

What the Literature Tells us about the Jury Foreperson

by Traci Feller

As evidence and common sense suggest, forepersons have more impact on trial outcomes than the average juror (Devine, Clayton, Dunford, Seying & Pryce, 2001). For this reason, studying them has interested researchers for decades. This accumulated research knowledge reveals common foreperson behavioral tendencies, traits and attributes, as well as possible outcomes associated with being foreperson. The research also offers insights into the method by which jury forepersons are selected and the effect this can have on group deliberation. Finally, a brief study with some insight comparing mock juries *with* a foreperson to mock juries *without* one, aids the analysis of whether or not jury forepersons are beneficial and the impact they have on the process of deliberation.

Foreperson Tendencies, Traits and Attributes

Gender

First and foremost, dating back to the pioneers of foreperson trait research, we have seen that jury “foremen” are just as original lexicon follows, most often men (Boster, Hunter & Hale, 1991; Cowan, Thompson & Ellsworth, 1984; Devine et al., 2001; Hastie, 2002; Hastie et al., 1998). This is not surprising since the struggle to secure equal jury service rights for women went on through the 1970s (Ritter, 2002). In one early study (conducted in Texas from 1971 to 1974) 141 of the total 155 forepersons were men while only 14 were women (Beckham & Aronson, 1978). Given the number of men and women that made up these 155 juries, there should have been 72 female forepersons by chance; this means that only one-fifth (20%) of the expected women actually became foreperson. About a decade later, two studies found that the number of female forepersons was about 22% what it should have been by chance. (Kerr, Harmon and Graves, 1982; Dillhay & Nietzel, 1985). We can see through the years that this male-dominating trend has been diminishing overall, but is still seen today. A study with mock juries done by Ellison and Munro (2010) found that despite a near-even gender split, only two of 14 nominated forepersons (some juries selected randomly or did not select a foreperson) were women, the remaining 12 were men (28% what it should have been by chance). Even more disappointing, both female forepersons volunteered themselves to be foreperson, rather than being nominated by another juror, as was custom in many other juries. Speaking first can be a strong predictor of becoming foreperson, however, in many cases Ellison and Munro reviewed where a female spoke first, it was often to nominate a male peer to be foreperson. This type of observation can suggest that women may be promoting these tendencies. Interestingly, Diamond and Casper’s (1992) research did not find gender to predict foreperson selection in their regression analysis. However, gender was *specifically* discussed in four of their 70 mock juries when deciding foreperson. There is no information in Diamond and Casper’s (1992) article about *how* gender was discussed in choosing a foreperson, just that it was.



Age

Based on the one study that looked at age, forepersons are less likely than other jurors to be young (aged between 18-35 years old). Although 42% of jurors in Ellison and Munro's (2010) study fell within this age group, only 24% of the selected forepersons did. The majority (65%) of forepersons fell in the highest age group of 45 to 65, despite the fact that only 35% of the jurors made up that group. Although there is no upper age limit to jury service eligibility, and no exemptions for age, most state courts will allow jurors to be excused, at the discretion of the judge, after age 65-75, depending on the state (Skove, 2006). Prior jury experience can be a large predictor of foreperson selection, and with age comes a better chance that a juror has served before. Without controlling for these factors, we cannot be sure if older jurors are selected more because of their age, or if simply experienced jurors are more frequently selected. It may also be a combination of these factors causing this effect. It is surprising that more studies did not consider foreperson age, but this could possibly be a result of the culture of discussing age in the 70s and 80s when the majority of these studies were conducted.

Personality

A Five Factor Model of personality traits done on 764 jury venire members in a Southeastern state found that juror extraversion played a significant role in determining jury foreperson, (Clark, Boccaccini, Caillouet & Chaplin, 2007). This is interesting, because a similar study by Wigley (1999) found that jurors with higher levels of extraversion were more likely to be removed from the jury pool during jury selection. This could be explained by the fact that attorneys look at extraverted jurors as a potentially larger risk *because* they are likely to be foreperson. It follows that extraverted jurors will be watched closely during jury selection and more quickly struck by counsel. Juror extraversion was also correlated with longer deliberation times and perceived foreperson influence (when jurors were polled) in criminal cases (Clark et al., 2007; Marcus et al., 2000).

Education and SES

A common trend in jury research is that jury forepersons are better educated and of higher Social Economic Status (Diamond & Casper 1992; Ellison & Munro, 2010; Hastie et al., 1998; Hastie et al., 2002). In fact, Social Economic Status can have a stronger effect on who is heard in the jury deliberation room than can other demographic factors such as race, gender and age (Hickerson & Gastil, 2008). The finding that "Citizens readily pick up on social cues that help them identify those around them who have real political acumen" could show that this effect is self-promoting by jurors (Gastil, Burkhalter, & Black, 2007, p. 354; Huckfeldt, 2001). Another finding from Hastie et al. (1998) was that in mock trials in the Denver area including 726 mock jurors, jury forepersons tended to have a better memory of the judge's instructions. In a follow-up study, they also recalled more facts of the trial (Hastie et al., 2002). This could be an effect of having a higher education, or it could be the cause of another variable such as jurors with better memory are more comfortable taking charge and ending up with the position of foreperson.

Interestingly, Diamond and Casper (1992) found that jurors who indicated on a pretrial questionnaire that they had taken a statistics course were significantly overrepresented among forepersons. In fact, while this experience had no effect on the perceived influence of non-forepersons, it was crucial to the perceived influence of forepersons. In addition, when a foreperson did not have this

attribute, he/she was seen as no more influential than any other juror (Diamond & Casper, 1992). In this study, the probability of being selected foreperson for jurors with prior statistics training was three times higher than the probability of being selected foreperson without this training (Diamond & Casper, 1992). It is unclear whether forepersons actually made their statistics training evident to the other jurors before selection occurred, or if it is a consequence of higher education that is simply more salient.

Previous Experience on a Jury

Some studies have found that a higher proportion of jury forepersons have previous experience serving on a jury (Cowan et al., 1984; Devine, 2001). One study in 1982 found that 28% of the time, juries with experienced jurors (those who have served on a jury before) will choose one of those experienced jurors as foreperson; this percentage is significantly higher than chance (Dillehay & Nietzel, 1985; Werner, Strube, Cole & Kagehiro, 1982 as cited in Abbott, 1999). In fact, 10 of the 34 experienced jurors chosen as foreperson had actually served as foreperson before (in addition to simply sitting on a jury). A study of 162 criminal trials in San Diego, California showed that if the foreperson selection was random, experienced jurors should have been chosen 65 times (or 41%), however they presided in 83 (51%) of the cases (Kerr, Harmon & Graves, 1982). Similar research on 175 criminal trials (902 jurors) in Fayette County, Kentucky in 1973 found that “seasoned” jurors were chosen at rates significantly higher than chance; 51% were experienced while proportionally only 45% of selected forepersons should have been experienced, (Dillehay & Nietzel, 1985).

These findings have caused researchers to examine whether experienced versus non-experienced jurors yield different verdicts. Results have been mixed, but the general consensus is that if verdict differences are present, they are small at best (Dillehay & Nietzel, 1985; Kerr, 1981). In a laboratory setting in 1982, Kerr, Harmon & Graves compared the verdict results of 239 students hearing between one and five hypothetical cases. Their results showed that there was no pre-deliberation verdict preference difference between students who had experience reading one, two, three, four or all five cases. Aside from being more likely to serve as foreperson in a subsequent trial, there have been no replicated research studies that show any significant differences between experienced and non-experienced jurors (see Kerr 1981; Kerr, Harmon & Graves, 1982; Broeder, 1965; Reed, 1965; as well as Nietzel, Dillehay & Rogers 1976; and Werner, Strube, Cole & Kagehiro, 1982 as cited in Dillehay & Nietzel, 1985), suggesting that it is a perceived increase in competence that leads jurors to choose experienced jurors as foreperson. This could be perceived by the experienced jurors themselves, or by the remaining jurors, or both. In a mock trial survey, experienced jurors were also more likely to be older and male, than inexperienced jurors (Jurow, 1971), so it could be partially due to effects of those traits as well that experienced jurors were chosen as foreperson more often on average.



Foreperson Selection Method

It is customary for a jury to choose their own foreperson however, some states allow the trial judge to select the foreperson as he or she chooses. These states include Maine, New Hampshire, South Carolina and Arizona. In Maryland, Massachusetts and Rhode Island such practice is actually *required* (Horwitz, 2005). Typically a judge will simply choose the juror in the first seat, or they will hand-pick a specific juror they see most fit for the position. It is in the latter case that we see the most objections. This method raises huge concerns among legal scholars and professionals because the judge's particular selection has the potential to convey a wide array of messages to the jury, whether intentional or not. These messages could include the perception that the judge thinks this juror's judgment to be superior to that of the remaining jurors.

It is also possible that the judge actually chooses a juror who seems to have views similar to their own. Many judges might not do this on purpose, but they could still subconsciously respect a juror more who nods at the right times and seems to interpret the case in the same way that judge does. Judges who follow this tradition of choosing a foreperson for the deliberations usually argue that their selection of foreperson is based solely on their observations of how attentive that juror was during the trial. This can be inherently biased because a juror who reacts to testimony in a similar nonverbal way that the judge does would seem to be paying more attention at important times. Judges might also argue that their selection saves the jury a step and can be more efficient. Andrew Horwitz (2005) points out however, that even if the judge chooses the foreperson to help deliberations, it could actually be *counterproductive* because if a foreperson is chosen without the support of the majority of the jury, it could be troublesome for deliberations. Horwitz also explains that even without malicious intent by the judge to control the outcome of the deliberation, selecting the foreperson still controls deliberations in one way or another. This means of selecting a foreperson is very debatable and because it is not the standard, it is not studied to a large degree.

When the jury chooses its own foreperson, the selection process seems to be brief with very little discussion of merit or intent (Devine et al., 2001). As in both of Manzo's (1996) recordings of real jury deliberations, foreperson selection was the first task completed, following a recommendation made by the judge to do so. Most selections occur within the first four minutes, perhaps resulting from a lack of understanding of foreperson role and responsibilities (Ellison & Munro, 2010). A study by Diamond and Casper (1992) found that almost 66% of their (70) mock juries chose a foreperson within the first 10 statements; 90% of the juries chose within the first 20 statements.

There are some other peripheral cues that seem to aid juries in choosing a foreperson. Processing these peripheral cues is easier for jurors than considering the central tendencies and traits of each individual before selecting a foreperson (although more careful consideration may not be a bad idea considering the importance this decision can have). Diamond and Casper (1992) as well as Ellison and Munro (2010) found that the jury foreperson is likely one of the first jurors to speak. He or she is also usually the first juror to mention the need to choose a foreperson (Boster et al., 1991; Devine et al., 2001; Ellison & Munro, 2010). A juror also has a higher chance of being selected as foreperson if s/he is seated at the head of the table (Cowan et al., 1984; Devine, 2001; Diamond and Casper, 1992 Ellison & Munro, 2010; Hastie et al., 2002). In fact, Diamond and Casper's mock trial study in 1992 found that being seated at the head of the table, prior jury service, as well as occupation, education or expertise were attributes commonly mentioned specifically during the brief discussion of choosing a foreperson.

Forepersons' Effects On Deliberation

So what can we gather other than the trends we see in types of forepersons and the means in which they are typically selected? There has been fruitful research on the potential effects of jury forepersons. It is interesting to note that jurors themselves tend to give forepersons more responsibility and power than judges do, yet as discussed above, they are quick to pick a foreperson. In the jury experience of nurse Victoria Hekkers (2002) a fellow male juror suggested that she be foreperson because of her medical background. Others agreed, she consented, and that was that. Most juries operate on the assumption that the foreperson is single-handedly responsible for organizing talking turns, announcing breaks, counting and keeping record of votes, keeping deliberation on topic, etc. What followed for Victoria Hekkers was the heavy responsibility she felt for the entire process and the verdict. Most nerve-wracking, was that a few jurors actually changed their vote to follow the way Victoria voted. This sense of control over something so important made her uncomfortable as it could any person. After all, only a minute ago she was just an ordinary juror, and now her opinion was given more weight than other jurors. Here we see that a foreperson can be given greater power and responsibility than the courts actually intend.

In Devine, Clayton, Dunford, Seying and Pryce's (2001) review of 45 years of jury research, they found that the foreperson typically decides which of two routes the jury takes at the start of deliberations: making deliberation either verdict-driven (usually exemplified by taking a poll at the start of deliberations) or evidence-driven (the jury discusses evidence first and does not pick a side right away)(also Ellison & Munro, 2010). There is much more research to be discussed on this topic, but for purposes of this paper, these two styles can make a substantial difference in the deliberation, and thus possibly the verdict (for more see Cowan, Thompson, & Ellsworth, 1984; Davis, Kameda, Parks, Stasson, & Zimmerman, 1989; Hastie et al, 1983; Kameda, 1991; Kameda & Sugimori, 1995; Sandys & Dillehay, 1995). Also, jury forepersons will usually speak last in the initial go-around the table where each juror will explain his or her position and reasoning (Manzo, 1996). Here, the foreperson is able to define the extent of the disagreement/agreement of the jurors, acting as the expert and initiating where deliberations should go from there.

As far as their effect, jury forepersons participate more than other jury members. We know that although the rules grant jurors equal rights, everyone doesn't participate equally (Fishkin, 2009). In fact, forepersons account for about 25%-31% of speaking during deliberations (Ellison & Munro, 2010). In a mock trial study using real jurors at an Illinois courthouse by Diamond and Casper (1992), jury forepersons spoke an average of about 1770.22 words to a non-foreperson's average 789.35 words. In a different mock jury study by Hastie (1993), forepersons also spoke nearly three times as much as their non-foremen counterparts. Specifically, they made organizational statements five times more, but used a significantly lower percentage of verdict preference statements. Fortunately, this is evidence of a trend of forepersons' respect for verdict fairness and effort towards neutrality. Interestingly however, after controlling for instances of summarizing and paraphrasing, forepersons were still found to have made twice as many statements of novel facts or opinions. Also in two-thirds of these juries, the first ranked talker was the jury foreperson (Hastie, 1993; Hastie et al., 2002). It is important to note however, that in accordance with Massachusetts's court procedure (the judge appoints the foreperson before deliberation begins), forepersons in this study were chosen and appointed by the experimenters. They tried to choose a mock juror who had served on a trial before, but if this wasn't possible, the foreperson was randomly selected. This suggests that forepersons selected because of prior experience

spoke more either because they felt more qualified to speak more, or because they were perceived as more qualified by their peers. It could also be a combination of the two, or suggestive of a third reason, a “foreperson effect” where jurors being named foreperson behave differently, simply as an effect of being given that role, than those without the title.



In addition, fellow jurors view forepersons as more influential than the average juror. Diamond and Casper’s (1992) mock trial study included a survey asking jurors to rate the influence of their fellow jurors and they found that forepersons received an average rating of 5.49 while non-forepersons were rated only 4.66 on average. It could seem that forepersons are perceived as more influential *because* they speak more than other jurors, however, when controlled for the number of words spoken, Diamond and Casper still found jury forepersons to be considered more influential. As Gastil (2008) points out, the foreperson’s

perceived dominance in the group could cause some concern about the speaking opportunities of non-forepersons, especially when those non-forepersons harbor views and opinions contrary to the foreperson and the majority. It is here where we hope for the foreperson’s influence to be a positive one, and one conducive to the sharing of views by everyone in the group.

This leads me to the most important power a foreperson may have: their influence on the speaking time, order and focus of the remaining jurors (Ellison & Munro, 2010; Manzo 1996). This is potentially crucial because the jury foreperson can give jurors with strong views on opposing ends unequal talking time and give unfair advantages to certain arguments. It follows that forepersons can have a major effect on damage awards or verdict outcome (Devine et al., 2001). Boster, Hunter and Hale (1991) found a high correlation between foreperson pre-deliberation award preferences and actual jury award amounts. Additionally, Diamond and Casper (1992) found that the correlation between forepersons pre-deliberation award and the actual award was twice as high as the correlation between non-forepersons pre-deliberation award and the actual award.

Note that in this same study, Diamond and Casper (1992) compared the forepersons’ pre-deliberation awards to the average of jury’s pre-deliberation awards as a whole and found that forepersons are no better than regular jurors at predicting the position of the group. In other words, the foreperson is not a particularly good indicator of where the rest of the group stands before deliberations, yet they *are* a particularly good indicator of where the group will end up. However, not all mock trial research yielded the same results. Hastie et al. (1998) in Denver found that forepersons pre-deliberation verdict correlated to the group’s final verdict at a rate slightly higher than non-forepersons ($r = .29$ and $.26$, respectively), but at this size, not enough to demonstrate significance.

Importance of Having a Foreperson

Because of Ellison and Munro’s (2010) brief comparisons of jury deliberations with groups that chose to select a foreperson and juries that did not, we are able to get a sense for the importance and necessity of a foreperson. For the 27 mock juries studied, Ellison and Munro advised them to choose a foreperson, but told them they were not required to do so. Only 14 of these juries elected a foreperson immediately or shortly after beginning deliberations. Three more juries showed one juror assuming this

role, even though the position was not assigned explicitly. In Ellison and Munro's opinion, only 7 of the 17 juries had effective forepersons that lead organized, orderly and fair deliberations, (none of which were the three who assumed the role) suggesting that deliberations would benefit from brief training or instruction of the foreperson's role and responsibility. However, these 17 foreperson-lead deliberations were still qualitatively better off than those without a foreperson. In the three instances where no foreperson was explicitly chosen, but a person assumed the role, there was a negative effect on deliberations, causing them to be less inclusive and narrower in focus. However, according to the researchers those juries were still better than the juries without a foreperson figure at all. These juries without foreperson figures were unorganized, jumped from topic to topic without thorough discussion, and narrow in participation and scope of participation (Ellison & Munro, 2010).

It is important to bear in mind that this study included a very small number of juries to analyze, and because it is a mock trial, we can speculate that jurors will perceive it as less important and will not take it as seriously as they would a real trial. Also, the mock trial was based on a real trial, but information and facts were simplified and summarized for time purposes, so the need of a foreperson would not be as obvious as in complicated consequential trials. Nevertheless, this study can shed light on the organization troubles and narrower scope that deliberations take without a good foreperson to act as facilitator. In many cases, the foreperson takes this position very seriously and tries hard to maintain a thorough discussion of all the evidence with adequate speaking time for all members of the jury. As James Fishkin puts it, in his book *When the People Speak*, "Jury foremen are not notorious for abusing their position" (p. 69). In fact, according to his research, there have only been a few incidents of abuse over the centuries (Fishkin, 2009).

Discussion

Overall, the research on jury forepersons shows that the foreperson is typically an older, highly educated, extraverted male with prior jury service who was the first one to speak (usually to suggest a foreperson be selected) and sitting at the head of the table. This person given the title of foreperson is likely to speak two to three times more than the average of the remaining jurors, and the verdict is most likely going to reflect what this person thought before deliberations. However, the majority of foreperson research was conducted in the 70s, and 80s and has since dwindled in recent years. We could benefit from some of this research being replicated to test its truth and reliability in more modern times. Research on some common foreperson traits such as age and personality are also limited, but showing evidence of an effect.

Cases going to trial and being decided by a jury have already been diminishing over the years because of early settling in fear of large economic loss, plea bargaining and other alternative methods of dispute resolution (Glaberson, 2001). We should put our trust back into the jury system. More research could be done on the types of forepersons that lead to the most highly deliberative processes possible, then using this research we could develop better instructions to supply the jury about forepersons' responsibilities (for example, making sure each juror has ample speaking opportunities, jurors are respectful of one another and try to keep an open mind, etc.), as well as instruction on how best to select them. This could strengthen the reliability of a verdict reached by an impartial jury, improve the quality and the perceived fairness of a jury deliberation, and eliminate the perception of foreperson tampering, although as Fishkin (2009) reminds us, it is a rare occurrence.

Traci Feller (Traci.Feller@gmail.com) received a B.S. in psychology from the University of Washington in 2008 and has since been a member of the ASTC. Traci interned at Tsongas Litigation Consulting, Inc. in Seattle, Washington for about a year and has been working as a research assistant for University of Washington professor John Gastil. Traci is applying to graduate school to continue studying juries and would like to someday work in the field of litigation consulting.

We asked an experienced trial consultant to respond to this literature review with thoughts on how the literature presented above is supported or not supported in practical, day-to-day experience in the courtroom. A response from Charli Morris follows this bibliography list.

Bibliography

Abbott, W. F. (1999). *A handbook of jury research*. United States of America: American Law Institute.

Beckham, B. & Aronson, H. (1978). Selection of jury foremen as a measure of the social status of women. *Psychological Reports*, 43, 2, 475-478.

Boster, F. J., Hunter, J. E., & Hale, J. L. (1991). An information-processing model of jury decision making. *Small Group Research*, 18, 524-547.

Broeder, D. W. (1965). Previous jury trial service affecting juror behavior. *Insurance Law Journal*, 506, 138-143.

Clark, J., Boccaccini, M., Caillouet, B., & Chaplin, W. (2007). Five factor model personality traits, jury selection, and case outcomes in criminal and civil cases. *Criminal Justice and Behavior*, 34(5), 641-660.

Cowan, C. L., Thompson, W. C., & Ellsworth, P. C. (1984). The effects of death qualification on jurors' predisposition to convict and on the quality of deliberation. *Law and Human Behavior*, 8, 53-79.

Davis, J. H., Kameda, T., Parks, C., Stasson, M., & Zimmerman, S. (1989). Some social mechanics of group decision making: The distribution of opinion, polling sequence, and implications for consensus. *Journal of Personality and Social Psychology*, 57, 1000-1012.

Devine, D. J., Clayton, L. D., Dunford, B. B., Seying, R., & Pryce, J. (2001). Jury decision making: 45 years of empirical research on deliberating groups. *Psychology Public Policy and Law*, 7, 622-727.

Diamond, S. S., & Casper, J. D. (1992). Blindfolding the jury to verdict consequences: Damages, experts, and the civil jury. *Law and Society Review*, 26, 513-557.

Dillehay, R. C. & Nietzel, M. T. (1985). Juror experience and jury verdicts. *Law and Human Behavior*, 9(2) 179-191.

Ellison, L., & Munro, V. E. (2010). Getting to (not) guilty: Examining jurors' deliberative processes in, and beyond, the context of a mock rape trial. *Legal Studies*, 30(1), 74-97.

Fishkin, J.S. (2009). *When the people speak: Deliberative democracy and public consultation*. New York: Oxford University Press.

Gastil, J. (2008). *Political communication and deliberation*. Thousand Oaks, CA: Sage.

Gastil, J., Burkhalter, S., & Black, L. (2007). Do juries deliberate? Small group research, 38(3), 337-359.

Glaberson, William. (2001). Juries, their powers under siege, find their role is being eroded. *New York Times*, March 2.

Hastie, R. (Ed.). (1993). *Inside the juror: The psychology of juror decision making*. New York: Cambridge University Press.

Hastie, R., Penrod, S. D., & Pennington, N. (2002). *Inside the jury*. Cambridge, MA: Harvard University Press.

Hastie, R., Schkade, D. A., & Payne, J. W. (1998). A study of juror and jury judgments in civil cases: Deciding liability for punitive damages. *Law and Human Behavior*, 22, 287-314.

Hekkers, V. (2002). Exorcising a ghost: My experience as a jury foreperson. *The Case Manager*, 13(3), 78-81.

Hickerson, A. & Gastil, J. (2008). Assessing the difference critique of deliberation: Gender, emotion, and the jury experience. *Communication Theory*, 18, 281-303.

Horwitz, A. (2005). Mixed signals and subtle cues: Jury independence and judicial appointment of the jury foreperson. *Catholic University Law Review*, 54(3), 829-878.

Huckfeldt, R. (2001). The social communication of political expertise. *American Journal of Political Science*, 45, 425-438

Jurow, G. L. (1971). New data on the effect of a "death qualified" jury on the guilt determination process. *Harvard Law Review*, 84(3), 567-611.

Kameda, T. (1991). Procedural influence in small-group decision making: Deliberations style and assigned decision rule. *Journal of Personality and Social Psychology*, 61, 245-256.

- Kameda, T., & Sugimori, S. (1995). Procedural influence in two-step group decision making: Power of local majorities in consensus formation. *Journal of Personality and Social Psychology*, *69*, 865-876.
- Kerr, N. (1981). Effects of prior juror experience on juror behavior. *Basic and Applied Social Psychology*, *2*(3), 175-193.
- Kerr, N. L., Harmon D. L., & Graves, J. K. (1982). Independence of multiple verdicts by jurors and juries. *Journal of Applied Social Psychology*, *12*, 12-29.
- Manzo, J. F. (1996). Taking turns and taking sides: Opening scenes from two jury deliberations. *Social Psychology Quarterly*, *59*(2), 107.
- Marcus, D., Lyons, P. Jr., & Guyton, M. (2000). Studying perceptions of juror influence in vivo: A social relations analysis. *Law and Human Behavior*, *2*, 173-186.
- Nietzel, M. T., Dillehay, R. C., & Rogers, G. (1976). *Method innovation in jury research: Alternative juries and archival data*. Paper presented at the meeting of the American Psychological Association, Washington, D.C.
- Sandys, M., & Dillehay, R. C. (1995). First-ballot votes, pre-deliberation dispositions, and final verdicts in jury trials. *Law and Human Behavior*, *19*, 175-195.
- Skove, A. (2006). Exemptions from Jury Duty: Memo on jury exemptions in the fifty states. National Center for State Courts.
- Reed, J. P. (1965). Jury deliberations, voting, and verdict trends. *Southwestern Social Science Quarterly*, *45*, 361-370.
- Ritter, G. (2002). Jury service and women's citizenship before and after the nineteenth amendment. *Law and History Review*, *20*, 479-516.
- Werner, C., Strube, M., Cole, A., & Kagehiro, D. (1982). The impact of case characteristics and prior jury experience on jury verdicts. *Journal of Applied Social Psychology*, *15*, 409-427
- Wigley, C. J. III. (2000). Verbal aggressiveness and communicator style characteristics of summoned jurors as predictors of actual jury selection. *Communication Abstracts*, *23*(2).

Surrogate, Secret & Silent:

A Few New Ways to Describe the Jury Foreperson's Identity and Impact

Response by Charlotte A. Morris

Feller begins by asserting that “evidence and common sense” suggest that forepersons “have more impact than the average juror.” I’m not so sure. I see ‘average’ jurors having an above-average impact on jury deliberations all the time.

While it is true that every once in a while I watch a foreperson who is intent on influencing the outcome drive the deliberations, just as often I see others who are not foreperson do the very same thing. In more than fifteen years of watching mock deliberations and interviewing jurors after trial, I have observed that the potential power held by a foreperson is as easily wasted or withheld as it is wielded.

How Do We Define Impact?

The most pressing question I have about Feller’s lit review is how the author (or even the underlying research) defines and measures “impact.” In my experience, there are a wide variety of ways a foreperson does – and does not – exert influence on both the deliberation process and its outcome.

On the subject of gender, for example, at times I see women accepting or volunteering for the foreperson role because they are perceived by themselves or others to be well-organized, good note-takers or effective administrators. Many times a woman fitting this description who becomes foreperson has less impact on the outcome and focuses more on having an impact on the deliberation process. What I also observe is that some men refuse or demur when asked to be the foreperson because frankly they see it the same way: the job is clerical, something administrative assistants might do. These men would rather have an impact on the outcome and let someone else worry about keeping score.

Deborah Tannen’s body of work on gender communication styles would also suggest that when men and women serve as forepersons they bring very different skills.² Women are more effective at encouraging others to share their points of view and building consensus, which can have a profound impact on the course of deliberations. But the research also suggests that typically “female” styles of communication get in the way of a woman’s ability to persuade, which means that a woman may have much less impact on the outcome. When a male foreperson communicates in a typically “male” style he holds the floor longer, interrupts more frequently, and uses more declarative statements. Arguably, his impact on deliberations is qualitatively different from that of a woman who communicates in a typically “female” style and he is likely to have a greater impact on the outcome as a result.



And then there’s the separate question of which tendencies, traits and attributes have an impact on the selection of the

foreperson, which is different from the question of what impact a foreperson has on deliberations or verdicts. It makes good common sense that folks with prior jury duty experience are more often elected to serve as forepersons. But the literature on that topic leaves something to be desired.

In my experience far more people have served on criminal cases because they go to trial more often and are shorter than most civil trials. But criminal cases involve a very different body of law (e.g., burden of proof) with very different consequences (jail time, no fine). I would be delighted to see new research that could tell us if jurors with prior jury duty experience have a greater impact on deliberations and verdicts across case types and in what direction (e.g., Is criminal case experience more likely to produce a particular type of outcome in a civil case?).

Three Types of Foreperson Not Identified in the Research: Surrogate, Secret and Silent

Notwithstanding the importance of having a foreperson, the real leader or leaders on a jury (i.e., people who influence the outcome) are very often not the person who signs the verdict form.

I frequently see jurors acting as “surrogate” foreperson. In a recent focus group demonstration we watched as the group rather quickly elected a foreperson (white male) who was largely ineffective in that role. Very soon, another juror (white female) took over: she led much of the discussion, recorded the votes and greatly influenced the decision on damages. At the end of deliberations, my consultant colleague asked the jury to remind us who was chosen to be the foreperson. Jurors couldn’t remember and said it didn’t really matter. It was an interesting dynamic to watch, but I have to agree that the identity of the *actual* foreperson didn’t matter much when compared to the impact made by the *acting* foreperson.

I have also heard from jurors who served as the “secret” foreperson. One woman on a jury in Florida admitted to me after the trial that she agreed to act as the foreperson for the purposes of deliberations but would not accept the responsibility for writing the notes they sent out to the judge or signing the verdict form. She assigned those chores to another woman. She was the only pro-defense juror on the case and ultimately traded her liability vote for extremely limited damages in a wrongful death case. She reported feeling very satisfied that she was able to get the result she wanted for the case, in spite of being vastly outnumbered. And the court never knew that the foreperson of record was not the same person who unabashedly assumed and used that position of power to achieve her desired outcome.

Finally we have what I will call the “silent” foreperson. This is someone who much prefers to focus on his or her job of recording votes, passing notes to the bailiff and reading the verdict form, precisely because he or she doesn’t want to have (or be perceived to have) an impact on the outcome of the case. And yet it does not surprise me when a silent foreperson’s fellow jurors tell me in post-verdict interviews that he or she had a significant impact (positive or negative) on the deliberations.

Looking for Leaders

I’d like the focus of future research to shift away from the singular position of jury foreperson to study instead the more dynamic question of jury leadership. From my perspective of working in the real-world practical application of jury research, the question of who will serve as foreperson is less important than the overall composition of the jury.

There are juror qualities and experiences that I find more influential on my own judgment when assisting counsel in jury selection than the foreperson attributes covered by the research to date. We are looking for leadership traits (and the lack thereof) when we try to assess who will have the greatest (or least) impact on jury deliberations. Very often we are trying to build a jury that contains a combination of qualities and attributes, provided we can match them all in one way or another to the important issues in our case.

These qualities can include how articulate a prospective juror is, the language he or she uses, a willingness to take the opposite view on a widely-held proposition, how other jurors react/respond to him or her, leadership experience, non-verbal behavior and so much more. We even try to identify who will be most and least influential on the specific issues of liability, causation and damages as those decisions draw on different types of experience, attitudes, behaviors and beliefs. We keep our evidence and case strategy in mind when considering the jury composition and try to keep a number of people who have the potential to lead on a number of issues most important to our case.

I see jurors drawing heavily on work and family experience in their decision-making during deliberations, so I'd also like to see research done on whether or not a person with significant influence on a jury is more likely to have business ownership, management or supervisory experience. I want to know if the leaders on the jury are in fact people who serve in leadership positions in their community life. I'd like to know if religiosity and political activism are strong predictors of jury leadership. Or if people who tend to be rule followers are more or less likely to lead and have an impact on the deliberation process. And most importantly I'd like to know if any of these or dozens of other traits or tendencies are predictive of jurors' impact on deliberation outcomes.

It would also be great to see research on jury leadership with respect to case type. Is it statistically more likely that women jurors on a case alleging missed diagnosis of breast cancer would have more impact on deliberations regardless of who serves as foreperson? Or that the juror with manufacturing experience would have more impact in a products liability case? Engineers on patent cases? Small business owners on contract cases?

The possibilities for future research on jury leadership are limitless.

Charli Morris is a trial consultant in Raleigh, NC who has worked since 1994 in venues across the country. You can find out more about Charli and her book [The Persuasive Edge](http://www.trial-prep.com) by checking out <http://www.trial-prep.com>.

Endnote

¹ Tannen, Deborah (1994). *Gender and Discourse*. New York, NY: Oxford University Press.

Citation for this article: *The Jury Expert*, 2010, 22(6), 42-54.

Editor's Note

You know how 'they' say as you get older, time seems to fly by faster? 2010 has absolutely flown by for me. This is our last issue for 2010 and we wanted to offer a full plate (so to speak) as you go into the holidays. To that end, we have articles on self-presentation in the courtroom; thoughts on what we can learn (if anything) from negative political attack ads; a review of the research on police deception in interrogation and how that influences jurors as they consider confessions; using hyperlinked briefs to power up both your argument and your persuasiveness; a look at the role and impact of juror IQ; a psychological approach to *voir dire*; and a review of the research on the role of the juror foreperson. As you peruse these (with holiday fudge and hot cider) all of us at the American Society of Trial Consultants wish you and yours the best of holiday times and success, health and happiness in the New Year.

In 2011, we hope to continue to bring you thought-provoking pieces that make you think as well as improve your litigation advocacy skills. We are in a time in this country where we have to continually assess and re-assess whether strategies in persuasion are still effective or if we have to re-group and re-vamp and re-approach the venire. As you practice and run up against new concerns, perspectives and attitudes-it helps us a lot to hear from you about topics you'd like to learn more about in *The Jury Expert*. Send me an email and tell me what topics you want to have in our 2011 issues. We'll see what we can do to make that happen. Think of it as our gift to you. Happy Holidays.

[Rita R. Handrich, Ph.D., Editor](#)

On Twitter: [@thejuryexpert](#)



The Jury Expert [ISSN: 1943-2208] is published

bimonthly by the:

American Society of Trial Consultants

1941 Greenspring Drive

Timonium, MD 21093

Phone: (410) 560-7949

Fax: (410) 560-2563

<http://www.astcweb.org/>

The Jury Expert logo was designed in 2008 by:
Vince Plunkett of [Persuasium Consulting](#)

Editors

[Rita R. Handrich, PhD](#) — Editor

[Kevin R. Bouly, PhD](#) — Associate Editor

The publisher of *The Jury Expert* is not engaged in rendering legal, accounting, or other professional service. The accuracy of the content of articles included in *The Jury Expert* is the sole responsibility of the authors, not of the publication. The publisher makes no warranty regarding the accuracy, integrity, or continued validity of the facts, allegations or legal authorities contained in any public record documents provided herein.

