

## The Many Faces of the Foreperson— Referee, Mediator and Maybe Mom

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"No man is wise enough by himself."  
Titus Maccius Plautus,  
Roman playwright, 254 B.C.-184 B.C.

The jury is sworn in and trial begins. The one hundred dollar question (save the talk about millions for the verdict) becomes who will be the foreperson a.k.a. presiding juror? How will the opinions and direction of this person impact the other jurors during deliberations?

This newsletter discusses the many faces of the forepersons, from those who effectively employ their position, control, and effect over the group, to others who squander their role as a potential leader. Post trial interviews and mock trial deliberations provide the sources for jurors' comments in this newsletter.

For counsel, foreperson tagging must be included in the overall voir dire strategy when categorizing prospective jurors as likely *persuader*, *participant* or *non-participant* personalities during the deliberative process. Throughout voir dire and especially during the peremptory challenges, counsel must strategically think and rethink about who would most likely fulfill that leadership role during deliberations. During trial, who seems to be the ringleader out in the hallway? Who has an occupational background that has some connection, however remote, present or past, to the issues and evidence? Who has a managerial demeanor? Or, presents a commanding presence?

### The Foreperson's Unique Skill Set

When reviewing the prospective jurors, counsel must be most cognizant of those people with occupations that demand consensus building, negotiation skills, decision-making, and cordiality. One or more of these skills can provide the foreperson with the tools to guide the group as they maneuver through the arduous verdict forms.

This is most evident when a determined juror or a small faction of jurors initially refuses to move off of their positions, due to real or supposed deeply held convictions. As the group dynamic turns intense with opinions seeming more steadfast, one or more jurors may be willing to ease away from their initial stance. A skillful foreperson facilitates this conversion by helping the juror(s) switch sides while saving face. It can be done by helping the juror verbalize a minority opinion that corresponds with evidence that supports the majority viewpoint. Consequently, a juror switches positions with dignity and without embarrassment for flip-flopping.

"We selected our foreperson because he had management experience. He was open-minded and didn't put people on the spot. If you had something to say, you were welcome. Even if some of the comments were uncomfortable, he was nonchalant and made it comfortable. He was diplomatic." Alameda County female juror

### Foreperson Selection

Typically, the foreperson is selected by the jurors within the first few minutes of commencing deliberations. Most often, the vote is casual (usually, no paper votes) and quick, often preceded by the question, "Who has done this before?" Therefore, during jury selection, counsel must take note of those prospective jurors who have served previously, found the experience worthwhile, sound articulate, and appear to have a presence of authority.

Anyone who has served as the foreperson in a past jury trial has an overwhelming chance of being foreperson in the present trial. More often than not, jurors enter the deliberation room and ask each other, "What do we do now?" Typically, having an experienced juror and past foreperson in the room puts that person at the helm once again. Gender seems irrelevant, while studies have shown that regarding age, female forepersons tend to be slightly younger than their male counterparts.

Sometimes the foreperson selection results from the scheming of another juror. In one case, a juror admitted that she calculatingly declined the foreperson position. She explained that if had she taken the foreperson job, then she would have been impeded in offering her opinion out of respect for the position as the jury's representative.

"I did not want to be the foreperson. Instead, I wanted to start the discussion and lead it in the direction that I thought was right. Being a foreperson, I would not be able to speak my mind. I would have to be more neutral being a leader of the group." Riverside County female juror

The juror who spouted trash talk in the hallway during trial breaks about the parties, witnesses, or lawyers is rarely designated foreperson. Usually, such a person makes the rest of the jury too nervous to be elected as the person who ultimately signs the verdict form.

Sometimes, a foreperson will attempt to dictate to the group but with little success. Given the dynamics of deliberations with different life experiences, temperament, and levels of analytical abilities in the room, a dictator-foreperson rarely prevails.

"She was a lawyer from New York, had a thick New York accent and didn't take any sass, which also meant she didn't allow free discussion of ideas that were contrary to her own. It angered and alienated some people enough to band together and force her to listen to their ideas about the case." Contra Costa male juror

At the opposite end from the dictatorial style is the mom-like foreperson. At another trial, jurors reported that their foreperson demonstrated an inclusive and maternal style as she divided tasks among several jurors. The tasks included writing evidence on the blackboard, reading aloud the verdict questions, counting hands, tallying votes on paper, and serving as timekeeper for breaks. In a group debriefing session after trial, their contentment seemed apparent when they referred to her as a "great" foreperson because "she made sure that everyone listened to everyone and gave everyone time to discuss." Contra Costa male juror

### Assuaging Conflict

A foreperson's ability to steer opinions away from divisiveness and into areas of common ground demands people skills and subtle influence beyond many jurors' capabilities.

The foreperson's skills are most tested when disorder threatens to predominate. With jurors openly admitting, "I did not like every juror in there," the goal for attaining consensus becomes ever more complex. A foreperson recalled the challenge of keeping a woman juror under control when disagreement ensued.

"One juror started cutting another person down. It was the beginning of a cat fight between two female jurors over a woman's issue and one said, 'How can you say that in today's world?' But we stopped it right away." Los Angeles County male juror

The foreperson of a jury in Sacramento successfully kept the group calm and focused with his patience and creative distractions when discussions became heated and conflicted. He recalled that when tensions rose, he asked everyone to suspend their discussion and "share something about their personal life with the group," including favorite movies, weekend activities, and hobbies. This hiatus allowed for the necessary cooling off time for the jury to decompress and regain civility and composure. Thereafter, the deliberations proceeded more smoothly.

Or, then there was the juror, not the foreperson, who appeared to frown on the foreperson's permissiveness of certain offbeat behavior during deliberations. The juror, a loner within the group, wrote a note to the judge asking if there were "guidelines on behavior and expression of jurors." Further, the juror inquired:

"Is it fine to joke about the defendants, plaintiffs before or after votes are taken?" Alameda County female juror

The foreperson of this jury explained later that he "had dealt with much worse at the office."

"Some folks need a way to release anxiety and [the complained of behavior] was more in the context of voting in a certain way—adding theatrics with each vote taken." Alameda County male juror, foreperson.

### Conclusion

The foreperson can be instrumental in setting the tone for the deliberations. While some moments in deliberations may be stressful, the civility of the group reflects back on the foreperson's abilities to guide them through the task of making some tough determinations. In the end, a jury that keeps deliberation arguments interactive and respectful avoids the petty talk that can derail reasoned sentiment and justified outcomes. Hollywood expressed it best with the impassioned plea of a juror in the movie *Twelve Angry Men*:

"We have a responsibility. I have always thought this is a remarkable thing about democracy. We are notified by mail to come down to this place to decide on the guilt or innocence of a man who we have never heard of before. We have nothing to gain or lose by our verdict. This is one of the reasons we are strong. We should not make this a personal thing." Juror, *Twelve Angry Men*, motion picture, 1957.

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