

## The Biggest Bully In the Room

by Trisha Renaud

Jurors these days seem to make news almost as much for their misbehavior as for the decisions they make.

First, there are a multitude of stories about jurors who refuse to follow the rules and use Google to satisfy their curiosity or hop on Facebook to share their opinions with all their Facebook “friends.” Occasionally, however, somewhat more lurid tales of jurors behaving badly are reported in the press. These accounts of jury room conduct feature everything from incivility to threats to physical violence.

Consider these recent examples of deliberations-turned-ugly:

2008. Miami. After issuing a guilty verdict in four murders on a charter boat, three jurors announced that their verdicts had been the product of badgering and bullying. They described how some jurors had pounded their fists on the table and shouted repeatedly.

2008. Washington. During deliberations in the federal corruption trial of Alaska Sen. Ted Stevens, jurors demand that one of their number be removed. They wrote the judge to complain that the juror in question was “being rude, disrespectful and unreasonable. She has had violent outbursts with other jurors and jurors are getting off course.”

2009. New York. Lawyers waiting on a verdict in the suit against Merck over its osteoporosis drug Fosamax heard loud shouts multiple times coming from the jury room. One juror sent the judge a note that read, in part: “I am being intimidated, threatened, screamed at, as well as verbally insulted that I am stupid because I do not agree. I have had 2 physical threats against me, a chair thrown and a verbal threat to beat me up. I need a police escort out of here. And I am afraid to come back ...”

2009. New Orleans. A juror on the murder trial of rapper Corey “C-Murder” Miller said she changed her vote to guilty in order to end deliberations and stop the other jurors from tormenting a younger juror. “This thing had to come to an end for this girl’s health, her sanity,” the juror told the Times-Picayune. “They literally made this 20-year-old girl so violently ill. ... She couldn’t function anymore.” Added the juror: “My time in deliberations was a vacation in hell. People turned into monsters.”

2009. New York City. In the high-profile Astor trial, one female juror reported that she felt personally threatened by another female juror who moved menacingly toward her and flashed “gang signs” her way. Other jurors now dispute her account.

2010. Detroit. After a mistrial in a political corruption trial, jurors described six nightmarish days of deliberations. “There was yelling and screaming and there were fights,” the foreman told the press. Another juror



reported that the lone holdout – the only African-American on the panel – slammed down a binder on the table, accusing the others of wanting to “hang the black man.” The holdout now reports receiving harassing telephone calls and mail.

And, lest anyone think such conduct is only a recent phenomenon, consider this extreme example from two decades ago:

1990. Chicago. During deliberations over the fate of accused murderer Madison Hobley, the jury foreman, a police officer, produced a gun, laid it on the jury table and announced “We’ll have a verdict.” The jury convicted Hobley, but he was later pardoned by the Illinois governor after revelations of police misconduct, including torture to extract confessions.

So just how common is jury room bullying? While vigorous argument and a push for unanimity are a natural part of deliberations, how often does the debate turn to incivility or does the pressure become coercive? And, most importantly, what can be done to prevent it?

A 2001 British study into many aspects of jury decision-making interviewed 312 jurors from 48 New Zealand trials.<sup>1</sup> In six trials, some jurors reported feeling intimidated during deliberations. This typically occurred when the foreperson was ineffective at managing deliberations and a juror with a dominant personality took over the discussion. In four cases, jurors reported that such domineering jurors had free rein to insult and denigrate other jurors.

Yet virtually no research existed on the extent of jury room intimidation until earlier this year when Australian academic Judith Fordham of Murdoch University released the results of several years of research. The study was commissioned by Australian authorities after concerns were raised that jurors had been intimidated into acquitting defendants in several high-profile trials.

Fordham was allowed unprecedented access to conduct post-trial interviews with Western Australian jurors. The study included questionnaire information from 913 jurors who served on 218 randomly chosen trials, as well as 58 jurors from 17 “targeted” trials involving prior allegations of juror intimidation. In addition to the survey on jurors’ trial experiences, 130 jurors were interviewed in person.

Her findings were released April 1 in a report called “Juror Intimidation? An investigation into the prevalence and nature of juror intimidation in Western Australia.”<sup>2</sup> On the key question – did jurors feel uneasy, threatened or unsafe during or after the trial – 14.3% of jurors in the random trials said yes. In the small group of jurors from the targeted trials, a much higher percentage – 33% – said yes.

Nonetheless, Fordham found that incidents of actual intimidation (rather than felt intimidation) were relatively rare and these threats emanated mostly from the accused person on trial. She concluded there was no evidence in most cases that such intimidation affected verdicts. However, incidents of perceived intimidation were much more frequent.

Fordham also found no correlation between either gender or age in who reported intimidation.

An unexpected finding was what occurred in the jury room: The most common form of intimidation was bullying from other jurors. Also, effective intimidation – the type of coercion that would cause a juror to later regret a vote – was more likely to occur in the jury room. In 8 of 11 instances, intimidation from other panel members caused jurors to change their vote.

Some jurors also reported discomfort about others' conduct during deliberations. Of jurors from the random trials, 24% reported being uncomfortable with statements of other jurors, 14.2% with offensive statements of other jurors, 12.9% with another juror's shouting, and 15.7% with another juror's emotional intensity.



No doubt, by the time jurors get to the point of deliberating, some are already stressed. They've had to deal with disruption in their life and possibly the loss of income. Some are distressed over the nature of the evidence, while others worry about the decision they must now make.

A 1998 survey of jurors conducted by the National Center for State Courts found that on short (one to three days) trials, more than a quarter of jurors reported feeling stress, while on trials lasting more than 21 days, nearly all – 96% report stress.<sup>3</sup> The NCSC report found that symptoms of stress could include increased anxiety, frustration, anger and hostility, and that deliberations were particularly stressful for most jurors.

Despite universal agreement that incivility and intimidation should never be part of a juror's experience, there has been little discussion about how to address the problem. The British study cited above noted that those jurors who felt coerced by another juror had received no advice from the court on strategies for dealing with such situations. Given that jurors naturally look to the judge for guidance on what is expected of them, the bench is a logical place to begin. One judge has written recently about the obligations of judges to ensure civility during deliberations.

“Jury deliberations should not be a free for all,” writes Milwaukee County Circuit Court Judge John DiMotto in his blog *Bench and Bar Experiences*. “They should not emulate a WWE ‘Raw’ television show.”<sup>4</sup>

DiMotto says that, in both jury selection and in jury instructions, judges should tell jurors what is expected of them. And along with the usual instructions about not discussing the case or conducting independent research, judge should emphasize that jurors must treat each other with civility and respect. “It is the responsibility of the judge to convey this information to the jury early on, and often, during trial,” says DiMotto.

Judges may want to urge jurors to set ground rules for deliberations. Such rules might include no shouting, no interrupting, no insults and no ridiculing of other jurors' views. In addition, jurors should be instructed to report abusive or coercive conduct to the court when it occurs, not after the verdict. While neither the court nor attorneys can dictate how jurors organize their deliberations, offering procedural suggestions may defuse the frustrations that often arise when jurors don't know how to proceed.

A number of courts make use of a pamphlet of The American Judicature Society entitled *Behind Closed Doors: A Guide for Jury Deliberations*. Along with suggestions for structuring deliberations, it features guidelines for civil discourse, including respecting others' opinions and a prohibition on bullying.

Lawyers can also contribute to setting a tone of civility by raising the issue in voir dire (where such questions are allowed) and in closing argument. Describing to jurors what happens when they retire to the jury room – in terms of sharing views, listening respectfully to each other, and learning from each other's wisdom – can serve as a reminder of the need for calm discourse, particularly in emotional or high-profile cases.

In voir dire, attorneys may want to secure jurors' commitment that, if selected, they would be willing to examine the evidence and patiently listen to the views of other jurors in striving to reach a verdict. Even if attorneys hope to encourage dissenters on the panel, the questions in voir dire and the message in closing argument can be to urge those jurors to be steadfast, but calm.

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## References

<sup>1</sup> Tinsley, Yvette. *Juror Decision-Making: A Look Inside the Jury Room*. The British Criminology Conference: Selected Proceedings. Volume 4. Papers from the British Society of Criminology Conference, Leicester, July 2000. This volume published October 2001.

<sup>2</sup> Fordham, Judith. *Juror Intimidation? An investigation into the prevalence and nature of juror intimidation in Western Australia*. Report submitted to the Attorney General of Western Australia. Edited version published April 1, 2010.

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<sup>3</sup> *Through 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](http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressPub.pdf)

appendix at: [http://www.ncsconline.org/WC/Publications/Res\\_Juries\\_JurorStressAppendPub.pdf](http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressAppendPub.pdf)

<sup>4</sup> DiMotto, John. *Judge's Responsibility to Encourage Juror Civility*. Bench and Bar Experiences. January 26, 2010.

[http://johndimotto.blogspot.com/2010\\_01\\_01\\_archive.html](http://johndimotto.blogspot.com/2010_01_01_archive.html)

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## Editor's Note

Welcome to the May 2010 issue of [The Jury Expert](#)! It's spring (although in Texas it definitely feels like summer)! This issue we have reptiles in the courtroom (and in a departure from tradition, we have four trial lawyers responding to the article rather than trial consultants); a *Batson* update; a piece on juror intimidation inside the jury deliberation room; an article from two journalists on pre-trial publicity and what defense advocates can learn from the Duke lacrosse case (with responses from three trial consultants); a piece using sense-making theory to discuss how Supreme Court Justices behave like jurors; that age-old question of whether size matters when it comes to juries; an essay on persuasive communication and attorney likability; and finally--a trip across the country (and, kind of, through time) as consultants tell stories about rural courthouses time forgot (and stories about a few other things too).

Of course, we also have a couple of Favorite Things and want to remind you about the upcoming [ASTC conference](#) in beautiful Minneapolis, Minnesota. The theme this year is '[Perfecting Your Game](#)' and it's always a good time for that.

This is the first issue in which we have benefitted from visual graphics experts in pulling together the issue. Special thanks to Jason Barnes ([Barnes & Roberts](#)), Ted Brooks ([Litigation-Tech](#)) and Nate Hatch ([Resonant Legal Media](#)). Click anywhere in this issue of [The Jury Expert](#) for challenging, educative and fun reading for Spring 2010. You'll see us again in July and 24/7 on-line. Read us. Tell your friends and colleagues.

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