



Trials. Not Errors.

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- Spotting leaders on the jury.
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- They do get it right, most of the time.

Spotlight on Jury Deliberations

Jury Deliberations:

What Goes on Behind Closed Doors

For most lawyers, the opportunity to observe a jury deliberate is a rare occurrence. Few trial attorneys actually make it onto jury panels. For the vast majority, trying a case is like entering information into a black hole, and awaiting the results to pop out without ever understanding what happened behind those closed doors. What influenced jurors? How did they go about reaching their verdict?

After observing hundreds and hundreds of mock juries deliberate, and interviewing dozens of actual jurors in post-trial sessions, we have gained many insights into the process that generally takes place inside the jury deliberation room. There is a method to the madness.

The jury's first task upon entering the jury deliberation room is to select a foreperson. Generally, one individual in the group will pose the question, "Who's done this before?" Those with prior jury experience are immediately in the pool of potential forepersons. Next, the group evaluates the leadership potential of these individuals. During voir dire, whether oral voir dire or on a jury questionnaire, counsel should inquire as to an individual's past leadership experience. Exploring leadership roles in civic organizations, and at work is an important tool for identifying the individuals who will have the most influence in the deliberation room.

Statistically, a foreperson is generally likely to be male, over the age of 40, with two plus years of college, and some management experience. When a female is foreperson, she is generally likely to be in her mid-thirties, with four years of college and single. Of course, these “statistical characteristics” must be understood in light of the fact that each panel is unique and represents a distinct entity. An individual who is a leader in one group of twelve, may be utterly silent in a different group of twelve. For example, a housewife who meets weekly with other parents of school children to plan fund raising activities, may be a leader or an active participant in that group. This same individual, when in a group of twelve community residents with differing interests, education levels and experiences, may take less of a leadership role. Therefore, in examining the “leadership” of any perspective juror, it must be done in the context of the other jurors. Trial attorneys should remain alert during their voir dire, to individuals with strong leadership characteristics and prior jury experience.



In looking at the panel as a whole, the relative participation of each group member will fall broadly into one of three categories. Generally, on any panel of 12 individuals, social science research has revealed that three or four “persuaders” emerge in the group. These individuals make over 50% of the affirmative statements during the deliberations. These individuals tend to be the ones who build coalitions and are responsible for the introduction of new issues for the jury’s consideration. Thus, although there might be one “foreperson” the bulk of the discussions really take place among the three or four persuaders. In fact, when a foreperson is ineffective in handling the organization of the deliberations, a secondary foreperson tends to emerge and unofficially takes on the role of the foreperson, without ever actually being identified as such.

The next group of individuals in the jury deliberation room are the “participants.” These six to eight individuals tend to be active and participate in the discussions, but they usually have opinions in reaction to statements made by the leaders. They tend to be the joiners, and will follow and support other members, but generally don’t tend to build coalitions themselves. Finally, there is a group of three or four individuals known as the “non-participants.” These individuals are uninterested in being on the jury, and/or are uncomfortable speaking up. Their primary concerns are: “How long is this going to take?” and “If you need another vote to get a majority, you can count me in.”

After the foreperson has been selected, the group tends to orient to the task. In most groups, jurors follow the judge’s admonition to avoid taking straw polls or immediately voting on the issues upon entering the deliberation room. One juror may suggest such a thing, but that tends to be quickly overruled by other group members who prefer to spend some time discussing the issues “in general.” The first phase of the jury deliberations is generally very animated. Jurors have been unable to discuss the issue for days or weeks. Suddenly they are given the liberty to offer opinions and comments. Many side conversations erupt during this initial phase, and the expression of a great deal of pent up frustration emerges. Jurors will complain about the pace of the case, different characteristics of the attorneys, the tedium of the testimony of various individuals, etc.

Once this initial phase has passed, jurors tend to reorient to the issues and often will start with a complete review of the verdict form, although jurors won't necessarily start with question number one. Rarely are the words "preponderance of the evidence," uttered during jury deliberations. Instead we hear questions such as: "Well, do you think the plaintiff is entitled to anything?" "Well, does it seem like this is a bad product?" "Well, what's your inclination? Are you going with the plaintiff or the defendant?" Observers rarely hear a juror say, "Do you feel the evidence presented establishes the liability of the defendant by a preponderance of the evidence?" Their evaluations are from a perspective of what is "fair" and what is "right," or how the case "ought to come out." Most often, they do not weigh evidence against some legalistic scale of "clear and convincing evidence" versus "preponderance of the evidence."

Jurors generally conduct a round table discussion of the issues, asking each individual to offer his or her opinion and analysis of the case. These are generally very productive discussions, and the orderly nature tends to yield a wealth of information for the jury. We are consistently impressed with the "collective intelligence" of the jury. If one juror makes an inaccurate statement, recalling an issue erroneously, more often than not, the group will correct the individual. Two or three other individuals will report that they heard it differently, and the individual who spoke incorrectly, backs down. This is the reason that groups of 12 are far more likely to reach the "correct" conclusion in a trial, rather than juries of six. Smaller groups are more likely to be led, and sometimes led astray, by the power or persuasiveness of a single personality. Such an individual, with only five others in the group, can occasionally drive a verdict. In a group of 12, especially when the verdict does not have to be unanimous, it is less likely that a sole individual can exert a disproportionate influence.

It is interesting to note that jurors are very willing to interpret the evidence. Rather than accepting the conclusions presented by witnesses, jurors generally feel they have sufficient expertise to be able to judge the issues themselves. This is especially true when "experts" emerge on the jury panel. These tend to be individuals who have had some experience, however remote, with the issues at hand, and therefore assert some unusual authority in the jury deliberation. For example, on many breach of contract cases we have seen jurors who have purchased homes use that experience as the basis for their "expertise" on commercial construction contracts.

Attorneys need to be on the lookout during jury selection for experiences jurors have had that may remotely touch upon the issues in the case. If it is a product defect case, it is important to find out if jurors have ever raised any complaints with a product manufacturer; whether they have ever returned a product to a store for a refund; and certainly whether they have ever been exposed to any type of dangerous situation they thought could have been the fault of a product. Counsel needs to know who might become an 'experts' in the deliberation room.

There is a great deal of compromising in the jury deliberation room. Often, if there are a few individuals who strongly oppose liability, but they are overruled by nine of their colleagues with respect to liability, their impact will still be felt during the damages discussion. Rarely are those opposed to liability cut out of the damages discussion. Those who voted for liability will generally make some "accommodation" in the form of reduced damages to take into account those who voted against liability.



It is profoundly refreshing to watch juries deliberate. They take their task very seriously. They truly struggle to do the "right thing," and in our experience, most of the time, their verdicts make perfect sense in light of the evidence.

There is a method to the seeming madness behind closed doors. Even though, as advocates, we may be disappointed in a particular jury verdict, upon review of the jury deliberations, either through post-trial interviews or through mock jury studies, one can generally retrace the jury's rationale and understand their verdict in light of the evidence that they examined.

It goes without saying that a poorly prepared and poorly presented case will likely fail, as it will confuse and divide jurors. A strongly articulated case, aimed and tailored to the persuaders on the panel, is the case that will persuade more often than not.

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