Consider The Impact Of Election Stress On Potential Jurors

By **Ken Broda-Bahm** (October 31, 2024)

Ken Broda-Bahm

I know, I know — there's a very good chance that every election in your lifetime has been billed as the "most important election in your lifetime." But when it comes to next week's election, that hyperbole just might be justified — at least based on the way the country seems to be feeling.

Those on both sides appear to believe not just that their candidate has the better character and ideas, but also that a victory by the other side could well mean the end of the country as we know it.

With the candidates increasingly speaking in those apocalyptic terms, there is evidence that the public is feeling it as well: About three in four Americans believe that the election results will determine the fate of democracy in the U.S.[1]

So, people are emotionally invested, anxiety is setting in and we don't yet know what will happen. The concerns transcend the more common worries about policy and the economy.

A long line of studies shows that elections bring a raft of mental health issues, such as irritability, anxiety, stress, sleep issues and drinking. And a 2023 study published in the journal Politics and the Life Sciences, focusing on the country's last presidential election in 2020, actually found that for a solid segment of the population — 12.5%, a rate almost four times the norm — the electoral stress reached the level of diagnosable post-traumatic stress disorder.[2]

Through these final days of the campaign, early voting, Election Day and the returns as they come in — as well as the expected messy aftermath in the form of delayed calls, recounts and potential legal challenges — we are perhaps in the midst of a collective national trauma.

Even after the election, the impact won't be limited to the side that lost. The researchers of the 2023 study noted that "voter[s] of any party may report election-related PTSD symptoms if they feel sufficiently distant from, hostile towards, isolated from, or hurt by members of the opposing party."

Trial consultant Alan Turkheimer recently observed in a LinkedIn video that trials are supposed to be impervious to this level of social stress and distraction, "but jurors are human, and humans are shaped by their experiences and outside events."[3]

For anyone going to trial in the next couple of months at least, you could be dealing with some preoccupied jurors who are working through anger, disbelief, and distrust in institutions and a substantial portion of their fellow Americans. It will be important to account for this stressor, and to check in on your potential jurors.

Account for relevant stress — trials intersect with political drama.

Jurors are asked to evaluate the case solely on what is presented in the courtroom, but try as they might, they cannot fully leave their emotions and their states of mind at the door. This is especially true when the case itself resonates with some of the same issues that are on your jurors' minds.

When you think about it, the case itself is often a kind of morality play that draws upon and invokes some of the same values that play a role in other social dramas: personal and collective responsibility, greed, fairness, and safety.

The characters in the case are also similar to those who play outsize roles in the political drama: big corporations, wealthy individuals, government regulators, etc.

The people jurors will need to listen to — witnesses, attorneys, clients — may be people who are significantly different from themselves, and not in the same political tribe.

Finally, jury duty itself is a form of forced interaction with people you don't know and who aren't necessarily like you. Jury duty raises the specter of contact with people on the "other side."

Check in with your potential jurors.

All of these factors can bring electoral stress to the forefront in a trial context. So, right now and in the coming months, it will make sense to assess your potential jurors, check on how they're doing, and ask whether they're able to sufficiently manage their social and political concerns. These questions are relevant because they go to the jurors' ability to focus on the case without bringing in preconceptions and distractions.

Here are a few questions you might ask to those who may have significant electoral stress:

- Do you find yourself thinking about the election and the results frequently over the course of your day?
- Have recent political events affected your mood or ability to focus? How so?
- How would your views about the electoral conflict carry over at all into your views on this conflict?
- Given that this specific case might involve issues like _____ that could have political relevance, do you think you would find it easy or hard to shut out the election background and just focus on the facts of this case?
- Do you have any reservations about interacting with, and listening, to people who may differ from you in your views?

Jurors who admit to being potentially influenced by the election issues or their current stress levels should be strongly considered for a cause challenge. A juror who is upset, distracted or sensitized to issues that could matter to the case would be better off serving at a different time.

Others at the lower ends of the anxiety scale may simply need a reminder from counsel or the court to try their best to keep their distractions in check, and to focus on the facts and not the surrounding issues.

Feelings about the election — before, during and after it — are naturally just one region in the larger constellation of mindsets, experiences and attitudes that jurors bring to a trial. But for the time being, we can expect that region to shine a little brighter.

Ken Broda-Bahm is a senior litigation consultant at Persuasion Strategies.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] https://www.pbs.org/newshour/politics/about-3-in-4-u-s-adults-say-the-2024-election-will-determine-the-fate-of-u-s-democracy.

[2] https://digitalcommons.unl.edu/poliscifacpub/132/.

[3] https://www.linkedin.com/feed/update/urn:li:activity:7255282312622350336/.