

# Popular Threads on Solosez

## How Do You Deal With Anxiety Of Going To Court?

I don't know about you all, but I've heard that a lot of practitioners get anxious about going to court. That's why some lawyers choose "office practice" rather than litigation. Even the top litigators are only human, and they must have some type of anxiety or nervousness about going to court.

I personally have been building my litigation practice, and have had increasingly large and complex matters in court. I have several trials including jury trials coming up in the next couple of months. I've noticed to a large extent that "preparation is key", and that, like an athlete or musician, once I am in court, I find myself in a sort of "flow". But in the days leading to the court appearance, I am a bit anxious. Do you other litigators experience this? How do you deal with it? Can this energy be channeled in a productive way?

I'm curious to see how anyone might respond.

David A. Silverstone, Hollywood, Florida

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work out and do meditation

Lynne R. Ostfeld, Chicago, Illinois

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Great idea for a thread, David.

I haven't had much litigation experience, being (so far) predominantly "inhouse" and on staff, and therefore mostly transactional. The few times I have been in court, I too had a runup of anxious days. But I noticed that it was very much akin to what I experienced - always - in my former life as a stage actress. It's basically a form of "stage fright" and it serves a very useful purpose - one you've already noted- in that it makes us prepare. And then prepare some more. And when we're done preparing, to \*really \*get down to it and PREPARE.

When I was acting, and stage fright (or nerves) would hit, whether right before an entrance or in the last days of rehearsal, I'd take a moment and breathe, deeply, at least ten times. That serves to stop the physical symptoms of anxiety and allow you to think your way out of the box. Then, I'd essentially talk to myself. "Self," I'd say, "What exactly are you afraid will happen here?" Self would respond, "I'm going to go up on my lines in scene 2. I just know it." "OK, Self," I'd say, "let's run lines." I'd go find someone to run lines with, if there was time. If there wasn't, and there was no basis for me thinking this, just a generalized fear, I'd say, "Yeah, but I don't think that's really it. What are you really afraid of?" And I'd keep going until I got to either a practical fear I could deal with, or what



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was really behind all such anxieties, and that's \*fear of failure\* - of not winning the audience's approval (be it through applause or the good verdict).

And for that? There's really only one cure: positive self talk, based on past experiences. Remind yourself of the facts; you've been practicing for some time, this isn't your first time (or you've prepared very well, if it is). Then try to find some place inside that has a positive energy flow - it's almost always there unless you've really screwed up, in which case, see previous paragraph - and try to swim in that current, psychologically speaking, for awhile.

That's what helped me. YMMV.

Sheryl Schelin

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To my view, performance anxiety can be debilitating or motivational. It is how you channel the nervous energy. As far as I can tell, this cross-applies to any other area of performance.

Preparation, discipline, confidence, absence of self-defeating negative habits and similar are all ways that you try for best outcome. Nerves can escalate to where they impair. Self-control and management of that to prevent reduction in capabilities is the key.

Coping mechanisms abound, but one has to find one that works for the individual. Self-talk, visualization skills, and other practices may assist.

Easy to say, hard to do all the time.

Darrell G. Stewart, San Antonio, Texas

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When you aren't anxious, you're not thinking. It gives you the edge. Take advantage of it. Use it to help you focus. Just don't let it consume you. Every good litigator that I know has a bit of trouble sleeping the night before the "big one." If you aren't anxious, then, to me, it means that you are probably over confident and you may have missed something. When you keep spinning it around, you're looking for something more --- and occasionally find it. Keep your eye on the prize!

Now, with all that said, be sure to get some exercise to keep the energy level up and to burn off some of the stress.

Bruce L. Dorner, Londonderry, New Hampshire

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I agree with Lynne. Also, I took a NITA trial course a few years back and one of the speakers recommended that to overcome anxiety a person should engage in deep breathing exercises and work up to a shallow but repeated pattern of deep breathing. This exercise should begin when you wake up in the morning and continue throughout the day leading up to the point of the hearing and/or through the point of preparation and should become second nature. I hope this makes sense.

Anyway, this exercise will relax you. On the occasions I have thought to engage in this exercise, it has worked. Unfortunately, I don't always follow this exercise and from time to time, get anxious before a big hearing.

Good luck,

Steve Satter

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Steve-

I'm a little unclear how breathing can be both shallow and deep.

Could you give more details?

Kenneth Forman, North Miami Beach, Florida

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Ken:

If you met some of my former girlfriends, you'd understand . . .

TJ Thurston

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Early in my practice, I would get nervous approaching any court appearance. At some point, that anxiety completely disappeared, and I'm not sure when. It probably began at about the same time that judges started calling me "Andy." I've argued before the U.S. Third Circuit enough that the late Judge Becker would address me by first name and once that happens, a certain amount of the mystique disappears.

My adrenaline still gets going for a jury trial. I only sleep a few hours each night of a jury trial, but I use that adrenaline to prepare for the coming day's events. With the jury trial, there is still a certain amount of "opening night" jitters before I make my opening statement but I find even they dissipate fairly quickly.

Bottom line is, as others have said, it is just a matter of practicing and getting so used to it that it no longer seems to be anything unusual.

Andy (Starting a trial Monday) Simpson, Christiansted, St. Croix, U.S. Virgin Islands

I've been doing litigation for 19 years and I still get some anxiety before going to court. (By way of side story, I used to be a competitive swimmer - not that you would know that by seeing me today - and even though I got quite good, every time I stepped up to the starting block, I had butterflies in my stomach.) I have always felt that a little anxiety is a good thing because it does two things:

1. Assures you are not overconfident; and
2. Assures that you are focused on what is going on.

These are great qualities in court. You never know what the judge is

going to do (having a bad day; distracted; likes you; hates you; doesn't care about you; knows the law; doesn't know the law; prepared; unprepared; etc.)

But you don't want to be so anxious as to allow it to interfere with you doing a good job for your client or to appear nervous to your opponent or the court.

Here is what I do to overcome that small anxieties I still get:

1. (Trying not to be gross, but just honest) I go to the bathroom and try to do #2 before court. Seriously! This really helps. Plus, you don't want to be in front of the judge and feel the urge.
2. Make sure you are very prepared. The anxiety will allow that preparation to come out. Trust me. The preparation is the key; the anxiety is the little voice protecting you and making sure you're remembering everything you need to do and say.
3. Deep breathing. Never a bad thing, ever. As you walk up to the bench, deep inhale and deep release.
4. Be extremely pleasant to the judge, regardless of the judge's mood. "Good morning your honor, TJ Thurston for the plaintiff." Big smile on your face like he/she is your best friend. This will usually make the judge feel good and that will have return effects of relaxation on you.

TJ Thurston, Huntley, Illinois

Gosh, I do not believe I am admitting this, but here goes: I talk to myself.

No, not IN the courtroom, but on the drive there. Before leaving the house I often quickly skim the papers. Then in the car, I verbally go over my arguments and convince myself how very right they are (critical step -- that sounds like a joke, but seriously you need to put yourself in that frame to write and argue convincingly, I think.) Sometimes I am arguing with the invisible opposing council or explaining things to the invisible judge, all riding along in my car. Often I imagine them coming up with things I had not thought of earlier or random excuses and anomalies. Scarily enough, these "predictions" are often accurate.

There are two downsides to my preparation method -- one, other drivers may think I am crazy. I am excited my new phone has Bluetooth so I can wear that earpiece! Two -- I have missed freeway exits before.

I find when I am a little angry, I am not too nervous. Amped, but not anxious.

The other thing I do is walk into court and, whether or not I know the clerk, be very courteous and conversational. Having a few words with someone about the traffic, their tie, or our kids is very calming as well.

I hope that is helpful! I hope the nerves never totally disappear -- I would worry that I was not really caring about my cases if that happened on bigger motions and trials, anyways!

Amy Kleinpeter, Pasadena, California

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As a new lawyer making court appearances, my biggest source of anxiety is not having a sense of the culture, courtroom dynamics, the flow of things, etc. And so, if I have time (which is rare) I like to watch a few arguments before the judge I am appearing before to get a sense of how the stage "feels" with live players. It then serves to make my visualization and preparation concrete--it enables me to actually "see" myself in the actual courtroom, before the actual judge, making my argument. I also check my adversary's law firm bio so I know what they look like. It helps to be able to visualize "the enemy" when going through mock combat.

Dave Galalis

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I've done close to 40 or so "no fault" trials in the NY Civil Courts. Before the first trial my hands shook so much that I couldn't hold on to anything without drawing attention to myself. Since then, I get still get nervous before each trial right up to the point where the judge comes out, but once it gets started it all goes away and there is nothing I would rather be doing.

In fact, there was a trial just a few weeks ago where I was so nervous I felt sick, again, up until the point we got started. During that trial I spent a good two hours crossing the doctor and I had one of the best times yet.

Granted my trials aren't terribly complex. It usually consists of the defendant putting their doctor on the stand and me cross-examining him or her.

Dave Gottlieb

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David's post reminded me of one other thing I do. If I am sitting in the courtroom and starting to get nervous, I remember back to some of my first appearances when I really had no idea what was going on, and yet somehow it turned out OK.

Like the first time in federal court, when I could not figure out where to stand because instead of a microphone and chairs for both Plaintiffs and Defense, there was one stand and one microphone and opposing counsel and her associate had set up camp in front of it. And yet despite my confusion and awkwardness, our motion for remand to state court was granted. And there have been other times as well, of course.

I find that really, the written arguments have the greatest influence. So sometimes I calm my nerves by reminding myself that no matter how great an orator opposing counsel is, and how much I stutter and misstate things, the judge's mind is usually 97% made up before we even began.

Amy Kleinpeter, Pasadena, California

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I wholeheartedly agree with the idea of preparation, which I find

generally relieves the butterflies. I was much more anxious in my early years of practice, most likely due to my excessive deference to authority figures. (Can I get an opinion from our resident psychologist?) Amy, you are not alone in your pre-court preparation method. Whether I am driving to court or taking the subway, I run through my argument, which I have already outlined in full, then pared down, in advance. I try not to move my lips, but I don't know how successful I am. Unfortunately (or fortunately), I almost always find that I have over prepared, particularly for arguments of motions. I do not know what it's like in other jurisdictions, but in New York State courts located within the five boroughs or on Long Island, the judges will hear about a minute or two from each attorney, then reserve decision. In most cases, the judges will not even hear oral argument.

Donald M. Spector, New York, New York

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Ken, you're right. I was rushing when I responded earlier. What the lecturer suggested is in the morning get up in the morning and take a series of really deep breathes and continue to do that intermittently as you go through the morning preparing to leave for work. After going through those really deep breathing exercises, start to moderate the breaths to the point where while they are still deep, they are not full lung capacity types breaths and then moderate down in the breathing to where you are breathing deep, but not quite as pronounced as earlier...and so on. In other words, deeper breaths than normal, but not to the point where it's obvious.

What he also said is it could take up to 3 hours of your time as part of your pre-trial preparation.

Steven Satter

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David --- for your amusement and for those few who read solosez, I offer the following war story.

I was a relatively new attorney. I landed a case with BIG FIRM on the other side. I knew that I had a good case and truth, justice and the American Way were on my side (translate that as youthful exuberance). I had control of the Great American Dispositive Motion for my case. I was going to nail the other side. I had researched everything and had the facts and the law, or so I thought.

I arrived at the courthouse early and found the courtroom where my case would be heard. I went in and found the right table from which I would launch my assault. I paced out the distance between my table and the flip chart. I checked the volume on the microphone. I turned back the first page of the chart and then put all of my key points on following two pages. I was very careful in my handwriting so it would be clear to the judge and OC. I then turned the first page back on top so it would be amazing how I just had to flip over the blank page and there, in all its glory would be my key points.

I respectfully greeted my opponent when he entered the courtroom. We were the first case of the day. My papers were carefully arranged on

counsel table. I was ready.

The bailiff entered the courtroom. He turned to me and OC and politely said, "judge will see you both in chambers." I was crushed.....no courtroom drama --- a backroom brawl. I entered the judges chambers --- clearly a foreign environment to a young lawyer. The judge looked up at us, turned to OC and said, "hi, Bill." "What can I do for you gents?" The wind left my sails as the judge beckoned us to be seated and put his legs up on the side of his desk.

We were compelled to summarize our arguments and the judge ruled contrary to my argument, but said it would be a good trial. However, he also said, "I want both of you to settle this today before you leave the court house." The judge then asked how long I've been around and offered to help me if any courtroom questions arose. He then inquired about the OC's children and lovely wife.

Shall we say that I was a bit over prepared for the courtroom, and under prepared for the reality of how local justice was dispensed. Next time I came to court with two plans. One for the courtroom and one for chambers.

Bruce Dorner, Londonderry, New Hampshire

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