



# The Clock on the Wall Is Part of Your Trial Strategy

By Hon. Kristi Harrington (Ret.), Jury Consultant Affiliate

Every trial lawyer has a story about the juror who nodded off after lunch or the panel that returned a verdict shortly after coming back from a break. Most of us treat those moments as courtroom folklore. We should not.

Reading a thoughtful article by Jeff Bloom in Temple Law's Advocacy and Evidence Resources prompted me to revisit something I had observed for years, first as a trial judge and later while watching mock jury deliberations. Courtrooms run on human cognition, and human cognition runs on a clock of its own. That reality deserves more attention in how we plan a trial day. It has important implications for jury selection, evidence presentation, and jury deliberations.

## The Afternoon Trough is Real

Daniel Pink's *When: The Scientific Secrets of Perfect Timing* introduced many readers to decades of research on circadian rhythms. Pink describes the underlying pattern simply: that most people move through the day in three stages.

- **The peak** tends to fall in the morning for most people, when alertness and vigilance are at their highest.
- **The trough** is the familiar afternoon slump, a predictable period when alertness, mood, and analytical performance decline.
- **The recovery** arrives later in the day, when mood and energy begin to climb again, though not always back to peak levels.

Jurors and judges are not exempt from that daily pattern, and how they respond to each stage should matter to every trial lawyer.

## A Familiar Pattern in the Jury Room

In my experience, juries often seem to make their greatest progress shortly after returning from a break. During my years on the bench, there was a running joke among judges: “If you want a verdict, send in lunch.” We assumed jurors simply wanted to eat before reaching a decision.



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Today, I wonder whether something else was happening.

One possible explanation is that jurors returning from a break have regained enough mental energy to work through disagreements they were unable to resolve beforehand. Rather than continuing to circle the same arguments, they can engage with one another more productively because they have returned refreshed.

In discussing *When*, Pink observed that breaks are not simply pauses in productivity. They are often what enable people to perform at their best. That same principle may help explain what many judges and trial lawyers have observed for years in the jury room.

I continue to be struck by how often a seemingly stalled discussion finds new momentum after a recess. The break does not change the evidence but rather the jurors’ ability to engage with it.

## A Judge’s-Eye View of the Trough

I know my own trough stage by the clock. Pink’s research describes a population-average afternoon trough, but individual rhythms vary. Mine has always arrived a bit earlier, around 2:30 PM. I learned to plan around it long before I knew there was a name for it or a body of research explaining it.

On the bench, I tried to keep the heaviest mental lifting away from that stretch of the afternoon whenever possible. Dense evidentiary arguments, difficult jury instructions, and motions requiring careful comparison of competing authorities were better handled when I knew my mind was at its sharpest. Simpler matters and routine administrative business could wait until later in the day.

It was never a formal policy. It was simply recognizing my own limits and refusing to pretend they disappeared just because I was wearing a robe.

That is also something I tried to impress upon newer judges. The instinct, especially early in a judicial career, is to treat every hour on the bench as though attention and judgment remain

perfectly constant from morning until adjournment. They do not. This is why recognizing your own cognitive rhythms and planning around them indicates smart preparation, not concession.

## Quick Tips for Building a Trial Day

None of these points argue for restructuring an entire trial around a chronobiology chart. Court schedules, witness availability, and countless practical realities will always dictate much of a trial day. But where lawyers have flexibility, timing deserves consideration. With that in mind, a few practical principles are worth keeping in view when planning a trial schedule.

### 1) Sequence complex evidence deliberately.

For most people, analytical performance is strongest earlier in the day. Dense expert testimony, technical damages evidence, or testimony requiring careful comparison is generally better presented before the afternoon trough whenever possible.



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### 2) Think about voir dire and case theory together.

If your case depends on jurors adopting a nuanced view of the evidence rather than an easy, surface-level reading of the facts, recognize that this type of reasoning may become harder to sustain as the day wears on. That consideration should inform not only how you present your case, but also how you think about jury selection.

### 3) Watch the clock on deliberations, not just testimony

A jury beginning deliberations immediately before a break is working under different cognitive conditions than one returning refreshed. Where scheduling allows, that difference is worth considering.

### 4) Treat breaks as part of the performance, not a pause from it.

Strategic breaks are part of sustaining high-level performance, and the same logic applies to a jury. A well-placed recess is not lost time; it may be what makes the next stretch of thoughtful attention possible.

## A Caution Against Overcorrecting

Case theory, witness credibility, and the strength of the evidence will always carry the greatest weight. Time of day is not a substitute for the fundamentals. Still, trial lawyers routinely devote enormous attention to witness order, demonstratives, and closing arguments because they understand that small advantages accumulate over the course of a trial.

Carefully consider when to introduce a key exhibit, when to call an expert witness, and how to structure a closing argument for maximum impact. These decisions reflect a simple truth: jurors are human beings, not information-processing machines. Determining when and for how long they are asked to absorb, analyze, and deliberate over the evidence also deserves careful consideration.

No one can control the clock on the courtroom wall, but we should acknowledge its influence on the critical decisions made beneath it.

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