

# Chicago Daily Law Bulletin®

Volume 161, No. 140

## Mediation no time to let boys be boys: Mind your brain's chemistry in mediation

Recently a group of economists, neuroscientists and psychiatrists at institutions including the University of Cambridge, the Imperial College London, the University of Minnesota and the University of Zurich published a study in *Scientific Reports* finding that elevated levels of testosterone and cortisol in young males could play a destabilizing role in financial markets due to risky decision-making.

The study is part of a larger effort to begin to look at the physiological basis of the "irrational exuberance" of financial bubbles referred to by Alan Greenspan and others.

The results suggest that at least in young men in competitive and stressful situations, increases in cortisol and testosterone can cause increased risk-taking and "mispricing" behavior.

This research is important to lawyers because advocacy in mediation is frequently both competitive and stressful and, in many instances, the lawyers and/or the parties are both young and male.

The scientists found in their experiments that both cortisol and testosterone "shifted investment toward riskier assets" but in different ways. Cortisol appears to directly affect willingness to take a risk, whereas testosterone operates by increasing optimism about increasing prices.

Building on previous experimentation, the researchers tested the hypothesis that levels of either testosterone or cortisol would predict risk-taking and price instability.

First, they studied the risk-taking behaviors of 142 men and women age 18 to 30 as they traded real money in simulated

competitive and stressful trading floor environments and measured their hormone levels by taking saliva samples. They then conducted two additional experiments with men age 18 to 30, administering either cortisol or testosterone to their subjects.

They found that the men engaged in riskier financial decisions with either increased cortisol or testosterone. Investment in riskier stocks was 70 percent higher with elevated cortisol and 46 percent higher with elevated testosterone.

Interestingly, there was no association between cortisol levels and risky trading behavior found in the women. (Women were studied only in the first experiment, but the authors point out that "[t]his result is consistent with previous evidence of gender differences in the relationship between risk-taking, cortisol and acute stress.")

In his negotiation blog, *Negotiation Mastery* for the Legal Professional, attorney Doug Noll referred to this study and pointed out that the more stressful a mediation environment, the more likely that cortisol will be elevated and that "this may lead to unwanted risky decision-making."

Noll also noted that if young male lawyers or their clients become too competitive in a mediation, testosterone levels will rise, which will "create a false sense of control and optimism, leading to risky decisions," such as declining a reasonable settlement offer or creating "a belief of infallibility at trial."

Testosterone and cortisol may be an even more difficult problem if one of the lawyers or parties is from an "honor culture" such as the American South. A famous experiment from the 1990s by researchers led by Dov Cohen from the

### BEYOND DISPUTE



**TERESA F.  
FRISBIE**

*Teresa F. Frisbie is the director of the Loyola University Chicago School of Law Dispute Resolution Program; a mediator and arbitrator at ADR Systems of America; a member of the National Academy of Distinguished Neutrals; and of counsel to DeGrand & Wolfe P.C.*

University of Illinois and Richard Nisbett from the University of Michigan showed that both hormones were elevated when white males from the South were insulted or bumped into while walking.

For example, cortisol levels rose 79 percent for insulted Southerners, while only 33 percent for insulted Northerners. The researchers posited that the famous tendency of Southerners to be polite and deferential may relate to this phenomenon.

Some possible strategies to avoid decision-error from soaring hormones in lawyers or clients in contentious mediations might include changing up the players or taking steps to reduce cortisol before the negotiations fail.

For example, in a situation where a party representative or lawyer is young and male, it may be prudent to be sure to include a female or older male on the team to rein him in.

Advocating for your side in an assertive yet professional and empathetic manner is usually more useful in negotiations than speaking as though in front of a

jury and may be particularly beneficial when a young male is on the other side.

In the case of cortisol, there are also physical strategies that can reduce hormone levels. Cortisol is a stress hormone that dissipates in the body over time. If a mediation becomes contentious, taking a lunch break for an hour or two or using a mediation process that takes place over several shorter sessions should help.

While you may not feel brave enough to suggest some deep breathing or meditating, getting a client or negotiation counterpart to laugh may be just as effective in quickly reducing cortisol.

If you, yourself, fall into the category of people who may engage in risky decision-making due to elevated hormonal levels, using common relaxation techniques ranging from exercise and sleep to massage or thinking about the negotiation from a third-party perspective should help you reduce decision-error.

One of the best ways to self-regulate emotion and stress hormones during any negotiation is to thoroughly prepare ahead of time. When you have researched your BATNA (best alternative to a negotiated agreement), planned your goal and concessions, thought about the other side's likely perspective, interests and BATNA and come up with a few creative non-monetary ideas for resolution, you may be less likely to take the other side's negotiation moves personally and fall into the hormone-fueled decision-error trap.

Oh, and as a woman, I cannot resist pointing out that it would probably be a bad idea to say to anyone being difficult in a mediation that they are behaving the way they are due to "raging hormones."