

Juror Stress: The Hidden Influence of the Jury Experience

by Anne Reed

I am having such a Monday. I guess the weather is changing (again) because I have very achy knees. And I have a serious case of The Dreads about tomorrow, when I have jury duty. Again. . . . I really, really, really hate jury duty, every single aspect of it -- driving downtown in rush hour, trying to park in a parking garage designed by MC Escher, all that waiting around, realizing that law-abiding citizens called for jury duty have fewer rights than alleged criminals, realizing that the trials are seldom really about guilt or innocence but rather about some minutiae in a subparagraph of a subsection in the criminal code, and generally having to deal with the system. The last time wasn't quite as miserable, in spite of being stuck on an ugly trial, since my fellow jurors were all reasonable, nice people. But I still HATE, HATE, HATE it.

--Shanna, a juror blogger¹, March 2009

Lawyers are great at understanding the connection between trials and stress – their own stress, that is, and that of their clients and witnesses. But in the rush of our own stress in preparing for trial, we often fail to think about the jury -- that silent box of expressionless faces -- and the stress under which jurors operate. It's worth thinking about, and worth your time to be prepared for it.

Most of them don't let it show in the courtroom, but jurors are stressed. They have made that clear not only in blogs like Shanna's, but also in a 1998 survey by the National Center for State Courts². Even after the shortest trials, one to three days, 27% of jurors said they experienced stress as a result of their jury duty. Almost as many, 19%, said they "found it necessary to talk to others about distressing aspects of jury duty," and 12% said "something should have been done to reduce our stress levels." And those were only the ones willing to admit they were stressed. Even more said they thought that "other jurors experienced stress during jury duty" (45%), that "stress had an effect on the thinking of some jurors" (29%), and that "stress had an effect on the decisions of some jurors" (22%).

Those stress levels after short trials, striking as they are, are nothing compared to what jurors report after long trials, which the NCSC survey defined as trials longer than 21 days. A full 96% of those respondents³ said they experienced stress as a result of their jury duty, and many of those reported serious stress symptoms. Almost half said they had "disturbing memories" of their jury duty; more than a third said, "Jury duty left me feeling numb and detached"; exactly half said, "I am more tense than I was before jury duty"; 29% said, "I am likely to avoid doing things that remind me of jury duty"; and almost half said, "There are emotions resulting from jury duty that I have bottled up inside." A British study published in February 2009⁴ reports no improvement in the decade since the NCSC survey: "[J]ury service can be a significant source of anxiety and for a vulnerable minority, can engender moderate to severe clinical levels of stress and in the longer term, lead to symptoms associated with PTSD," or post-traumatic stress disorder.

Sources of stress

Juror stress has many causes, as Shanna's blog entry demonstrates. Separately and in combination, jurors are stressed by:

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Disturbing evidence. On any given day in many courthouses, criminal trials especially force jurors to deal with images we would all prefer to avoid, from "ordinary" murder and sex cases to horrific serial murder and torture stories. This is the easiest juror stressor for lawyers to predict, but we often underestimate its power. The 2009 British study reviews the literature, including two particularly striking findings. Jurors in Milwaukee's awful Jeffrey Dahmer trial (featuring murder of young boys, necrophilia, and cannibalism, in case you missed it) suffered "sleep disturbances, intrusive thoughts, restlessness and agitation⁵." And a 1992 study⁶ of jurors in four high-profile trials (of which two were murder cases) found that "27 [of 40] jurors reported stress-related symptoms including depression, sexual problems, headaches, eating disorders and somatic complaints: gastro-intestinal distress being the most frequently cited (ten jurors). Some seven jurors became physically ill during the course of the proceedings and at least one fulfilled DSM-IV criteria for a diagnosis of PTSD."
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Evidence that touches a nerve. Disturbing evidence is even more disturbing to someone who has personal experience with it – sexual assault to a rape victim, for example – and even evidence that would be fairly easy for most people to handle can be traumatic to someone whose personal history puts it in different perspective. The British researchers found that, "Women as a group appear to be more vulnerable [to juror stress] than men, especially when the trial touches upon a past traumatic event that has been personally experienced."
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Economic and job concerns. Missing work has always been stressful, especially for jurors who are self-employed or paid by the hour. In what we call "these economic times," that stress is magnified.
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Impact of the decision. Jurors often agonize over the gravity of their task, especially in death penalty cases but in all kinds of other trials as well.
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Conflict on the jury. It's not the norm, but there are plenty of stories of screaming and cursing in the jury room. The NCSC respondents reported this as a significant cause of stress, and the 2009 British study found it especially difficult for female jurors.
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Confusion and lack of information. From unexplained rules and delays to unintelligible jury instructions, jurors don't know what's going on. Think of your last visit to a foreign airport for a quick reminder of how stressful this is.
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Privacy, public speaking, and dealing with strangers. For many jurors, the worst stress comes before the trial even begins. Answering personal questions in front of strangers in voir dire is one of the most difficult things a shy juror might ever be asked to do. Spending long days in close quarters with those same strangers isn't much easier.



- Safety and logistical issues. It's easy to forget how many jurors are unfamiliar with the courthouse neighborhood. Blogger Shanna isn't the only one concerned about "driving downtown in rush hour, trying to park in a parking garage designed by MC Escher."
- Long trials. Several studies show long trials are among the biggest predictors of juror stress.
- Boredom. We normally think of "doing nothing" as a great vacation, but it's stressful if you didn't choose it and can't change it. Both waiting for trial and sitting through monotonous evidence, bored jurors are stressed.

Effects of stress

Juror stress is hard on jurors, obviously – but does it have consequences beyond that? There's little research on how stressed *jurors* make decisions, but because many people want to know how stressed doctors, emergency responders, and business managers make decisions, there is considerable research on the topic in general. "The literature in this area [stress and decision-making] is extremely complex and not conclusive," say the authors of a 2003 literature review for the National Institute of Occupational Safety and Health⁷, but some research findings are well worth lawyers' attention.

For a start, lawyers should stop assuming that juror stress is bad for the case. You perform better under stress sometimes, right? That's probably true for some jurors too, at least sometimes. "For some individuals, heightened stress elevates their performance. Others are vulnerable to the negative impacts of stress, which results in diminished performance," say the authors of the 2003 NIOSH study. "Contrary to popular opinion," they continue, "judgment is not always compromised under stress. Although stress may narrow the focus of attention (the data are inconclusive), this is not necessarily a negative consequence in decision making." In their 1996 book *Stress and Human Performance*⁸, authors James E. Driskell and Eduardo Salas add, "Stressors may improve performance as well as disrupt it."

Stress research also suggests specific ways that jurors' thinking may change under stress, however, and most of these changes are not improvements, at least for the kinds of tasks jurors must perform. Findings include:

- Simplified thinking and willingness to proceed with incomplete information. The NIOSH review notes, "Some studies show that the individual adopts a simpler mode of information processing that may help in focusing on critical issues. Decisions can only be made based on the information available, and studies have shown that, on many occasions, decisions are made with incomplete information." Driskell and Salas agree: "The changes induced by stressors appear fairly adaptive – to trade off accuracy for speed, as when faced with a threat, and to narrow the focus of attention when faced with capacity limitations and attentional disruptions."
- The need for speed. In a 1987 study⁹ using electric shock as a stressor (these studies are pretty basic when it comes to inducing experimental stress), respondents naturally were in a hurry to finish their tasks: "[T]hose who were exposed to either controllable or uncontrollable stress showed a significantly stronger tendency to offer solutions before all available alternatives had been considered and to scan their



alternatives in a nonsystematic fashion than did participants who were not exposed to stress." Also not surprisingly, the ones who were in a hurry tended to be the ones who got the wrong answers.

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Slower learning. We may want to work faster when we're under stress, but it's likely that the same stress has actually slowed down our ability to learn. Researchers in 2007¹⁰ stressed respondents by telling them they'd have to make a public speech after they finished the research exercise, which involved learning a particular task. Stressed respondents "were slower to learn the task, meaning that it took them longer to shift toward advantageous decision making."
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Changes in risktaking. In a Rutgers study this year¹¹, researchers wondered if our current financial stress was changing our financial decisions. Stressing their subjects by putting their hands in very cold water, they found a mixed effect on risk-taking: stressed people took *fewer* risks than others when choosing between two probably positive outcomes, but *more* risks than others when choosing between two decisions that would both result in a loss
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Changes in leadership structure within the group. In a 1991 study of group decision-making under stress¹², Driskell & Salas found that both leaders and followers within the group were more deferential to an assigned partner in trying to reach a decision. Prior studies they cite, though, are to the contrary; in those studies, group leaders took over when the group had to work under stressful conditions.

Approaches to juror stress

If you're a judge or a jury manager – or just an empathic person who wants to do no harm – your approach to juror stress is simple: it's bad and you should try to minimize it. The NCSC's "Through The Eyes Of The Juror: A Manual For Addressing Juror Stress" is a comprehensive resource for that effort. It's about explaining what's going on, using clear jury instructions, keeping trials short, not embarrassing jurors, making them sincerely proud of their service, and in general doing all you can to minimize the things that cause stress in the first place.

If you're a trial lawyer, though, your task is more complicated. Any responsible lawyer hopes to prevent or at least ease jurors' discomfort, but you have another responsibility: to present your case as well as you can. If you decide that stress is bad for your case – as criminal defendants and personal injury defendants often will – you'll use the NCSC manual just as a good judge would. When you know your trial is likely to be especially stressful, the research on juror stress and stressed decision-making also suggests specific decisions you might make in your presentation. How this works will vary with your case, of course, but these questions are a beginning:

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Stressed jurors may be trying to work fast, even if it means absorbing less than all the evidence. Can you help them? Can you give them a clear chart to work through the elements of the case, or offer them one clear fact that cuts through the rest and decides the case in your favor? Researchers in this area suggest "decision support systems" for emergency response workers; can you provide something like that for your jury?
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Stressed jurors may learn more slowly. There is almost always a part of your case that you can make clearer; what is it? And, since this is an adversary system, is there an obscure part of your opponent's case that you don't need to clarify?

- Leadership patterns may change on a stressed jury. Are you aware of who your leaders are, and how the group seems to be interacting? Can you "rehearse" with them, in voir dire and in closing argument, techniques they can use as a group to reach good decisions under stress?
- Stressed jurors may be less willing to risk negative choices. If that helps you, how can you make the negative risks of their decisions more clear?



Finally – and perhaps both most important and most difficult – have a clear sense of where you'll draw the line between your responsibility to your case and your responsibility to jurors as fellow humans. Not every awful picture needs to be shown; not every awful scene needs to be described. If it means you have spared a juror from what may be years of trauma, your decision not to use that picture may be one of the most important of your career.

Endnotes

¹"The Pre-Jury Dreads," Shanna's Journal, March 30, 2009, <http://shanna-s.livejournal.com/305230.html>

²Through the Eyes of the Juror: A Manual for Addressing Juror Stress, National Center for State Courts 1998, http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressPub.pdf , appendix at http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressAppendPub.pdf

³This long-trial group was naturally smaller, with only 24 respondents compared to about 220 who sat on trials of one to three days.

⁴Robertson, Davies, and Nettleingham, "Vicarious Traumatization as a Consequence of Jury Service," 48 The Howard Journal 1, February 2009, <http://www3.interscience.wiley.com/journal/121529648/abstract>

⁵Feldmann, T.B. and Bell, R.A. (1993) 'Juror stress: identification and intervention', Bulletin of the American Academy of Psychiatry and the Law, 21, 409–17.

⁶Kaplan, S. and Winget, C. (1992) 'The occupational hazards of jury duty', Bulletin of the American Academy of Psychiatry and the Law, 20, 325–33.

⁷Kowalski-Trakofler, Vaught, and Scharf, Judgment and decision making under stress: an overview for emergency managers, National Institute for Occupational Safety and Health 2003, <http://origin.cdc.gov/niosh/mining/pubs/pdfs/jadmu.pdf>

⁸Driskell & Salas, Stress and Human Performance, Published by Lawrence Erlbaum Associates, 1996, http://books.google.com/books?id=mLjTv0hSJ-QC&dq=stress+effect+decisionmaking&lr=&source=gbs_summary_s&cad=0

⁹Keinan, Decision Making Under Stress: Scanning of Alternatives Under Controllable and Uncontrollable Threats, Journal of Personality and Social Psychology 1987, http://osil.psy.ua.edu:16080/~Rosanna/Soc_Inf/week10/Keinan.pdf

¹⁰Preston, Stansfield, Buchanan, and Bechara, Effects of Anticipatory Stress on Decision Making in a Gambling Task, Behavioral Neuroscience 2007, http://www-personal.umich.edu/~preston/Downloads/Prestonetal2007_BN.pdf

¹¹Porcelli and Delgado, Acute stress modulates risk taking in financial decision making, *Psychological Science* 2009, article <http://www.ncbi.nlm.nih.gov/pubmed/19207694>, press release <http://www.sindhoday.net/world/81985.htm>

¹²Driskell & Salas, Group Decision Making Under Stress, *Journal of Applied Psychology* 1991, <http://www.floridamaxima.com/groupdm.pdf>

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Editorial Exuberations

Spring is in full swing when it seems like the new calendars just went up on the wall. Our May issue is the biggest we've assembled yet both in size and in the range of ideas/perspectives incorporated. Thanks to your reading and suggestions we are continuing to evolve and expand. *The Jury Expert* is also on [Twitter](#) with daily links relevant to litigation and a few fun things to mull over your morning libations. Keep the feedback, ideas, and suggestions coming!

We are pleased to have a lengthy feature on the controversy about Generation Y and the prevalence of narcissism. We are publishing this issue on the heels of a heated debate in the blawgosphere on Generation Y in the legal workplace (see a summary of that controversy [here](#)). In a departure from our usual style of one author and several trial consultants reacting to the piece--in this case we have two articles (one saying narcissism is on the rise in our young people and the other begging to differ). Three experienced trial consultants with special interests in generational issues provide feedback on the articles and how this controversy relates to litigation advocacy and then both authors respond. This feature doesn't resolve the differences of opinion between the researchers but we hope it gives you a sense of how to use (or not use) generation and/or age in jury selection, case sequencing and narrative.

Our second academic feature is one of which we can all be proud. It's an exploration of just how the process of deliberating on a jury makes us better people and better citizens. How nice to hear something uplifting about the jury process for a change! Two past Presidents of the American Society of Trial Consultants respond to this article (ten years in the making) and then the authors follow-up with additional thoughts.

In addition, we have pieces on a wide range of issues from trial consultants: deception, juror stress, technology in high profile trials, questioning the child witness, using a simple mnemonic to aid you in organization in voir dire, and how to prepare expert witnesses. And of course, our favorite thing (two again this issue). It's a lot to ponder. Come back and visit the website and read to your hearts content! That's why we're here. Use us. --[Rita R. Handrich, PhD](#)



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