E xperiencing psychological trauma from secondhand exposure to traumatic situations—known as vicarious trauma—is ostensibly in the job description of many careers centered around law and justice. Judges routinely face matters of harm, wrongdoing, and blame (e.g., death, sexual assault, illness, domestic violence, child neglect, and abuse) and make significant rulings that sometimes result in anxiety, anger, a lack of concentration, fatigue, flashbacks, a sense of isolation, and loss of faith in humanity.1 Attorneys report similar experiences, as well as disturbed sleep, increased startle, and irritability.2 Law enforcement officers are certainly at risk for experiencing traumatic stress, particularly when it comes to confronting crimes against children.3 Can jurors also experience trauma-related symptoms depending on the nature and circumstances of a case? If so, does the court have a responsibility to protect jurors from the negative effects of psychological trauma they may experience during jury duty and/or post-trial, or is this simply the cost of justice? This article examines the impact of trial stress on jurors’ mental health in certain types of cases, current efforts to mitigate it, and our research exploring trial judges’ views on the matter.

Vicarious Trauma, Secondary Traumatic Stress, and Jurors

Trauma is not always a firsthand experience. Professionals who are continually exposed to others’ suffering such as medical personnel, combat veterans, clinicians, and social workers can be vicariously traumatized. One negative consequence of enduring repeated contact with trauma is secondary traumatic stress. Its symptoms are comparable to those of post-traumatic stress disorder (e.g., unwanted flashbacks, avoidance, depression, anxiety), and it can similarly degrade normal daily functioning.4 This begs the question: Can jurors experience trauma-related symptoms depending on the nature and circumstances of a case? If so, does the court have a responsibility to protect jurors from the negative effects of psychological trauma they may experience during jury duty and/or post-trial, or is this simply the cost of justice? This article examines the impact of trial stress on jurors’ mental health in certain types of cases, current efforts to mitigate it, and our research exploring trial judges’ views on the matter.

VICARIOUS TRAUMA IN THE COURTROOM

Judicial Perceptions of Juror Distress

By Dawn E. McQuiston, M. Dylan Hooper, and Abbey E. Brasington
exhibits, and more. The information presented in cases involving violent crime or otherwise significant offenses is particularly difficult to consume. Consider information like explicit and gruesome descriptions of the crime scene and injuries (both physical and psychological), shocking visuals (photographs or videos), or emotionally distressing testimony from witnesses. For many, exposure to such graphic and personal information about a serious wrongdoing and its consequences is a novel and overwhelming experience. A profound empathy may develop over the course of the trial. Life-altering decisions will have to be made about another's future while, in some cases, jurors literally will choose whether someone will die. For days or weeks, jurors must be silent about what they endure.

These circumstances have prompted some scholars to ask: Can jury duty be hazardous to your health? Researchers have been interested in exploring stress and the juror experience dating back to the mid-1980s. A solid body of research now shows that traumatic stress resulting from exposure to disturbing, gruesome, and/or emotional courtroom testimony and other circumstances related to jury duty can lead to jurors experiencing symptoms associated with psychological trauma and stress-related disorders. Indeed, a quick Google search provides several media accounts of jurors experiencing symptoms associated with psychological trauma and stress-related disorders. Indeed, a quick Google search provides several media accounts of jurors vomiting, crying, and collapsing while in the jury box. During the trial and deliberations, jurors can experience depression, decreased energy, loss of appetite, irritability, and guilt.

These symptoms of traumatic stress sometimes get worse immediately post-trial and may persist in the weeks and months that follow, with some jurors reporting symptoms not unlike those associated with post-traumatic stress disorder. Post-trial, jurors can experience insomnia, nightmares, emotional numbness, irritability, substance abuse, headaches, weight gain, fatigue, interpersonal difficulties, intrusive thoughts, and fear (e.g., retribution from the victim's or defendant's family). In addition to the type of evidence presented, jurors' trauma-related symptoms also may result from the nature of the trial (graphic and violent crime versus civil), trial length, and deliberations. Symptoms may be amplified among jurors serving on a capital trial. To worsen matters, social media allow jurors to access a host of information, including material about an ongoing trial, potentially magnifying an already overwhelming experience—especially when the case is high profile.

**Efforts to Reduce Juror Stress**

A challenge of judicial gatekeeping concerns the handling of sensitive information and potentially troubling circumstances during a trial. Surveys addressing judges' perceptions of jurors' distress reveal that judges are indeed sensitive to issues that can negatively affect jurors, including disturbing evidence, group dynamics during deliberations, sometimes necessary safety precautions, and sequestration. Judges report assuming a moderate degree of responsibility for juror stress, indicating they attempt to reduce it by, for instance, providing additional warnings and instructions, being mindful of the timing of breaks, limiting the volume of gruesome evidence, creating a positive rapport, and asking court staff to be aware of jurors' needs. More generally, the justice system has explicitly addressed the problem of juror stress through several active efforts aimed at mitigating it; these programs are currently adopted in some jurisdictions.

*Pretrial conversations* with jurors can be used to educate jurors about the potential to experience stress-related symptoms during the trial and how to cope with them. Whether this dialogue has a positive impact on jurors is currently unclear. Immediately following a trial, *post-verdict debriefing* led by the trial judge or a trained clinician can give jurors an opportunity to openly discuss their experiences as a group and share emotional reactions to being exposed to traumatic evidence and other stressful circumstances of their time on the jury. They are typically modeled after Crisis Incident Stress Management protocols, which are designed to help first responders and so forth cope with on-the-job stress. These post-verdict group discussions have been used following high-profile cases that include gruesome evidence (e.g., the Jeffrey Dahmer murder trial).

However, some issues prevent this method from being particularly successful. A group setting may not be effective for all participants, as some will prefer one-on-one interaction. Debriefing sessions held one time immediately following the verdict are not likely to be an effective mechanism to promote any meaningful or long-term stress reduction. And to maximize their effectiveness, debriefing sessions should be run by a properly and highly trained clinician, but, due to a lack of funding, these programs are rarely offered.

A promising method for reducing trauma-related symptoms is *post-trial counseling* in which jurors are offered a series of free counseling sessions, often through the federal government's Employee Assistance Program. This is a rare occurrence but could...
prove to be a valuable solution. A recent pilot study in Wisconsin analyzed the proportion of jurors who would potentially utilize a counseling program based on the incidence of trials involving violent crime. Their results indicated that such a small number of jurors would in fact be confronted with such evidence that it should not place undue financial strain on the jurisdictions providing this type of program.

Indeed, some jurisdictions have taken notice of the need for these programs when it comes to high-profile and particularly gruesome cases. Following the trial of Boston Marathon bomber Dzhokhar Tsarnaev, the trial court judge arranged for jurors to take advantage of counseling services using federal funding. A similar program was offered to Connecticut jurors who served on a high-profile triple-murder case involving grizzly evidence. According to the National Center for State Courts, a few other states (e.g., Minnesota, Ohio, Texas) offer counseling programs to jurors when needed, but overall, the utilization and success of these efforts are rarely tracked. Currently, Alaska, the only state with such legislation, allows up to 10 hours of post-trial counseling to be used within 180 days of the verdict for jurors who served on trials involving violent crime, paid for by the state. It is unclear the extent to which this service is utilized and/or has a meaningful impact on jurors’ distress. Although certainly a step in the right direction, one potential problem with Alaska’s bill is the timeframe/time limit in which counseling services must be utilized.

The South Carolina Study: Judges’ Perceptions of Juror Stress

To more directly examine judicial perceptions of jurors’ susceptibility to psychological distress and current efforts to mitigate it, we conducted in-person one-on-one interviews with a sample of judges. Participants included 13 (11 current, 2 former) South Carolina circuit court judges (general jurisdiction state trial judges) from various locations. They varied in legal experience and expertise, with an average of 12.19 years on the bench. During their careers as judges, they indicated presiding over civil, criminal, and family court proceedings. Judges had backgrounds as defense attorneys, prosecutors, and civil litigation attorneys and worked in private and general practice settings, with an average time practicing of 16.84 years. A semi-structured interview format including 14 questions was used, and each interview took approximately 30 minutes to complete.

The first set of questions probed judges’ experiences with and attitudes toward juror stress in the courtroom, with several items concerning how they believed it should be managed, if at all. Judges universally agreed that the task of being a juror is a stressful one, as anyone who has been on jury duty would agree. Viewed from the bench, judges cited as sources of stress for jury members the unfamiliar courtroom setting, juror duties and the deliberation process, rules and regulations, and the high emotionality of the jury trial experience—many of the jurors experiencing the courtroom for the first time.

More than half of the responses centered around the same potentially traumatic evidence and emotional reactions that we set out to investigate. Several judges indicated having direct experience with jury members’ distress associated with viewing graphic pictures and hearing emotional testimony (usually anything regarding harm to a child or a traumatic experience). A few relayed witnessing emotional breakdowns, including one perceived “psychotic break” in which a juror put on several additional clothing items while in the jury box and began screaming in response to the presentation of very emotional evidence.

About a third of the judges agreed that in-trial stressors could affect jurors emotionally and psychologically following the conclusion of the trial, while the remaining judges were either unsure or believed a “society of victims” was to blame for any in- or post-trial trauma. Those who acknowledged the possibility of jurors experiencing high levels of stress indicated that, as gatekeepers, probative and impactful evidence should be admitted but not to the extent of allowing unnecessary gore into the trial. Some judges warn jurors during their opening instructions about evidence that could be difficult to view or potentially traumatizing. Notably, this proved to be a major point of disagreement; several endorsed this instruction, but others argued against it due to its potential to unfairly taint the jury antecedently.

Judges were next presented with information about different jurisdictions in which juror health initiatives or legislation have been proposed or implemented (Wisconsin, Alaska, Texas) and were asked their opinions about these programs—and the responsibilities of the judicial system in general—to address and manage jurors’ stress-related symptoms. After hearing some details about these programs, about half voiced approval for them and endorsed the potential for similar initiatives across the nation and specifically their state of South Carolina. The remaining judges indicated either needing more information concerning the science of juror trauma and secondary traumatic stress before forming an opinion, or that these programs are an unnecessary allocation of already-limited resources.
resources and time in the judicial system. Judges also cited laws governing admissibility of evidence, concerns about trial fairness, and an endemic lack of resources in court systems as barriers to the management of juror stressors.

These informal interview responses can offer some helpful guidance on how to move forward. Overall, they suggest that while potential stress associated with jury duty may be on some judges’ radar, others may fail to recognize the potential for negative psychological symptoms to develop into something greater post-trial or believe the psychological impact of jury duty is beyond the scope of what judges or the judicial system can manage.

After discussing the potential for long-term trauma-related symptoms on quite literally all those involved in the trial process, researchers asked: Is it worth it? That is, is the necessity of the jury trial as it is currently implemented outweighed by the potential for traumatic symptoms—both in the short and long term—faced by those selected to participate? Judges responded with a unanimous and enthusiastic “no.” They agreed that the right to and process of the jury trial has been a foundation of our country’s justice system since its inception, it does not often make mistakes, and this necessity is not outweighed by the secondary traumatic stress experienced by some.

Conclusions
It is possible that the negative impact of jury service for the subset of jurors described here has been severely underestimated by the judicial system. Thanks to a rich literature concerning the impact of traumatic stress on mental health generally, the courts must look no further than this solid science to gain an understanding of the potential for negative psychological outcomes when it comes to some jurors’ experiences. Several ambitious efforts across the United States have already been launched that explicitly address juror health post-trial. The next steps should, at a minimum, involve formalized evaluations of these programs to determine their success in adequately assisting those in need. Notably, it is suggested that both immediate/post-verdict and delayed counseling together may be necessary to fully address the symptoms experienced by some jurors. If current efforts prove successful at mitigating juror stress, courts should consider adopting similar programs that include immediate and post-trial counseling (including many sessions that can be utilized over the long term).

Methods for addressing jurors’ exposure to traumatic material during the trial also should be considered (e.g., ongoing access to mental health professionals; permitting juror discussions concerning specific evidence in a group setting). The legal system has raised quite valid concerns about the availability of funding and resources to support such programs; however, it also can be argued that the government should provide necessary protections to those who are required to serve when it comes to the proper care and support of mental health.

Endnotes
6. Id.
8. Lonergan et al., supra note 5.