

Jurors with Attention Deficit Disorder Tips on Identifying Jurors and Improving their Attention

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In a recent trial, a juror sat on a bench directly behind the attorneys' table fidgeting, whispering to his neighbors and constantly raising his hand in voir dire to ask questions or clarify voir dire issues that had already passed. He was engaged, smart and interested. Yet, his ability to sit still or focus on the voir dire questions being asked was so limited that he seemed to be 10



minutes behind the rest of the court. Additionally, while his questions were insightful and he asked for definitions and clarifications on important terms, he was too high-energy and scattered to attend to three weeks of tedious testimony in that case. As the hours of voir dire passed, he became more disruptive to the proceedings and he was dismissed from jury service. This juror likely suffered from ADD (Attention Deficit Hyperactivity Disorder), which is not an uncommon disorder among the general population. As a result, every trial has a decent likelihood of having an ADD (Attention Deficit Disorder) or ADHD juror in the pool. The questions raised in this article include: Are these jurors automatic peremptory or cause strikes, or can they sometimes be diligent jurors? What are the signs that a juror may become too disruptive to sit on a panel? And if an ADD juror ends up on a jury, how can attorneys help him to focus and remember the details of the case?

Traits of Jurors with ADD and ADHD

As with just about everything, ADD and ADHD have positive and negative aspects. Each

person's symptoms are somewhat unique and there is no blanket answer as to whether an attorney should strike a juror based solely on that fact. On the upside, those with ADD and ADHD are creative thinkers and can give undivided and sustained attention to things they enjoy – to the point of being hyperfocused. When ADD and ADHD jurors are intrigued by a subject, they can actually become extremely focused on the issue at hand and ignore other surrounding distractions. In assessing a juror's suitability for trial, vet whether the subject matter may be interesting to her, because in that case some ADD jurors could even find themselves with greater memory capacity and attention to the details of the case than other jurors.

Persons with ADD and ADHD tend to be quite intuitive, curious and can capture the big picture pretty quickly. They have a greater willingness to take risks and think outside the box, which can also be a downside if it leads them into high-risk or compulsive behaviors. Oftentimes, they are friendly, talkative and effortlessly funny. Because of setbacks experienced in academics or other situations that require attention, they have adapted and strengthened their social charms. This means they are good at getting needed information from others when they have not been able to focus enough to read or pay attention in class or meetings. In a trial setting, other jurors welcome their friendliness because it helps to bring the panel together as a group.

Unfortunately, ADD and ADHD sufferers also experience notable difficulties. They have trouble remembering, learning new information or focusing for long periods of time because their thoughts feel cluttered and seem to go in many directions at once. They can feel overwhelmed quickly, especially in new or unstructured situations. They often jump from one task to another and have difficulty bringing tasks to completion. Sometimes the anxiety or extra stimulation caused by difficult situations causes words to tumble out faster than the thoughts behind them. Because of all this, they constantly procrastinate and struggle to plan, prioritize or keep track of appointments. They also tend to misplace or lose things. Additionally, they are poor self-observers, so they do not typically know when they are losing focus or missing something important.

Not every ADD or ADHD juror will be a bad fit for a jury trial. While there is at times a concomitant disorder related to the ADD, such as depression, anxiety, substance abuse, etc., many sufferers have learned how to maintain seemingly "normal" functionality and do not have these additional difficulties. A good way to find out whether a juror you suspect has ADD also suffers from any of these other common problems is to add questions to the end of any supplemental trial questionnaire. ("Please describe any problems – vision, hearing, medical, language, psychological, etc. – that may affect your jury service." "Are you on any medications of any kind that would affect your ability to serve on a jury?") Jurors do not always feel comfortable talking about medical issues in open court, but often will describe problems in writing on a private questionnaire. Then, a lawyer can ask for a sidebar with the juror to talk about any effects the medication or medical problem will have on his jury service without embarrassing him in front of others. Asking jurors about medications can be helpful even if the issue is something other than ADD. In a brief analysis of a sample of juror data from five recent mock trials, 37% stated that they were currently taking a prescription medication. Typically, on a questionnaire in trial, only a handful of jurors may claim that the drug would actually affect their jury service, but it is important to know about them and use that information for cause challenges when needed.

Help the Juror Manage His/Her Performance in Court

Adults with ADHD are able to focus; the problem is their difficulty staying focused. This is especially true when the activity calling for our attention (e.g., witness testimony) is not one that the juror finds especially engaging. Have you ever struggled to pay attention to a boring presentation? Or to stay involved in a meeting that goes on, seemingly forever? The snail's pace of court can be a

struggle for anyone. In trial, it may be the case that such a good jury pool appeared in court that you have extra peremptories to use on a juror you suspect has ADD, but frequently there are far more dangerous jurors that require those precious strikes. If an ADD juror is empanelled, also make sure that there is at least one or more jurors who will have a calming influence on the ADD juror. If that person will likely be a fair leader – and someone who is organized – she may be able to counterbalance the challenges the ADD juror will face. The presentation of the case through opening, closing and the witnesses can also be adjusted to help the ADD juror concentrate and remember your message. The recommendations below are certainly pointed toward jurors with attention difficulties, but are also good advice for all jurors, especially now that technology is shrinking everyone’s attention spans.

1. Increase the structure of presentations.

- Get your themes out early and often.
- Provide presentation “sign posts” and be sure to follow through with each element.
- Use lists for everything.
- Use reminders.
- Stick with one or two core themes and repeat them over and over. Repetition is a great presentation tactic for influencing memory. However, be cautious about what information gets repeated and the overuse of repetition. As one of our clients explained, “At trial we try to explain the wall (or whichever analogy one chooses), brick by brick. Jurors with ADD will quickly see the wall, but we lose them describing the bricks.”
- Throughout trial, color code similar ideas, parties, witnesses, etc. This will help to create consistency and draw attention to key elements of the presentations. Because ADD and ADHD jurors tend to be more visual, this will aid their focus and ability to remember and easily recall information.
- Tell jurors to take good notes and circle or highlight areas in the notes they feel may be important.
- Be aware that every “new” thing presented to a person with ADD or ADHD will become a distraction. Therefore, it is important to minimize the number of distractions brought into court. Be conscious of the clothes you are wearing, the objects on your counsel table, the number of people who appear or leave your side’s table during the day, fidgeting, etc.

2. Focus on developing a strong rapport with jurors during voir dire and delivering a strong opening statement. As with all jurors, and especially ADD jurors, first impressions will be critical to setting the tone for the rest of the case. It is better to grab jurors’ attention early in trial, than to make up for lost time later.

3. Help the jurors focus on processing bottom-up, day-by-day. It can be too overwhelming for ADD and ADHD jurors to consider a large, high-level task and how they will accomplish it, such as processing a trial full of information into a verdict decision.

- Break up that end verdict decision into smaller parts and categories for jurors. Sometimes a large task can seem unachievable. By helping jurors understand that each big decision is really made up of smaller ones, you will help them to focus on the small ones and give them a roadmap of how to these lead to the big one. It will also offer the attorney more opportunities to explain each step from his client’s point of view.

For example, break down pieces of the jury instructions throughout trial, explaining and pointing out what would and would not be “proximate cause,” “reasonable,” a “defect,” and so on. Juror will then focus on putting the smaller pieces together and find that the larger decision is much easier to handle.

- Tell the jurors that while they will have a lot of information to think about at the end, it will be easier if they just focus on today. Encourage them to take one day at a time.

4. Provide attention-grabbing and non-distracting visuals.

- When it comes to slides/graphics, do not make them too visually overloaded, but do make them appealing so they grab the jurors’ attention on particularly important points. Along with the color coding suggested above, add minor animations (e.g., having the text fly in from the side) and choose a background that is calming, but visually pleasing.
- Help jurors remember who said what. Pull up still images of witnesses when talking about their testimony to help stir the memory and encourage easy recall.
- Accommodate different learning styles. Read aloud and show on-screen what you want jurors to attend to. Research indicates that people retain twice as much information when they both hear it and see it, as compared to when only one learning style is employed.

5. Take frequent breaks; allow jurors to stand if needed.

- Often judges will make accommodations for jurors with back pain, or other problems that occur from sitting too long, by allowing them to stand in the jury box when needed. If a juror has admitted to having ADD/ADHD, ask if the court will be willing to make an exception and allow this juror to stand in the back of the jury box when needed to help her remain focused.
 - A seat in the back row, closest to the witness box will be best for ADD jurors. It allows them to stand up when needed, without disrupting others, and helps keep them focused because they are front and center for witness testimony. Some judges will not allow jurors to shuffle seats. If a juror has already told the court about his ADD/ADHD, the seating change is something that can be requested if the juror feels it will help his attention. As always, it is up to the court’s discretion.
- Most courts are very good about keeping break times so that jurors have 15 minutes free for every 90 to 120 minutes of court time. Do not agree to an exception to significantly shorten or eliminate a break. The typical ADD/ADHD juror will have trouble adjusting to the change in schedule and will already be too exhausted from attending to the preceding testimony to keep up the pace.

Conclusion

It is important to not only recognize the signs of ADD or ADHD, but also to understand how best to help a juror displaying those signs to absorb trial information given their challenges. Ultimately, the question of whether an ADD or ADHD juror will help or hurt your case depends upon the case, the evidence and your presentation style. However, by keeping in mind these general tips and tuning your presentation style to help jurors with attention deficit disorders, you will be in a stronger position to communicate with and influence those jurors.