

# INCREASING JUROR SATISFACTION: A CALL TO ACTION FOR JUDGES AND RESEARCHERS

*Julianna C. Chomos*<sup>\*</sup>

*Monica K. Miller*<sup>\*\*</sup>

*Lorie L. Sicafuse*<sup>\*\*\*</sup>

*James T. Richardson*<sup>\*\*\*\*</sup>

*Clayton D. Peoples*<sup>\*\*\*\*\*</sup>

*The Honorable Celeste F. Bremer*<sup>†</sup>

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\* B.S., University of Pittsburgh, 2007; M.A., University of Nevada, Reno, 2014.

\*\* Associate Professor of Criminal Justice and Social Psychology, University of Nevada, Reno; B.A., University of Nebraska-Lincoln, 1998; M.A., University of Nebraska-Lincoln, 2002; J.D., University of Nebraska College of Law, 2002; Ph.D., University of Nebraska-Lincoln, 2004.

\*\*\* B.A., University of Minnesota, 2000; Ph.D. Candidate, University of Nevada, Reno, 2012.

\*\*\*\* Professor of Sociology and Judicial Studies, University of Nevada, Reno; B.A., Texas Tech University, 1964; M.A., Texas Tech University, 1965; Ph.D., Washington State University, 1968; J.D., Nevada School of Law, 1986.

\*\*\*\*\* Assistant Professor of Sociology, University of Nevada, Reno; B.A., Bowling Green State University, 1999; M.A., Ohio State University, 2001; Ph.D., Ohio State University, 2005.

† United States Magistrate Judge, Southern District of Iowa; Adjunct Faculty, Drake University Law School and School of Education; B.A., St. Ambrose College, 1974; J.D., University of Iowa College of Law, 1977; Ed.D., Drake University School of Education, 2002.

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Jurors play an integral role in the justice system of the United States. Juries help protect the rights of defendants, bring justice for victims, and resolve disputes between parties in civil cases. Even though many individuals recognize that jury service is an important civil duty, there is significant concern about the impact on the justice system caused by juror “no-shows.”<sup>1</sup>

There are many reasons why an individual may fail to respond to a jury summons, and it is essential researchers and the legal system investigate these reasons and respond accordingly. Reasons can be related to finances, uncertainty, or negative past experiences with the legal system.<sup>2</sup> For instance, jurors may experience annoying trial delays, have difficulty understanding instructions, and may not understand how to deliberate with other jurors.<sup>3</sup> As a result, they may fail to respond to a future summons or

1. See generally Monica K. Miller & Brian H. Bornstein, *Juror Stress: Causes and Interventions*, 30 T. MARSHALL L. REV. 237, 243 (2004) (discussing the “widespread” problem affecting Baltimore, Philadelphia, Los Angeles, Dallas, and New York).

2. See K.B. Battaglini, Mark A. Behrens & Cary Silverman, Essay, *Jury Patriotism: The Jury System Should Be Improved for Texans Called to Serve*, 35 ST. MARY’S L.J. 117, 127–28 (2003) (discussing financial hardships impacting jury service).

3. NAT’L CTR. FOR STATE COURTS, THROUGH THE EYES OF THE JUROR: A

discourage others from participating in the jury process.<sup>4</sup> Addressing these concerns can help improve individuals' perceptions of jury duty and jurors' experiences.<sup>5</sup>

Organizations such as the American Bar Association (ABA), the National Center for State Courts (NCSC), and the State Justice Institute (SJI) have all taken steps to reform the court system, promote juror satisfaction, and reduce juror stress.<sup>6</sup> Some of their recommendations are designed to encourage individuals to participate in the jury process, while others are designed to help reduce negative aspects sometimes associated with jury duty.<sup>7</sup> Changes have also been recommended that make jurors' jobs easier, quicker, and more pleasant.<sup>8</sup> The purpose of this Article is to summarize many of these innovations and the research testing their effectiveness, where available. It also summarizes research that still needs to be conducted. In all, the Article is a call to action for judges to adopt these innovations and for researchers to further investigate their effects. Such steps preserve the integrity of the justice system by promoting jury satisfaction and participation.

## I. RESEARCH ON JUROR SATISFACTION

Perceptions of jury service have important implications for the justice system. There is a prominent myth that most people avoid jury duty. However, research shows Americans generally are positive about jury service, and this positive attitude increases after service.<sup>9</sup> An NCSC study

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MANUAL FOR ADDRESSING JUROR STRESS 1 (1998) [hereinafter NCSC MANUAL], available at [http://www.ncsconline.org/WC/Publications/Res\\_Juries\\_JurorStressPub.pdf](http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressPub.pdf) (detailing causes of juror stress before and during trial). The appendix is available at [http://www.ncsconline.org/WC/Publications/Res\\_Juries\\_JurorStressAppendPub.pdf](http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressAppendPub.pdf).

4. See *id.* at 2.

5. See *id.*

6. See COMM. ON JURY STANDARDS, AM. BAR ASS'N, STANDARDS RELATING TO JUROR USE AND MANAGEMENT, Standard 16, at 140–42 (1993) [hereinafter ABA STANDARDS] (detailing the need for orientation and instructions to alleviate juror confusion); NCSC MANUAL, *supra* note 3, at 4–5 (discussing the background and motivation of the NCSC Manual, which was funded through a grant from the State Justice Institute).

7. See generally ABA STANDARDS, *supra* note 6, Standard 16, at 140–42 (discussing ways to encourage juror involvement and increase understanding of the proceedings); NCSC MANUAL, *supra* note 3 (examining factors that provide stress to jurors and possible solutions).

8. See NCSC MANUAL, *supra* note 3, at 12–13 (detailing ways to increase efficiency, decrease boredom, and alleviate safety concerns).

9. See, e.g., James L. Allen, *Attitude Change Following Jury Duty*, 2 JUST.

supports this conclusion, finding most jurors did not view jury service as a waste of time and were willing to serve on another jury in the future.<sup>10</sup> These views were even more positive among those who actually served on a jury, as compared to those who were called but not selected.<sup>11</sup>

A study of 4,654 veniremembers in North Carolina also revealed generally high levels of satisfaction with jury service across all demographic and social class categories.<sup>12</sup> The study also revealed the experience of jury service increased positive attitudes.<sup>13</sup> Even so, jurors expressed some concerns about time management and requirements for jury service.<sup>14</sup> Researchers also investigated jurors' attitudes toward innovations that might increase juror satisfaction.<sup>15</sup> Most of the jurors surveyed had generally positive attitudes toward trial innovations such as note taking, questioning of witnesses, and written instructions.<sup>16</sup>

Similar results concerning juror satisfaction were found in a study of 159 jurors in nineteen civil cases and nine criminal trials.<sup>17</sup> Ninety-eight percent of jurors believed the selection process was fair, ninety-nine percent believed the defendant had received a fair trial, and one hundred percent thought they were treated well by court personnel.<sup>18</sup> Fifty-seven percent felt better or much better about how the justice system operates after serving on a jury, but fifty-five percent said jurors should be better paid for their services.<sup>19</sup>

Jurors were also asked about twenty-five potential stressors, and forty percent admitted to experiencing some stress as a result of their

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Sys. J. 246, 246 (1977) (discussing the results of a study performed in Oakland County, Michigan, on juror satisfaction).

10. NCSC MANUAL, *supra* note 3, app. C, at 85 (showing eighty-two percent of jurors felt jury service was not a waste of their time and fifty-six percent would volunteer again).

11. Allen, *supra* note 9, at 246.

12. Brian L. Cutler & Donna M. Hughes, *Judging Jury Service: Results of the North Carolina Administrative Office of the Courts Juror Survey*, 19 BEHAV. SCI. & L. 305, 305, 316, 319 (2001).

13. *Id.* at 305, 316.

14. *Id.* at 314–16, 319.

15. *Id.* at 314 tbl.5.

16. *Id.* at 313–14, 314 tbl.5.

17. Brian H. Bornstein et al., *Juror Reactions to Jury Duty: Perceptions of the System and Potential Stressors*, 23 BEHAV. SCI. & L. 321, 326–27, 339 (2005).

18. *Id.* at 330.

19. *Id.*

participation in their trial.<sup>20</sup> The study found seven factors contributing to juror stress: disruption of daily life, trial complexity, evidence reaction, decision making, jury duty, jury interactions, and other external sources.<sup>21</sup>

Although jurors generally have positive attitudes toward jury service, research indicates innovations are needed to address some shortcomings. There are many innovations that potentially improve juror satisfaction and stress; some have yet to be fully researched. This Article will highlight existing and needed research in this area.

## II. CALL TO ACTION FOR JUDGES

Each of the following sections discusses one innovation designed to promote juror satisfaction and reduce juror stress. Research, if available, is presented in order to fully explore the effectiveness of these innovations. Such information should help judges determine which innovations to adopt in their courtrooms. Although we direct our comments to judges, we realize many others are involved in implementing these changes, such as court administrators, security personnel, and court staff, and we encourage them to take action as well, as judges cannot do all the work alone.

### A. *Positively Promote Jury Duty*

It is vital the courts and government work together to educate the American population about the importance of jury service and the history behind this civic duty. Although we could find no research directly examining the relationship between positively promoting jury duty and increased juror satisfaction, there are several ways to promote jury duty.<sup>22</sup> First, government leaders could make a juror appreciation day, week, or other time period to show their gratitude to those who have served on a jury.<sup>23</sup> Second, the courts and government could produce a mass advertising campaign to promote jury service using television, newspaper, radio, and other media forms.<sup>24</sup> Third, courts could send representatives to classrooms—civics and history classes, for example—to tell students about

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20. *See id.* at 331, 335.

21. *Id.* at 331–33.

22. NAT'L CTR. FOR STATE COURTS, JURY TRIAL INNOVATIONS 22–24 (G. Thomas Munsterman, Paula L. Hannaford-Agor & G. Marc Whitehead eds., 2d ed. 2006) [hereinafter NCSC INNOVATIONS].

23. *Id.* at 23.

24. *Id.*

the importance and role of jurors in the legal system.<sup>25</sup> Lastly, courts could make websites that encourage potential jurors to serve, provide important information, answer common questions that may arise, and discuss jury innovations that are currently practiced in their jurisdiction.<sup>26</sup>

People often get caught up in their everyday routines, so when asked to deviate from this set pattern for jury service, they can see it as an inconvenience.<sup>27</sup> By positively promoting jury duty, however, courts can remind potential jurors of the importance of jury service, which may reduce some of the stress associated with jury duty.

### B. Implement Comprehensive Juror Orientation Programs

Lack of information regarding jury service may be a source of stress and dissatisfaction for many jurors.<sup>28</sup> They may be unsure of where to report or how to get there,<sup>29</sup> have concerns about how jury service will affect their finances or employment,<sup>30</sup> or wonder whether they are qualified to serve on a jury. These stressors may be compounded once a juror is selected to serve on a trial, as many community members have a limited understanding of the law, legal terms, and court procedures.<sup>31</sup>

The ABA has recommended courts implement orientation programs to increase jurors' understanding of jury service and the judicial system.<sup>32</sup> Overall, jurors have positive perceptions of orientation materials.<sup>33</sup> For

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25. *Id.* at 23–24.

26. *See id.* at 37 (discussing the use of court websites for accessing jury service F.A.Q.'s and orientation information).

27. *See* NCSC MANUAL, *supra* note 3, at 8 (“The amount of notice given to jurors before having to report generally is within the control of local court personnel. Many jurors in the study noted that having sufficient notice in which to arrange for time away from home or work would minimize the stress associated with these disruptions.”).

28. *Id.* (quoting a juror who needed “more information from the court about the process and what to expect”).

29. *Id.*

30. *Id.* at 9–10.

31. *See* Elizabeth Najdovski-Terziovski et al., *What Are We Doing Here? An Analysis of Juror Orientation Programs*, 92 JUDICATURE, Sept.–Oct. 2008, at 70 (discussing the layperson's knowledge of law, legal terms, and court procedures in common law countries).

32. AM. JURY PROJECT, AM. BAR ASS'N, PRINCIPLES FOR JURIES AND JURY TRIALS, Principle 6, at 7–8 (2005) [hereinafter ABA PRINCIPLES], available at <http://www.abanet.org/juryprojectstandards/principles.pdf>.

33. *See* Cutler & Hughes, *supra* note 12, at 311 tbl.2 (stating 91.8% of 2,996

instance, jurors who were randomly selected to view a juror orientation videotape had significantly higher knowledge of courtroom procedures, felt more comfortable and confident in their role as jurors, and had more positive attitudes toward jury service than jurors who did not view the videotape.<sup>34</sup> Further, exposure to orientation materials increases juror satisfaction.<sup>35</sup>

Accordingly, judges should implement comprehensive juror orientation programs. Prior to reporting for jury service, jurors should receive orientation materials addressing practical issues, such as appropriate courtroom attire, compensation, job-related concerns, and procedures for requesting an exemption.<sup>36</sup> At the courthouse, jurors should receive additional information regarding juror schedules, location of dining areas, and jury selection procedures.<sup>37</sup> Finally, during jury selection, jurors should be informed of all basic trial procedures and their responsibilities as jurors.<sup>38</sup> The ABA recommends this portion of the orientation be presented by a judge.<sup>39</sup> The ABA also recommends that judges disseminate information through a variety of mediums, including audiovisual, oral, and written.<sup>40</sup> Such programs may help alleviate juror stress, enhance juror confidence and competency, and result in more favorable perceptions of the judicial process.<sup>41</sup>

### C. Limit Jury Service Length

The length of jury service differs by jurisdiction and type of jury service—petit or grand—and can vary from one day to many weeks. There are some jurisdictions that enlist the “one-day–one-trial” technique, which can lessen the amount of time potential jurors serve by having the juror

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jurors shown an orientation video in the North Carolina survey were either satisfied or very satisfied with the information in the video).

34. Gregory S. Bradshaw et al., *Fostering Juror Comfort: Effects of an Orientation Videotape*, 29 LAW & HUM. BEHAV. 457, 461–63 (2005).

35. Larry Heuer & Steven Penrod, *Trial Complexity: A Field Investigation of Its Meaning and Its Effects*, 18 LAW & HUM. BEHAV. 29, 42 (1994) (“[J]uror orientation procedure also has a positive effect on the measure of juror satisfaction.”).

36. NCSC MANUAL, *supra* note 3, at 8–9.

37. NCSC INNOVATIONS, *supra* note 22, at 38.

38. ABA PRINCIPLES, *supra* note 32, Principle 6(C)(1)–(2), at 7–8.

39. *Id.* Principle 6(B)(3), at 7.

40. *Id.* Principle 6(B)(2), at 7.

41. See Bradshaw et al., *supra* note 34, at 461–63 (discussing the generally positive reception to orientation videotapes).

serve for either one day or one trial.<sup>42</sup> Jurors who are “on call” for an extended period of time may serve on numerous trials, often only days apart.<sup>43</sup> Research suggests this practice may have negative consequences.<sup>44</sup> First, jurors may experience stress and dissatisfaction due to the uncertainty of whether they will be called and the potential hardships of jury duty. Research shows jurors experience frustration when they do not know which days or for how long they will be required to serve.<sup>45</sup> Second, “repeat” jurors can find a second trial harder to follow and less interesting; they also tend to like their fellow jurors less than novice jurors.<sup>46</sup> Although this may not be an issue for all jurors who serve on multiple juries, it is important to note these effects and their potentially negative impact on an individual’s perception of jury duty and his or her fellow jurors. An NCSC report found seventy-three percent of jurors experienced stress at some level as they awaited assignment to a trial.<sup>47</sup> We could find no research that tests whether one-day-one-trial jurors experience less stress and greater satisfaction than jurors who are not in one-day-one-trial jurisdictions.

Judges should consider both limiting repeat jury service and implementing the one-day-one-trial approach. In the one-day-one-trial

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42. NCSC INNOVATIONS, *supra* note 22, at 25–26; *see, e.g.*, FLA. STAT. ANN. § 40.41 (West 2003) (“The length of the term of service for a petit juror shall not exceed 1 day unless the juror is assigned to or impaneled on a trial that is not completed in 1 day . . . .”); IND. CODE ANN. § 33-28-5-23 (LexisNexis 2004 & Supp. 2010) (“[A] juror serves until the conclusion of the first trial in which the juror is sworn, regardless of the length . . . [or] when jury selection is complete.”); OKLA. STAT. ANN. tit. 38, § 23.1 (West 2010) (“[N]o person shall be required to render service as a juror for more than one (1) day in a calendar year, unless he or she is selected to serve in a trial or is under consideration to serve in a trial and such consideration covers a period of two (2) or more days.”); JUDICIAL COUNCIL OF CAL., FACT SHEET: ONE-DAY OR ONE-TRIAL JURY SERVICE (2010), *available at* <http://www.courts.ca.gov/onedayonetrial.pdf>.

43. *See, e.g.*, MICH. COMP. LAWS ANN. § 600.1343 (West 1996 & Supp. 2010) (“The term of service of petit jurors shall be determined by local court rule but shall not exceed the term of court. . . . Once commenced, the term of service shall be continuous.”).

44. Saul M. Kassin & Ralph Juhnke, *Juror Experience and Decision Making*, 44 J. PERSONALITY & SOC. PSYCHOL. 1182, 1190 (1983) (explaining a study comparing experienced and inexperienced mock jurors found adverse effects on “valued aspects of jury functioning, notably the deliberation process and juror satisfaction” for the experienced jurors).

45. *See* NAT’L CTR. FOR STATE COURTS, THE RELATIONSHIP OF JUROR FEES AND TERMS OF SERVICE TO JURY SYSTEM PERFORMANCE 31 (1991).

46. *See* Kassin & Juhnke, *supra* note 44, at 1190.

47. NCSC MANUAL, *supra* note 3, app. C, at 86.



method of determining jury service length, jurors can be on call for jury duty for several days, but once called to the courthouse, they have met their one-day requirement.<sup>48</sup> If a potential juror is selected to serve on a jury, it counts as his or her one trial, and that juror will not be called again.<sup>49</sup> The one-day-one-trial approach lessens the amount of time the potential juror is on call and decreases requests for excusal due to hardships.<sup>50</sup> Also, by applying a one-day-one-trial rule, judges are able to minimize the negative effects of serving on multiple juries.

#### D. Improve Juror Space

The physical spaces in courthouses used for gathering, waiting, and deliberating are often cramped, congested, noisy, and unwelcoming.<sup>51</sup> Juror stressors related to physical space may include noisy and crowded areas, unsafe facilities, uncomfortable chairs, and inadequate restrooms.<sup>52</sup> Stress can result in reduced efficiency and productivity for jurors.<sup>53</sup> The physical environment for jurors likely impacts their overall satisfaction with the jury process, yet we could not find any research that investigates whether addressing these issues improves jurors' experience and satisfaction with jury service in the United States.<sup>54</sup>

Judges can take steps, many inexpensive, to improve jurors' work and waiting areas through cooperation with the building management and those charged with providing safety to the court.<sup>55</sup> Court personnel can

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48. NCSC INNOVATIONS, *supra* note 22, at 25.

49. *Id.*

50. Battaglini, Behrens & Silverman, *supra* note 2, at 125–26.

51. J. Clark Kelso, Report, *Final Report of the Blue Ribbon Commission on Jury System Improvement*, 47 HASTINGS L.J. 1433, 1457, 1460 (1996).

52. *Id.* at 1460–61.

53. Cf. Isaiah M. Zimmerman, *Stress: What It Does to Judges, and How It Can Be Lessened*, 20 JUDGES' J. 4 (1981), reprinted in HANDBOOK FOR JUDGES 117 (G. H. Williams & Kathleen M. Sampson eds., 1984); Celeste F. Bremer, *Impact of a Mentoring Program on Occupational Stress, Personal Strain, and Coping Resources of Newly Appointed U.S. Magistrate Judges* (Dec. 2002) (unpublished Ed.D. dissertation, Drake University) (on file with author).

54. See JUDICIAL CONFERENCE OF THE U.S., U.S. COURTS DESIGN GUIDE 5-3 (2007) (providing guidelines for designing adequate and comfortable juror facilities); cf. JANE GOODMAN-DELAHUNTY ET AL., AUSTRALIAN INST. OF CRIMINOLOGY, PRACTICES, POLICIES AND PROCEDURES THAT INFLUENCE JUROR SATISFACTION IN AUSTRALIA 135 (2007) (stating “the physical environment which jurors experience was a substantial contributor to comfort and general satisfaction with the experience of jury service” in Australia).

55. See, e.g., JUDICIAL ADMINISTRATION AND SPACE MANAGEMENT: A

shadow the jurors' experience for a day—park where jurors park, sit in juror-waiting areas, or try to find bathrooms or telephones—and carefully observe jurors to see what changes should be made to address juror comfort and safety.<sup>56</sup> Local student, civic, or professional groups may also be able to suggest changes, such as better chairs or more convenient parking, and provide a fresh perspective to the jury service process.

Judges should consider whether other rooms, such as training or conference rooms, could be used instead of crowded or unsightly jury assembly areas.<sup>57</sup> Community service groups or students can paint, refurbish, and provide artwork to make the jurors' experience more dignified and welcoming. Courts can also provide Wi-Fi service, books, magazines, and maps of local areas that note nearby restaurants and points of interest to give jurors a break from the intense experience of serving on a jury and to make time spent waiting pass more quickly.<sup>58</sup>

Courts should strive to provide a safe, clean, and dignified place for jurors. By reducing stressors related to the physical site, courts may be able to increase juror satisfaction and safety. Researchers from various disciplines, including marketing, design, architecture, and education, can aid judges in creating better work spaces and test whether jurors' experiences are improved through attention to their environment.<sup>59</sup>

#### E. Conduct Individualized Voir Dire

During voir dire, potential jurors must often respond to highly personal questions in the presence of other jurors, courtroom staff, trial participants, and spectators. This experience may be stressful for many jurors who are uncomfortable sharing personal information<sup>60</sup> or who fear their responses may be self-incriminating—if jurors are asked about

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GUIDE FOR ARCHITECTS, COURT ADMINISTRATORS, AND PLANNERS 98 (F. Michael Wong ed. 2001) [hereinafter Wong] (providing suggestions for architectural design and court management).

56. See CTR. FOR PUB. BLDGS. & MODERNIZATIONS, U.S. GEN. SERVS. ADMIN., ACHIEVING GREAT FEDERAL PUBLIC SPACES: A PROPERTY MANAGER'S GUIDE 88 (2007).

57. See Wong, *supra* note 55, at 115–16.

58. See NCSC INNOVATIONS, *supra* note 22, at 39–40 (discussing possible diversions and forms of entertainment for jurors).

59. See generally Wong, *supra* note 55 (elaborating on techniques and planning for architects and court administrators).

60. NCSC MANUAL, *supra* note 3, at 15–16.

personal drug use, for example.<sup>61</sup> Conducting individualized voir dire may reduce discomfort and enhance juror satisfaction.<sup>62</sup>

Research demonstrates jurors often hesitate to answer sensitive questions during voir dire.<sup>63</sup> Judge Gregory Mize's individual interviews with prospective jurors revealed many were too fearful or embarrassed to respond to general voir dire questions,<sup>64</sup> and an NCSC survey indicated the jury selection process was among one of the top ten sources of stress for potential jurors.<sup>65</sup> To the authors' knowledge, no research exploring the relationships between voir dire processes and juror satisfaction has been conducted. Yet implementing this practice would likely yield more positive perceptions of jury service and the trial process as a whole.

Judges may use a variety of methods to minimize juror embarrassment and apprehension related to answering personal questions in an open courtroom. For instance, the judge may ask the jury panel to provide yes or no answers on a slip of paper and then conduct private interviews—with only the juror and representatives from both parties present—to obtain more detailed information.<sup>66</sup> Alternatively, the entire voir dire could be conducted individually, or jurors may request to answer any question posed in traditional voir dire proceedings out of the presence of the jury panel and courtroom observers.<sup>67</sup> Such procedures may put potential jurors at ease and reduce stress related to the jury selection process.<sup>68</sup>

#### F. Manage Time Effectively

A trial is a complex, multistep process involving many individuals. As a result, some judges may find it challenging to manage time effectively.

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61. PAULA L. HANNAFORD, STATE JUSTICE INST., MAKING THE CASE FOR JUROR PRIVACY: A NEW FRAMEWORK FOR COURT POLICIES AND PROCEDURES 16 (2001), available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/juries&CISOPTR=31>.

62. *Id.* at 17.

63. *Id.* at 15; see, e.g., Richard Seltzer et al., *Juror Honesty During the Voir Dire*, 19 J. CRIM. JUST. 451, 460 (1991) (“[J]urors withhold information or lie during voir dire.”).

64. See Gregory A. Mize, *On Better Jury Selection: Spotting UFO Jurors Before They Enter the Jury Room*, 36 CT. REV., Spring 1999, at 10, 12–13.

65. See NCSC MANUAL, *supra* note 3, at 86–88.

66. Mize, *supra* note 64, at 11–12.

67. HANNAFORD, *supra* note 61, at 17.

68. See *id.*

Jurors may be dissatisfied with delays, such as those during jury selection or when attorneys have sidebar meetings with the judge.<sup>69</sup> Research has revealed trial interruptions and delays were moderately stressful for jurors, as was waiting to be assigned to a trial.<sup>70</sup> Further, twenty-one percent of jurors were dissatisfied with how their time was used.<sup>71</sup> We could not find any studies that have investigated whether better time management decreases stress or dissatisfaction, however.

Judges should analyze their current courtroom procedures and determine if changes can be made to use juror time more efficiently. The NCSC offers some suggestions for improving time management, including pre-screening jurors, holding pretrial conferences with attorneys, and using written questionnaires.<sup>72</sup> The ABA recommends courts call only the minimum number of jurors necessary, minimize jurors' wait time, and make sure each potential juror is assigned to a panel before assigning any potential juror a second time.<sup>73</sup> Such changes have the potential to reduce jurors' stress and dissatisfaction, which can improve their overall experience.

#### G. Establishing Overall Time Limits

One innovation that has been useful in some jurisdictions concerns establishing overall time limits for the presentation of each side of a case.<sup>74</sup> This is typically done only in civil cases.<sup>75</sup> While it has not been extended to criminal trials, it might be useful in certain cases, as long as the defendant's rights are adequately protected. Although we know of no research finding time limits increase juror satisfaction, this innovation has been recommended by several researchers and upheld in court decisions.<sup>76</sup>

Typically, before the trial begins, both sides agree on how much time

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69. NCSC MANUAL, *supra* note 3, app. C, at 88.

70. See Bornstein et al., *supra* note 17, at 332 tbl.2.

71. Cutler & Hughes, *supra* note 12, at 311.

72. NAT'L CTR. FOR STATE COURTS, OPTIMUM USE OF TIME & PERSONS DURING JURY SELECTION 3, available at [http://www.icmelearning.com/jtm/pdf/slides/Jury\\_Selection\\_Mod5.pdf](http://www.icmelearning.com/jtm/pdf/slides/Jury_Selection_Mod5.pdf).

73. ABA PRINCIPLES, *supra* note 32, Principle 2, at 4–5.

74. See NCSC INNOVATIONS, *supra* note 22, at 90–91.

75. See, e.g., *Johnson v. Ashby*, 808 F.2d 676, 678 (8th Cir. 1987) (affirming trial court time limit in civil case); *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1171–72 (7th Cir. 1982) (same).

76. See, e.g., *Johnson*, 808 F.2d 676; *MCI Commc'ns Corp.*, 708 F.2d 1081; NCSC INNOVATIONS, *supra* note 22, at 90–91.

will be allotted for all activities associated with the case and the trial itself.<sup>77</sup> Consequently, attorneys must carefully allocate available time to opening arguments, presenting their case through direct evidence, cross-examination of opposing witnesses, and closing arguments.<sup>78</sup> This may encourage attorneys to be concise and well-prepared, and help ease juror boredom and frustration due to lengthy trials.<sup>79</sup>

#### H. Inform Jurors of Important Legal Background Issues Before the Trial Begins

Often, jurors know very little about the law relevant to a case prior to the end of a trial, and they may not understand the instructions they are given.<sup>80</sup> This can add to the stress of jury service. Research shows this stress may be alleviated by a more thorough pretrial orientation on the relevant law of the case.<sup>81</sup> Researchers Brian Cutler and Donna Hughes included pretrial instructions as one of the many reforms they examined in their research.<sup>82</sup> They found nearly half of the jurors agreed it would have been helpful if the judge would have provided information on the law of the case *before* the trial began.<sup>83</sup> Doctors Joe Cecil and Elizabeth Wiggins of the Federal Judicial Center and Doctor Valerie Hans summarized research on the use of earlier orientation and found that preliminary instructions increased juror satisfaction with trials and helped jurors understand the relevant legal issues.<sup>84</sup>

Judges should consider informing jurors, alternates, and even potential jurors about the relevant laws. Also, if the trial is lengthy and complex, clarifications might be offered at key points throughout the process. Finally, the relevant law might be summarized, in an understandable manner, prior to closing arguments. Providing jurors with information about the relevant legal background pertaining to the trial may increase juror knowledge and awareness of pertinent information, which

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77. NCSC INNOVATIONS, *supra* note 22, at 90.

78. *See id.*

79. *See id.* at 91.

80. *See* Joe S. Cecil et al., *Citizen Comprehension of Difficult Issues: Lessons from Civil Jury Trials*, 40 AM. U. L. REV. 727, 733–34 (1991).

81. Cutler & Hughes, *supra* note 12, at 314.

82. *Id.*

83. *Id.*

84. *See* Cecil et al., *supra* note 80, at 770 (citing Larry Heuer & Steven Penrod, *Instructing Jurors: A Field Experiment with Written and Preliminary Instructions*, 13 LAW & HUM. BEHAV. 409, 425–26 (1989)).

may help alleviate their stress and increase satisfaction.

### I. *Help Jurors Understand Instructions*

Jurors often do not understand the instructions they are given, which is a problem exacerbated in jurisdictions that require written instructions to be read verbatim. Because jurors often have only high school or equivalent level education,<sup>85</sup> it is no surprise difficulty understanding the law—and other trial characteristics—is one of the most stressful aspects of trial.<sup>86</sup>

Researchers have studied ways to improve juror comprehension of instructions. In general, jurors who receive instructions often show no better comprehension of the law and legal principles, with the exception of procedural matters, than those who do not.<sup>87</sup> In order to improve juror comprehension, the instructions should be written in a manner easily understood by the “average” American.

In jurisdictions where editing of jury instructions is allowed, instructions should be written in short, concise sentences that are easily understood, use the active voice, use parallel structure, and do not use multiple negatives in a sentence.<sup>88</sup> In jurisdictions where editing of jury instructions is not allowed, the judge should paraphrase the particularly confusing parts and clarify issues of concern to the jurors after the initial reading of the instructions.<sup>89</sup>

Increasing juror comprehension may lead to higher levels of juror satisfaction by lessening the amount of confusion and stress a juror may experience. Thus, judges should make efforts to simplify and clarify the instructions they give to jurors.

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85. See, e.g., Cutler & Hughes, *supra* note 12, at 314 tbl.1 (showing 56.3% of jurors surveyed held no more than a high school degree).

86. See Bornstein et al., *supra* note 17, at 331–32 (discussing “Trial Complexity” as one of the top two stressors jurors experience).

87. Bethany K. Dumas, *Jury Trials: Lay Jurors, Pattern Jury Instructions, and Comprehension Issues*, 67 TENN. L. REV. 701, 723–24 (2000); see also NCSC INNOVATIONS, *supra* note 22, at 15.

88. Veda Charrow, *Some Guidelines for Clear Legal Writing*, 8 U. BRIDGEPORT L. REV. 405, 406 (1987). Parallel structure refers to using similarly worded and structured clauses to clearly and concisely get the point of the sentence across to the reader.

89. NCSC INNOVATIONS, *supra* note 22, at 15.

### J. Place Opposing Testimony Back to Back

Some trials are inherently complex, with a great deal of complicated testimony and evidence about topics unfamiliar to most jurors. For instance, a medical malpractice case can involve testimony about technical, complicated medical procedures, legal standards of care, and economic consequences for the patient. Often such cases become a “battle of experts” in which the competing sides present conflicting opinions and evidence. Experts for the prosecution and experts for the defense often testify hours or days apart, with other witnesses testifying in between. This delay may make it difficult for jurors to compare the testimonies of the expert witnesses.<sup>90</sup> Researchers have suggested the sequence of testimony could be reorganized so opposing witnesses could testify back to back.<sup>91</sup> This would allow jurors to hear “both sides of the story” at the same time.<sup>92</sup>

We could not find any research that has specifically measured jurors’ reactions to the ordering of testimony, nor is there any empirical evidence indicating that placing opposing testimony back to back affects jurors’ stress or satisfaction. Even so, research has revealed jurors generally experience stress as a result of “trial complexity,” which includes difficulty understanding testimony.<sup>93</sup> Another study found thirty-three percent of jurors experienced stress as a result of expert testimony.<sup>94</sup> Thus, any procedure that could reduce this stress has potential benefit.

Judges should consider sequencing the trial testimony so opposing experts can testify back to back. Doing so may help jurors understand this expert testimony.<sup>95</sup> This may increase both their confidence in their verdicts and their satisfaction with their experiences as jurors.

### K. Allow Juror Note Taking

Trials can sometimes be long and complex, which can make it difficult for jurors to remember all of the information presented. It is common for individuals in meetings to take notes to aid their memory and ability to recall information at a later time. As early as 1919, some courts recognized

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90. See *id.* at 94–95 (discussing reordering the sequence of expert testimony for the jury’s benefit).

91. See *id.* at 94.

92. See *id.* at 95 (“Jurors receive a clearer understanding of the nature and extent of differences between experts and the soundness of their views.”).

93. Bornstein et al., *supra* note 17, at 331–32.

94. NCSC MANUAL, *supra* note 3, app. C, at 86.

95. See NCSC INNOVATIONS, *supra* note 22, at 94–95.

this principle applies to jurors as well.<sup>96</sup> In *Denson v. Stanley*, the court found note taking assists jurors in reaching a correct and fair finding.<sup>97</sup> However, some courts still do not allow note taking.<sup>98</sup>

Although some studies have found note taking does not affect jurors' performance, evidence suggests it can be helpful in some cases.<sup>99</sup> Studies have found note taking by jurors facilitates greater efficiency in discussing evidence, helps clarify the case more effectively, increases juror satisfaction, encourages greater participation, and decreases deliberation time.<sup>100</sup> Note taking also keeps jurors active and alert, which has also been shown to increase juror satisfaction.<sup>101</sup>

Even though research is mixed, judges should consider allowing note taking in their courtrooms. Judges may want to limit note taking to long or complex trials, as there is a small risk note taking may be a distraction or cause disparity between efficient and inefficient note takers.<sup>102</sup> Judges could also provide jurors with instructions and clarifications that include the following: the purpose and function of note taking, the confidentiality of notes, the permissive nature of note taking, the proper use of notes as a memory aid, and the proper weight to be afforded to notes, including a reminder that jurors should all participate equally during deliberations

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96. See, e.g., *Denson v. Stanley*, 84 So. 770, 771 (Ala. Ct. App. 1919) (noting the benefits of juror note taking and permitting it in the trial).

97. *Id.*; see also Steven D. Penrod & Larry Heuer, *Tweaking Commonsense: Assembling Aids to Jury Decision Making*, 3 PSYCHOL. PUB. POL'Y & L. 259, 266 (1997) (discussing the impact of *Denson* and increased juror satisfaction).

98. See, e.g., *Toles v. United States*, 308 F.2d 590, 594 (9th Cir. 1962) (noting the trial court's decision regarding jury note taking is within the discretion of the trial judge and many judges prohibit it).

99. Penrod & Heuer, *supra* note 97, at 266–67; see generally Larry Heuer & Steven Penrod, *Increasing Jurors' Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking*, 12 LAW & HUM. BEHAV. 231, 233 (1988) [hereinafter Heuer & Penrod, *Increasing Jurors' Participation*] (reporting a field experiment in Wisconsin regarding juror participation, which included a finding jurors are better informed when they engaged in note taking); Larry Heuer & Steven Penrod, *Juror Notetaking and Question Asking During Trials: A National Field Experiment*, 18 LAW & HUM. BEHAV. 121, 135–40, 148–49 (1994) [hereinafter Heuer & Penrod, *Juror Notetaking*] (reporting findings from a national field experiment on juror note taking and question asking).

100. NCSC INNOVATIONS, *supra* note 22, at 127; Irwin A. Horowitz & Lynne ForsterLee, *The Effects of Note-Taking and Trial Transcript Access on Mock Jury Decisions in a Complex Civil Trial*, 25 LAW & HUM. BEHAV. 373, 387 (2001).

101. NCSC INNOVATIONS, *supra* note 22, at 127.

102. Penrod & Heuer, *supra* note 97, at 267–68.



regardless of whether they took notes.<sup>103</sup>

Although note taking may not make a significant difference in decision making, research has found jurors would like to be able to take notes.<sup>104</sup> As such, allowing them to do so may increase jury satisfaction.

*L. Allow Jurors to Submit Written Questions for Witnesses*

Many jurors struggle to understand complex evidence and testimony, and this confusion may be compounded by expert witnesses who often use elaborate terminology to discuss unfamiliar topics. In one study, about twenty percent of jurors experienced a moderate level of stress directly related to their inability to ask questions.<sup>105</sup> Thus, allowing jurors to submit written questions for witnesses may minimize juror stress while enhancing juror comprehension and satisfaction.

Numerous studies illuminate the benefits of allowing juror questions. For instance, jurors randomly assigned to trials permitting questions were significantly more likely than other jurors to report they understood the evidence and testimony<sup>106</sup> and they had sufficient information to render a fair verdict.<sup>107</sup> Jurors who could ask questions were also more satisfied with the trial process and had more favorable perceptions of jury service.<sup>108</sup> Another study of over four hundred jurors who were allowed to ask questions revealed seventy-seven percent believed this practice increased their understanding of the evidence and testimony, and fifty-six percent reported increased satisfaction with the trial process.<sup>109</sup> Research reveals

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103. NCSC INNOVATIONS, *supra* note 22, at 126–27.

104. See Penrod & Heuer, *supra* note 97, at 265.

105. Bornstein et al., *supra* note 17.

106. Heuer & Penrod, *Juror Notetaking*, *supra* note 99, at 142.

107. Heuer & Penrod, *Increasing Jurors' Participation*, *supra* note 99, at 252; see also MARY DODGE, SHOULD JURORS ASK QUESTIONS IN CRIMINAL CASES? A REPORT SUBMITTED TO THE COLORADO SUPREME COURT'S JURY SYSTEM COMMITTEE 40 (2002), available at [http://www.courts.state.co.us/userfiles/File/Court\\_Probation/Supreme\\_Court/Committees/Jury\\_System\\_Standing\\_Committee/dodgereport.pdf](http://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Committees/Jury_System_Standing_Committee/dodgereport.pdf) (explaining jurors who were permitted to ask questions “were more likely to agree that they had sufficient information to reach a correct decision” compared to jurors in groups where questions were not permitted).

108. DODGE, *supra* note 107, at 45.

109. AM. JURY PROJECT COMM'N, SEVENTH CIR. BAR ASS'N, SEVENTH CIRCUIT AMERICAN JURY PROJECT: FINAL REPORT 13, 22 (2008), available at <http://www.7thcircuitbar.org/associations/1507/files/7th%20Circuit%20American%20Jury%20Project%20Final%20Report.pdf>.

few disadvantages to allowing juror questions.<sup>110</sup> The majority of jurors submit questions to clarify the evidence and testimony.<sup>111</sup> Inappropriate questions are rare and effectively screened by judges and attorneys.<sup>112</sup> Juror questions do not appear to prejudice either party or interfere with trial strategy.<sup>113</sup> They also do not significantly influence verdicts.<sup>114</sup> Finally, juror questions do not appear to cause unreasonable time delays or affect trial efficiency.<sup>115</sup>

Most states and all federal jurisdictions permit jurors to submit written questions at the discretion of the trial judge, though specific laws may vary according to jurisdiction and trial type—civil versus criminal, for example.<sup>116</sup> The ABA recommends judges permit jurors to submit written questions during civil trials and provides basic guidelines for this practice.<sup>117</sup> Its use in criminal trials is recommended at the court's discretion.<sup>118</sup>

Judges in jurisdictions allowing juror questions should consider implementing this practice. Permitting jurors to submit written questions during trial may decrease juror stress related to trial complexity, as well as increase overall comprehension and verdict confidence.

#### M. Supply Jurors with Written Copies of Jury Instructions

As previously noted, jurors often enter the courtroom having very little, if any, experience with trials. As such, they may feel lost in the

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110. See DODGE, *supra* note 107, at 57–58; Penrod & Heuer, *supra* note 97, at 280.

111. DODGE, *supra* note 107, at 38.

112. *Id.* at 58.

113. Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not to Ask, That Is the Question,"* 78 CHI.-KENT L. REV. 1099, 1119 (2003).

114. Penrod & Heuer, *supra* note 97, at 280.

115. DODGE, *supra* note 107, at 16; see also REPORT OF THE CONFERENCE OF CIVIL PRESIDING JUDGES ON ITS EVALUATION OF JUROR QUESTION-ASKING PROCEDURES 11 (2006), available at <http://www.judiciary.state.nj.us/jurypilot/jurquest2.pdf> (showing the median time for juror questions was thirty minutes and the average time was fifty-nine minutes).

116. See *Jurisdiction-by-Jurisdiction Rules for Juror Questions to Witnesses*, AM. JUDICATURE SOC'Y (2009), [http://www.ajs.org/jc/juries/jc\\_improvements\\_questions\\_laws.asp](http://www.ajs.org/jc/juries/jc_improvements_questions_laws.asp); see also *United States v. Bush*, 47 F.3d 511, 514 (2d Cir. 1995) (“[D]irect questioning by jurors is a ‘matter within the judge’s discretion, like witness-questioning by the judge himself.’” (quoting *United States v. Witt*, 215 F.2d 580, 584 (2d Cir. 1954))).

117. ABA PRINCIPLES, *supra* note 32, Principle 13(C), at 18–19.

118. *Id.*

process, unsure of what to expect, and unfamiliar with what is expected of them. Research confirms the difficulty of understanding the law and the complexity of the trial process is a primary stressor for jurors.<sup>119</sup>

Providing written court instructions to jurors in advance of the judge's reading of the instructions, closing arguments, and juror deliberations may help alleviate some of this stress. Research suggests written instructions are useful to jurors because they "accommodate jurors' different learning styles, enhance comprehension, and reduce the number of questions about the instructions from deliberating jurors."<sup>120</sup> There are, however, some disadvantages to providing written instructions: less educated individuals or non-English speakers may be inadequately instructed, attorneys and judges will need to devote more time to preparing the instructions, and additional copies of the instructions will increase the cost of jury trials.<sup>121</sup> Moreover, jurors may reach a verdict early in the trial, improperly focus on certain testimony or issues, and adopt an oversimplified perspective of trial issues.<sup>122</sup>

Although the utility of providing jurors with written instructions is somewhat mixed, judges should consider implementing this jury trial innovation. Having written instructions in hand may not always enhance juror performance, but it may nonetheless help jurors feel more confident and comfortable with the process.

#### N. Give Jurors Directions for How to Deliberate

One of the most foreign concepts to jurors, despite being a critical part of the jury process, is deliberation. Novice jurors may have many questions regarding deliberations as a process, including how deliberation should proceed, who should act as the foreperson, what topics are open to discussion, and how disagreements should be resolved. As a result, many

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119. Bornstein et al., *supra* note 17, at 331–32.

120. B. Michael Dann & Valerie P. Hans, *Recent Evaluative Work on Jury Trial Innovations*, 41 CT. REV., Spring 2004, at 12, 18–19. For example, a Tennessee study including responses from jurors, attorneys, and judges indicated jurors referred to their court instructions an average of 4.78 times during deliberations. *See id.* at 19 (citing Neil P. Cohen & Daniel R. Cohen, *Jury Reform in Tennessee*, 34 MEMPHIS L. REV. 1 (2003)). Ninety-nine percent of those jurors rated the instructions as "clear," and eighty-seven percent of respondents found them "very clear." *Id.*

121. NCSC INNOVATIONS, *supra* note 22, at 152.

122. Leonard B. Sand & Steven Alan Reiss, *A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit*, 60 N.Y.U. L. REV. 423, 438–39 (1985).

jurors are confused, hesitant, and even frustrated when commencing deliberation.<sup>123</sup>

One method for alleviating this stress is for judges to provide jurors with suggestions on how to deliberate.<sup>124</sup> One might criticize this method by alleging jurors may feel the judge is illegitimately attempting to influence the trial outcome, but this argument is generally rejected.<sup>125</sup> Studies show wide support for deliberation suggestions.<sup>126</sup> Eighty percent of jurors in Massachusetts and Ohio independently agreed deliberation instructions are helpful.<sup>127</sup> As such, judges should provide deliberation suggestions to aid jurors in this process, thereby helping to reduce these stresses and increase satisfaction.

#### O. Allow Jurors to Deliberate During the Trial

Having cases decided by a “jury of one’s peers” sets the United States’ justice system apart from many other systems. Jurors do not make decisions as independent voters, per se. Instead, jurors arrive at a unanimous verdict after what can sometimes be lengthy deliberations.<sup>128</sup> Deliberation can be a significant source of discomfort, ranging from confusion to outright frustration.<sup>129</sup> Some of the stress related to deliberation may stem from the fact that in many jurisdictions, deliberation is only allowed after all evidence has been presented.<sup>130</sup> This could leave

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123. NCSC INNOVATIONS, *supra* note 22, at 149.

124. This can be done verbally or in written form. See AM. JUDICATURE SOC’Y, BEHIND CLOSED DOORS: A GUIDE FOR JURY DELIBERATIONS 3–10 (1999).

125. See NCSC INNOVATIONS, *supra* note 22, at 149.

126. See *id.* at 149–50, 191–92, 197–202 (analyzing studies and practices from deliberation suggestions); see, e.g., B. MICHAEL DANN, VALERIE P. HANS & DAVID H. KAYE, TESTING THE EFFECTS OF SELECTED JURY TRIAL INNOVATIONS ON JUROR COMPREHENSION OF CONTESTED MTDNA EVIDENCE 67–72 (2004) (discussing deliberation suggestions in mitochondrial DNA cases).

127. See JAMES FRANK & TAMARA MADENSEN, SURVEY TO ASSESS AND IMPROVE JURY SERVICE IN OHIO, at iv (2004) (showing “over 80 percent of the jurors [in the Ohio study] believed that the judge’s advice was helpful” in each jury deliberation surveyed).

128. See, e.g., DANN, HANS & KAYE, *supra* note 126, at 67 (noting some deliberations studied extended for 105 minutes).

129. NCSC INNOVATIONS, *supra* note 22, at 149; see also NCSC MANUAL, *supra* note 3, app. C, at 88 (providing statistics on stress involved with jury deliberation).

130. See, e.g., IOWA R. CRIM. P. 2.19(5)(a) (stating the jury “should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them”).

questions unanswered and create unnecessary delays and frustrations once deliberation finally commences.<sup>131</sup>

Some jurisdictions, such as Arizona, allow jurors to discuss aspects of the case at various times during a trial rather than only at the end.<sup>132</sup> Early research has indicated this innovation has a positive impact in complex cases.<sup>133</sup> One study suggested allowing intermittent juror deliberation helps jurors clear up any points that were poorly understood.<sup>134</sup> Similarly, another study showed allowing deliberation during the trial can reduce the “recency effect,” whereby jurors best remember the evidence they heard most recently.<sup>135</sup> Importantly, the same study also noted jurors better understand the evidence when allowed to discuss it early.<sup>136</sup> Despite these benefits, some fear allowing intermittent discussion will lead to premature judgments.<sup>137</sup> However, studies of the Arizona procedure allowing deliberation during trial have shown no evidence this occurs, perhaps because the procedure involves an explicit statement imploring jurors to

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131. See NCSC INNOVATIONS, *supra* note 22, at 125 (discussing advantages of juror discussion prior to deliberation).

132. ARIZ. R. CIV. P. 39(f) (“[J]urors shall be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present . . .”).

133. See NCSC INNOVATIONS, *supra* note 22, at 124 (discussing results of extensive studies of this technique, including increases in juror comprehension in large, complex cases).

134. Shari Seidman Diamond et al., *Juror Discussion During Civil Trials: Studying an Arizona Innovation*, 45 ARIZ. L. REV. 1, 74–75 (2003).

135. Paula L. Hannaford, Valerie P. Hans & G. Thomas Munsterman, *Permitting Jury Discussions During Trial: Impact of the Arizona Reform*, 24 LAW & HUM. BEHAV. 359, 370 (2000).

136. See *id.* at 378.

137. See, e.g., *United States v. Jadowe*, 628 F.3d 1, 16–18 (1st Cir. 2010) (“At least for now, the prevailing view in the federal courts remains that it is improper for jurors to discuss the case other than during their formal deliberations.”); *United States v. Resko*, 3 F.3d 684, 688–90 (3d Cir. 1993) (“It is a generally accepted principle of trial administration that jurors must not engage in discussions of a case before they have heard both the evidence and the court’s legal instructions and have begun formally deliberating as a collective body.”); *Winebrenner v. United States*, 147 F.2d 322, 328 (8th Cir. 1945) (“Thus, it is not until the final submission of the case that jurors are told that a defendant is under the law presumed to be innocent and not guilty . . .”); Diamond et al., *supra* note 134, at 74 (“Jurors permitted to discuss the evidence would use the breaks during trial to arrive at premature group decisions . . .”); Hannaford, Hans & Munsterman, *supra* note 135, at 369 (“[T]he most ubiquitous fear expressed is that trial discussions will cause jurors to reach premature decisions about who should win the case.”).

refrain from making premature judgments.<sup>138</sup> Although evidence is scarce, it appears this process may be beneficial if a court follows the Arizona procedures. Allowing jurors to deliberate intermittently throughout a trial may help alleviate deliberation-related stress and increase satisfaction.

#### P. Posttrial Meeting with Jurors

After the trial is finished, jurors may have questions regarding aspects of the legal system or general comments about their experience as a juror. Failure to address these concerns may lead jurors to think the courts do not care about their opinions. Although we could find no research directly linking posttrial meetings between judges and jurors to increased juror satisfaction, this practice has been recommended to improve juror-judge relations and juror satisfaction.<sup>139</sup>

Before the posttrial meeting begins, judges should instruct jurors not to discuss the verdict or details of deliberation; the purpose of the meeting is to discuss general questions about the trial process and for the judge to learn about the jurors' experience with jury duty.<sup>140</sup> When judges take time to meet with jurors posttrial to address any concerns the jurors may have and to listen to juror comments regarding impressions of jury duty, the court is communicating its appreciation of the jurors.<sup>141</sup> This meeting also allows judges to assess juror opinions, making it possible to continue practices jurors enjoy and alter those that jurors find confusing or unpleasant.<sup>142</sup> Providing the opportunity for an open dialogue ensures the legal system will continue to evolve over time to meet the needs of jurors and increase juror satisfaction.

#### Q. Offer Juror Stress Interventions

Jurors sometimes witness gruesome or emotional evidence during trials, and often make decisions that will have a major impact on the lives of those involved in the trial.<sup>143</sup> This may cause many jurors to experience

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138. Dann & Hans, *supra* note 120, at 18; *see* ARIZ. R. CIV. P. 39(f) (stating jurors are allowed to discuss the case during trial "as long as they reserve judgment about the outcome of the case until deliberations commence").

139. NCSC INNOVATIONS, *supra* note 22, at 170–71; Jeannine Turgeon & Elizabeth A. Francis, *Improving Pennsylvania's Justice System Through Jury System Innovations*, 18 WIDENER L.J. 419, 451–52 (2009).

140. NCSC INNOVATIONS, *supra* note 22, at 170.

141. *Id.*

142. *See id.*

143. Miller & Bornstein, *supra* note 1, at 237; Monica K. Miller & David M.

stress. For instance, the NCSC study revealed forty-four percent of jurors experienced stress over trying to reach the correct verdict and twenty-eight percent reported stress due to exposure to gruesome evidence.<sup>144</sup> Juror stress can have a variety of negative outcomes for jurors' short- and long-term health, such as anxiety and insomnia.<sup>145</sup> As a result, some courts have adopted interventions designed to alleviate stress.<sup>146</sup>

Courts can offer pretrial interventions that teach jurors how to cope with the stressors they may face in the upcoming trial.<sup>147</sup> Posttrial interventions range from simple handouts describing stress and coping techniques to multiphase interventions led by professional counselors.<sup>148</sup> Jury debriefings are also used to address jurors' stress.<sup>149</sup> Some judges lead these debriefings, allowing jurors to talk about their stress with other jurors who also experienced the trial.<sup>150</sup> Other debriefings are led by professionals.<sup>151</sup> Professional debriefings are sometimes modeled after "critical incident stress management" techniques, which are typically used for police officers and other professionals who experience trauma.<sup>152</sup> In general, debriefings are designed to help "jurors: (1) accept their role in the trial; (2) identify the impact of the trial; (3) share emotional reactions with others; (4) learn to control the stress; [and] (5) learn to adjust to normal life again."<sup>153</sup>

Judges should consider providing some sort of stress intervention for jurors in high-stress cases. Courts must consider issues such as whether the court can afford to implement these interventions,<sup>154</sup> which jurors need intervention,<sup>155</sup> whether it is appropriate for a judge to lead the

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Flores, *Addressing the Problem of Courtroom Stress*, 91 JUDICATURE, Sept.–Oct. 2007, at 60, 63 tbl.1 (citing NCSC MANUAL, *supra* note 3).

144. See Miller & Flores, *supra* note 143, at 63 tbl.1 (citing NCSC MANUAL, *supra* note 3).

145. See *id.* at 62–63 (citations omitted).

146. See *id.* at 65–67.

147. *Id.* at 66.

148. *Id.* at 65–66.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 65.

153. Miller & Bornstein, *supra* note 1, at 249 (citations omitted).

154. See *id.* at 255.

155. See *id.* at 244–46, 254–55.

intervention,<sup>156</sup> and whether interventions have consequences on trial outcomes.<sup>157</sup> Adopting one or more of these interventions may help relieve juror stress, protect jurors' overall well-being, and generally promote positive perceptions of the trial process.

#### R. *Call for Researchers to Take Action*

It is important for researchers and legal personnel, such as judges, court administrators, and lawyers, to continue examining the aforementioned innovations—and others not yet studied—to improve juror satisfaction. Though the benefits of some innovations have been well-researched, such as individualized voir dire and juror stress interventions, research examining the innovations discussed within this Article, such as back-to-back testimony, positively promoting jury duty, and practicing good time management, is insufficient. The studies of several other innovations, such as note taking by jurors, instructions regarding how to deliberate, and deliberation during the trial, produced mixed findings and therefore require more analysis to reach a definite conclusion as to their usefulness in the justice system.

Researchers should specifically examine the effect trial innovations have on juror satisfaction. One of the best ways to measure these relationships is for researchers to conduct studies using actual jurors in real-life courtroom settings. In order for trial innovation research to be most helpful in actual courtrooms, judges need to be supportive and allow researchers to conduct their studies using actual trials. The continued funding by agencies, such as the SJI, is necessary to facilitate continuing research, as jurisdictions may be more likely to implement innovations if they are proven effective through the use of scientific research methodologies.

### III. CONCLUSION

The list of innovations detailed in this Article is not all-inclusive, but it provides a basic summary of a number of possible steps judges can take in their roles as court leaders. Some changes may seem more feasible than others, but many can be addressed in individual cases before attempting a systemic change across an entire district or state. Judges and other participants in the trial system may be hesitant to make changes; however, research has indicated even those who hesitate often come to appreciate

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156. *See id.* at 256–59.

157. *See id.* at 256.



these changes. For instance, once attorneys and judges attempted to use innovations such as note taking, written jury instructions, preliminary instructions, and allowing jurors to submit written questions, they developed more positive attitudes toward them. Applying adult-education theory and techniques adapted to modern life can increase satisfaction and a sense of fairness about the jury system by litigants, attorneys, judges, and the public alike. Specifically, such theory and technique suggests that jurors should not be viewed as passive recipients of information but as participants in the trial process.

Judges should not hesitate to ask researchers for help in understanding the literature and theory behind changes. This understanding will help judges become better advocates for changes improving jury service and increasing juror satisfaction. Because many of the techniques discussed in this Article make logical sense but have not yet been tested in the jury box, more research is needed. Judges should facilitate researchers' access to jury pools so empirical data can be collected to support recommended changes to the system.

Without individual citizens willing to participate as jurors, the legal system in the United States would be dramatically different. Thus, it is up to judges in their roles as adjudicators, case managers, and leaders in the legal system to take steps to reduce stress and promote the satisfaction of jurors. If the public has a better perception of jury service, these actions by judges should reduce "no-show" jurors and help maintain a fair, just, and efficient system of justice.