongst jurors, including the prevalence?**

What goes on behind the jury room door has always been a topical issue and of interest to community members as well as the judiciary, who, for obvious reasons, this knowledge would significantly benefit. Most people's knowledge of jury duty comes from acquaintances who have served as jurors or from sensationalist media coverage of the most visible trials (Cowdrey 2001). While the role of the jury is portrayed in the media and socio-legal studies, few jurors anticipate the personal aspects of serving on a jury (*id*). Selecting jurors at random from the community and subjecting them to an overwhelming responsibility is often quite traumatic (Dabbs, 1992). Jurors are given no training for their role and may have no past experience with the courtroom or the law. They are often expected to assimilate large volumes of evidence, intuitively analyse and remember witness testimony and apply commonsense beyond reasonable doubt (Osborn 1937). Given this task and the weight of responsibility to act as community representative and judge of another person, it is not surprising that jurors should experience stress, manifested in psychological and physiological reactions (Kaplan & Winget, 1992; Feldman & Bell, 1991).

In the last two decades there has been an increased recognition of the stress that jurors experience in undertaking jury service (Carll, 1999; Slind-Flor, 1992). Previously the majority of research in the area of jurors focussed on the administration of processes in the management of jurors. Indeed the New South Wales Jury Act 1977, Section 68A(1) prohibits solicitation of information from jurors¹ about their deliberations, as does the Victorian Jury Act (Juries Act 2000). There are similar acts in all states and territories in Australia. Consequently, little empirical information exists in Australia, beyond peripheral feedback from those studies mentioned below, on the prevalence and significance of stress amongst jurors, and the interpersonal dynamics of the jury room that contribute to this stress.

In 2001 the University of New South Wales and the Justice Research Centre (Law & Justice Foundation, Chesterman, Chan & Hampton) published a report examining the impact of 'prejudicial publicity' on jurors. This research was concerned with prejudicial publicity, that is, publicity which has the potential to exert influence on a jury. 41 criminal trials in N.S.W. were selected between mid-1997 and mid-2000. A series of structured interviews with jurors, judges and principal counsel on both sides were conducted, post trial. Media publicity associated with each trial was simultaneously monitored, as was any process by officers of the court to manage that publicity, as a potential influence on jurors.

¹ Regina vs John Laws 2001. Prosecution for solicitation of information from a juror (via radio interview).

Although concerned with the prejudicial nature of publicity on the perceptions of jurors, this report does touch on the experiences of jurors in a broader context. Chesterman et al reports, “*a number of jurors expressed surprise that, even though they felt fine during and immediately after the trial, they had experienced sleeplessness, nightmares, depression and phobias in subsequent months*”. A number of jurors suggested that a free counselling service should be made available for several months after the completion of a trial, in order to help those jurors who experience a delayed reaction to the stress of jury service².

Chesterman et al report a number of issues of concern to jurors. While feedback on some of these issues was unsolicited by the researcher (via telephone interview) and falls outside the scope of the project's specific research questions, the jurors' observations corroborate comparable findings on similar issues described in a New Zealand report prepared by Professor Warren Young³ in 1999, on behalf of the New Zealand Law Commission. Both of these studies highlight the interpersonal dynamics of the jury and individual concerns as contributing to stress amongst jurors.

Some of the main issues of the 'troubled' jury include:

- The capitulating, uninterested or 'slow' juror
- Bullying juror
- Selection of the foreperson (Chesterman et al & New Zealand Law Commission)
- Understanding of the law, instructions and definitions⁴
- Lack of life experiences of young jurors
- Clash of personalities
- Poor English comprehension skills
- Poor facilitation skills
- Problems arising in personal & professional life due to undertaking jury service

Personal issues of concern:

- Facts of case disturbing (including possible emergence of repressed memories of past traumas)
- Reluctance to return a verdict that would entail a custodial sentence
- Lack of predictability & lack of control over the experience

² The Office of the Sheriff NSW established a Juror Support Program in August 2000 which is made available to all jurors who are empanelled and subsequently discharged from N.S.W. courts (criminal, civil and coronial). Debriefing notes are also read to jurors immediately on discharge addressing immediate reactions and encouraging jurors to attend counselling with registered psychologists, available 24hr/7 days.

³ See *Juries in Criminal Trials, Part two: A summary of the Research Finding (Law Commission of New Zealand)*

⁴ For example the concept of 'beyond reasonable doubt'- the New Zealand study reports that jurors in its sample assigned varying percentages to the level of proof required to assuage reasonable doubt. The Chesterman report also revealed a wide range of interpretations and 'disagreement' on meaning of this concept amongst jurors.

- Frustration over the process (time delays, not all information provided, not allowed out at request etc..)
- Frustration at capital concerns, - time, conditions of accommodation, food etc.
- Responsibility of a verdict

Another study undertaken in Australia aimed at examining the representativeness of Australian society within the jury system, touched peripherally on the issue of juror stress (Law Reform Committee, Jury Service in Victoria 1996 and the Law Reform Commission of New South Wales 1986.). The Criminal Justice Statistics and Research Unit, Department of Justice Victoria, undertook a survey of Victorian jurors in 1998, which examined the experiences of jurors, both empanelled and non-empanelled. The aim of the survey was to, *'...obtain empirical data in relation to the representativeness of juries, and to ascertain jurors' understanding and experience of the jury selection and court processes'*⁵. Although focused on the experience of the administrative processes of serving on a jury⁶, this survey did solicit information on the perception of juror's personal safety and the perceived usefulness of counselling on discharge from a trial (empanelled jurors only). Although this information was again gained peripherally to the scope of the research, it highlights similar issues to those raised in the formerly mentioned Australian and New Zealand studies and reiterates the need for further study in Australia and New Zealand in the area of juror stress.

Regarding feelings of personal safety, jurors were asked (Findings 3.9.3):

"How would you rate your feeling of personal safety?"

"Did you feel unsafe at any time?"

- About 10 per cent of empanelled jurors said they felt unsafe at times.

Regarding the usefulness of counselling services, empanelled jurors were asked (Findings 3.9.4),

"Do you think counselling should be available to jurors who experience problems as a result of their jury service? "

"If counselling was available, do you think you would use this service?"

- Most jurors (76.0% of criminal and 69.4% of civil) felt that counselling should be provided for those jurors who experience problems as result of being a juror.
- About one third of jurors said that they would access counselling if such a service were available.

⁵ A similar survey of jurors in NSW courts was conducted in 2001 to examine their understanding of the court process and empanelment. The survey was conducted prior to empanelment and focused on Notice of Inclusion, understanding of exemption, personal application to be excused and experience of being called for jury service.

⁶ eg Sufficiency of information provided, views on jury summons, special arrangements at home, level of current jury payment, awareness of employer obligation, impact on others at work, information provided in Jury Pool Room, waiting time, reasons to be excused, helpfulness of Jury video etc...

These findings suggest that some jurors may experience emotional or psychological issues arising from having served on a jury and that at least one third may benefit from being offered a debriefing service on discharge.

Internationally, recent studies of the jury trial process in America have gone some way to assessing the significance and prevalence of juror stress (amongst American juries). A study funded by the National Centre for State Courts U.S.A. in 1998 sought to examine the extent of juror stress, which is considered to be a contributing factor to the unwillingness of people to serve on a jury. There is concern that juries will become less representative of their communities, as greater numbers of people devise ways to avoid jury service and the stress associated with being on a jury.

Findings indicated that "...although few individuals experienced *clinical* stress as a result of their juror experience, approximately one-third of *all* individuals who reported for jury duty reported experiencing *some* stress as a result of their jury duty and over half thought other jurors experienced stress during jury duty", (National Centre for State Courts 1998). Sources and levels of stress reported varied depending on the individual juror's experience. Stressors identified were similar to the subsequent studies conducted in New Zealand and New South Wales mentioned earlier.

The symptoms of stress most commonly reported by jurors (National Centre for State Courts, U.S.A., 1998; Chesterman et al, 2001, Young et al, 2000) include:

- *Anxiety for the victim or accused and their families .Replaying events and questioning the verdict*
- *Sleep problems (early waking, difficulty sleeping ...)*
- *Physical complaints (stomach aches, nausea, headaches) .Emotional distress (feeling guilty, angry teary, anxious)*
- *Social distress (wanting to withdraw, panic, fear) .Sexual difficulties*
- *Obsessing about sentencing/further charges/previous convictions*

While jurors' reactions are dependent on a number of variables, including pre-existing depressive conditions, recent studies on jurors reactions indicate that the stress jurors experience may be significant and has been compared to that of posttraumatic stress disorder (Shuman, Hamilton, & Daley, 1994). On a study of stress amongst 40 jurors across four trials (2 murder, 1 child abuse and 1 pornography), Kaplan & Winget (1992) found that jurors experienced two kinds of symptoms- psychophysiological symptoms such as sleeplessness, anorexia, depression, heart palpitations, faintness, numbness, phobic reactions and sexual dysfunction, and other overt reactions included peptic ulcers, hives, hypertension and visual distortions. Twenty seven of the jurors in the study reported one or more physical and/or psychological symptoms attributable to having undertaken jury duty. Seven jurors experienced psychophysiological problems and three jurors required medical attention. Four jurors met the criteria for DSM-III-Revised criteria for posttraumatic stress disorder. Of further note in this study, jurors from two highly 'visible' trials demonstrated almost identical emotional and cognitive responses despite differences in the juries' demographic profile and the communities in which the trials were conducted (Hafemeister & Ventis, 1994). Although this study did not use a control group or account for other independent variables, this research provides an insight into the significance of stress and the relationship between jury service and health.

Further research on the emotional responses of jurors (Feldman & Bell, 1991) indicates that jurors may experience a myriad of emotions during a trial, 'horror, anger, pain, sadness, fear, sympathy, helplessness, guilt, frustration and perhaps contempt'. In a foundational study in the U.S., Feldman and Bell provided de-briefing to a jury on a highly 'visible' trial which involved the deaths of 27 students in an alcohol related traffic accident. The authors report that the jurors experienced considerable stress during the trial, requiring frequent breaks, and that after the trial, media coverage and lack of anonymity caused by the case, being located in a rural community, compounded stress amongst the jurors. The authors reported that the reaction of the jury was as intense as that of the rescue workers at the scene and convinced them of the necessity of crisis debriefing for jurors.

This was reaffirmed in a follow-up study of the same jury 18 months later wherein jurors reported experiencing stress-related symptoms for months after the trial, including intrusive thoughts, flashbacks, feelings of restlessness and sleep difficulties (Bell & Feldman, 1993). Interestingly, the debriefing team of Feldman and Bell was sought on the initiation of the judge who had realised the impact of the trial on himself and hence became more sensitive to the emotional needs of the jurors (Feldman & Bell, 1991), prompting him to seek debriefing for [his] jury.

The prevalence of stress amongst jurors was further investigated by Delipsey (1995) of 61 jurors serving on six murder trials in a metropolitan area in the U.S. The Symptom Checklist-90-Revised (Derogatis, 1977 cited in Delipsey 1995) and a questionnaire were used to assess jurors' stress levels. Nearly one third of the jurors surveyed indicated stress levels of clinical significance while serving on a trial.

Stressful life events impact on the physical, mental and emotional well-being of a person (Horowitz 1976, cited in Dabbs, 1992). While the severity of stress experienced varies according to the ability of individuals to respond to and manage degrees of stress, it is predictable that jurors on difficult trials will be subject to more anxiety. Research demonstrates that 'traumatic' (usually highly visible in the media) trials are six times more likely to manifest symptoms associated with depression than jurors serving on non traumatic trials (Shuman, Hamilton & Daley, 1994).

Individuals subjected to prolonged extreme stress will invariably develop symptoms of neurosis (Horowitz 1986). While the trial 'matter' affects stress, demonstrated in a study by the National Centre for State Courts (1998) concluding that, 'notorious trials place different and magnified strains on the jury', numerous research studies have identified several factors that contribute to stress reactions for jurors, such as - presentation of gruesome or graphic evidence (Hafemeister in Munsterman, Hannaford & Whitehead 1997), media attention (Hafemeister & Ventis, 1994; fear of retribution by the defendant (Nordgren & Thelan 1999), sequestration (Strauss 1996), length of trial, community response, including lack of anonymity for rural locations (Feldman & Bell 1991) personalities and group dynamics of the jury (Shuman, Hamilton & Daley 1994) and sense of community responsibility (Dabbs, 1992).

It was not until the 1980's, and primarily in the U.S., that consideration has been given to examining the impact jury service has had on the health of jurors (Hafemeister & Ventis, 1994; Kaplan & Winget 1992; Dabbs 1992). This sociopsychological approach, investigating the impact the legal system has on promoting or inhibiting mental health has been referred to as 'therapeutic jurisprudence' (Wexler, 1990). More commonly used in researching offenders within the legal system, therapeutic

jurisprudence may also include research on jurors, recognizing that the legal process in which they attend may vicariously affect jurors (Findlay, 1994).

The research findings from the U.S. and the peripheral findings on this issue from Australia and New Zealand indicate it is time to consider jurors stress as significant and prevalent amongst jurors in Australia. The recognition afforded 'secondary' or 'tertiary' victims of critical incidents, such as police rescue workers or firefighters has long been recognized, but the impact on jurors has for too long been ignored.

In addressing this issue in the U.S., de-briefing is now commonly used to address stress amongst jurors after a trial. Critical Incident Stress De-briefing has been used for some time amongst emergency workers to reduce trauma and to help those people return to their normal routines (Mitchell & Everly 1993). That de-briefing is used to assess (Nordgren & Thelan, 1999; Hafemeister, 1993) and address stress amongst jurors (Feldman & Bell, 1991), is indicative of the significance and prevalence of this issue.

The Australian and New Zealand studies to date, all invariably recommended that Australia needs to further examine this subject. Therapeutic jurisprudence in Australia is in its infancy in relation to jurors and the findings from any such research is anticipated to be of interest to numerous stakeholders in the judicial system, as well as contributing to the welfare of jurors, as proscribed in the New South Wales Jury Act 1977, by informing Australian judicial administration regarding these issues and providing recommendations for post-trial management.

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