

10 Indicators of Who Will Be Opinion Leaders in Deliberations

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Jury selection is difficult. It is impossible to predict exactly how any one individual is going to decide the case. Instead, we look for indicators or glimpses into how a potential juror might decide the case. Some attorneys rely on the simple lifestyle choices of jurors, such as their news sources or what the bumper stickers on their cars say. Others use voir dire to explore jurors' case-related attitudes and life experiences. While some methods are more reliable than others, they are all imperfect tools for trying to predict the future.

These imperfections inevitably lead to moments of uncertainty during jury selection where attorneys struggle to determine who, among a few possibilities, is the best choice for the use of a peremptory strike. Even when attorneys are confident in their identification of "bad jurors," the situation often arises where they have fewer peremptory strikes than "bad jurors."

In these scenarios, it's best to look to focus on opinion leadership to guide these tough decisions. If there is uncertainty over who is truly bad for the case, remove the opinion leaders. If there are five "bad jurors," but only three peremptory strikes, remove the opinion leaders. Opinion leaders, by definition, are going to exert more influence over the course of deliberations. This makes the choice a matter of risk reduction. While you cannot be certain about how an opinion leader will decide the case, you can have confidence that the consequences of "getting it wrong" and allowing an opinion leader on the jury are significant.

In this article, I want to identify ten common signs that someone will be an opinion leader in jury deliberations.

1. **The prior foreperson.** Consistent with the popular saying that "the best predictor of the future is the past," a prior experience as a foreperson on a jury is a strong indicator that someone will exert influence in deliberations. This prior experience establishes that the individual in question is willing and able to serve in this incredibly important role and that he or she is equally perceived as such by his or her peers. Furthermore, some studies show that a foreperson accounts for as much as 25% of the comments made during deliberations. In my own experiences watching mock jury deliberations, the foreperson's influence extends not only to the amount of their involvement in the discussion, but also to their ability to influence how the discussion proceeds.
2. **The prior juror.** Several studies show that prior experience serving on a jury is the best predictor of who will be elected foreperson. The selection of the



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foreperson often begins with the question, “who has done this before.” This deference to the person who is most familiar with the process allows him or her to exert considerable influence over the group as highlighted in the previous point.

3. **The workplace manager.** People who manage groups of people at their place of employment have greater experience, comfort, and ability to take charge in a small group and lead them in their efforts to accomplish tasks. Experienced managers know how to deal with disagreement and conflict, which allows them to take on a moderator role. This gives them authority and, consequently, credibility in the eyes of the other jurors.
4. **Strong moral convictions.** Some studies of jury deliberations have shown that the most vocal and influential individuals in deliberations are those who exhibit strong “moral reasoning.” In other words, these individuals tend to evoke common principals of right and wrong and other core human values such as personal responsibility and accountability. These values and principles are important to them personally, which motivates them to advocate in deliberations.
5. **The non-testifying expert.** The non-testifying expert on the jury is the individual who has personal experiences (i.e. “expertise”) or, at least, is perceived as having personal expertise on key issues in the case. For example, a nurse serving as a juror in a medical malpractice case brings his or her own medical expertise to the deliberation room that other members of the jurors will rely upon to fill evidentiary gaps in the case or to resolve areas of confusion or conflict. Non-testifying experts can be particularly dangerous opinion leaders because, absent the presence of other jurors with related expertise, the information they inject into deliberations often goes unchecked.
6. **The confident speaker.** Attorneys should look for the person who is comfortable and confident speaking in front of others during voir dire. A courtroom is an intimidating environment for the average layperson. When attorneys ask questions of jurors during voir dire, they are asking jurors to stand up and engage in an act of public speaking in front of a large group of strangers with the added pressure (and corresponding fear) of being under oath. Public speaking is the number one fear in our country, so it is a strong sign of leadership when someone can stand up and comfortably and confidently offer their opinions in voir dire.



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7. **The articulate speaker.** In addition to comfort and confidence, the ability to articulate their opinions in a simple and compelling fashion indicates strong leadership potential. An articulate person is a credible person. This is a person whose opinions about the case will have greater persuasive force in deliberations due to his or her ability to explain them in a clear, simple, and compelling way.
8. **The social butterfly.** The social butterfly is the person who is very comfortable with and seems to enjoy striking up conversations with those sitting around him or her during breaks. Striking up a conversation with one person sitting next to them is one thing, but the person who appears to bring multiple venire members into a casual discussion during breaks and downtime is particularly notable. The social ability to bring people together makes someone likable and naturally positions them at the center of any discussion.
9. **The note-taker.** The note-taker, particularly the one who takes a LOT of notes, becomes an expert on the case by default. Some studies suggest jurors remember as little as 10% of what they hear over the course of trial by the time they get to deliberations. As a result, a significant amount of deliberation time is often spent just trying to reconstruct the case. The juror who took extensive notes over the course of the trial is naturally positioned to exert significant influence over how the arguments and responses are reconstructed during deliberations, which means this person can exert control over what it is that jurors talk about. This is particularly important since a verdict is a product of what jurors choose to focus on and talk about the most during deliberations.
10. **The interested and attentive juror.** This sometimes goes hand in hand with the note-taker, but not always. In voir dire, look for the venire members who seem to be interested in the process and enjoying the experience. These are the venire members who seem to be following everything closely as opposed to the venire members who looked bored, annoyed, and hopeful that they will not have to serve on the jury. I recently watched a federal judge ask each of the venire members individually if they were interested in being on the jury. The variation in the responses was interesting and informative and gave hints about who would be most likely to immerse themselves in the case and take on an active role in deliberations.



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