

One Voice Among Many:
Forepersons, Juries, and the Importance of Communication

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University of Washington

Abstract

One Voice Among Many:

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Jury forepersons are fundamental to the deliberations over which they preside, and thus our justice system. This dissertation explored who became jury forepersons, how they were selected, how they communicated and behaved during the deliberations, and how these factors might have impacted the perceptions of the jurors in the deliberation. I examined video recordings of 22 mock jury deliberations, performed content analysis, and administered questionnaires to 249 mock jurors. Overall, I found that females and people of color were not equally represented as leaders of groups and faced greater adversity when asserting themselves to this role.

Furthermore, the communications and behaviors of forepersons impacted jurors' deliberation satisfaction, ratings of the foreperson, impressions of other jurors, and impressions of humanity in general. Only about a fifth of jurors reported wanting to be foreperson, the others cited a lack of knowledge or skill necessary for the role. Nearly two-thirds of jurors stood out to others during the deliberations and this was overwhelmingly due to their communication skills, or lack thereof. This work has several implications for our jury system and how it impacts the justice system at large, and it argues for greater research in the field of jury deliberations and improved instructions for jurors.

Keywords: communication, deliberation, foreperson, juror, jury, leader

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Chapter 1

Introduction

“The founders of our nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a ‘safeguard too precious to be left to the whim of the sovereign’.”

-Chief Justice William Rehnquist, 1979

The American jury is one of the most democratic systems that currently exists in the world. No other vital legal body includes as wide a range of ordinary people and gives them the power to make real and immediate decisions impacting fellow citizens. Likewise, jury service is one of the most important civic duties one can perform, and unlike formalized political contexts like voting, juries provide an opportunity for U.S. citizens to actively participate in civic life in collaborative ways (Abramson, 1994). Juries were included in the U.S. Constitution by the Founders to prevent the government from exercising unjust influence or tyranny over the people, as seen in Amendments 6 and 7. The jury is well-esteemed by leaders in the judicial branch: in one survey, three-fourths of federal judges characterized the jury system “thoroughly satisfactory” and none found it unsatisfactory (Sentell, 1991). Trust in the jury is also rated highly by American citizens: 75% of people would rather have their case decided by a jury than a single judge (American Bar Association, 2004) and 69% of people strongly agree that juries are the most important part of our judicial system (American Bar Association, 1999). In fact, when one thinks of major miscarriages of justice that have occurred over the last 50 years, one is far

less likely to blame a jury than evidence tampering, police interrogation, and attorney misconduct (Mendelle, 2010). This is, in part, because juries deliberate and make decisions as a collective group, which makes it less likely that an error of fact or a considerably misguided judgment occurs (Gastil, 2008; Hans & Vidmar, 1986; Searcy, Duck, & Blanck, 2005). For example, the presence of deliberation and the fact that it involves participants with a wide range of views are two important qualities that juries can offer that other alternatives cannot (such as bench trials decided by a sole judge, or a panel of judges, for more see Lettow Lerner, 2015; Ellis & Diamond, 2003; Lilly, 2001). Juries, in short, are set up to ideally bring about democratic and impartial decision making in our justice system.

Looking historically, juries have been used in one form or another for over 700 years. Before being enshrined into the United States Bill of Rights, the concept of a jury was adopted from English Common Law. Its origins are debated by historians, but most date it back as early as 6th century England ruled by Anglo-Saxon Kings or as late as 1066 when William the Conqueror ruled during the Norman Invasion (American Bar Association, 2016; Von Moschzisker, 1921). Regardless of its exact origins, in medieval England the jury was not used to limit the powers of the king and protect the common person as it is touted today. In fact, in 12th century England, the jury was quite the opposite: it was a tool of the king. The term ‘juror’ came from the French word *jurere* meaning ‘to swear’ under oath. Jurors were sent by the king to fact-find in order to provide evidence to the king, who would make the final decisions¹

¹ It was also common that kings would pass on decisions to be made by a ‘trial of ordeal’ which is the practice of subjecting the accused to an unpleasant, usually dangerous experience under the belief that God would protect the innocent from injury. Examples of trial by ordeal include by fire: requiring the accused to walk a certain distance over red-hot stones; by boiling water: requiring the accused to dip their hand in boiling water to retrieve a stone; by drowning: requiring the accused to be thrown into water with hands and feet bound, etc. Trial by ordeals were used until 1215 when Pope Innocent III and King Henry II denounced them (Bartlett, 1988).

(American Bar Association, 2016). When King John signed the Magna Carta in 1215, article 39 read “no freeman shall be taken or imprisoned...except by the lawful judgment of his peers or by the law of the land,” yet the purpose of this document was to assert the rights of powerful English noblemen, not to protect Englishmen in general. More often than not, the “peers” at that time were not in fact impartial, because it wasn’t until 1825 that a jury could return a ‘not guilty’ verdict without fear of being fined or imprisoned themselves (American Bar Association, 2016). Though the advent of the jury occurred in England, it underwent many changes as England expanded its rule into North America.

When the colonists settled in the original American colonies, one way that Britain maintained control over the new settlements was to install leaders and arbitrators who were unsympathetic to the colonists and whose interests lay with the Crown. Here in the colonies, a jury of peers became an entrée to freedom, a means by which revolutionary ideas could take effect. In fact, England attempted to deny American colonists their right to a trial by jury for decades, which became one of the many grievances that led to the American Revolution (Hans & Vidmar, 1986). The trial of John Peter Zenger, a German immigrant and New York printer in 1735, paved the way for the jury to protect the people against tyranny and corruption. Zenger printed a story in the *New York Weekly Journal* criticizing William S. Cosby, royal governor in New York for rigged elections and poor leadership. The English Government accused Zenger of libel, and stacked the jury with people on Cosby’s payroll. The jury’s duty in fact-finding was only to determine whether Zenger had printed the paper, which was obviously true, while the judge’s onus was to decide whether it was libelous and the potential punishment sentence. However, Philadelphia lawyer Andrew Hamilton represented Zenger and argued that the jury should consider the “law of the future” rather than the law of the day (Hans & Vidmar, 1986).

The jury found Zenger not guilty and this case became a noted precursor to the First Amendment's guarantee of free speech, the Sixth Amendment's right to a trial by jury in criminal cases, and the Seventh Amendment's guarantee of a trial by jury in civil cases. From then on, the jury was less considered a mere tool by government, and grew into what was idealized as the "conscience of the community" and the "Achilles heel of tyrants" (Horowitz, 1985). The jury as we know it was on its way.

However, the jury system still had a long way to progress to espouse the constitutional value of a fair and impartial trial by a jury of peers. The first black man to serve on a U.S. jury was in 1860 (Alschuler & Deiss, 1994) and the first female juror in the U.S. was in 1898 (McDonald, 2011), but women and racial minorities did not attain the right to serve on a jury in all 50 states until the 1970s (Marder, 2013). Congress passed the Civil Rights Act of 1875 to eliminate racial discrimination of jury selection, but for decades, people of color were systematically struck from the jury pool for vague and unsubstantiated reasons such as alleged lack of intelligence, experience, or moral character (Equal Justice Initiative, 2010). In some jurisdictions, names of black residents were included on the list from which the jury was supposedly randomly drawn, but printed on a different sheet of paper so that they could easily be avoided (Equal Justice Initiative, 2010). Many argue that the inclusion of African Americans on our juries today is still not equal (Ellis & Diamond, 2003; Equal Justice Initiative, 2010; Ramirez, 1998; Underwood, 1992). Women long were excluded on the premise of "*propter defectum sexus*," meaning "the defect of sex" (Nemeth, Endicott, & Wachtler, 1976) and passed over for men for reasons such as having too much sympathy or being emotionally traumatized by nature of the trials. Since the women's rights movement, all states have granted women access to serve on juries, but studies show that their participation and treatment on juries was not and still

is not equal to men (Devine, Buddenbaum, Houp, Stolle, & Studebaker, 2007; Feller, 2017; Simon, 1999b; Strodtbeck & Mann, 1956). With these systemic discriminations in place, it is ever important to work to make sure juries are a mechanism for the voice of the *whole* community.

The process of deliberation is what gives much legitimation to the decisions reached by a jury. Scholar James Fishkin defines deliberation as “a process by which individuals sincerely weigh the merits of competing arguments in discussions together” (2009, p. 33). A jury deliberation allows for the voices of citizens from various walks of life to weigh in on important and consequential matters. We cannot expect that the *few* always can, or will, be attentive to the interests of the *many*, and the jury endeavors to afford the voice of the *many* in our judicial system; their ability to inject the community’s values into the legislative branch of government is critical to our democracy (Litan, 1993). As Gastil, Deess, Weiser, and Simmons (2010) have argued, “the jury puts citizens right at the heart of a legal process and lets them not merely test its legitimacy but actually take responsibility for rendering its judgments” (p. 20). Juries can deliberate for hours, days, even weeks, to reach a decision as a group, and these decisions are legally binding. As a democratic nation, we have an ethical and constitutional commitment to provide our citizens with the right to a fair trial by a jury of their peers, so it follows that what happens in these deliberations among the jury of peers is crucial to our democracy.

Despite its centrality to the legal process, and its compelling decision-making dynamics, jury deliberation is an understudied phenomenon. This is at least partly because the privacy and sanctity of jury deliberations make them closed to the public, and it is illegal to observe or record them. For this reason, researchers typically employ mock trials to study jury deliberations, but there are significant costs and complications with this approach. Studies aiming to mimic actual

jury deliberations must give enough complex trial information so that the jury has genuine discussions, involve participants that reflect the community at large, and permit adequate deliberation time. Post-deliberative questionnaires and interviews are also employed to study deliberations, and provide the benefit of exploring real life jury deliberations, but questionnaires and interviews can only shed light on jurors' memory and perceptions, because they lack direct evidence of what actually occurred in the jury room. All of these aspects make jury deliberation a difficult but compelling matter to research.

This study examined what occurs in the deliberation room by observing mock jury deliberations and surveying participants following their deliberations. The mock juries used in this study were made up of roughly 12 registered voters of the community in which the trial was set to take place. They sat together for four to five hours listening to trial information about a real case likely to go to trial, presented by attorneys involved in the cases. Jurors were then put into deliberation rooms where they were seated around a large table, given judge's instructions and a verdict form (the official document a jury signs and turns in at the completion of deliberations), and instructed to select a foreperson and to begin deliberating. Deliberations lasted up to three hours depending on if and when the jury reached a verdict, and were video-taped. In this study, the deliberations were observed for tendencies involving jurors, especially the foreperson, and their communication and facilitation styles. The deliberation in general was also analyzed for dimensions of deliberative quality. At the end of the deliberations, jurors received a questionnaire with questions about their impressions of their experience deliberating, as well as about democracy, humanity, and the justice system in general. Findings from this questionnaire were connected to researcher observations of the deliberation to gain a deeper understanding of

deliberation both through the eyes of a researcher, as well as through participants' questionnaire responses.

Chapter 2

Conceptual Argument

In the past few decades, democratic theorists have taken an increased interest in deliberation as a measure of democratic legitimacy. Although deliberation is a heavily studied phenomenon across disciplines, there is not agreement on exactly what defines deliberation (Ryfe, 2007; Thompson, 2008). However, social science scholars generally define it as a space that ideally fosters an empathic, egalitarian, reciprocal, reason-centered, and open-minded exchange of language (Habermas, 1989; Mansbridge, Hartz-Karp, Amengual, & Gastil, 2006; Mendelberg, 2002). Jürgen Habermas (1970; 1989) contended that deliberation could transform individuals into better democratic citizens. Not only would deliberation motivate citizens to become more involved with and informed of political matters, but it would help citizens develop the ability to provide reasoned arguments for their beliefs that others would accept. In his notion of the public sphere, the concept of deliberative space gave members of the public a more prominent place in democracy and decisions related to government through the medium of talk. Some suggest that decisions reached through deliberation are meaningful because deliberation represents a more substantive method of citizen participation rather than a symbolic one (Dryzek, 2000). Deliberation is a unique form of communication because deliberators are allowed and even encouraged to adjust and modify their judgments, preferences, and views throughout the course of the dialogue. It requires thoughtful reflection and openness in the sharing of information and ideas, different than other forms of political communication that can incite forces of manipulation, self-interest, propaganda, and even deception such as political campaign ads or even news coverage. Additionally, some communication systems in the public such as the media, or capitalistic organizations, have a way of discouraging and even alienating the public

(Entman, 1989; Pinkleton, Austin, & Fortman, 1998), whereas deliberative spaces can empower citizens to become more civically engaged and inform them on the merits of other viewpoints (Delli Carpini, Cook, & Jacobs, 2004; Hickerson & Gastil, 2008). Deliberation is key to democracy because it offers the inclusion of a more enlightened and legitimate voice of the public.

Communication is at the crux of what makes deliberation a meaningful enterprise. Research shows that no circumstance increases cooperation in the face of a social dilemma like face-to-face communication (Ostrom, 1998; Bornstein, 1999), and deliberation can offer just that. Deliberation is also conceptually rich because it lays the groundwork for multiple and varied forms of communication such as argument, emotion, criticism, humor, comparison, storytelling, etc. (Dryzek, 2000). Through communicating different views to each other in a face-to-face open space, deliberation leads to an increased tolerance for opposing points of view (Mendelberg, 2002). The act of communicating one's own opinion in the face of opposition also leads to an improved self-understanding of personal preferences, as well as a better ability to support personal preferences with stronger arguments (Gutmann & Thompson, 1996). The shared communication in a deliberation also fosters a sense of group cohesion, which can increase efficiency and productivity, and leave members feeling more satisfied and fulfilled with the outcomes (Mendelberg, 2002). However, the communicative benefits of deliberation do not end with the individual or even the group. As Hibbing and Theiss-Morse (2002) say, the communication that occurs within a deliberation can lead to better *citizens*, better *decisions*, and a better *system* overall. Citizens become more engaged and informed, which leads to better decisions, and the communicative benefits to the system overall stem from the deliberation's installment of a collective trust in an institution that values a democratic process, as well as the

greater sense of confidence that the processes have been fairly carried out (Karpowitz & Mendelberg, 2011). All of these benefits, both individual and at the systemic level, can be traced to the open sharing and reflection of information and ideas, all made possible through communication.

For a democracy to be inclusive, it must provide a communication infrastructure conducive to the contribution of diverse voices and forms of speech. However, there are few structured places in America for the public to effectively participate in meaningful deliberation (Fishkin, 2009). One of the most prominent is the jury (Gastil, 2008). The jury provides citizens an opportunity to make decisions that immediately impact the justice system. The other two branches of the American government do not offer this type of one-step, direct effect where citizens can make a decision that is legally binding; in Thomas Jefferson's view, "the execution of the laws is more important than the making of them" (to Abbe Arnoux, 1789). Some scholars criticize the jury for its lack of intelligence, and inability to form rational arguments (Benhabib, 1996; Lettow Lerner, 2015; Sanders, 1997). However, a study early in the field found that juries are good at understanding the case at hand; when a jury reached a verdict that the judge disagreed with, case complexity was not found to be related, suggesting that juries are expressing different values judgments rather than a lack of understanding (Kalven & Zeisel, 1966). Critics of the jury also maintain that deliberative spaces are unfairly biased toward the values of those with more power and privilege, reproducing the same marginalization that is present in our society (Benhabib, 1996; Mansbridge, 1983; Sanders, 1997). However, these arguments are primarily theoretical and the few recent empirical studies that have looked at race and sex in deliberations have not confirmed these results. For example, Hickerson and Gastil (2008) found no clear pattern of deliberation satisfaction, verdict satisfaction, or treatment by other jurors

related to biological sex, education, race, or work status. Additionally, self-reported data have shown that jurors enjoy the process of jury deliberation and feel it to be fair; in a study of jurors' accounts of their experience, 98% felt that they had adequate opportunities to express their views of the case (Gastil, Burkhalter, & Black, 2007). Currently, the self-reported data about jury deliberations and analyses of their verdicts gives much hope to their quality, reifying the jury's value in the American justice system.

As important as the deliberations are to the essence of the jury, the communications that occur within them remain largely understudied. This is mainly because the sanctity of jury deliberations and the safety of the jurors requires that they be done in private and in only a few rare exceptions has a judge allowed them to be video recorded or observed (Manzo, 1996; Sunwolf, 2010). But more than that, communications in the jury room are rather complex. Jurors are asked to perform the difficult and consequential task of weighing competing evidence and deciding the fate of individuals involved in the case, all with people who are strangers at the start of the trial. Further, jurors are typically unfamiliar with the workings of a trial in general and are usually unacquainted with the process of serving on a jury — including knowing what to do or how to behave when they begin the jury deliberation (Searcy, Duck, & Blanck, 2005). To preserve the integrity of the deliberation process, the instructions given to the jury upon the start of deliberations are intentionally vague when it comes to directing them on how to deliberate (National Center for State Courts, 1998), so it is up to the jury to set and agree upon their own communicative rules and norms (Sunwolf & Seibold, 1998). Other deliberative groups, such as online communities, find it daunting to establish norms that allow them to effectively balance tasks and relational dimensions of their discussions (Black, Welser, Cosley, & DeGroot, 2011), and there is no reason to believe that juries find it any easier. The process of deliberation is a

complex phenomenon made up of the many communication interactions among all members of the jury.

The Foreperson

One key person in the development and process of a jury deliberation is the foreperson. Instructions for both civil and criminal cases vary by state, but are generally minimal in detailing the responsibilities of the foreperson. Washington State, where this study was conducted, simply says in its civil and criminal jury instructions “When you begin to deliberate, your first duty is to select a presiding² juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you” (Washington State Supreme Court Committee on Jury Instructions, 2013). North Dakota, which is known as one of the national leaders in jury instruction development, says, “The Jury Leader will lead your deliberations, communicate with the bailiff(s) for you and speak for you in court. The Jury Leader does not have more authority than other jurors, and the Jury Leader’s opinion does not carry more weight than the opinions of other jurors” (North Dakota Civil and Criminal Instructions, 2016). However, many juries still operate with an assumption that the foreperson is single-handedly responsible for organizing talking turns, announcing breaks, counting and keeping record of votes, keeping the deliberation on topic, and more (Hekkers, 2002). This could be self-promoted by the foreperson, or a responsibility that fellow

² Presiding juror is synonymous with foreperson. The terms are used by different jurisdictions to refer to the same thing.

jurors unduly place upon the foreperson, but nevertheless these impressions impact the dynamics in the deliberation room.

Regardless of specific duties assigned to the foreperson, they generally have an important role in the deliberation. First and foremost, forepersons participate more than other jury members. Studies have found that forepersons accounted for about one-fourth to one-third of speaking during deliberations (Devine, Clayton, Dunford, Seying, & Pryce, 2001; Strodbeck, James, & Hawkins, 1957), or spoke nearly three times as much as their non-foreperson counterparts (Hastie, 1993). Even when controlling for instances of summarizing and paraphrasing, one study found forepersons to have made twice as many statements of new facts or opinions than other jurors (Hastie, 1993; see also Hastie, Penrod, & Pennington, 1983). Next, the foreperson is seen by other jurors as more influential in the deliberation than other jurors. One study asked jurors to rate the influence of their fellow jurors after deliberations and found that forepersons received a significantly higher rating than non-forepersons (Diamond & Casper, 1992). Because it could seem that forepersons are more influential *because* they speak more than other jurors, that study also controlled for the number of words spoken, and jury forepersons were still considered significantly more influential. Finally, the foreperson can have a disproportionately larger influence on damage decisions than other jurors. One study found that the foreperson's preferred amount of monetary damages before deliberation correlated with the final amount awarded from the jury twice as strongly as non-forepersons (Boster, Hunter, & Hale, 1991). The potential influence of the jury foreperson is indicated by these statistical analyses, but from a deliberative standpoint, even without these quantitative data, a foreperson's influence can dictate speaking time, order, and focus of the other jurors (Ellison & Munro, 2010; Gastil, 2008; Manzo, 1996). This is important because forepersons can give jurors with strong

views unequal talking time and unfair advantages to airing certain arguments, possibly aligning with the foreperson's own views. Both the theoretical and empirical data suggest that forepersons are an integral part of jury deliberations, whether intentional or not.

These realities highlight the importance of what types of people typically become forepersons. Research indicates that certain traits and tendencies are associated with being a jury foreperson. First, we have seen that traditionally named jury "foremen" are still, just as the original lexicon suggests, most often men (Boster et al., 1991; Devine et al., 2007; Dillhay & Nietzel, 1985; Ellison & Munro, 2010; Feller, 2017; Hastie et al., 1983; Hastie, Schkade, & Payne, 1998; Kerr, Harmon, & Graves, 1982; Simon, 1999a). Forepersons are also more likely to be white (Boster et al., 1991; Devine et al., 2007), above the age of 40 (Ellison & Munro, 2010; Foley & Pigott, 1997), better educated (Diamond & Casper, 1992; Hastie et al., 1998), and of higher socio-economic status (Diamond & Casper, 1992; Ellison & Munro, 2010; Hastie et al., 1998; Strodbeck & Lipinski, 1985) than nonforepersons. Behaviorally, forepersons have some tendencies that are related to their increased likelihood of being selected. First, forepersons are typically more willing to speak in front of a group (Foley & Pigott, 1997), particularly to mention the task of selecting a foreperson³ (Diamond & Casper, 1992; Boster et al., 1991). They are more likely to take a seat at the head of the table (Diamond & Casper, 1992; Strodbeck & Lipinski, 1985), and they more likely to have prior experience serving on a jury (Dillehay & Nietzel, 1985; Kerr et al., 1982; Strodbeck & Lipinski, 1985). Research on the relative weight of each of these traits and tendencies in contributing to the selection of forepersons is mixed, but most of them are never explicitly mentioned in the discussion of who should be foreperson.

³ The jury selects its forepersons in an overwhelming majority of cases, but in Maine, New Hampshire, South Carolina, and Arizona, a judge is allowed to select the foreperson before deliberation, though they do not always do so. However, in Maryland, Massachusetts, and Rhode Island such practice is *required*.

Generally, the most explicitly mentioned attributes by the jury are first to mention the need for a foreperson, being seated at the head of the table, and prior experience serving on a jury (Diamond & Casper, 1992; Feller, 2017). Explicitly mentioned attributes play an interesting role because they are not qualities that lay below the collective consciousness of the jury, but rather are overtly part of the foreperson selection communications, which I will discuss next.

The discussion that surrounds the foreperson selection is important because it is typically one of the first tasks that the jury completes together,⁴ and it can set a trajectory for the deliberation. Fisher (1970) identified four stages of group decision-making, and foreperson selection is in the first stage, the orientation phase. Each of the four stages is characterized by the communication acts that take place within, and the orientation phase is marked by the tension of uncertainty and ambiguity of the exchanges (Anthony & Bodaken, 1999). Jurors in this phase are feeling out the novel environment and often act with tentativeness, agreement, politeness, and even increased humor to facilitate social cohesiveness. This phase of the process likely leads jurors to engage in nonargumentative communicative acts, which generally includes agreeing with the first suggestion for who should be foreperson, with no real discussion of individual merit (Bridgeman & Marlowe, 1979; Strodtbeck & Lipinski, 1985). Typically, the foreperson selection decision is somewhat rushed, and made within four minutes (Ellison & Munro, 2010) or ten statements (Diamond & Casper, 1992). This can be troublesome because of the integral role of forepersons in the deliberation. Scholars warn us that more thought and discussion should go into the selection of the foreperson (Deosaran, 1993; Horowitz, 2005), but at this early point in the deliberation, the jury may not know enough about the leadership or organizational skills of jurors in the group (Deosaran, 1993), or be aware of the duties and responsibilities of the role

⁴ See Footnote 2.

and the potential severity of the decision (Ellison & Munro, 2010). Furthermore, given that jurors are not allowed to discuss the case with each other prior to deliberations, jurors tend to assume that other jurors see things the same way they do and underestimate levels of disagreement (Foley & Pigott, 1997). All of this makes the communications in the selection of the foreperson consequential to the deliberations and important to this study.

Communication in the Deliberation

I am interested in two types of foreperson selections: self-nominated forepersons who volunteer for the role unprompted, and forepersons nominated by others who agree to be foreperson at the suggestion of another juror. There has not been much research on this phenomenon in the past, but one study found 40% of forepersons nominated themselves, 40% were nominated by women, and 20% were nominated by males (Feller, 2017). Interestingly, males and females made nominations at similar rates (46.7% and 53.3% respectively), but males nominated themselves a slight majority of the time they made nominations and nominated other males the rest of the time, while females nominated other females exactly half the time they made nominations, then themselves and other males equally. These are very different patterns. Men generally tend to be more assertive and willing to display authority, and gender/sex-based norms make it easier and more acceptable for them to do that (Karpowitz & Mendelberg, 2014). Women have made strides in the direction of leadership, but they face an unfortunate hurdle: females are more likely to underrate their abilities and less likely to view themselves as qualified to engage in leadership roles (Fox & Lawless, 2011; Kanthak & Woon, 2015; Karpowitz & Mendelberg, 2014). Furthermore, women report a greater fear of being perceived as “pushy” or “demanding” if they assert themselves (Amanatullah & Morris, 2010). With all this in mind for

my first predictions, I suggested that males would nominate themselves more often than females, and females would nominate males at higher rates than males nominate females. Therefore, my first two hypotheses were:

H₁: Males will nominate themselves to be foreperson more often than females.

H₂: Females will nominate males more often than males will nominate females.

As part of these discussions, this study also looked at two previously identified tendencies associated with the foreperson selection: a nomination *reconsideration*, when another juror suggests the need for a vote on the nomination or at least otherwise further discussion before a decision is made, and a nomination *justification*, when a juror (either the foreperson nominated in question, or another juror) gives or asks for some sort of reasoning or justification for why this person should be foreperson (*justifications* typically include seating location at the head of the table, or previous experience serving on a jury, see Feller, 2017). In previous research, *reconsiderations* and *justifications* have occurred more frequently when women nominate themselves to be foreperson (Feller, 2017). Research shows that men can be assertive without incurring social costs, whereas women are rated as less likeable and less respectable (Eagly & Carli, 2007; Eagly, Makhijani, & Klonsky, 1992; Heilman & Okimoto, 2007). Women face more adverse consequences when assuming roles of authority, and particularly when women use explicit markers of influence — such as nominating oneself to be foreperson — they elicit “powerful signals of social disapproval” (Karpowitz & Mendelberg, 2014, p. 59). As such, they might be more likely to be questioned or to have to justify themselves. With this in mind, this study advanced the following hypothesis:

H₃: Nomination reconsiderations or justifications will occur more frequently when females are nominated to be foreperson than when males are nominated.

Once the foreperson is selected, they take the lead on at least the initial jury communications. As mentioned, in almost all legal locales there are no set rules or instructions for how forepersons should lead the group, and it is generally up to the discretion of the foreperson to shape the deliberation, unless or until another juror assumes control of the group's discussion. In this study, I looked at leadership styles of the foreperson, and/or other members of the group who became leaders during the deliberation. Little work has been conducted on this in the context of jury deliberations, but early research on leadership styles more generally identifies a democratic-autocratic continuum (Lewin & Lippitt, 1938). The democratic model is defined by policy and standards determined by the group as a whole, encouraged and drawn out by the leaders, and the autocratic model is defined by policy and standards set by the strongest, or most assertive person, which may or may not be the foreperson in the context of jury deliberations. This study fit these paradigms to the context of the jury — in which the group selects its own leader, it is task-driven, and there are no employer/employee power dynamics or discrepancies in access to information — and instead used the terms egalitarian (similar to democratic) and non-egalitarian (similar to autocratic) to more intuitively accord with the present study. This study defined an egalitarian foreperson leadership style as comprised of a range of specified attempts to include the voices of a wide range of members of the group, and a non-egalitarian foreperson leadership style as allowing whatever voices are offered — that are asserted — to be the ones heard. In Eagly and Karau's (1991) laboratory and field studies, men emerged as leaders to a greater extent than did women, yet men were more task-oriented, and women were more social in their leadership. It seemed possible in this research that female forepersons would adopt an egalitarian leadership style more often than male forepersons both because (a) it is more

democratic and thus less likely to provoke disapproval of female forepersons, and (b) that style leans toward social cohesion and sense of community. Thus, I hypothesized:

H₄: Female forepersons will be more likely to adopt an egalitarian leadership style than male forepersons.

There is another dimension of foreperson leadership style that this study aimed to explore. Early group research also identifies the difference between participatory and non-participatory leadership styles (Preston & Heintz, 1949). That research, like other leadership research, can be applied to juries. Preston and Heintz define participatory leadership as leaders taking more control over the topics that are discussed and the amount of time they are discussed, as well as the leader's insertion of their personal opinions into the discussion. They define non-participatory leadership as the leaders limiting their responsibility to seeing that the objective is reached, or the task is completed, and not inserting their own views into the discussion. Although Preston and Heintz found that participatory leadership is more effective in changing attitudes, producing group agreement, and in making the task at hand more interesting, I suggested that in the context of a jury, the outcomes of either type of leadership style would be more nuanced. In a jury, the foreperson is not thought to know more about the case than other jurors, their participation is not meant to muster a sense of morale among their "followers." So for this study, using the concept of participatory leadership as a theoretical base, I was interested in the presence or absence of a leader's injection of their own voice, opinions, or thoughts into the discussion. I posited that if a foreperson's communications have a large presence in the deliberation, the foreperson is more likely to be using their status as the leader to advance their own agenda and influence others in the group, and are not leading in an egalitarian way. A foreperson's communications should not be completely absent from the deliberation either,

though; it is important that all voices are heard equally, so on the present-absent continuum, more effective, egalitarian forepersons should fall somewhere in the middle, matching the communications sharing of the average juror in the room, and not exceeding it. Therefore, I offered the following hypothesis:

H₅: The closer the number of foreperson communications during deliberation is to that of the average of all jurors, the more likely the foreperson will be to employ an egalitarian leadership style.

Lastly, the foreperson also can impact how deliberation itself unfolds in the jury room. Hastie, Penrod, and Pennington (1983) conducted important research on mock juries and discovered two differing approaches that juries took in their deliberation: verdict-driven or evidence-driven. A verdict-driven deliberation style generally begins with a vote, or the stating of each juror's preferred verdict; this style is characterized by a strong sense of the goal as reaching a verdict and begins with positions in conflict or disagreement. An evidence-driven deliberation style typically does not require jurors to pick a side or state their preferred verdict at the start, but instead jurors spend time discussing the evidence of the case. Hastie et al. (1983) found that evidence-driven juries deliberated longer, discussed evidence and legal definitions in greater depth, agreed more on the "story" of the case, reported higher deliberation satisfaction, and rated their fellow jurors more favorably than verdict-driven juries. Furthermore, evidence-driven deliberations prevent jurors from becoming unduly committed to one side when overtly selecting one without any discussion; this way jurors are less publicly committed and spend their time discussing other positions rather than advancing or defending their own. According to this research, juries tend to be either evidence-driven or verdict-driven at fairly similar rates, about one-third each, and the remaining juries are a mix of both approaches. The foreperson typically

decides which of the two routes the jury takes at the start of deliberations because they prioritize either evidence or verdict preferences when the discussion ensues (Devine et al., 2001, Ellison & Munro, 2010). These two styles can make a substantial difference in the deliberation, and thus possibly the verdict (Devine et al., 2001; Hastie et al., 1983; Kameda, 1991). However, results on the effects have been mixed, especially when a study defines the deliberation styles simply by the number of minutes that precede the first vote (Davis, Stasson, Ono, & Zimmerman, 1988; Sandys & Dillehay, 1995), so more research is needed to examine deliberative styles. Therefore, I offered this study's first research question:

RQ₁: Is there a relationship between the types of forepersons and the types of deliberation styles they employ?

Deliberative Outcomes

The communication approaches in selecting a foreperson and the communication in the deliberation may have some impact on how jurors experience the deliberation and carry forward these perceptions. Specifically, I was interested in how these phenomena impact four categories of perceptions: juror satisfaction with the deliberation, juror self-efficacy about democracy and deliberation, juror ratings of the foreperson, and lastly, juror impressions of other jurors and impressions of humanity in general. Pettus (1990) stresses the importance of gleaning insight “from the juror’s point of view,” so this study utilized that perspective (p. 96). I conducted this research via administration of a post-deliberation questionnaire for each juror, which included two to three questions about each of those topics. I will now explain each of these topics as well as the research questions or hypotheses associated.

Deliberation Satisfaction

First, satisfaction with the deliberation is a common measure of deliberation quality. The social dimension of deliberation is a key component to juror satisfaction, and that includes jurors feeling that they have adequate opportunities to speak (Burkhalter, Gastil, & Kelshaw, 2002). Furthermore, Sanders (1997) suggests that all voices need to be heard for a deliberation to be satisfying to its members. If the foreperson has an egalitarian approach to the deliberation and actively seeks out the thoughts and opinions of all jurors, I posited that deliberation satisfaction overall would likely be higher. Specifically, I advanced the following hypothesis:

H₆: Deliberation satisfaction will be higher for juries in which the foreperson adopted a more egalitarian leadership approach than for juries in which the foreperson adopted a less egalitarian leadership approach.

In this study, I aimed to determine if the process of deciding upon a foreperson — either their own volunteering of themselves to fill this role or the volunteering of them by others — relates to the deliberation satisfaction ratings of the jury. This might help us understand whether jurors are generally skilled at identifying themselves as good leaders, or if they are skilled at identifying others who would be good leaders. There is not a clear suggestion in scholarship about these possibilities, so I advanced a second research question:

RQ₂: Does deliberation satisfaction relate to whether forepersons nominate themselves or forepersons are nominated by others?

Furthermore, if the foreperson's communication quotient is greater than the average juror, jurors might think the foreperson over-used their power to advance an agenda or perspective. Using one's power to coerce others is defined by Vigoda-Gadot (2007) as poor leadership style and creates dissatisfaction among group members. Therefore, I posed the following hypothesis:

H₇: The closer the number of foreperson communications in the deliberation to that of the average of all jurors, the more satisfied the jurors will be with the deliberation.

Beyond the selection and communications of the foreperson, I also predicted that an evidence-driven deliberation would lead to higher juror satisfaction. Hastie et al.'s research (1983) found that because evidence-driven deliberations led jurors to more thoroughly discuss the facts of the case, and come to a better agreement on the sequence of events, they are more likely to rate fellow jurors and the deliberation overall more favorably. I therefore offered the following hypothesis:

H₈: Evidence-driven deliberations will lead to higher juror satisfaction ratings than verdict-driven deliberations.

Self-Efficacy about Democracy and Deliberation

Next, I predicted that juror self-efficacy about democracy and deliberation would be greater if they have a positive experience in the deliberation. Self-efficacy is the feeling that one can produce a desired result, so for this research I am interested in the extent that participants feel they can make a difference in the deliberation and in our democracy in general. Research has indicated that participating in a deliberative body increases one's political efficacy and faith in deliberation (Finkel, 1985; Fishkin, 2009; Knobloch, 2012). More specifically, research has found that serving on a jury increases one's sense of political efficacy (Consolini, 1992; Gastil, Black, Deess, & Leichter, 2008), and I expected a higher efficacy regarding democracy and deliberation would be associated with jurors who participated in a satisfying, and democratic deliberations. If a foreperson's style was more egalitarian, making sure all voices were heard, I posited that they would also have increased democratic and deliberative efficacy, or faith in deliberation, so the following hypothesis was posed:

H₉: A foreperson with a more egalitarian leadership style will lead to greater self-efficacy about democracy and deliberation in jurors than a foreperson with a less egalitarian leadership style.

Likewise, if a foreperson was using their position to hold more sway in the deliberation, inserting their opinions more frequently than the average juror, jurors would seem likely to have lower feelings of democratic and deliberative efficacy, so I offered the following hypothesis:

H₁₀: The closer the number of foreperson communications in the deliberation is to that of the average of all jurors, the more democratic and deliberative efficacy the jurors will report.

Finally, a verdict-driven deliberation style is generally associated with more argument between factions, and less satisfaction overall (Hastie et al., 1983). This is likely due to the fact that in a verdict-driven deliberation, jurors are urged to pick a side at the beginning of deliberations, so the discussion starts with two sides pitted against each other. This leads to more disagreement among the jury and less satisfaction, so I predicted lower feelings of democratic and deliberative efficacy would be associated with verdict-driven deliberations as well:

H₁₁: Evidence-driven deliberations will lead to higher democratic and deliberative efficacy in jurors than verdict-driven deliberations.

Ratings of the Foreperson

Turning next to juror impressions of the foreperson, I expected that juror ratings of the foreperson would be closely tied to the communication behaviors of the foreperson. If a foreperson engaged in a more egalitarian approach in the deliberation in seeking more voices to be heard, they would seem likely be well-received by other jurors. This is because other jurors

would feel like they are given a fair chance to speak their mind and that their opinions are given respect, leading me to my next hypothesis:

H₁₂: Forepersons who provide a more egalitarian approach to the deliberations will be rated more favorably than forepersons who provide a less egalitarian approach.

Likewise, if the foreperson communicates at a similar rate as other jurors, I expected other jurors would rate them more favorably. This kind of behavior is putting the foreperson on an equal level with the other jurors. If the foreperson does not communicate at all, or uses their position to communicate their views, opinions, and thoughts more frequently than the average juror, I predicted that other jurors would rate the foreperson less favorably. Each of these behaviors treats the foreperson as being more important than the other jurors, or else it puts them in a separate category altogether that just oversees the discussion but does not participate in it themselves. Therefore, I advanced the following hypothesis:

H₁₃: The closer the number of foreperson communications in the deliberation is to that of the average of all jurors, the higher the overall ratings will be of the foreperson.

Next, I was also interested if the foreperson's nomination of themselves or nomination by other jurors is connected to juror impressions of the foreperson. Do jurors have more favorable impressions of a foreperson who was nominated by someone else because they seemingly have gained the approval of their peers, or does a foreperson who nominates themselves possess the ability to gain more favorable impressions by the other jurors? Thus, I offered another research question:

RQ₃: Are there differences between the ratings of forepersons who nominate themselves and forepersons who are nominated by others?

Finally, because the foreperson generally sets the deliberation style as either being evidence- or verdict-driven, and that style can affect juror satisfaction with the deliberation overall (Hastie et al., 1983), I predicted that jurors might attribute their satisfaction or dissatisfaction of either style to their thoughts of the foreperson. Therefore, I offered my final prediction connecting deliberation style with impressions of the foreperson.

H₁₄: Forepersons who conduct an evidence-driven deliberation will be rated more favorably than forepersons who conduct a verdict-driven deliberation.

Impressions of Other Jurors and Impressions of Humanity in General

Impressions among jurors about other jurors and impressions of humanity in general may also be related to democratic and deliberative efficacy. As stated above, mutual respect is a key component of successful deliberation (Burkhalter et al., 2002), and feeling respected by other group members would plausibly be reflected in a juror's impressions of other jurors and humanity in general. Furthermore, deliberation satisfaction was related to evidence-driven deliberations in scholarship (Hastie et al., 1983) so impressions of other jurors and humanity in general would likely be related as well. One driving cause in deliberation satisfaction has to do with the other people in the deliberation. As scholars have defined, quality deliberation includes empathy, egalitarianism, and reciprocity, all factors that are dependent upon the group as a whole. Therefore, other jurors and humanity in general are closely related to satisfying deliberations, and because research has already linked evidence-driven deliberations to juror satisfaction, I advanced the following hypothesis:

H₁₅: Evidence-driven deliberations will lead to jurors having more positive impressions of other jurors and humanity in general than verdict-driven deliberations.

Jurors' impressions of others and impressions of humanity in general closely applies to the concept of deliberation. Humanity is defined to the extent that people are seen as having moral value, agency, and responsibility (Bastian, Laham, Wilson, Haslam, & Koval, 2011). Research shows that the extent to which humanity is attributed to others is surprisingly flexible, and that interpersonal conflict can lead to dampened impressions of others (Bastian et al., 2011; Bastian, et al., 2013). I predicted that impressions of other jurors and humanity in general would be improved or damaged in correlation with how positive or negative an experience they had in the deliberation room with others. If jurors have an egalitarian deliberation with an open sharing of ideas, and feel that the foreperson did not use their power to drive the deliberation, their impressions of other jurors and humanity in general will be more positive. Therefore, I advanced the following hypothesis:

H₁₆: Forepersons who employ a more egalitarian approach to the deliberations will lead to jurors having more positive impressions of other jurors and humanity in general than forepersons who use a less egalitarian approach.

Likewise, if jurors do not think they were given adequate time to speak and feel that the foreperson used their role to share their own opinions more than the average juror, jurors' impressions of other jurors and humanity in general may be less positive, which led me to my next hypothesis:

H₁₇: The closer the number of foreperson communications in the deliberation to that of the average of all jurors, the more positive juror impressions of other jurors and impressions of humanity in general will be.

Open-Ended Questionnaire Responses

This dissertation also sought exploratory information from jurors in the form of a few open-ended questions. These questions were content analyzed both quantitatively and qualitatively for trends. Beginning with the central topic of forepersons in this work, this study posed a question to all jurors “Would you have wanted to be foreperson?” This enabled me to see which jurors would have wanted to become foreperson, and they were subsequently asked their reasons why, as well as which jurors would not have wanted to become foreperson, and their reasons why, as well as which jurors were unsure, and their reasons for being so. Regarding this open-ended material, I included my fourth research question:

RQ₄: What characteristics are associated with jurors answering “No,” “Maybe,” or “Yes,” to wanting to become foreperson?

As part of measuring impressions of other members of the jury, this study asked jurors to list up to two other jurors who stood out to them in the deliberation, and why, because I wanted to learn whether other jurors generally stand out for positive or negative reasons. Asking jurors to name which jurors stood out to them also gave me an opportunity to examine the jurors that frequently stood out to other members of the jury. Again, I content analyzed these responses both quantitatively and qualitatively. This helped me understand the communications associated with particularly visible jurors, and learn about what types of influences were memorable. From this I offered my fifth and final research question:

RQ₅: Are there particular characteristics associated with jurors who stand out to other jurors in the deliberation?

Chapter 3

Methods

This study employed two methods to analyze the communication occurring in the deliberation as well as the impressions of jurors: content analysis and survey questionnaires. Content analysis is a method most commonly employed to assess the frequency and types of certain occurrences within a mode of communication in order to identify potential trends and patterns (Neuendorf, 2002). This method allowed me to identify general patterns and themes in both the foreperson's communication behaviors as well as the communication style of the deliberation overall. Survey data is commonly used to gain an understanding of participant perceptions, so it allowed the study to reveal more about how communication behaviors inside the deliberation were related to jurors' views (Presser, 2004). Specifically, this gave my study an inside look at how the mock jurors experienced the deliberation and how that experience was related to their perceptions of deliberation, democracy, and humanity in general. Furthermore, using a multi-method approach produced significantly more insightful and comprehensive understandings of the phenomenon under investigation than either method could have done alone (Caracelli & Greene, 1997). I now move to a discussion of the type of data this study collected, including key considerations along the way, as well as how each of these methods was employed to delve deeper into several concepts.

Because laws protect the privacy and legal sanctity of jury deliberations and make it illegal for them to be recorded, this study drew upon video recordings of mock juries. Research comparing the outcomes of mock juries to actual juries has concluded that little differences occur between the two, rendering mock trial data an appropriate avenue for this study (Bornstein, 1999; Bray & Kerr, 1979; Devine et al., 2001). A litigation-consulting firm afforded permission for this

study to access video of their mock trial deliberations; those videos and the participants in those studies were the focus of this research. This litigation-consulting firm conducts extensive jury research to provide trial lawyers with advice for how a jury would view their case, and they pay participants for an entire day. In my data, mock jurors learned about a case at hand for about four hours, broke for lunch together, and then deliberated together for an average of two to three more hours. Because they are conducted by legal professionals, mock juries performed by litigation consultants provide a rich avenue for conducting research on the inner workings of juries.

Scholars have warned against the hazards of common mock jury shortcomings, which I sought to avoid in this study. These include using primarily university undergraduate populations; asking participants to read an arguably insufficient, short (one to two-page) vignette or watch a 15- to 20-minute video in place of a trial; allowing deliberation for only a truncated period of time, or worse, not having participants deliberate at all (Bornstein, 1999; Diamond, 1997; Nuñez, McCrea, & Culhane, 2011; Weiten & Diamond, 1979). Nonetheless, for logistical and cost-related reasons, many studies are forced to engage in one or more of these limitations (Burnett & Badzinski, 2000; Hastie et al., 1998; Koehler, 2001; Krauss & Sales, 2001; MacCoun & Kerr, 1988; White, 1987). This study on the other hand, in putting together its mock juries, employed a demographically stratified sample of the population in the county for which the actual trial would take place. Additionally, the jurors sat together for a full day: the first four hours or so were spent watching complex trial information presented by actual attorneys involved in the case and video testimony of the actual witnesses in the trial. After lunch, a bonding moment in which real jurors engage, the mock jurors then deliberated for the rest of the day or until they reached a unanimous verdict. This is substantial given that the average jury study allows for 30 minutes of deliberation (Devine et al., 2001) and studies that tout themselves

for having more realistic jury simulations still only present trial information for about 75 minutes and deliberate for up to about 90 minutes⁵ (Diamond & Casper, 1992; Ellison & Munro, 2010). The method used in the present study more closely matched the conditions of an actual jury trial, creating a deliberation that more accurately resembles real jury deliberations.

The mock jurors in this dataset were selected by market research firms to reflect the jury pool for each county in which the given trial would occur. Using this collection of data was appropriate for this study because an actual jury pool would also reflect the county in which the trial would take place. This dataset included low, medium, and highly educated counties, as well as primarily conservative, primarily liberal, and mixed counties. This dataset comprised only civil trials, and given the nature of the litigation firm from which this data was collected, they were primarily medical malpractice cases, so the results are not necessarily generalizable to all types of legal cases. To select a manageable sample size from this broader dataset, the primary investigator collected all mock trial deliberation videos from the litigation-consulting firms available from the time that IRB approval was granted until a sufficiently large enough dataset was reached. This study used a total of 22 mock trial deliberations which yielded a total of 249 participants, and at minimum about 44 hours of deliberation. Data collection was conducted over 7 months.

This study applied for expedited human subjects approval because the participants consented to have their opinions and deliberations used for research. Participants in this study were paid an average of \$200 for their time by the litigation-consulting firm who used the data to make trial decisions on a case specific basis. The mock jurors were told that their task was to

⁵ If, after that time the jury could not reach a verdict, a facilitator in this study entered the room and asked follow-up questions pertaining to the reasons the jury was left undecided (or hung).

behave as if they were jurors deciding a real case. Specifically, they were asked to attend closely to both the evidence and the judicial instructions given to them after the trial presentation in order to come to a reasoned and rational decision in deliberation. The mock jurors were also requested to refrain from speaking to each other about the case outside of the deliberation until the completion of the study. Deliberations lasted an average of two hours after the mock jurors witnessed a mock trial (consisting of opening statements given by actual attorneys involved in the case, rebuttals, evidence, and videos of actual depositions or testimony) lasting three to four hours. Following the mock trial presentation, jurors were sent to a private deliberation room. Here, a facilitator read them the judge's instructions and they were told that their first task was to select a foreperson, then the facilitator left the room and let them begin. Demographic information was collected for each of the mock jurors in the form of a self-completed questionnaire prior to the mock trial, including sex⁶, age, ethnicity, highest level of education completed, employment status, and marital status. The primary investigator referenced demographic characteristics associated with the identifying juror numbers (assigned for anonymity) after coding was completed for analysis. This research builds on our current understanding of jury deliberations, which helps us gain insight into what occurs under the veil of secrecy that is a bulwark of our justice system.

Content Analysis

A codebook was created to operationally define the variables used in this study and to instruct the coders of the coding protocol (the codebook can be found in Appendix A). The primary researcher coded the majority of the data and another coder was used to ensure

⁶ The pre-trial questionnaire used in this study to collect demographic information specifically asks participants for their "sex" and gives them the option to write in. All 249 participants wrote either "Male" or "Female." Therefore, this study will refer to the sex of participants, and not to their gender.

intercoder reliability among at least 20% of the data. Intercoder reliability was calculated using Krippendorff's Alpha, which corrects for chance agreement and disagreement. The coding occurred in two phases: the first focused on communication in the deliberation, and the second focused on deliberative outcomes. The first phase included careful observation and analysis of the deliberation videos for traits and tendencies of the foreperson and the deliberation overall. A unit of analysis was one jury deliberation, and was coded for the following: (1) identifiable data of the trial and the foreperson selected; (2) whether the foreperson nominated themselves or was nominated by another juror; (3) whether the foreperson sustained nomination reconsiderations or nomination justifications; (4) whether the foreperson led the deliberation in a more egalitarian or less egalitarian manner; (5) how closely the foreperson's number of communications in the deliberation were to that of the average juror; (6) whether the deliberation was verdict- or evidence-driven. To test my hypotheses, I created the following variables and defined them operationally as follows.

Identifiable Data. The codebook began with some basic information about the trial and about the foreperson from their self-reported pre-trial questionnaire. First, each trial was given a number corresponding to that unique trial, beginning with 1 and increasing by whole numbers. Next, the trial type was coded: most trials were medical malpractice, but the codebook allowed for other types to be added as they came up. Next, the trial deliberation length in minutes was coded, starting when the facilitator left the room and ending when the facilitator re-entered the room (either because time had run out or the facilitator had determined that the group had reached a verdict). Following that, the final verdict was coded as either in favor of the plaintiff, the defense, or hung. From the self-reported pre-trial questionnaire that each juror filled out, this

study coded the foreperson's sex, age, ethnicity, highest education completed, employment status, and marital status.

Nomination Type. Next, the way in which the foreperson became foreperson was coded. The foreperson either nominated themselves, which consisted of any form of self-volunteer, such as "I will be foreperson," or "I'll do it," or "I'd like to volunteer." Alternatively, they could be nominated by another person, which meant another juror suggested that they be foreperson, such as "How about Scott," or "I think Scott should be foreperson," or "I nominate Scott." The codebook identified whether the foreperson was self-nominated, or nominated by another person who was a female, or nominated by another person who was a male. This variable reached 100% agreement, Krippendorff's $\alpha = 1$. Next, the researcher coded for whether another person was suggested to be a foreperson, and how that person was suggested (self, other, by the foreperson). This variable reached 100% agreement, Krippendorff's $\alpha = 1$. Rarely more than one person was explicitly considered to be foreperson, so the codebook coded for the foreperson and up to one other person.

Nomination Caveats. During the process of selecting a foreperson, a nomination reconsideration or nomination justification could occur, and each was coded as present or absent. A nomination reconsideration consisted of anyone making a follow-up statement to the nomination that implied the option of that person *not* yet officially being foreperson. An example of a nomination reconsideration might be "Does everyone agree?" or "Should we vote on it?" A nomination justification referred to any time that a juror, either the foreperson in question or any other juror, made a reason-based argument for why someone specific should be foreperson. These reasons could include logistics, such as "Well, s/he is seated at the head of the table," or

experience, such as “I have served on a jury before.” The nomination reconsideration and the nomination justification variables both reached 100% agreement, Krippendorff’s $\alpha = 1$.

Foreperson Egalitarian Style. The foreperson’s egalitarian style of facilitation was coded on a scale of 0 to 5. The presence or absence of five egalitarian behaviors was coded, those five behaviors were (a) Solicitation/Prioritization: the foreperson asked for the opinions of quieter jurors and/or made statements prioritizing them explicitly for the reason that they had not spoken much; (b) Curbing: the foreperson tried to curb the speaking quantity of overbearing speakers to allow for others to speak; (c) Correcting for interruptions: the foreperson stepped in if another juror was interrupted with an explicit goal of giving the floor back to the initial speaker; (d) Creating a queue: the foreperson tried to organize multiple speaking turns based on raising of hands; (e) Statement of equality: the foreperson made a statement about how the opinions of all the jurors were equally important. For this variable, each foreperson was given one point for each of these behaviors and to allow for a variety of behaviors to be measured, repeated behaviors were not given additional points. Intercoder reliability for this variable was measured in randomly selected 15-minute increments of 20% of total number of 15-minute increments in the data and reached 100% agreement, Krippendorff’s $\alpha = 1$.

Foreperson Communication Quantity. The quantity of the foreperson’s own communications inserted into the deliberation was measured against the average juror for that group. This was done because deliberations varied in length, therefore a raw count of speaking turns would not allow for comparisons across deliberations. The researcher took a tally of the speaking turns of each juror during each deliberation and calculated the z-score, or the number of standard deviations from the mean of each juror differed based on the mean for their group,

including the foreperson. Intercoder reliability for this variable was measured in 15-minute increments of 20% of total number of 15-minute increments in the data, Krippendorff's $\alpha = .98$.

Deliberation Style. Each deliberation was coded as either verdict-driven or evidence-driven. A deliberation was coded as verdict-driven if there was a vote soliciting each juror's opinions near the start of the deliberation, mainly before everyone had an opportunity to share their thoughts openly and without being tied to one verdict or another. The deliberation was coded as evidence-driven if jurors were free to discuss their thoughts openly at the start of deliberation and without picking a side if they did not wish to do so. This variable reached 100% agreement, Krippendorff's $\alpha = 1$.

Post-Deliberative Questionnaire

The second phase of this research measured the deliberative outcomes in the form of a post-deliberation questionnaire. Post-deliberative surveys, questionnaires, and interviews are common methodologies for studying juries, specifically because the deliberations themselves are closed to the public (Devine et al., 2001; Diamond, 1997). As with any self-reported data, questionnaires can be subject to response bias from the participants, or a desire to answer in a socially acceptable way (Kidder, Judd, & Smith, 1986), but despite this, many studies use post-deliberative interviews or questionnaires of actual jurors (Cutler & Hughes, 2001; Garvey, 1998; Gastil et al., 2007; Pettus, 1990; Sunwolf & Seibold, 1998) or mock jurors (Casper, Benedict, & Perry, 1989; Cowan, Thompson, & Ellsworth, 1984; Kerwin & Shaffer, 1994) because it is the most direct way to gauge juror perceptions. Diamond (1997) warns us that even the most careful researchers cannot get trustworthy data by relying solely on post-deliberative questionnaires or interviews, which is why I also collected content analysis data. The questionnaire was kept brief (one page) to avoid questionnaire fatigue (Krosnick & Presser, 2010) given the long day jurors

had, and mock jurors were instructed to not speak to one another while completing the questionnaire. The questionnaire measured the following four concepts: (1) juror satisfaction with the deliberation; (2) juror self-efficacy about democracy and deliberation; (3) juror ratings of the foreperson; and (4) juror impressions of other jurors and impressions of humanity in general (the questionnaire can be found in the Appendix B). I now turn to the list of questions within each topic.

Deliberation Satisfaction. The post-deliberation questionnaire asked participants the following three questions about their satisfaction with the deliberation: “Please rate your satisfaction with the quality of the jury’s deliberations: 1=very unsatisfied, 2=unsatisfied, 3=neutral, 4=satisfied, 5=very satisfied” and “Please rate your satisfaction with the jury’s verdict: 1=very unsatisfied, 2=unsatisfied, 3=neutral, 4=satisfied, 5=very satisfied” (Gastil et al., 2008). Each of these questions helped the researcher understand juror satisfaction with important but nuanced aspects of deliberations.

Self-efficacy about Democracy and Deliberation. To look at self-efficacy about democracy, the questionnaire asked participants the following four questions: “Under our form of government, people have the final say about how the country is run, no matter who is in office: 1=strongly disagree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree” and “I take seriously my responsibilities as a citizen. 1=strongly disagree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree” (Gastil et al., 2008). Next, the questionnaire asked the following questions pertaining to self-efficacy and democracy: “Compared to other members of your jury, how much did you participate during deliberations? 1=much less, 2=somewhat less, 3=the same, 4=somewhat more, 5=much more” (Bornstein, Miller, Nemeth, Page, & Musil, 2005), and “How important do you feel you were to this jury today? 1=not at all important, 7=very important”

(adapted from Waters & Hans, 2009). These questions gave the researcher a better idea of where the jurors stood on how much of a difference they can make to democracy as a whole and to the deliberation in which they participated.

Impressions of the Foreperson. To measure perceptions of the foreperson, the questionnaire asked four questions: “In the future, how willing would you be to choose your foreperson as the leader of a similar group? 1=never, 2=almost never, 3=occasionally, 4=sometimes, 5=frequently, 6=almost always, 7=always” (Cargill, 2002), and “Rate the influence of the foreperson: 1=not at all influential, 7=very influential” (Diamond & Casper, 1992), and “How well do you think the foreperson tried to ensure all voices were heard? 1=did not try at all, 7=tried very much” and finally “Would you have wanted to be foreperson? Yes, Maybe, No. Please explain.” The juror responses gave each foreperson an average score for each of the first three questions. The final question provided insight regarding how willing jurors were to take the foreperson role, and was content analyzed (results presented in Chapter Six) separate from the closed-ended item analyses (results in Chapter Five).

Impressions of Other Jurors and Impressions of Humanity in General. Impressions of other jurors were addressed in the following three questions: “The other jurors gave me enough of a chance to express my opinions about the case: 1=strongly disagree, 2=disagree, 3=neutral, 4=agree, 5=strongly agree” (Gastil et al., 2008), and “Did you feel that all jurors had a fair opportunity to contribute? 1=not at all, 7=very much,” and “How open-minded was the jury to each other’s ideas? 1=not at all open-minded, 7=very open-minded” (Waters & Hans, 2009). Next, impressions of humanity were measured with the following two questions: “How do you find people in general to be? 1=dishonest, 7=honest” (adapted from Musick, Rose, Dury, & Rose, 2015), and “What is your opinion of the world? 1=the world is filled with evil and sin, and

7="there is much goodness in the world" (Musick et al., 2015). Finally, this questionnaire asked questions pertaining to other jurors that stood out to them in an open-ended fashion: "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you." The reasons given for other jurors standing out were rated as either positive, negative, or unclear/neutral. Intercoder reliability was determined based on 20% of the reasons given and this variable reached 92.04% agreement, Krippendorff's $\alpha = .85$. First two clusters of questions were part of Chapter Five and the final question was part of Chapter Six. Taken together, these questions shed light on juror perceptions of other jurors and humanity in general.

The first stage of this study, the content analysis, gave insight to the trends and patterns that take place in mock jury deliberations. The second stage, the post-deliberation questionnaire, then allowed this study a glimpse into the perceptions that these jurors have at the end of deliberation. The combination of the deliberation content analysis with questionnaire data was especially important because it allowed this study to gain multiple perspectives of what happened in the deliberations and how it was experienced. It is my hope that this study sheds light on the communicative behaviors of forepersons and deliberations in general, and the outcomes that those types of communications can have on jurors and the deliberation overall. If we can learn what types of foreperson behaviors make for more satisfying, democratic, and fair deliberations, then perhaps we can work toward better instructions for juries and their forepersons. Research of this nature is essential to what is at the crux of our justice system, a trial by a jury of our peers.

Chapter 4

Foreperson Selection

The duty of serving on a jury can be daunting and the task of serving as a jury foreperson can be even more so. As Chapter Two discusses, jurors generally do not receive detailed instructions about what the duty of the foreperson is, and some jurors give the forepersons disproportionately more responsibility than others. Because of this tendency, the state of North Dakota explains in its jury instructions that “the Jury Leader does not have more authority than other jurors” (North Dakota Civil and Criminal Instructions, 2016). No matter the instruction to the jury, the act of choosing a leader can have implications that reach beyond their intended purposes. One jury foreperson details her experience and the pressures she felt as the presiding juror in an article:

Not wanting anyone to just agree with me, I decided to take a vote before we looked at the evidence. I voted last. Six jurors said guilty, and six said not guilty. I was shocked! Although we had not been able to discuss the evidence, we had exchanged knowing glances, and I was wrong in what I thought they were thinking, having heard the same evidence I had heard.

After I voted not guilty, a few jurors changed their verdict, which made me equally uncomfortable. I suggested we go over the evidence, which lay in the middle of the table in a heap in no particular order...I, too, was tired, and the idea of sorting through that pile seemed overwhelming. As the jury foreperson, however, I thought we were obligated to review all the evidence. As I reached for the pile, several other members of the jury groaned. I shared their dismay, but I

was persistent in that we really owed it to everyone involved to make an informed decision regarding the evidence.

I was emotionally exhausted...I really was afraid that the others who didn't want to look at the evidence would rely on what I had to say and change their vote...What was I to do next? I had a dozen people sitting there, looking at me, and I had no idea what to do and no one to ask. (Hekkers, 2002, pp. 80-81)

This jury foreperson did not necessarily have a better understanding of the case than others in the room, or have her finger on the pulse of the full jury. She also was concerned that her interpretations of the evidence would be given greater weight, leading to too much influence among the jurors. This kind of pressure made her “frightened that day and for many days afterward” that she unduly influenced the outcome of the case (p. 81). Indeed, research does show that jury forepersons are often rated as more influential than other jurors (Diamond & Casper, 1992). Furthermore, their preferred damage award amounts are correlated with the final award amount in civil cases twice as strongly than other jurors (Boster, Hunter, & Hale, 1991). Research, in sum, indicates that forepersons are significant to jury deliberations.

Given the responsibility and authority jurors place upon forepersons and that the forepersons place upon themselves it is important to study their selection and the subsequent deliberations. Research indicates they are selected rather quickly and without much discussion (Diamond & Casper, 1992; Ellison & Munro, 2010). Scholars theorize that jurors do not give much consideration to this decision because they do not know enough about the leadership skills of the members of the group at that point (Deosaran, 1993) and they assume, as the foreperson did in the example above, that because they have all seen the same evidence they will more or less agree on the verdict and underestimate the need for a good leader (Foley & Pigott, 1997).

Typically, also, research shows that norms of politeness often rule, and the first person to volunteer or be nominated commonly becomes foreperson with little to no questioning (Anthony & Bodaken, 1999; Bridgeman, & Marlowe, 1979; Strodtbeck & Lipinski, 1985). From there, that person holds a great deal of responsibility and their communications have the potential to impact the deliberation. Forepersons do not all govern equally, and it seems imperative that their selection be given more careful contemplation and discussion.

For this dissertation, I observed the deliberations, including foreperson selections, of 22 mock trials. The demographic information of all the jurors, including the foreperson, was gathered using a questionnaire. When the foreperson was selected, I coded whether they nominated themselves or if they were nominated by another juror, and who that juror was. I also coded whether there were any nomination caveats, specifically a nomination reconsideration or nomination justification. Examples of a nomination reconsideration include suggesting a follow-up vote be taken, or otherwise entertaining the idea that the person nominated not become foreperson or that someone else does. Examples of a nomination justification include giving a reason or reasons why someone should be foreperson, implying the need for additional explanations. After the foreperson was nominated and the deliberations began, I noted the style of the foreperson's leadership and counted the speaking turns of each juror. At the end of those 22 deliberations, questionnaires were administered to each juror asking questions about the jurors' satisfaction with the deliberation, their efficacy regarding democracy and deliberation, their ratings of the foreperson, and their impressions of other jurors and humanity in general. The selection of these 22 forepersons, including who they were demographically, their communications, egalitarian behaviors, and deliberation style are all examined in this chapter. The relationship of these communication acts to jurors' experiences is the focus of the next

chapter, and their impressions of whether they would like to be foreperson is the focus of the final data chapter, Chapter Six.

In this chapter, I present the results of my hypotheses and research questions that pertain to the foreperson data. I begin by reporting some overall descriptive information about the data, mainly who became foreperson and how they compared to the overall demographic makeup of the jurors in this study. Then I discuss my first and second hypotheses which address forepersons who are more likely to self-nominate or nominate a person of the opposite sex (H_1 and H_2). Next, I examine my third hypothesis (H_3) and the role of nomination reconsiderations or nomination justifications in foreperson selections and where those occurred in the data. Following this, I discuss my fourth hypothesis (H_4) regarding the egalitarian styles of the forepersons, and my fifth hypothesis (H_5) regarding their number of communications throughout the deliberations. Next, I explore the study's first research question (RQ_1) about what types of forepersons employed either a verdict- or evidence-style deliberation. I then close this chapter's results section with some additional analyses that stem from these hypotheses and research questions about the forepersons, their selections, and their styles of communication.

Results

I begin by noting some characteristics of the selected forepersons relative to the overall population of jurors in this research. These data are in Table 1. This dataset had 249 individuals in 22 mock juries with 22 forepersons, because each jury selected one foreperson. Of the entire population of jurors, 50.2% were male, and 49.8% were female. Among forepersons, males were slightly overrepresented: they comprised 54.5% of the forepersons while females were 45.5% of the forepersons. On racial identity, whites were overrepresented as forepersons: three-fourths of

jurors were white (75.5%), yet all but two forepersons were white, resulting in whites comprising 91.0% of forepersons. Only two forepersons, or 9.0%, did not self-report as being white, and they reported being black or African American or of mixed race (which may or may not have included white as one of the races). Next, younger jurors, specifically those ages 18-35, were overrepresented as forepersons. This age group comprised 23.3% of the entire juror population but fully 45.5% of forepersons. In contrast, jurors ages 56-75 (there was no one above the age of 75) were underrepresented as forepersons, making up 34.9% of the entire population but only 18.2% of the forepersons. Education levels and employment status, on the other hand, tracked pretty similarly across the full juror population and forepersons. Finally, jurors who were married were over-represented among forepersons, compared to the under-representation of people who were partnered or previously partnered. These patterns in the descriptive statistics that make up forepersons are noteworthy because they show us what types of people become foreperson more often.

These data show us that white, male, younger, and currently married jurors were more often forepersons than people who did not fit these demographic categories. One might think that education level might be a good indicator of a good jury leader, that better educated forepersons would rank higher in the social hierarchy, and that those with a higher education would either self-select or, provided that jurors were aware of people's education levels either explicitly or more subtly, be nominated to be foreperson more often. However, this was not so in these data. Employment status also did not appear to matter for selection of forepersons, although many types of full time jobs could promote the leadership skills necessary to be a good foreperson. Rather, jurors aligned with systemic stereotypes when selecting their forepersons. In particular, *visually identifiable cues* of age, sex, and race (and perhaps wedding rings) were correlated with

who became foreperson. Notably, research does not indicate that younger males who are white and/or married are more adept at being forepersons (Karpowitz & Mendelberg, 2014; Kassin & Wrightsman, 1988), so this raises an important issue about how forepersons are selected and why. These patterns are suggestive of how ingrained stereotypes of race, sex, age, and perhaps marriage can influence the legal process in American culture. The fact that white males who were younger and married were more likely to become forepersons, rather than juries selecting a broader range of people, could unintentionally shape deliberations, jury outcomes, and the credibility of the legal system. These numbers are summarized in Table 1.

Table 1
Characteristics of Forepersons Relative to All Jurors

Measures	<i>All Jurors %</i> <i>N = 249</i>	<i>Foreperson %</i> <i>N = 22</i>
<i>Sex</i>		
Male	50.2	54.4
Female	49.8	45.5
Total	100%	100%
<i>Race</i>		
White	75.5	91.0
Asian	2.0	0.0
Black or African American	10.0	4.5
Hispanic, Latino, or Spanish Origin	5.6	0.0
<i>Middle</i>		
Eastern/North African	0.4	0.0
Native Hawaiian or other Pac. Islander	0.8	0.0
Mixed Race	4.4	4.5
Other Race	1.2	0.0
Total	100%	100%
<i>Age</i>		
18-35	23.3	45.5
36-55	41.8	36.3
56-75	34.9	18.2
76+	0.0	0.0

	Total	100%	100%
<i>Highest Level of Education Completed</i>			
Some High School	0.4		0.0
High School/GED	21.7		22.7
Some College	20.1		22.7
AA/professional deg.	16.9		18.2
Bachelor's Degree	26.5		27.3
Some Graduate Level Work	1.2		0.0
Master's Degree	12.4		9.1
Ph.D.	0.8		0.0
Total	100%		100%
<i>Employment Status</i>			
Full Time	49.0		45.5
Part Time	23.7		27.3
Student	0.4		0.0
Retired	13.7		4.5
Home-maker	6.4		4.5
Unemployed	5.6		13.6
Disabled	1.2		4.5
Total	100%		100%
<i>Marital Status</i>			
Single	38.2		40.9
Married	47.8		59.1
Cohabiting	1.6		0.0
Divorced	10.4		0.0
Widowed	2.0		0.0
Separated	0.0		0.0
Total	100%		100%

Foreperson Selection, Characteristics, and Behaviors

I now turn to a discussion of my hypotheses and research questions relating to the foreperson and their selection. My first hypothesis (H_1) was: Males will nominate themselves to be foreperson more often than females. Notably, among the 22 forepersons, 13 (59.1%) were the result of self-nominations and 9 (40.9%) were the result of nominations by other jurors. Using

these data, this hypothesis was not statistically supported, $\chi^2 (1, N = 22) = .09, n.s.$ As shown in Table 2, 4.8% of the males in this study nominated themselves to be foreperson, while 5.6% of females did so.

Table 2
Juror Sex by Self-Nomination

<i>Nominated Self</i>	<i>Juror Sex</i>		χ^2	<i>p</i>
	Male	Female		
Yes	4.8% <i>n</i> = 6	5.6% <i>n</i> = 7	.09	.76
No	95.2% <i>n</i> = 119	94.4% <i>n</i> = 117		
Total <i>N</i> = 249	100% <i>n</i> = 125	100% <i>n</i> = 124		

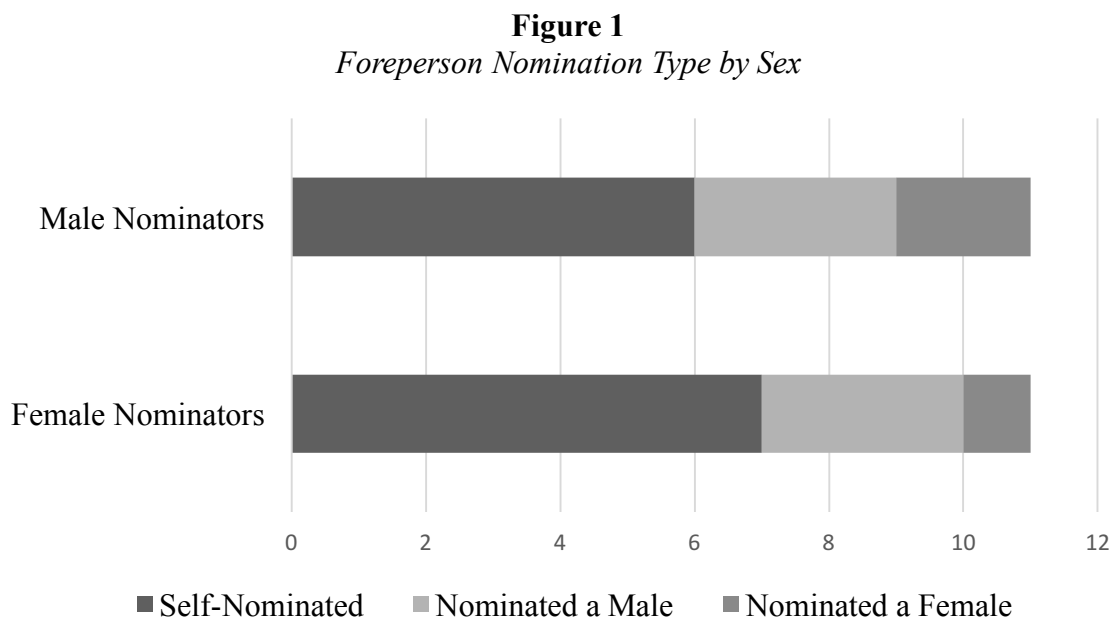
My second hypothesis (H_2) was: Females will nominate males more often than males will nominate females (not counting self-nominations). I again did not find statistical significance, but a trend was present. As shown in Table 3, females nominated males 75% of the time they nominated another person to be foreperson, while males nominated females only 40% of the time they nominated another person, $\chi^2 (1, N = 9) = .23, n.s.$ Here we see that males nominated other males more than they nominated females, and females nominated other males more often when they nominated someone else to be foreperson.

Table 3
Nominator Sex by Foreperson Sex

<i>Foreperson Sex</i>	<i>Sex of Nominator</i>		χ^2	<i>p</i>
	Male	Female		
Male	60% <i>n</i> = 3	75% <i>n</i> = 3	.23	.64
Female	40% <i>n</i> = 2	25% <i>n</i> = 1		
Total <i>N</i> = 9	100% <i>n</i> = 5	100% <i>n</i> = 4		

Note: This table only includes forepersons nominated by another juror, self-nominated forepersons were removed from this table.

The data show that 6 males were nominated to be foreperson by someone else, whereas only 3 females were nominated to be foreperson by someone else, and that both males and females leaned toward nominating males. In Figure 1 we see that although female forepersons were slightly more likely to nominate themselves to be foreperson, males emerged as more forepersons because of the tendency of both males and females to nominate males more often. This is an interesting pattern to which I will return in discussing the findings.



My third hypothesis (H_3) was: Nomination reconsiderations or justifications will occur more frequently when females are nominated to be foreperson than when males are nominated. I again found no statistical significance, $\chi^2(1, N = 22) = 2.64, n.s.$, but there was strong indication. In fact, the small number of reconsiderations or justifications were offered *only* with forepersons who were female, as shown in Table 4. Nomination caveats (nomination reconsiderations and nomination justifications) occurred in the foreperson selection for two juries in this study (9.1%): one included a reconsideration and one included a justification. Females make up fewer forepersons, and a justification or reconsideration happened to a fifth (20%) of females, but to no

(0%) males, even though males become forepersons more often. Additionally, foreperson caveats only occurred with self-nominations; it seemed that being nominated by another juror kept a foreperson safe from nomination reconsiderations or nomination justifications. Notably, the reconsideration that occurred in this study consisted of a male reconsidering a female who nominated herself, when a male said, “Well if you ask for a vote then we’ll vote on you.” When she didn’t then ask for a vote, he asked the group “Does anybody else want to challenge her?” No other jurors challenged, so the same male asked again “Anybody in favor?” He attempted to reconsider her self-nomination several times. The justification in this study occurred in another jury when a juror asked, “Anybody want the job?” (referring to the job as foreperson) and a female nominated herself while justifying it, saying “I will, just so we can proceed, because we don’t have much time.” No other juror in this study felt the need to give a justification for why they or someone else should be foreperson; and no other foreperson was reconsidered when volunteering or being nominated during the course of this study. The fact that fewer females became foreperson, and that the only times a nomination caveat occurred was during two of those instances is notable to the sex-based patterns shown in previous research as well as this study thus far.

Table 4
Foreperson Nomination Caveats by Foreperson Sex

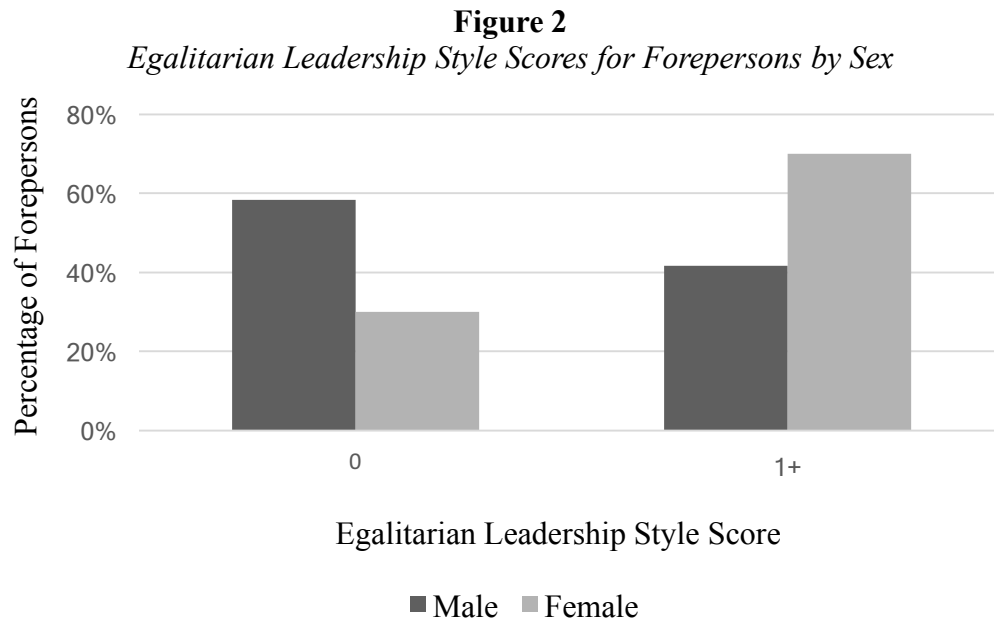
<i>Foreperson Sex</i>	<i>Foreperson Reconsideration or Justification</i>		χ^2	<i>p</i>
	Caveat Absent	Caveat Present		
Male	60% <i>n</i> = 12	0% <i>n</i> = 0	2.64	.10
Female	40% <i>n</i> = 8	100% <i>n</i> = 2		
Total <i>N</i> = 22	100% <i>n</i> = 20	100% <i>n</i> = 2		

My fourth hypothesis (H₄) was: Female forepersons will be more likely to adopt an egalitarian leadership style than male forepersons. I again found no statistical significance yet a trend was apparent, $t(20) = -.14, n.s.$ Each foreperson was located on an egalitarian style scale based on the number of five egalitarian behaviors shown by the foreperson: (a) solicitation or prioritization of speaking turns of quieter jurors, (b) curbing of speaking turns by overbearing or talkative jurors, (c) correction of the interruption of a juror, in other words asking the interrupter to let the original speaker finish, (d) creation of a speaking queue, or organizing speaking turns for multiple speakers, and (e) making an explicit statement about equality, for example stating how everyone's opinions matter the same or that no one person's opinion (including their own) matters more than another's. Engagement of each of these behaviors earned a foreperson a score of 1, with the potential range from 0-5, 0 being less egalitarian and 5 being more egalitarian. Each behavior was only counted once so as to emphasize the range of egalitarian communications rather than depth on any single one. Table 5 shows that male forepersons scored an average of .83 on the scale, while female forepersons scored an average of .90 on the scale.

Table 5
Egalitarian Leadership Style Scores for Forepersons by Sex

Foreperson Sex	<i>n</i>	<i>mean score</i>	<i>standard deviation</i>	<i>minimum score</i>	<i>maximum score</i>
Male	12	.83	1.27	0	4
Female	10	.90	.88	0	3
Overall	22	.86	1.08		

Although females scored slightly higher on average as seen in Table 5, another way to look at the data is to see which jurors engaged in *any* egalitarian behaviors. A total of 10 forepersons scored a 0, engaging in none of these defined egalitarian behaviors; of these, seven were male and three were female. Figure 2 illustrates these trends in terms of percentage within each sex.



These results are suggestive that female forepersons were more communicatively egalitarian at a baseline level than men, but that when comparing overall means the two groups did not differ. This could be explained by females, because of their cultural experiences, having developed a more foundational approach to making greater efforts to cultivate inclusivity in broader group discussions.

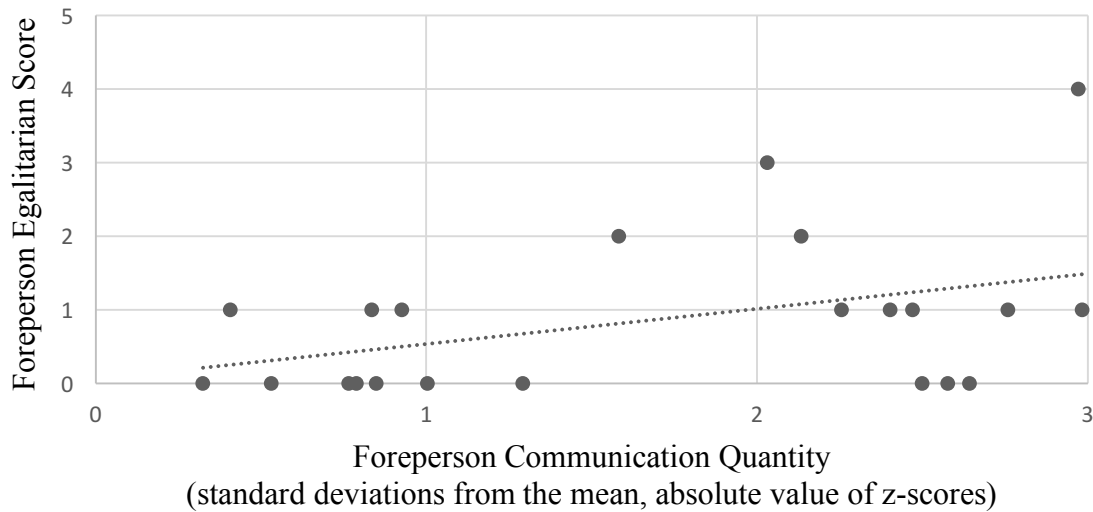
For my last hypothesis relating to the foreperson and their behaviors, my fifth hypothesis (H_5) was: The closer the number of foreperson communications during deliberation is to that of the average of all jurors, the more likely the foreperson will be to employ an egalitarian leadership style. The quantity of communications offered by each juror was recorded and each juror received a standard deviation score indicating how their number of communications stood in relation to the average number of communications per juror for that group.⁷ The absolute

⁷ The results suggest that although the average female communications in this study was slightly higher than male communications, statistically speaking males ($M = -.01$, $SD = .10$) and females ($M = .01$, $SD = .92$) communicated in relatively equal amounts, $t(247) = -.19$, *n.s.* Furthermore, male ($M = -1.48$, $SD = 1.11$) and female ($M = 1.68$, $SD = 1.16$) forepersons also communicated in statistically equal amounts, $t(20) = -.414$, *n.s.*

value of the foreperson's standard deviation score was then correlated with their egalitarian style score, and I expected an inverse relationship. My results showed the Pearson correlation in a one-tailed test to be statistically significant ($r = .41, n = 22, p < .1$), but not in the expected direction. Figure 3 shows these trends. Specifically, the data showed that in general the greater the foreperson's communication quantity in terms of standard deviation from the mean of their jury group, the higher the foreperson's egalitarian style score. In fact, when taking the actual values of the standard deviations from the mean, only two forepersons spoke less than the average for their group, and they were both very near to the standard deviation, $-.85$ and $-.41$. Perhaps in order to exhibit an egalitarian style, a foreperson needed to actually step in to speak more often with input to equalize the conversation. For example, one foreperson who spoke a large standard deviation from the mean (in a positive direction) compared to the other forepersons and scored the highest egalitarian score of other forepersons often made comments such as: "Well actually, Kate⁸ was next, so why don't you go ahead, Kate" and "Okay, next it's Bruce's turn and then Sheila's turn." Although he even said right after being nominated and agreeing to be foreperson, "I just want to be clear, as foreman that doesn't mean my voice takes primacy, I'm not going to speak more than other people. Or try not to at least," he spoke 2.97 standard deviations more than the average of the jurors in his group (highest foreperson score was 2.98). Being more egalitarian in explicit communications actually accompanied a divergent amount of speaking turns to implement those egalitarian values.

⁸ All names have been changed.

Figure 3
Foreperson Communication Quantity and Egalitarian Scores



Foreperson Characteristics related to Deliberation Style

My first research question (RQ₁) was: Is there a relationship between the types of forepersons and the types of deliberation styles they employ? Here I delve into the findings. To revisit, Hastie, Penrod, and Pennington (1983) discovered two different approaches that juries adopt in deliberations: verdict-driven and evidence-driven. Verdict-driven deliberations usually begin with a vote or include some method of jurors choosing a side before a discussion ensues; it is called verdict-driven because gaining insight into the eventual verdict is positioned as a frame for the entire deliberation. Evidence-driven deliberations generally begin with a discussion of the evidence and do not ask jurors to lean toward one side or the other by taking a vote initially. Evidence-driven deliberations have been found to lead to more satisfying deliberations and jurors are more likely to listen openly and discuss the issues rather than spend the deliberation “defending” the choice they made publicly at the onset (Hastie et al., 1983). Evidence-driven deliberations also tend to result in more thorough discussions of a greater amount of issues of a case (Hastie et al., 1983). It is important to note that the foreperson is the one who leads the

discussion and either asks for an initial vote or not, or makes the decision to accept another juror's suggestion to have a vote or not. Thus, the foreperson is the key juror when it comes to jury deliberation style. In Table 6 we see that there were more verdict-driven deliberations (59.1%) in this study than evidence driven (40.9%), but not in a strongly one-sided manner.

Table 6
Foreperson Deliberation Style Descriptive Data

Deliberation Style	<i>n</i>	%
Verdict-Driven	13	59.1
Evidence -Driven	9	40.9
Total	22	100%

I now examine whether foreperson demographic characteristics were related to deliberation styles of either evidence- or verdict-driven. Table 7 shows that female forepersons were more likely to have a verdict-driven deliberation (7 out of 10, or 70%) than male forepersons (6 out of 12, or 50%), though the finding was not statistically significant, $X^2(1, N = 22) = 0.90, n.s.$ There was also no significant difference between verdict styles and race, given that white forepersons made up the vast majority and were pretty evenly divided between verdict- and evidence-driven (60% and 40% respectively), $X^2(2, N = 22) = 2.14, n.s.$ On sex and race, therefore, we see no distinctions in deliberation approach.

However, Table 7 also shows some suggestive differences due to other foreperson characteristics. First, we see that jurors under the age of 35 were much more likely to lead an evidence-driven deliberation (60%) than jurors over the age of 35 (25%), though a Chi-square test yielded insignificant results, $X^2(2, N = 22) = 2.76, n.s.$ For highest education completed, those forepersons with a high school diploma/GED or some college education were both more likely to have an evidence-driven deliberation (60% each), forepersons with an AA or other professional degree were divided 50/50 between verdict- and evidence-driven deliberations, and

then as highest education completed went up to bachelor's degree, evidence-driven deliberations went down to 0%. The trend erased, however, as jurors with a master's degree were again evenly divided between verdict- and evidence-driven deliberations. Here again though, a Chi-square test yielded statistically insignificant results, $X^2(4, N = 22) = 5.87, n.s.$ Employment status produced some interesting significant results, with full time and part time employed forepersons being less likely to lead an evidence-driven deliberation (20% and 33.3% respectively) and homemaker, unemployed, and disabled forepersons being more likely to lead an evidence-driven deliberation style (100% each), $X^2(5, N = 22) = 9.87, p < .1$. In terms of marital status, single forepersons were significantly more likely (66.7%) than married forepersons (23.1%) to lead an evidence-driven deliberation according to a Chi-square test, $X^2(1, N = 22) = 4.18, p < .05$. There were no forepersons who self-reported as being cohabitating, divorced, separated, or widowed.

Table 7
Foreperson Characteristics by Deliberation Styles

Measures	Deliberation Style		Total
	Verdict-Driven <i>n</i> = 13	Evidence-Driven <i>n</i> = 9	
<i>Sex</i>			
Male	50% <i>n</i> = 6	50% <i>n</i> = 6	100% <i>n</i> = 12
Female	70% <i>n</i> = 7	30% <i>n</i> = 3	100% <i>n</i> = 10
<i>Race</i>			
White	60% <i>n</i> = 12	40% <i>n</i> = 8	100% <i>n</i> = 20
Asian	0 <i>n</i> = 0	0 <i>n</i> = 0	
Black or African American	0 <i>n</i> = 0	100% <i>n</i> = 1	100% <i>n</i> = 1
Hispanic, Latino, or Spanish Origin	0 <i>n</i> = 0	0 <i>n</i> = 0	
Middle Eastern/North African	0 <i>n</i> = 0	0 <i>n</i> = 0	
Native Hawaiian or other Pac. Islander	0 <i>n</i> = 0	0 <i>n</i> = 0	
Mixed Race	100%	0%	100%

	<i>n</i> = 1	<i>n</i> = 0	<i>n</i> = 1
Other Race	0 <i>n</i> = 0	0 <i>n</i> = 0	
<i>Age</i>			
18-35	40% <i>n</i> = 4	60% <i>n</i> = 6	100% <i>n</i> = 10
36-55	75% <i>n</i> = 6	25% <i>n</i> = 2	100% <i>n</i> = 8
56-75	75% <i>n</i> = 3	25% <i>n</i> = 1	100% <i>n</i> = 4
76+	0 <i>n</i> = 0	0 <i>n</i> = 0	
<i>Highest Level of Education Completed</i>			
Some High School	0 <i>n</i> = 0	0 <i>n</i> = 0	
High School/GED	40% <i>n</i> = 2	60% <i>n</i> = 3	100% <i>n</i> = 5
Some College	40% <i>n</i> = 2	60% <i>n</i> = 3	100% <i>n</i> = 5
AA/professional deg.	50% <i>n</i> = 2	50% <i>n</i> = 2	100% <i>n</i> = 4
Bachelor's Degree	100% <i>n</i> = 6	0% <i>n</i> = 0	100% <i>n</i> = 6
Some Post Graduate Work	0 <i>n</i> = 0	0 <i>n</i> = 0	
Master's Degree	50% <i>n</i> = 1	50% <i>n</i> = 1	100% <i>n</i> = 2
Ph.D.	0 <i>n</i> = 0	0 <i>n</i> = 0	
<i>Employment Status</i>			
Full Time	80% <i>n</i> = 8	20% <i>n</i> = 2	100% <i>n</i> = 10
Part Time	66.7% <i>n</i> = 4	33.3% <i>n</i> = 2	100% <i>n</i> = 6
Student	0 <i>n</i> = 0	0 <i>n</i> = 0	
Retired	100% <i>n</i> = 1	0 <i>n</i> = 0	100% <i>n</i> = 1
Home-maker	0% <i>n</i> = 0	100% <i>n</i> = 1	100% <i>n</i> = 1
Unemployed	0% <i>n</i> = 0	100% <i>n</i> = 3	100% <i>n</i> = 3
Disabled	0% <i>n</i> = 0	100% <i>n</i> = 1	100% <i>n</i> = 1
<i>Marital Status</i>			
Single	33.3% <i>n</i> = 3	66.7% <i>n</i> = 6	100% <i>n</i> = 9
Married	76.9% <i>n</i> = 10	23.1% <i>n</i> = 3	100% <i>n</i> = 13

Cohabiting	0 <i>n</i> = 0	0 <i>n</i> = 0
Divorced	0 <i>n</i> = 0	0 <i>n</i> = 0
Widowed	0 <i>n</i> = 0	0 <i>n</i> = 0
Separated	0 <i>n</i> = 0	0 <i>n</i> = 0

I now turn to a discussion of the foreperson's nomination and communication behaviors with both deliberation styles, shown in Table 8. First, self-nominated forepersons and forepersons nominated by another person were both more likely to lead a verdict-driven deliberation, doing so 53.8% and 66.7% of the time, respectively. This result was not statistically significant, $X^2(1, N = 22) = .36, n.s.$ Whether the foreperson had a nomination caveat resulted in a statistically insignificant difference to their deliberation style $X^2(1, N = 22) = .08, n.s.$, or to their egalitarian style $t(20) = -.18, n.s.$ And the foreperson's egalitarian style score of 0-5 was also statistically insignificantly related to deliberation style, as a t-test comparing egalitarian scores revealed, $t(20) = -.48, n.s.$ It appeared the only factor regarding the selection or egalitarianism of the foreperson that potentially affected the deliberation style was whether the foreperson volunteered themselves or was nominated by another juror. Though not statistically significant, forepersons who nominated themselves tended to be slightly more likely to lead evidence-style deliberations, which are thought by scholars to be more effective deliberations, than forepersons nominated by another person (Hastie et al., 1983). This tells us that jurors might not be as skilled at identifying and nominating other members of the jury to be foreperson. In fact, those forepersons that self-selected were slightly more likely to lead "better" deliberations. Coupled with the demographic information shown above, jurors aged 18-35 and single jurors were also more likely to lead evidence-driven deliberations, giving us the full picture of how demographics, nomination selection, and egalitarianism were related to deliberation style.

Table 8
Foreperson Nominations/Behaviors and their Deliberation Style

Measures	<i>Deliberation Style</i>		
	<i>Verdict-Driven</i>	<i>Evidence-Driven</i>	<i>Total</i>
<i>Foreperson Nomination Type</i>			
Self-Nominated	53.8% <i>n = 7</i>	46.2% <i>n = 6</i>	100% <i>n = 13</i>
Nominated by another person	66.7% <i>n = 6</i>	33.3% <i>n = 3</i>	100% <i>n = 9</i>
<i>Foreperson Nomination Reconsideration or Justification</i>			
Caveats Absent	60% <i>n = 12</i>	40% <i>n = 8</i>	100% <i>n = 2</i>
Caveats Present	50% <i>n = 1</i>	50% <i>n = 1</i>	100% <i>n = 2</i>
<i>Foreperson Egalitarian Score</i>			
0	60% <i>n = 6</i>	40% <i>n = 4</i>	100% <i>n = 10</i>
1	62.5% <i>n = 5</i>	37.5% <i>n = 3</i>	100% <i>n = 8</i>
2	50% <i>n = 1</i>	50% <i>n = 1</i>	100% <i>n = 2</i>
3	100% <i>n = 1</i>	0% <i>n = 0</i>	100% <i>n = 1</i>
4	0% <i>n = 0</i>	100% <i>n = 1</i>	100% <i>n = 1</i>
5	0% <i>n = 0</i>	0% <i>n = 0</i>	

Additional Analysis

An initial finding in this chapter was that race, sex, age, and even marital status seemingly were related to the selection by a jury of a foreperson, it begs the question of whether those societally ingrained preferences can possibly impact the discussion as well. It has been shown that participants in a jury deliberation do not all participate equally (Fishkin, 2009), and this is problematic for democratic systems like jury deliberation. Indeed, as a democratic nation, the United States has a moral and ethical commitment to resist institutionally oppressive powers,

and the jury system should, in theory, help to do that. But is it in fact as democratic as the ideal notion? Are the laws governing the inclusion of women and people of color in the jury selection process enough to achieve representation in the deliberation room? Sanders (1997) argues that race, quality of life, and other cultural markers dominate this process and it is not a fair and equal one. When Americans assemble in juries, she contends, “they do not leave behind the status, power, and privileges that they hold in the outside world” (Sanders, 1997, p. 364). She goes on to assert that distributing skills among all members of a jury is still likely to result in the most powerful utilizing those skills and resources in an unequally advantaged way. On the other hand, Gastil and his colleagues (2007) observed in post-deliberative interviews that the overwhelming majority of jurors said that other jurors gave them enough of a chance to express their opinions, and that they “listened respectfully to each other during deliberation” (p. 346). It appears that the jury is still out on whether jury deliberations are in fact fair and equal, and we can benefit from further research on the process of jury deliberation and what may be impeding its democratic potential.

Speaking Quantity. Scholarship suggests that forepersons speak more than other jurors on average, and this study corroborated that finding. Forepersons in this study spoke significantly more than other members of the jury, averaging 1.72 more standard deviations from the mean overall, $t(247) = -9.35, p < .01$, as seen in Table 9.

Table 9
Communication Quantity for Forepersons and Non-Forepersons

Juror Type	<i>n</i>	<i>mean</i>	<i>standard deviation</i>	<i>minimum</i>	<i>maximum</i>
Forepersons	22	1.57	1.11	-.85	2.98
Non-forepersons	227	-.15	.79	-1.63	1.88
Overall	247	0.0	.96		

Note: These data represent the z-score, or standard deviation from the mean, for each juror.

Furthermore, white jurors in this study were also found to have spoken about .66 standard deviations from the mean more on average than jurors of color, though this finding was not significant when considering the standard deviations from the mean of each group, $t(247) = 1.48$, *n.s.*, as shown in Table 10.

Table 10
Communication Quantity for White Jurors and Jurors of Color

Juror Type	<i>n</i>	<i>mean</i>	<i>standard deviation</i>	<i>minimum</i>	<i>maximum</i>
White Jurors	188	.50	.97	-1.63	2.98
Jurors of Color	61	-.16	.90	-1.34	1.84
Overall	249	0.00	.96		

Note: These data represent the z-score, or standard deviation from the mean, for each juror.

In this study, there was no significant difference between the speaking quantities of male and female jurors, on average, $t(247) = -.19$, *n.s.* Age ($r = -.06$, $n = 249$, *n.s.*), highest education level completed ($r = -.04$, $n = 249$, *n.s.*), marital status (married compared to not married, $t(247) = -1.17$, *n.s.*) and employment status (full time compared to not full time, $t(247) = -.15$, *n.s.*) were also statistically unrelated to communication quantity. Aside from being the foreperson, for the population of jurors here, it appeared that race most strongly related to speaking turns, more so than any other demographic.

In terms of overall speaking turns, I wanted to see if foreperson selection or behaviors could have an impact on the communications that occur in the deliberation room. Here I took the actual standard deviation from the mean for each foreperson, and did not use the absolute value. Results show that forepersons who had an evidence-driven deliberation style and forepersons who had a verdict-driven deliberation style communicated in relatively the same amount, $t(20) = -.71$, *n.s.* as shown in Table 11.

Table 11
Communication Quantity for Forepersons by Deliberation Style

Deliberation Style	<i>n</i>	<i>mean</i>	<i>standard deviation</i>	<i>minimum</i>	<i>maximum</i>
Verdict-Driven	13	1.43	1.26	-.85	2.98
Evidence-Driven	9	1.77	.89	.79	2.97
Overall	22	1.57	1.11	-.85	2.98

Note: These data represent the z-score, or standard deviation from the mean, for each juror.

Furthermore, jurors overall did not speak significantly more on average during a verdict-driven or evidence-driven deliberation, $t(247) = .00$, *n.s.* as shown in Table 12. This is surprising because research suggests deliberation type has an impact on deliberation satisfaction and the comprehensiveness of deliberation, but it did not appear to impact the speaking turns of the foreperson or the other jurors in the deliberation. This implies that speaking turns overall may not be related to deliberation type.

Table 12
Communication Quantity for Jurors by Deliberation Style

Deliberation Style	<i>n</i>	<i>mean</i>	<i>standard deviation</i>	<i>minimum</i>	<i>maximum</i>
Verdict-Driven	142	-.01	.96	-1.63	2.98
Evidence-Driven	107	.01	.96	-1.41	2.97
Overall	249	0.00	.96		

Note: These data represent the z-score, or standard deviation from the mean, for each juror.

Forepersons who either nominated themselves or were nominated by others did not show any differences in their speaking quantity, $t(20) = .63$, *n.s.* (not in any table). These nomination differences also did not relate to any differences in the speaking quantities of jurors during the deliberations overall, $t(247) = .00$, *n.s.* Furthermore, foreperson selection caveats — that is, nomination reconsiderations and nomination justifications — were also not significantly related to juror speaking quantity during deliberations, $t(247) = .00$, *n.s.*, or speaking quantity of the foreperson during deliberations, $t(20) = -.07$, *n.s.* It appears that jurors are no more or less likely

to speak based on aspects of the foreperson nomination, such as nomination type and the presence of a nomination caveat, either a nomination reconsideration or justification.

Discussion

If all voices are not equally represented in jury deliberations, America's justice system is seriously threatened. Sandoval (2000) says we can learn the greatest from the most underprivileged in a society and that jury deliberations should actually hear from underrepresented people *more* than their counterparts. The fact that race norms are related not only to who becomes foreperson but also to who speaks during deliberations has potentially harmful implications for democratic realities. If the American nation has worked over the decades to ensure that a jury is made up of fair and impartial peers, measures should also be in place to better advocate that the deliberation between those jurors is also fair and impartial. As feminist theorist Crenshaw (1991) asserts, "social power in delineating difference need not be the power of domination; it can instead be the source of social empowerment and reconstruction" (p. 1242). If we can instruct jurors to be more aware of ways that power differences can manifest in the deliberation room, the discussions could provide a better environment suited to hearing all voices. After all, Sonia Sotomayor (2002), now a Supreme Court Justice, claims that Americans take pride in our ethnic diversity, yet "simultaneously insist that we can and must function and live in a race and color-blind way that ignore these very differences" (p. 88). Rather than letting these differences dictate who is heard or unheard in the jury room, we should utilize those differences to improve upon the American justice system. If we continue to work within the current system to improve the aspects that merit concern, we can solidify and uphold the reputation of the jury.

It is noteworthy, therefore, that results in this chapter show that young, white, married, males much more commonly became forepersons in the mock trial juries I examined. This follows what has been found in scholarship, so it is not surprising (Devine et al., 2001). However, research has not yet examined *how* a juror becomes foreperson, as this study did. Digging deeper into the selection of forepersons, about half of the forepersons in this study nominated themselves while the other half were nominated by other jurors. Males were slightly more likely to nominate themselves to be foreperson than females. Females were just as likely to nominate others to be foreperson as males, but they more commonly nominated males than their same-sex counterparts. Furthermore, each time a foreperson nomination was reconsidered or justified, it happened when a female nominated herself. This is important considering that females nominate themselves to be foreperson less often than males do. In fact, self-nominated females made up 31.8% of total forepersons, yet over a quarter (28.6%) of those instances received pushback in the form of a reconsideration or justification. It is impossible to determine exactly where these trends stem from, but it is clear that females, at least in this study, did not assert themselves or other females to be foreperson as often as males, and they were not treated the same way when they did nominate themselves.

What about the communications that took place once a person became the jury foreperson? In these data, females and males appeared to engage in similarly egalitarian behaviors and they spoke approximately the same amount. Females did receive slightly higher egalitarian measures than male forepersons, but these data were not significantly different. It seems, then, that male and female forepersons had more similarities than differences in the ways they led in these mock juries. These results are somewhat surprising when coupled with the fact that study after study (including this research) supports the finding that white males are more

prevalent in leadership positions (Boster et al., 1991; Cowan et al., 1984; Hastie, 2002; Hastie et al., 1998; Simon, 1999). Disappointingly, there were only two forepersons of color, so an analysis of the differences between white leaders and leaders of color cannot be made, except for the glaring fact that people of color were not often nominated. Because these differences in nominations cannot be explained by white males' propensity to do a better job, it stands that it must be explained by cultural stereotypes, systemic inherencies, and race/sex-based norms. These norms are perhaps so widespread that they are subconscious, as no discussion of foreperson included the explicit mention of one's race or sex (or any other demographic), even though both factors were strongly correlated with foreperson selections.

In addition to calibrating their own communicative behaviors such as speaking turns or egalitarian behaviors to their role as a leader, forepersons also play a critical part in determining what type of deliberation ensues. As Hastie, Penrod, and Pennington (1983) discovered, deliberations can take one of two routes, verdict-driven or evidence-driven. The deliberations in this study were roughly split between the two approaches. Research has identified that evidence-driven deliberations are superior in terms of the breadth of topics discussed, as well as the satisfaction of the members of the jury (Hastie et al., 1983), and this study built on that by exploring foreperson differences that may be associated with each type. Sex and race of the foreperson did not appear to be associated with either type of deliberation, but age and highest education level completed were associated, in a nuanced way. I will unpack these findings separately.

Looking at the percentages, jurors under the age of 35 were much more likely (60%) to lead an evidence-driven deliberation than jurors over the age of 35 (25%), pointing to a trend that younger forepersons may be more adept at focusing the conversation on the evidence and not

making the central theme of the deliberation be about the verdict. A proclivity to want to keep an open mind and not stake a claim in a particular verdict early on might explain the decision to have an evidence-driven deliberation and younger jurors did this more frequently. It is conventional wisdom that older individuals are more set in their ways and less likely to change their thinking, and this finding could be an exemplification of that. Older forepersons might expect the rest of the jury to have their mind made up at the beginning and believe that taking a vote early on is simply more efficient and not likely to affect individuals' thinking. On the other hand, younger forepersons might be more open to the idea of perspectives being modified and would not find it effective to take a tally before any of the evidence has been discussed. These two perspectives both have their merits, but research has indicated that evidence-driven deliberations more commonly sought by younger forepersons is better from a deliberative standpoint.

When considering the education level of the foreperson, there appears to be somewhat of a u-shaped curve for the deliberatively superior evidence-driven deliberations. At the bottom of the u-shaped curve were forepersons with bachelor's degrees; all of these forepersons led verdict-driven deliberations. Forepersons with an associate degree or professional degree were evenly split between verdict- and evidence-driven deliberations, but evidence-driven deliberations were more commonly utilized when education levels decline to include some college or less. The two forepersons with master's degrees were split between leading an evidence-driven and verdict-driven deliberation. These results showed a clear trend that forepersons with bachelor's degrees were associated with the lowest presence of evidence-driven deliberations. This could stem from the idea that forepersons with bachelor's degrees are more likely to tightly manage the deliberations from the start, which includes implementing a plan to

“go around the table and tell us your verdict leaning” or “raise your hands and vote.” The implementation of a plan like this could be indicative of a mindset that as the foreperson they must take action and simply opening the floor for discussion might not feel like enough structure for someone with formal higher education. As education level moves below this formal education ‘gold standard,’ forepersons might be more comfortable letting the discussion manifest without directive, or perhaps they are less trained in suggesting an active instruction or plan to begin. As education level increases from a bachelor’s degree however, there are many opportunities for a foreperson to have experienced small group open discussion and thus could explain why they might opt for an evidence-driven approach at a higher rate. It is not common knowledge that evidence-driven deliberations are superior, but if that fact was taught in formal educational institutions, it could positively impact jury deliberations on a grand scale, and especially those with formal higher education.

This study was one of the first of its kind to explore jury forepersons in this way, yet it is not without shortcomings. A small sample size of forepersons ($N = 22$) made statistical inference difficult. Many trends were apparent but could not meet the threshold of statistical significance without a larger sample. Future studies could spend more time collecting and analyzing a greater number of cases for these purposes. This would hopefully make cross-racial comparisons possible so we can gain better insight into how race is related to foreperson communications and behaviors. Furthermore, a wider variety of case types, perhaps even some criminal cases in which the stakes are life and liberty rather than monetary damages could shed better light on how a jury foreperson functions. Research of this nature helps us to understand how critical the role of foreperson is to jury deliberations. As we learn more, we may one day be able to implement some type of instruction to give to the jury before they embark upon their first task of deciding a

foreperson. Anything that can improve that process is important to our justice system and even our democracy as a whole.

Chapter 5

Juror Questionnaire

Many who have served on a jury know that it is an experience unlike any other, and one they will likely never forget. Rarely, if ever, are people placed in a room with people they have almost certainly never met and asked to come to a consensus about a decision affecting the lives of yet other strangers. One of the main purposes of a jury is to include voices of a cross section of the community, but with that cross section comes differences, which can make open discussion difficult. One juror who wrote about their experience serving on a jury put it this way:

As seriously as several of us took the proceedings and our duty, several others were equally disengaged; some entered deliberations completely on the side of the plaintiff, others on the side of the defendant; some seemed open to considering other points of view, and to analyzing their own positions through another lens, while others would not even listen to contrary arguments. It was such a slice of humanity — old, young, white, black, brown, blue collar, professional — and I found the process of throwing us into a room to come to a unified decision simply fascinating. (Salvia, circa 1996)

Despite their differences, jurors — or at least most — attempt to work together with a goal of finding and providing justice. In the end, jurors often report that they enjoyed the process and felt that they were an important part of the system (Gastil et al., 2007). Take this juror's account:

As the bailiff walked the forms to the clerk, my fists clenched, my legs bounced and my heart squeezed out a liter of adrenaline with every beat. All this, and I already knew the verdict! ... When the clerk read the words “not guilty,” the

entire room exhaled at once. It was the biggest rush I've ever felt. I played my part in the system. I served justice. I was Juror No. 4. Even at \$15 a day, it was the coolest job I could ever imagine. (Lewis, 2013)

What occurs in the jury room has interested scholars for decades, and even the wider public has devoured the drama of jury deliberations in the form of movies, TV shows, and books. One of the most famous jury depictions is the 1957 film *12 Angry Men*. The movie takes place in one single room, yet the dialogue and emotion are enough to rank it among the American Film Institute's top movies list, and it was selected for preservation in the United States National Film Registry in 2007 by the Library of Congress for being "culturally, historically, or aesthetically significant" (United States Library of Congress, 2007). The movie famously ends in a way that everyday communications commonly begin, exemplifying the uniqueness of the experience:

Juror #9: Hey!... What's your name?

Juror #8: Davis.

Juror #9: [*shakes his hand*] My name's McCardle.

[*pause*]

Juror #9: Well, so long.

Juror #8: So long.

(Fonda, Rose, & Lumet, 1957)

Deliberation in general requires thoughtful reflection and openness in the sharing of information and ideas, and deliberating on a jury can increase tolerance for opposing points of view (Mendelberg, 2002) and even motivate citizens to become more involved with and informed of political matters (Gastil et al., 2010; Habermas, 1970; 1989). However, there is still much to learn about specifically what occurs in a jury room and how it affects jurors. We know that the

foreperson can have a large impact on the talking turns of the deliberation (Devine et al., 2001; Hastie, 1993; Hastie et al., 1983; Strodbeck et al., 1957), verdict awards (Boster et al., 1991), and general influence in the jury (Diamond & Casper, 1992), but how does the foreperson specifically, and their communications and contributions to the deliberation more broadly, influence the experience and the perceptions of the rest of the jurors? These questions inform the data presented in this chapter.

Procedures and Expectations

For this dissertation, I observed the deliberations, including foreperson selections, of 22 mock trials and then I administered a post-deliberation questionnaire to all jurors after they reached a verdict. The combination of the observational content analysis of the deliberations with questionnaire data afforded multiple ways to gain insight into the experiences of jurors in the deliberations. Self-reported data are valuable to gain a glimpse into what kind of outcomes a deliberation can have on juror perceptions (Kidder et al., 1986; Pettus, 1990). Each of these 22 juries had one foreperson and between 9-13 jurors, totaling 249 jurors, and thus 249 questionnaires. This questionnaire was one page long and included 16 questions, 14 of which are of focus in this chapter. The questionnaire measured the following four concepts in the hypotheses and research questions: (1) juror satisfaction with the deliberation; (2) juror self-efficacy about democracy and deliberation; (3) juror ratings of the foreperson; and (4) juror impressions of other jurors and of humanity in general. The responses for each of the 14 questions were combined into six variables (discussed below) that captured the four concepts. These variables were then connected with the traits, behaviors, and communications of the

foreperson for that particular jury to identify potential trends. I will now discuss those four concepts and how they were measured in the questionnaire.

The questionnaire included multiple items attempting to capture components of each concept, and the item responses were often combined to create a new single variable. Some concepts were split into two variables to gain a more nuanced view of the concept. The new variables and their respective measures are:

- *Deliberation Satisfaction*. This was built on two items: “Please rate your satisfaction with the quality of the jury’s deliberations” and “Please rate your satisfaction with the jury’s verdict.” These items had response options of 1 = “very unsatisfied” to 5 = “very satisfied”. They were correlated at .51. I added them together, then divided by two. The mean was 3.95, median was 4.00, and standard deviation was .83.

- *Self-Efficacy about Democracy*. This was built on two items: “Under our form of government, people have the final say about how the country is run, no matter who is in office” and “I take seriously my responsibilities as a citizen.” These items had response options of 1 = “strongly disagree” to 5 = “strongly agree.” They were correlated at .13. I added the scores together, then divided by two. The mean was 3.71, median was 3.50, and standard deviation was .74.

- *Self-Efficacy about Deliberation*. This was created from two items: “Compared to other members of your jury, how much did you participate during deliberations?” and “How important do you feel you were to this jury today?” These items had response options of 1 = “much less” to 5 = “much more,” and 1 = “not at all important” to 7 = “very important,” respectively. They were correlated at .39. I added the scores together, then divided by two. The mean was 4.26, median was 4.50, and standard deviation was .92.

- *Ratings of the Foreperson.* This was created from three items: “In the future, how willing would you be to choose your foreperson as the leader of a similar group?”, “Rate the influence of the foreperson,” and “How well do you think the foreperson tried to ensure all voices were heard?” These items had response options of 1 = “never” to 5 = “always,” 1 = “not at all influential” to 7 = “very influential,” and 1 = “did not try at all” to 7 = “tried very much,” respectively. The first two questions were correlated at .41, the second two were correlated at .41, and the first and third questions were correlated at .37. I added the responses together, then divided by three. The mean was 5.09, median was 5.00, and standard deviation was 1.12.

- *Impressions of Other Jurors.* This was created from three items: “The other jurors gave me enough of a chance to express my opinions about the case”, “Did you feel that all jurors had a fair opportunity to contribute?”, and “How open-minded was the jury to each other’s ideas?” These items had response options of 1 = “strongly disagree” to 5 = “strongly agree,” and 1 = “not at all” to 7 = “very much,” and 1 = “not at all” to 7 = “very open-minded,” respectively. The first and second questions were correlated at .44, the second and third questions were correlated at .49, and the first and third questions were correlated at .40. I added the responses together, then divided by three. The mean was 5.19, median was 5.33, and standard deviation was .98.

- *Impressions of Humanity in General.* This was created from two items: “How do you find people in general to be?” and “What is your opinion of the world?” These items had response options of 1 = “dishonest” to 7 = “honest”, and 1 = “the world is filled with evil and sin” to 7 = “there is much goodness in the world,” respectively. They were correlated at .35. I added the scores together, then divided by two. The mean was 5.25, median was 5.50, and standard deviation was 1.01.

In this chapter, I present the results of my hypotheses and research questions that pertain to the post-deliberation questionnaire. I begin by reporting some overall descriptive information about the data. Next, I examine deliberation satisfaction, which was the focus of my sixth, seventh, and eighth hypotheses as well as my second research question. Then, I examine jurors' responses regarding their self-efficacy about the jury deliberation, which were the focus of my ninth, tenth, and eleventh hypotheses. Following this, I explore evaluations of the foreperson, which were the focus of my twelfth, thirteenth, and fourteenth hypotheses, as well as my third research question. And lastly, I examine jurors' impressions about other jurors and humanity in general, which were the focus of the study's fifteenth, sixteenth, and seventeenth hypotheses. I then close this chapter's results section with some additional analyses that help explore any general trends that exist among what types of jurors share certain perceptions about the deliberation process.

Results

For these analyses, I connected four observational variables about the foreperson to the questionnaire responses of jurors upon completion of the deliberations. Three of the observational variables are part of this chapter's hypotheses: the foreperson's degree of egalitarianism, communication quantity, and deliberation style. The fourth observational variable, foreperson nomination type, is included in both of this chapter's research questions. As a reminder from the previous chapter, forepersons attained an egalitarian score between 0 and 5 based on a number of egalitarian behaviors in which they engaged. No forepersons received a score of 5, and over three quarters received a score of 0-1. Next, for communication quantity of the foreperson, speaking turns were counted and then the standard deviations were taken for each

jury because deliberation lengths varied; each juror received a z-score, representing the number of standard deviations that their score differed from the mean of the group. Because of the varied lengths of deliberations, raw number of speaking turns would not be meaningful to compare. Forepersons spoke between -0.85 and 2.98 standard deviations from the mean. For deliberation style, forepersons were pretty evenly divided with 13 conducting a verdict-driven deliberation and 9 conducting an evidence-driven deliberation. Lastly, for foreperson nomination, 13 forepersons nominated themselves and 9 forepersons were nominated by another juror. I now turn to a discussion of my hypotheses and research questions.

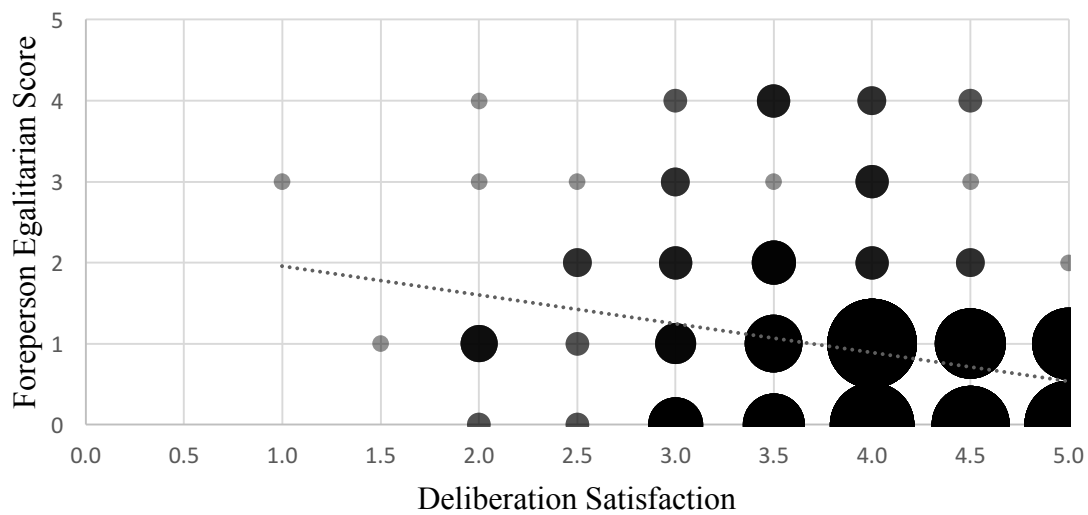
Deliberation Satisfaction

My sixth, seventh, and eighth hypotheses, as well as my second research question, focused on how the foreperson's communications and behaviors were related to jurors' deliberation satisfaction.

My sixth hypothesis (H_6) was: Deliberation satisfaction will be higher for juries in which the foreperson adopted a more egalitarian leadership approach than for juries in which the foreperson adopted a less egalitarian leadership approach. The results were significant, but in the *opposite* direction from what I predicted. Deliberation satisfaction was actually higher for juries in which the foreperson adopted a less egalitarian approach, according to a Pearson's correlation ($r = -.27, n = 243, p < .01$), as shown in Figure 4. This finding can perhaps be connected with an unexpected finding in Chapter Three, in which contrary to my prediction, greater egalitarianism by the foreperson in leading the deliberations was significantly and positively related to higher quantity of foreperson communications. Coupled together, it may be that the higher communications by the foreperson that accompanied the greater egalitarianism helped spur lower deliberation satisfaction among all jurors. It could be that the higher number of speaking turns by

the foreperson that came with a more egalitarian approach was experienced in negative ways during the deliberation and resulted in jurors recording lower satisfaction. Perhaps, though, the direction of influence went the other way: a lower deliberation satisfaction during the deliberation led jurors to put the foreperson in a position in which she or he had to work harder to enact egalitarianism and ended up speaking more. These findings are correlational, not causal, so either of these explanations is possible.

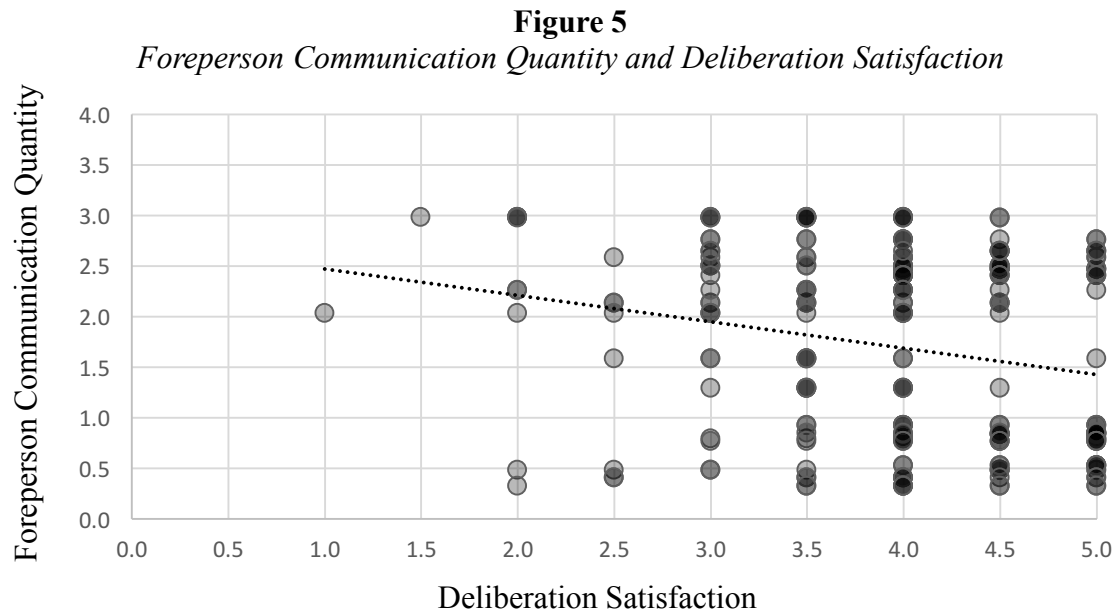
Figure 4
Foreperson Egalitarian Scores by Deliberation Satisfaction



My second research question (RQ₂) was: Does deliberation satisfaction relate to whether forepersons nominate themselves or forepersons are nominated by others? Results showed that the two were in fact related. Deliberation satisfaction was significantly higher when forepersons self-nominated ($M = 4.07$, $SD = .73$) rather than being nominated by others ($M = 3.81$, $SD = .92$), $t(241) = -2.44$, $p < .05$. This demonstrates perhaps that good leaders, generating a higher satisfaction among their group, might be better at identifying themselves rather than being identified by others. However, these too are correlational data: it is also plausible that when forepersons were nominated by other jurors, they simply did not conduct deliberations as

effectively. Chapter Three showed us that about half (55.6%) of forepersons nominated themselves, so it was generally just as typical, but resulted in better satisfaction.

My seventh hypothesis (H_7) was: The closer the number of foreperson communications in the deliberation to that of the average of all jurors, the more satisfied the jurors will be with the deliberation. Here, I took the absolute value of the standard deviation from the mean, and the results were significantly correlated, negatively, as predicted. The closer to 0 standard deviations from the mean communications for the group of the foreperson's communications (and thus the lower the number), the higher the ratings for jurors' deliberation satisfaction, according to a Pearson's correlation ($r = -.23$, $n = 243$, $p < .01$), as shown in Figure 5. In other words, as foreperson communication quantity diverges from the mean of the group, juror deliberation satisfaction decreases. This theme has been discussed earlier in reference to egalitarianism and speaking quantity, and this finding further supports that idea that forepersons who spoke a more relatively different amount than other jurors may have achieved more egalitarianism but at the expense of juror satisfaction. Jurors instead seemed to be more satisfied with the deliberation when the speaking turns of the foreperson were distributed more equivalently to that of the other jurors.



My eighth hypothesis (H_8) was: Evidence-driven deliberations will lead to higher juror satisfaction ratings than verdict-driven deliberations. The results were not statistically significant. Deliberations conducted in an evidence-driven manner ($M = 4.05$, $SD = .73$) were ranked statistically similar to verdict-driven deliberations ($M = 3.89$, $SD = .88$) in terms of deliberation satisfaction, $t(241) = -1.52$, *n.s.* This runs counter to Hastie, Penrod, and Pennington's (1983) research about evidence-driven deliberations being more satisfying for jurors. In that study jurors expressed greater satisfaction with the deliberations when they were not asked to pick a side at the onset of deliberation and could instead focus on discussing the evidence rather than encountering a need to defend a certain perspective or challenge another one. This study, though much smaller than the one conducted by Hastie, Penrod, and Pennington, did not find this difference to be present. Thus, it appeared deliberation satisfaction was related to foreperson egalitarianism, foreperson nomination type, and foreperson communication quantity, but not deliberation type.

Self-Efficacy about Democracy and Deliberation

My ninth, tenth, and eleventh hypotheses focused on jurors' self-efficacy about democracy and the jury deliberation and how those responses related to the foreperson and their communications and behaviors.

My ninth hypothesis (H_9) was: A foreperson with a more egalitarian leadership style will lead to greater self-efficacy about democracy and deliberation among jurors than a foreperson with a less egalitarian leadership style. The results for this hypothesis were not statistically significant. The presence of forepersons with a greater egalitarian style was unrelated to expressions among jurors of greater self-efficacy about democracy ($r = -.04, n = 244, n.s.$) or self-efficacy about the deliberation ($r = -.04, n = 245, n.s.$). Again, it appeared that egalitarian behavior was not central to juror perceptions. In fact, egalitarian deliberation leadership has not been correlated with positive outcomes such as deliberation satisfaction or self-efficacy about democracy or the deliberation thus far.

My tenth hypothesis (H_{10}) was: The closer the number of foreperson communications in the deliberation is to that of the average of all jurors, the more democratic and deliberative efficacy the jurors will report. Taking the absolute value of the standard deviations from the mean, these results were also statistically insignificant. A foreperson's communication quantity relative to that of other jurors did not significantly relate to greater self-efficacy about democracy among jurors ($r = -.01, n = 244, n.s.$) or self-efficacy about the deliberation among jurors ($r = -.00, n = 245, n.s.$). Although we saw that a foreperson's communication quantity was related to jurors' deliberation satisfaction, it did not extend to their feelings of self-efficacy about either democracy or the deliberation. Perhaps individuals' concepts of self-efficacy are too deeply ingrained to be swayed by the behavior of one person during one deliberation.

My eleventh hypothesis (H_{11}) was: Evidence-driven deliberations will lead to higher democratic and deliberative efficacy in jurors than verdict-driven deliberations. These results were statistically insignificant. Evidence-driven deliberations did not lead to higher democratic self-efficacy among jurors ($M = 4.23$, $SD = .91$) than verdict-driven deliberations ($M = 4.29$, $SD = .93$), $t(242) = .54$, *n.s.* Evidence-driven deliberations also did not lead to higher deliberative self-efficacy among jurors ($M = 4.21$, $SD = .92$) than verdict-driven deliberations ($M = 4.29$, $SD = .93$), $t(243) = .68$, *n.s.* This again supports the idea that our self-concepts of efficacy are sufficiently embedded in us as individuals that they are not easily affected by the actions of an individual, for example the foreperson, or a specific democratic experience such as a mock trial. One experience in a small group deliberation with strangers simply may not be enough to significantly alter our concepts of self-efficacy about democracy and deliberation, because these impressions are likely built over years and years of experiences among people with whom we have formed more meaningful and lasting relationships.

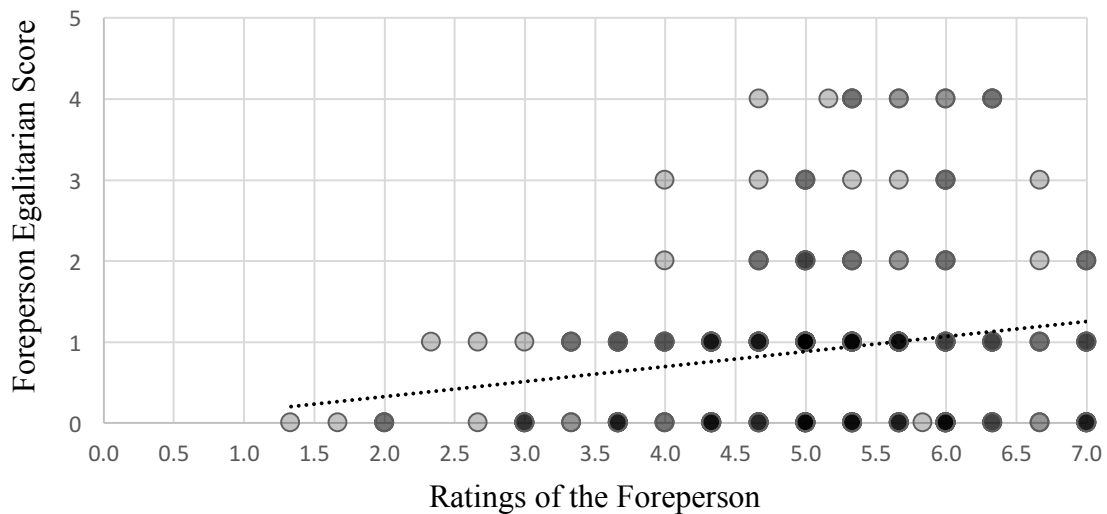
Ratings of the Foreperson

My twelfth, thirteenth, and fourteenth hypotheses, as well as my third research question connected jurors' evaluations of the foreperson with the foreperson's communications and behaviors.

My twelfth hypothesis (H_{12}) was: Forepersons who provide a more egalitarian approach to the deliberations will be rated more favorably than forepersons who provide a less egalitarian approach. These results were as predicted and significant. A greater egalitarian style among forepersons was significantly related to higher ratings of the forepersons ($r = .19$, $n = 237$, $p < .01$) as shown in Figure 6. Although we saw earlier that the foreperson's extent of egalitarian style was significantly related to *lower* deliberation satisfaction, it turns out it was nonetheless

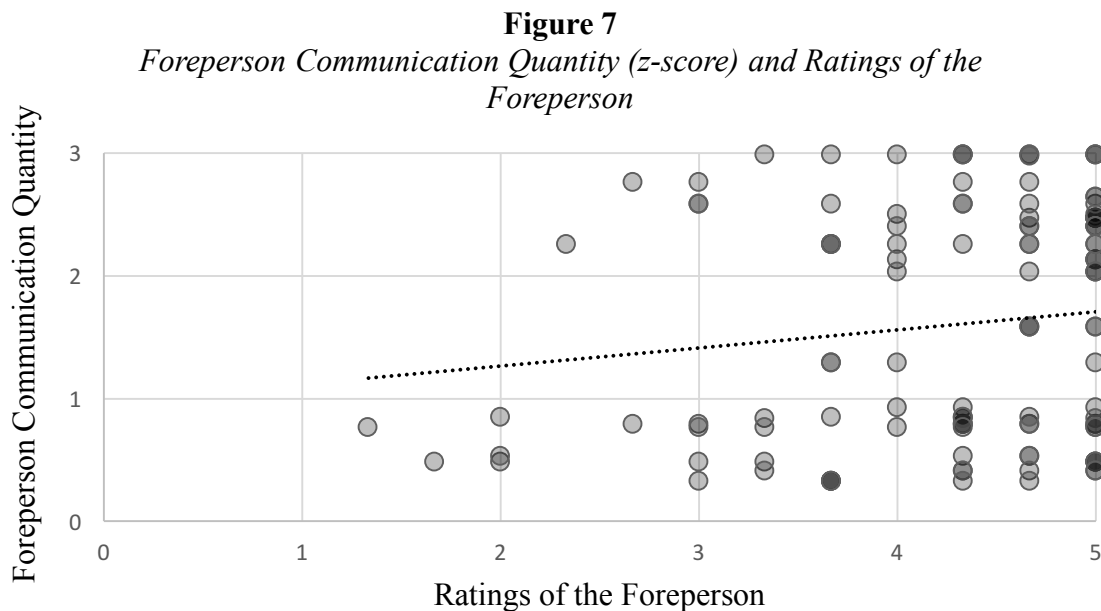
related to higher ratings of the foreperson. Perhaps the effort that the foreperson offered in order to create a more egalitarian deliberation did shine through, even though the jurors were less satisfied with the deliberation overall. It is interesting that this lower deliberation satisfaction that went along with greater egalitarianism was not manifested in less favorable impressions of the foreperson themselves.

Figure 6
Foreperson Egalitarian Score and Ratings of the Foreperson



My thirteenth hypothesis (H_{13}) was: The closer the number of foreperson communications in the deliberation to that of the average of all jurors, the higher the overall ratings will be of the foreperson. Taking the absolute value of the standard deviation from the mean, these results were significant, but in the *opposite* way as predicted. The quantity of foreperson communications relative to the mean of all jurors was positively related to ratings of the foreperson ($r = .18, n = 237, p < .01$). In other words, the more divergent the foreperson's speaking turns from the average of the group, the higher their ratings as a foreperson. This mirrored the earlier findings about foreperson egalitarianism, the greater the standard deviation from the mean a foreperson spoke, the higher their egalitarian score and the higher their ratings

were. However, as seen above, greater foreperson communication deviation (and thus, most often greater number of foreperson communications overall) also correlated with lower deliberation satisfaction. So, although the foreperson was rated higher, jurors overall were less satisfied with the deliberation when a foreperson spoke a great deal differently in terms of quantity than the average of the other jurors. It appeared that jurors appreciated a foreperson that spoke on average more than the group, but they did not appreciate as much the deliberation as a whole.



My third research question (RQ₃) was: Are there differences between the ratings of forepersons who nominate themselves and forepersons who are nominated by others? These results were not significant. There were no meaningful differences in foreperson ratings among jurors between forepersons who nominated themselves ($M = 5.18$, $SD = 1.09$) and forepersons who were nominated by others ($M = 4.97$, $SD = 1.16$), $t(235) = -1.47$, $n.s.$ Although forepersons who nominated themselves were more likely to incur higher impressions among jurors for deliberation satisfaction, this did not extend to the jurors' impressions of the foreperson. Jurors

did not rate forepersons higher when they self-nominated compared to those who were nominated by others, so in terms of ratings of the foreperson, there appears to be no difference between jurors who were self-nominated and jurors who were nominated by others.

My fourteenth hypothesis (H_{14}) was: Forepersons who conduct an evidence-driven deliberation will be rated more favorably than forepersons who conduct a verdict-driven deliberation. These results were not statistically significant. There was no difference in foreperson ratings for forepersons who conducted evidence-driven deliberations ($M = 5.16$, $SD = 1.08$) and forepersons who conducted verdict-driven deliberations ($M = 5.05$, $SD = 1.15$), $t(235) = -.73$, *n.s.* Hastie, Penrod, and Pennington (1983) did not look at ratings of the foreperson when they determined that evidence-driven deliberations were superior to verdict-driven deliberations, and the two were unrelated in this study. Jurors did not necessarily report higher ratings of the foreperson when the deliberation was centered on discussing evidence rather than choosing a verdict at the onset.

Impressions of Other Jurors and Impressions of Humanity in General

My fifteenth, sixteenth, and seventeenth hypotheses examined jurors' impressions of other jurors and humanity in general, and how these related to the foreperson's communications and behaviors.

My fifteenth hypothesis (H_{15}) was: Evidence-driven deliberations will lead to jurors having more positive impressions of other jurors and humanity in general than verdict-driven deliberations. These results were mixed. Evidence-driven deliberations did not lead to jurors having more positive impressions of other jurors ($M = 5.27$, $SD = .90$) than verdict-driven deliberations ($M = 5.13$, $SD = 1.04$), $t(245) = -1.11$, *n.s.* However, evidence-driven deliberations did lead to jurors having more positive impressions of humanity in general ($M = 5.40$, $SD = .93$)

than verdict-driven deliberations ($M = 5.14$, $SD = 1.06$), $t(244) = -2.06$, $p < .05$. Evidence-driven deliberations may have led to jurors having better impressions of humanity in general because they had a positive experience of not being pitted against each other by choosing verdicts at the onset; interestingly, however, it did not relate to how they felt about one another during the actual deliberation at hand. It is notable that evidence-driven deliberations did not exert a positive outcome on deliberation satisfaction, impressions of other jurors, or ratings of the foreperson, yet jurors' impressions of humanity in general were positively affected. It appears that, similar to the concepts of self-efficacy examined a short while earlier, jurors' impressions of other jurors were not affected by the foreperson's communications and behaviors, including which deliberation style that foreperson selected. This may perhaps be due to the fact that those impressions are not related enough to the decision of the foreperson and/or too complex to be altered by the foreperson. However, impressions of humanity in general did not appear as unshakable, and those impressions were more positive when a juror engaged in an evidence-driven deliberation.

My sixteenth hypothesis (H_{16}) was: Forepersons who employ a more egalitarian approach to the deliberations will lead to jurors having more positive impressions of other jurors and humanity in general than forepersons who use a less egalitarian approach. These results were also mixed. A foreperson's egalitarian style was negatively related to jurors' impressions of other jurors ($r = -.13$, $n = 247$, $p < .05$) and unrelated to jurors' impressions of humanity in general ($r = .04$, $n = 246$, $n.s.$). A foreperson acting in an egalitarian way as defined in this study required them to keep a tighter control over the speaking turns in the deliberation, to correct for interruptions or for jurors speaking too little or too much. Perhaps this sort of explicit control lead jurors to call attention to the un-egalitarian behaviors of the other jurors and in turn made

those jurors rate each other less favorably. It would follow that this egalitarianism would lead to more positive impressions of the person making those egalitarian corrections, and more negative impressions of the other jurors that required those corrections of the foreperson. In sum, a foreperson's egalitarian style was negatively related to juror satisfaction with the deliberation, negatively related to jurors' impressions of other jurors, but positively related to jurors' ratings of the foreperson. However, a more or less egalitarian foreperson was not related to jurors' self-efficacy about democracy and deliberation, and as we just learned, their impressions of humanity in general. Perhaps this is due to the fact that these deep-seeded perceptions of humanity in general have little to do with how egalitarian the foreperson was, and again we would see these attitudes being more influenced by a greater number of experiences over a longer period of time.

Lastly, my final hypothesis (H_{17}) was: The closer the number of foreperson communications in the deliberation to that of the average of all jurors, the more positive juror impressions of other jurors and impressions of humanity in general will be. Taking the absolute value of the standard deviation from the mean, these results were also statistically insignificant. A foreperson's communication quantity relative to other jurors was statistically unrelated to jurors' impressions of other jurors ($r = -.08, n = 247, n.s.$) and jurors' impressions of humanity in general ($r = -.04, n = 246, n.s.$). Although one would think that being led by a person who did not over- or under-emphasize their own presence in a deliberation and instead personally contributed a more equal distribution of sharing might lead jurors to have more positive impressions of other jurors and humanity in general, these concepts were unrelated to the speaking quantity of the foreperson. Again, perhaps this experience was not enough to influence jurors more closely held conceptions of humanity and others.

After close analyses of each of my hypotheses and research questions, I found that certain outcomes appeared to be more related to the foreperson's communications and behaviors than others. For one, deliberation satisfaction among jurors was significantly related to the foreperson's egalitarian style, communication quantity in terms of standard deviation from the mean, and their nomination type (either by self or by other). Ratings of the foreperson among jurors were also significantly positively related to the foreperson's egalitarian style, and the forepersons' communication quantity in terms of standard deviation from the mean, though the latter was in the opposite way as predicted. Additionally, the jurors' impressions of the other jurors were negatively related to the foreperson's egalitarian style, and jurors' impressions of humanity in general were positively related to evidence-driven deliberations. However, jurors' self-efficacy about democracy and the deliberation, and their impressions of humanity in general were not related in any instance to the foreperson's communications and behaviors. Throughout these analyses, the data patterns have suggested that self-efficacy about democracy and self-efficacy about the jury deliberation were perhaps too deeply rooted in jurors and not changed by the foreperson in one small group deliberation. These data suggest that some of the traits, communications, and behaviors of forepersons are connected to juror impressions of the deliberation, forepersons, other jurors, and humanity in general. But these relationships only go so far.

Additional Analysis

I now turn to some additional analyses that look at these and other concepts in a differing light. I wanted to see if juror responses regarding these six concepts were related to their demographic characteristics, particularly their sex, race, age, and highest education level completed, or their communication behaviors, specifically their quantity of communications.

Communication Quantity. In general, jurors did not differ in their communication quantity based on demographic factors. All of the deliberations were carefully watched in their entirety and each time a differing juror would speak, it was coded as a speaking turn. Because the deliberations varied in length of times, I took the average speaking turns per deliberation and determined the standard deviation for that sample. I then calculated the number of standard deviations from the mean each juror differed, also known as a z -score. As a result, each juror was given a positive or negative z -score which represented the number of standard deviations from the mean score of the group that their communication quantity varied. Females ($M = .01$, $SD = .92$) and males ($M = -.01$, $SD = .10$) spoke at statistically similar rates, $t(247) = -.19$, $n.s.$ Furthermore, white jurors ($M = .05$, $SD = .97$) did not speak significantly more than jurors of color ($M = -.16$, $SD = .90$), $t(247) = 1.48$, $n.s.$ Additionally, juror age ($r = -.06$, $n = 249$, $n.s.$) and highest education level completed ($r = -.04$, $n = 249$, $n.s.$) did not significantly correlate with communication quantity.

Deliberation Satisfaction. Males and females did not differ in their satisfaction with the deliberation, $t(241) = -.98$, $n.s.$ Whites and people of color also did not differ in their deliberation satisfaction, $t(241) = -.69$, $n.s.$ Juror age and highest education level completed were not significantly correlated with deliberation satisfaction ($r = .03$, $n = 243$, $n.s.$; $r = .06$, $n = 243$, $n.s.$, respectively). Furthermore, jurors' communication quantity (as discussed above) was not related to their deliberation satisfaction ($r = .05$, $n = 243$, $n.s.$). It appeared that deliberation satisfaction was not correlated with any demographic or communicative characteristics of jurors. This is interesting, given that deliberation satisfaction was significantly related to the foreperson's egalitarian style, the foreperson's communication quantity in terms of standard deviation from the mean, the style of the deliberation, as well as the foreperson's nomination type. This

indicates that deliberation satisfaction has more to do with the deliberation itself than any predisposition of the juror experiencing it.

Self-efficacy about Democracy and the Jury Deliberation. Males and females did not differ in their self-efficacy about democracy or their self-efficacy about the jury deliberation, $t(242) = .26, n.s.$; $t(243) = .38, n.s.$, respectively. Whites and people of color also did not differ in their self-efficacy about democracy or their self-efficacy about the jury deliberation, $t(242) = -.31, n.s.$; $t(243) = -.24, n.s.$, respectively. Age was not related to jurors' self-efficacy regarding democracy ($r = .03, n = 244, n.s.$), or their self-efficacy about the jury deliberation ($r = .02, n = 245, n.s.$). Education was also not correlated with jurors' self-efficacy regarding democracy ($r = -.02, n = 244, n.s.$) or the deliberation ($r = -.03, n = 245, n.s.$). However, jurors' communication quantity was significantly positively related to their self-efficacy about democracy ($r = .40, n = 244, p < .01$), as well as their self-efficacy about the jury deliberation ($r = .39, n = 245, p < .01$). In sum, jurors differed in their self-efficacy responses only in terms of communication quantity. Jurors with higher communication quantities rated their self-efficacy about democracy and the jury deliberation higher, meaning that jurors who spoke more felt they had a greater ability to make an impact on democracy as a whole as well as the deliberation. This is interesting because each of the hypotheses related to the foreperson's communications and behaviors from this chapter did not reveal statistical significance with regard to juror self-efficacy about democracy or the jury deliberation, yet juror communications were positively related to both. Jurors who are generally more vocal perhaps feel that they impact larger systems such as democracy more, whereas less vocal people might generally feel that they have less of an impact on society's structural systems such as democracy. Additionally, jurors who were more vocal perhaps also felt that what they said in the deliberation was important and they expected it to influence the

deliberation whereas jurors who spoke less were not as likely to feel that way. It is unclear whether jurors spoke more because they felt greater self-efficacy regarding democracy and deliberation, or if jurors felt greater self-efficacy about democracy and the deliberation because they spoke more, but they are each significantly related.

Ratings of the Foreperson. Males and females overall did not differ in their ratings of the foreperson, $t(235) = -.57, n.s.$ Whites and people of color also did not differ in their ratings of the foreperson, $t(235) = 1.46, n.s.$ Ratings of the foreperson were not correlated with juror highest education level completed ($r = -.06, n = 237, n.s.$). Furthermore, jurors' communication quantities also did not relate to their ratings of the foreperson ($r = -.05, n = 237, n.s.$). However, ratings of the foreperson were positively correlated with juror age, ($r = .12, n = 237, p < .1$). It seems that foreperson ratings were based primarily on the communications and behaviors of the foreperson (their egalitarian style, and their communication quantity) and not related to any demographic or communication characteristics of the jurors, except for their age. This finding may be in part due to the fact that age is sometimes related to respect and those older jurors may have been treated with more respect by the foreperson and in turn may highly rate the foreperson in reciprocity.

Impressions of Other Jurors and Humanity in General. Males had significantly more positive impressions of other jurors ($M = 5.29, SD = .80$) than females ($M = 5.08, SD = 1.13$), $t(245) = 1.68, p < .1$. However, males did not have significantly more positive impressions of humanity in general than females, $t(244) = .00, n.s.$ In terms of race, white jurors did not have significantly more positive impressions of other jurors than jurors of color, $t(245) = 1.17, n.s.$, or more positive impression of humanity in general than jurors of color, $t(244) = .57, n.s.$ Older jurors were significantly more likely to report more positive impressions of humanity in general

($r = .32, n = 246, p < .01$), but this did not correlate to their impressions of other jurors ($r = .05, n = 247, n.s.$). Higher-educated jurors were also more likely to report more positive impressions of humanity in general ($r = .18, n = 246, p < .01$), but this also did not carry over to their impressions of other jurors ($r = -.03, n = 247, n.s.$). Jurors' communication quantity also did not relate to their impressions of other jurors or humanity in general ($r = .09, n = 247, n.s.$; $r = -.08, n = 246, n.s.$, respectively). In sum, impressions of other jurors were correlated sex: males rated their impressions of other jurors more positively. And impressions of humanity in general were correlated with age and education level completed: older and more educated jurors rated their impressions of humanity in general more positively. Our societal structure generally privileges males over females, so perhaps males felt as though they were treated better by the other jurors and thus had more positive impressions of them, based on this socially constructed hierarchy that may well exist within the deliberation room too. It is interesting, however, that this difference was not seen with jurors of color and white jurors. Furthermore, older, and better-educated jurors may be more likely to have success, and be treated with respect, and that treatment might have led them to have better impressions of humanity in general. Overall, impressions of other jurors and humanity in general seem to relate to juror demographics, generally trending toward the more affluent or socially dominant groups rating each more positively.

Discussion

Scholarship has shown us that forepersons are an integral part of jury deliberations. They are perceived to be more influential than other members of the jury (Diamond & Casper, 1992) and they can impact verdict awards (Boster et al., 1991) and speaking turns (Devine et al., 2001; Hastie, 1993; Hastie et al., 1983; Strodbeck et al., 1957). However, previous research has not

looked at whether a foreperson's communications and behaviors affect jurors' perceptions in other specific and measurable ways. From this research, we learned a few key things, mainly that the foreperson influenced certain perceptions of the jurors, as measured by the questionnaire. These findings related to hypotheses and research questions associated with this study. On the other hand, some of the juror perceptions measured in the questionnaire were unaffected by the actions and words of the foreperson, but were still related to a few key demographics and behaviors of the jurors themselves, which were discovered in additional analysis of the data. I will examine these findings by first discussing those that related to the behaviors and communications of the foreperson and then by discussing those related to the communications and demographics of the jurors.

First, the data suggest that the foreperson's communications and behaviors during jury deliberations can influence jurors' deliberation satisfaction, their ratings of the foreperson, their impressions of other jurors and their impressions of humanity in general — though not in a singularly directional way. For starters, foreperson engagement in more egalitarian behavior correlated with jurors being less satisfied with the deliberations, and with the jurors having more negative impressions of other jurors. At the same time, though, forepersons who performed more egalitarian behavior received significantly higher ratings by other jurors. In a parallel pattern, forepersons who spoke more received higher ratings by other jurors but this foreperson communications approach also led to jurors being less satisfied with the deliberation. Egalitarian behaviors and speaking turns of the foreperson yielded mixed results, therefore. Increases in both tended to improve perceptions of the foreperson, but at the detriment of jurors' overall satisfaction or perceptions of the other jurors. Moving in the opposite data direction, forepersons who initiated an evidence-driven deliberation and thus did not require jurors to select a verdict at

the onset of deliberations led to jurors gaining more positive impressions of humanity in general. In partial alignment, forepersons who self-nominated also led to jurors being more satisfied with the deliberation but had no impact on the ratings of forepersons. In sum, jurors' satisfaction with the deliberation was significantly related to three of the four communications and behaviors of the foreperson identified in the content analysis, but in contrasting ways: less egalitarian style, less communication quantity, and self-nominated forepersons. Jurors' ratings of the foreperson were related to two of the four communication behaviors of the foreperson, and in contrasting ways: more egalitarian style and greater communication quantity. And finally, jurors' impressions of other jurors were related to a less egalitarian style of the foreperson; while jurors' impressions of humanity in general were related to the foreperson selecting an evidence-driven deliberation.

The foreperson communications and behaviors were found to be unrelated to concepts of self-efficacy, and only partially related to the other concepts, however certain concepts were related to the communications and demographics of the jurors. Specifically, males were found to have more positive impressions of other jurors, while older, educated jurors were found to have more positive impressions of humanity in general. Older jurors were also found to have higher ratings of the foreperson. These findings are complex because the fact that males were more likely to have positive impressions of other jurors could be reflective of how they were treated in the deliberation specifically as opposed to how they are treated in general by others because they were not more likely to have positive impressions of humanity in general. Conversely, older, and more educated jurors were more likely to have positive impressions of humanity in general, but this did not relate to how they felt about other jurors in the deliberation. There seems to be something happening in the deliberation to those males that is not connected in their minds to

their experiences with humanity in general, and something happening to older, more educated jurors that is not connected in their minds to impressions of other jurors. Furthermore, given the respect often paid to elders in our society, the older jurors might have been treated better by forepersons resulting in them rating the foreperson higher.

On the other hand, self-efficacy is a trait that could very well be tied to certain more privileged demographics, but it appears that it was not the case. Self-efficacy is defined as confidence in one's own ability to produce an intended result. In terms of democracy and deliberation, this refers to how impactful a juror feels they can be to democracy as a whole as well as the deliberation in which they participated. These data show that sex, race, age, and education were not related to jurors' self-efficacy about democracy or the deliberations. Rather, only jurors who spoke more during the deliberation were likely to have better self-efficacy about democracy and self-efficacy about the deliberation. It is at the least a signal of equality that the privileges commonly enjoyed by whites and males in our society did not necessarily cause these jurors to feel a significantly greater sense of self-efficacy than their counterparts. Furthermore, speaking quantities of the jurors were not significantly related to any of the other demographics measured here (sex, race, age, or education), indicating that there are other factors that shape speaking turns and self-efficacy, rather than direct ties to demographic characteristics. Similarly, deliberation satisfaction was not related to any demographic characteristic of the jurors, nor to their communication quantity.

Notably, this study consisted of 249 jurors, which gives this research a strong sense of the concepts relating solely to the jurors' traits and communications. However, there were only 22 forepersons, so the concepts relating to the forepersons' communications and behaviors are more limited. Having an expanded dataset with a greater number of forepersons would help to gain a

better perspective on the communications and behaviors of these forepersons to see how they affect the experiences and impressions of jurors. Future research could also expand questionnaire measurement to look at responses to more specific qualities of the deliberation, such as breadth of evidence discussed, or quality of arguments made by other jurors. Foreperson egalitarianism could have been more explicitly referenced in the questionnaires since these findings showed mixed results. However, this is the first study of its kind to look at foreperson communications and behaviors so it serves as an exploratory starting point for which future research can build. Knowing more about how forepersons' communications and behaviors may influence the jurors in a deliberation is important to our jury system and expanding our knowledge can potentially help us create instructions for juries to consider when selecting a foreperson. After all, jury deliberations are the place where key verdicts are rendered which can have lasting impacts on our justice system as a whole, as well as the individuals involved in the trial.

Chapter 6

Jurors Who Wanted to be Foreperson and Jurors Who Stood Out

Serving on a jury almost by definition comes with the experience of interacting with people whom one does not know and with whom one perhaps might not normally cross paths or build relationships. As one juror wrote in a blog about serving on a jury:

The best part of [the] experience is getting to meet all the other jurors. I got to chat and get to know a variety of people, all of whom were extremely nice. Jury duty at its core is to give citizens a fair and impartial trial, and as such, you will get to meet a diverse group of people. Sharing life stories and experiences is truly exciting, and I always enjoy meeting new people and seeing that not everyone lives the way you do. (Bresnahan, 2016, para. 3)

This can be a positive experience but is not always so, of course. Some jurors experience stress, anxiety, or even bullying, as another juror wrote in an open letter to the editor of her community newspaper after her service:

In this case I was one of 12 to hold no blame. I was then bullied, told that because I held an opinion, I had no right to tell someone else their opinion was wrong, I had pictures stuffed in my face (too close to actually see) and told, “See, there’s someone on the tracks.”...When I began to realize that I was not skilled enough (I don’t think fast on my feet) to convince any of them, and that they did not want to listen, I decided to concede that there was minuscule responsibility. (Hodge, 2017)

In this chapter, I seek a more personalized approach to the experiences of jurors by examining their impressions of the role of the foreperson, as well as of the foreperson him- or herself and

other jurors during the deliberation. Specifically, in this chapter I pursue an additional perspective on forepersons and jurors, via the form of two open-ended items completed by jurors after their deliberations. One was the question: “Would you have wanted to be foreperson?” People were asked to circle “No,” “Maybe,” or “Yes,” and to explain their reasons. The second item was “List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you.” Research questions guided my analysis here: (RQ₄) What characteristics are associated with jurors answering “No,” “Maybe,” or “Yes,” to wanting to become foreperson? And (RQ₅) Are there particular characteristics associated with jurors who stand out to other jurors in the deliberation? This chapter will examine the answers to these research questions.

Unexplored in this dissertation thus far are the characteristics that jurors think accompanies the role of foreperson and whether the jurors wanted to hold that position. We saw in Chapter Three that the typical foreperson nomination at the beginning of juror deliberations consists of only one juror being considered. We also know from scholarship — and from what I observed in these data — that foreperson selection occurs rather quickly, without much discussion or consideration (Deosaran, 1993; Diamond & Casper, 1992; Horowitz, 2005; Ellison & Munro, 2010; Strodbeck & Lipinski, 1985). Jurors are unlikely to challenge or argue with someone’s nomination in part because in the early stages of group formation, cohesion and agreeability are very important (Anthony & Bodaken, 1999; Fisher, 1970). It is also true that many people have a fear of rejection when it comes to self-nominating (Anthony & Bodaken, 1999; Bridgeman & Marlowe, 1979), so if another juror is taking the lead, others may not want to throw their hats into the ring. All of these reasons probably help to explain why more jurors do not nominate themselves to be foreperson or push for others to be considered once an initial

nomination is made. With this in mind, I was also interested in who else may have wanted to lead, but did not take on this role. The first open-ended question of this questionnaire asked: “Would you have wanted to be foreperson?” I will discuss the trends associated with which jurors circled “No,” “Maybe,” or “Yes,” and the explanations they provided.

One nearly unavoidable part of being a foreperson is that these individuals likely stand out to others during the deliberation. However, evidence and common sense suggests that forepersons are not the only ones who influence jury deliberations (Cornwell & Hans, 2011; York & Cornwell, 2006). There can be other jurors who stand out during deliberations, either as opinion leaders, virtuous mediators, or because they possess unusual proficiency at recollecting evidence and testimony. Others might also be notable for being boisterous, overbearing, even annoying. The second open-ended item asked jurors, “List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you.” The question was intentionally open to include any juror because it allowed for jurors to potentially list the foreperson as one of the two jurors who stood out; but they obviously could also choose to list non-foreperson jurors. Similarly, the item was intentionally open regarding why a person might stand out. The question did not prompt the jurors to select others who stood out for what might seem like good or bad reasons; it was up to the jurors to decide the characteristics and to identify the people. Those jurors who were named as standing out were identified by me and matched with the demographic information given for said jurors. I then examined the rationale provided as being positive, negative, or neutral/unclear. This analysis enables examination of who stood out to whom, and why.

Methodologically, I examined these two open-ended items in both quantitative and qualitative ways. First, for RQ₄, I computed frequencies for each of the answers circled (“No,”

“Maybe,” or “Yes,”), followed by frequencies for demographic information and juror communication behaviors within each of the circled answers. These frequencies can tell us if any demographic information or communication behavior correlates with whether jurors would have wanted to be foreperson. Next, I ran frequencies for each of the six themes from the other items in the questionnaire to see if certain concepts (deliberation satisfaction, self-efficacy about democracy, self-efficacy about deliberation, ratings of the foreperson, impressions of other jurors, impressions of humanity in general) were related to jurors’ likelihood to want to be foreperson. These frequencies were the quantitative elements of the analysis. Lastly, for RQ₄, I performed a qualitative content analysis in which I examined the explanations for jurors’ answers. Excerpts from the responses were selected to highlight those themes.

For RQ₅, I ran frequencies for each demographic characteristic and communication behavior (speaking quantity) that appeared in jurors who stood out as well as frequencies for the whole collection of jurors in this study. These two sets of frequencies enabled comparison of what demographics appeared more or less than chance would expect. From this we can see what demographic characteristics or communication behaviors were associated with jurors who stood out in deliberation. Next, I compared the demographic information or speaking quantity of each juror to the demographic information or speaking quantity of the jurors who stood out specifically to see if any characteristics or behaviors of jurors were more or less likely to be associated with who stood out, thus helping us see not only who stood out in general, but also who stood out *to whom*. Lastly, after identifying each reason given for a juror standing out as positive, negative, or neutral/unclear, I ran frequencies to see if any demographic characteristics or speaking quantity appeared in positive or negative lights more than chance would expect. For

a qualitative look at RQ₅, I then looked at the specific reasons given for why jurors stood out, to identify themes associated with those reasons. Excerpts will illustrate those reasons and themes.

Results

In this section, I present the findings associated with my two final research questions. I begin by reporting overall trends associated with my fourth research question (RQ₄), which was: What characteristics are associated with jurors answering “No,” “Maybe,” or “Yes,” to wanting to become foreperson? And I discuss the circled answers as well as the explanations given for those answers. Next, I report overall trends associated with my fifth and final research question (RQ₅), which was: Are there particular characteristics associated with jurors who stand out to other jurors in the deliberation? I then consider and discuss trends associated with the jurors selected as well as the reasons given for why those jurors were selected as standing out in the deliberation. This chapter concludes with an overall discussion about what was found in these exploratory open-ended items and how it pertains to jurors’ experiences during jury deliberation.

Research Question 4

Each of the 249 mock jurors were asked whether they would have wanted to be foreperson. They were asked to circle “No,” “Maybe,” or “Yes,” and to explain their reason. Four jurors did not circle a response, resulting in a total of 245 answers. Nearly half of jurors (42.9%) answered “No,” that they would not have wanted to become foreperson. Closely behind, 39.6% of jurors answered “Maybe.” Lastly, 17.6% of jurors answered “Yes,” that they would have wanted to become foreperson. Notably, these responses are inclusive of jurors who did in fact become foreperson. I now turn to a discussion to answer (RQ₄): What characteristics are associated with jurors answering “No,” “Maybe,” or “Yes,” to wanting to become foreperson?

Forepersons. As one might expect, people who did serve as forepersons were much more likely to say that they wanted to be foreperson than those who did not become foreperson. There were 22 forepersons across the mock juries; one did not answer the item on the questionnaire, so the N for the forepersons in this analysis was 21. Ninety percent said they wanted to be foreperson, compared to 10.7% percent among jurors who did not serve as foreperson. A Chi-square test showed these results to be statistically significant, $\chi^2(2, N = 245) = 84.41, p < .01$. Only one foreperson, a female, answered “Maybe;” her explanation was “I was the foreperson, did not mind it, but maybe would not be it next time.” This foreperson self-nominated, was one of the youngest forepersons, and also had one of the highest education levels of all the forepersons (master’s degree). Additionally, her jurors gave above average scores for all six of the concepts measured in the questionnaire: deliberation satisfaction, self-efficacy about democracy, self-efficacy about deliberation, ratings of the foreperson, impressions of other jurors, and impressions of humanity in general. Furthermore, one foreperson, a male, answered “No,” but he did not give an explanation as to why. He was nominated by another juror, spoke less than all the other forepersons, and was of average age and education compared to the rest of the forepersons. This foreperson received above average scores on four of the concepts, but below average scores for ratings of the foreperson and impressions of humanity in general. Overall, forepersons said they wanted to be forepersons.

Looking at jurors who were not forepersons, 10.7% said “Yes” that they would have wanted to be foreperson. The majority of these jurors were male (62.5%). Most of these jurors provided rationale for their responses that highlighted *skills, experiences, or positive contributions to a leadership role*. These included: “No reason really except I’m native in leading,” “I think I would have done a good job,” or “Am able to control groups of adults with

gentle direction and able to make sure all views are heard.” Within these non-foreperson jurors, there was a smaller segment of jurors who said they would have done something *more or better* than the sitting foreperson, implying a hint of criticism for how that person did, such as “I think I would have done a better job,” “More control needed to be taken,” or “I believe it would have been a smoother debate, much less focused on emotion and more on proof.” These critical jurors were nearly split between males and females. Overall, this was a very small group of jurors who made up this category of not being foreperson but wanting to be.

Further, among jurors who were not forepersons 42.9% said “Maybe” they would have liked to be foreperson. Among these jurors, three points of comments emerged. First, and most frequent, jurors provided reasons why they would be a *good or better foreperson* than the one who presided over their deliberation, such as “Organization tends to be my strong suit,” “Experience with serving on a jury,” “I would have kept clear the purpose of each question and keep flows of deliberation for that question,” “I think I could have done a better job leading,” or even “Yes, there are studies proving men perceive women as speaking significantly more than they do. A female foreman would have been more fair.” Second, and next most common, jurors said something to the effect that they would take on the foreperson role *if necessary*, but then offered some sort of reluctance. For example, responses included “If no one else wanted it, I would step up,” “Sure, if I had to be,” “It depends on how I’m feeling that day. Sometimes I’m not in the mood to be a leader,” or “If enough time goes by and no one volunteers, I will!” Third, least common but evident as a pattern, jurors said “Maybe” and then essentially *counter-argued against themselves* serving as forepersons, providing reasons why they would not be a good foreperson or not want to serve in that role, including “I may over-speak,” “I get nervous in a group,” “I may have been too abrupt or curt,” “Too much personal opinion,” “Don’t know if I’m

patient enough,” “I would have preferred better to listen than be the foreperson so I could pay better attention to all and take notes” or “I’m not quite that confident.” Sometimes these counter-arguments even included the juror giving reasons why they are qualified, followed by a reason why they should not or would not want to, such as “I have lots of leadership experience but I don’t crave it so I don’t mind sharing the spotlight,” or “I’ve read the literature on how to become the foreman, but I demurred, my handwriting is too lousy.” All in all, many of the jurors who circled the response “Maybe” gave reasons why they would be willing to be foreperson, while a smaller portion of the jurors also offered reasons why they likely should not or would not want to be foreperson.

Finally, among jurors who were not forepersons 46.4% said “No,” they would not be interested in being a foreperson. The comments by these individuals also grouped into three categories. First, and most common, jurors offered explicit skills-based reasons why, in their view, they *would not have been a good foreperson*. These included, for example, statements such as “I don’t think I can maintain neutrality,” “Not knowledgeable,” “Lack of experience,” “Not good talking or taking order.” Some of the jurors’ explanations even included qualities about themselves that might actually be considered positive qualities to argue why they shouldn’t be foreperson, such as “I am not a control freak,” “I’m more of a thinker than a leader,” or “I’m too inquisitive.” Second, and next common, jurors stated that they *would not have wanted or liked to lead*. These included, for example, “Done enough of this when I worked, glad I didn’t have to be foreperson,” “Don’t like leadership responsibility,” “Did not want to be in charge,” “I like to let others shine,” or “Eh, not my thing.” Third, and least common, jurors opined that their *foreperson did a good or better job* than they could have done; comments included “I don’t think I would have done a good job as foreperson we had,” “I don’t think I could have been as

neutral,” “Foreperson seemed more knowledgeable about procedure than I would have been,” or “I thought Elizabeth was respectful and open to everyone. I get irritated with people talking too much.” As a whole, the reasons given for not wanting to be foreperson centered mostly on jurors’ negative evaluations of themselves, their skills, or their desires, as opposed to the more positive reasons jurors gave for answering “Maybe.”

Sex. Males and females were statistically no more or less likely to indicate “No,” “Maybe,” or “Yes,” to the question of wanting to be foreperson. Males said “No” 37.7% of the time, “Maybe” 41.8% of the time, and “Yes” 20.5% of the time, whereas females said “No” 48.0% of the time, “Maybe” 37.4% of the time, “Yes” 14.6% of the time. A Chi-square test showed this difference was statistically nonsignificant, $X^2(2, N = 245) = 3.00, n.s.$ In terms of sex, then, there was no clear relationship with how jurors answered whether they would have wanted to be foreperson.

Race. When looking at white jurors compared with jurors of color, race did not play a statistically significant role in how jurors answered whether they would have wanted to be foreperson. White jurors said “No” 39.5% of the time, “Maybe” 42.2% of the time, and “Yes” 18.4% of the time, whereas jurors of color said “No” 53.3% of the time, “Maybe” 31.7% of the time, and “Yes” 15% of the time. A Chi-square test indicated these differences to be statistically nonsignificant, $X^2(2, N = 245) = 3.59, n.s.$ In terms of race, jurors were no more or less likely to answer “No,” “Maybe,” or “Yes,” to wanting to be foreperson.

Age. Juror age did not play a role in who indicated “No,” “Maybe,” or “Yes,” to wanting to be foreperson. When giving the answer “No” a score of 1, the answer “Maybe” a score of 2, and the answer “Yes” a score of 3, likelihood of saying “Yes” was not correlated with age ($r = -$

.09, $n = 245$, *n.s.*). It seems that juror age was unrelated to whether jurors were willing to be foreperson.

Education. Juror education level did not relate to whether jurors would have wanted to become foreperson. When running a correlational analysis, education level was not significantly related to a juror's likelihood to want to be foreperson ($r = .02$, $n = 245$, *n.s.*). Therefore, education level was unrelated to what responses jurors circled for whether they would have wanted to be foreperson.

Employment Status. Employment status was not related to which jurors indicated they would have wanted to be foreperson. Full-time working jurors said "No" 40.5% of the time, "Maybe" 39.7% of the time, and "Yes" 19.8% of the time, whereas non-full-time working jurors said "No" 45.2% of the time, "Maybe" 39.5% of the time, and "Yes" 15.3% of the time. Furthermore, part-time working jurors said "No" 45.6% of the time, "Maybe" 43.9% of the time, and "Yes" 10.5% of the time, whereas non-part-time working jurors said "No" 42.0% of the time, "Maybe" 38.3% of the time, and "Yes" 19.7% of the time. Chi-square tests showed these results to be insignificant when looking at full-time employed jurors versus all other employment statuses, $X^2(2, N = 245) = 1.02$, *n.s.* and when looking at part-time employed jurors versus all other employment statuses, $X^2(2, N = 245) = 2.56$, *n.s.* Therefore, employment status was not related to whether jurors would have wanted to be foreperson.

Marital Status. In terms of marital status, jurors were no more or less likely to select "No," "Maybe," or "Yes," to wanting to become foreperson. Married people said "No" 42.0% of the time, "Maybe" 38.7% of the time, and "Yes" 19.3% of the time, whereas unmarried people said "No" 43.6% of the time, "Maybe" 40.5% of the time, and "Yes" 15.9% of the time. Furthermore, single people said "No" 38.5% of the time, "Maybe" 42.8% of the time, and "Yes"

18.7% of the time, whereas non-single people said “No” 45.4% of the time, “Maybe” 37.7% of the time, and “Yes” 16.9% of the time. Chi-square tests found differences to be statistically insignificant in terms of married jurors versus all non-married jurors, $X^2(2, N = 245) = .51, n.s.$ as well as in terms of single jurors versus non-single jurors, $X^2(2, N = 245) = 1.15, n.s.$

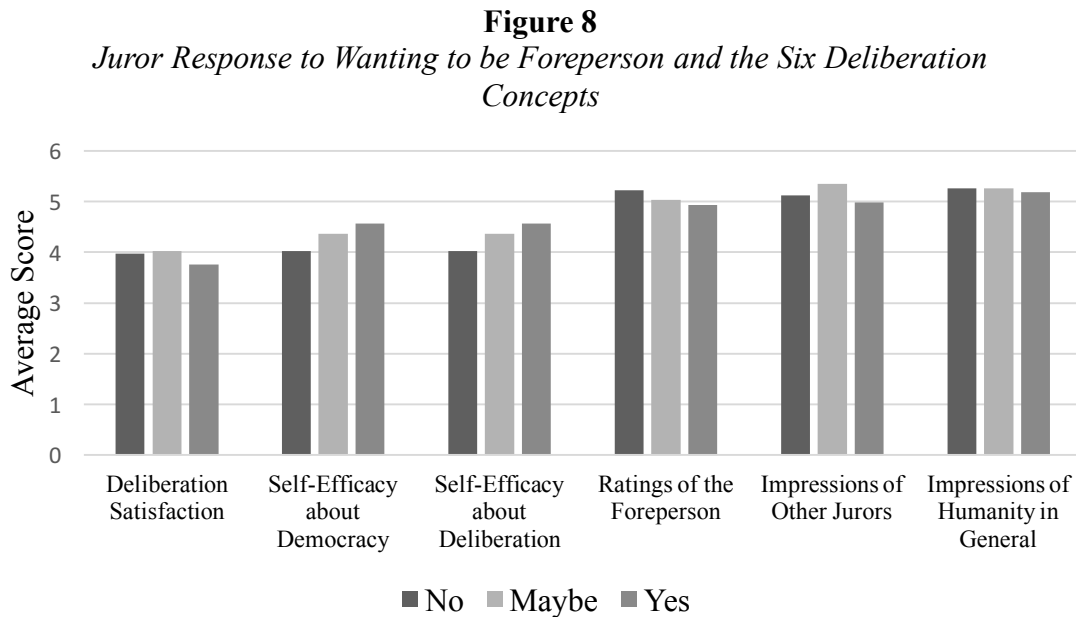
Therefore, marital status played no role in whether jurors would have wanted to be foreperson.

Speaking Quantity. Jurors who spoke more were significantly more likely to answer “Yes” or “Maybe” when asked whether they would have wanted to become foreperson. Speaking quantity was significantly correlated to likelihood to jurors’ responses ($r = .40, n = 245, p < .01$). Jurors answered “Yes” spoke an average of .84, while jurors who answered “Maybe” spoke an average of -.05, and jurors who answered “No” spoke an average of -.29 standard deviations from the mean for their group. This might be explained by the fact that jurors who speak more are likely more comfortable speaking in front of groups, and likely enjoy it more, therefore they would be more prone to be willing to be foreperson or even *maybe* want to be foreperson.

Deliberation Concepts. Figure 8 shows how the average scores for each of the six deliberation concepts measured in the questionnaire differ by what jurors answered when asked “Would you have wanted to be foreperson?” Interestingly, jurors’ answers were significantly related to both concepts of self-efficacy: self-efficacy about democracy ($r = .23, n = 242, p < .01$), and self-efficacy about deliberation ($r = .23, n = 243, p < .01$). Jurors with higher high levels of self-efficacy might be more willing to feel that they could make a positive impact by leading a deliberation. By definition, self-efficacy refers to a person’s sense of their ability to produce a desired or intended result, so this feeling could go hand in hand with the confidence and the desire to be foreperson. As we saw in previous chapters, self-efficacy appears to be a deeply rooted concept we all have. In this study, self-efficacy (about democracy and

deliberation) was unrelated to the experience of the deliberation at hand, but it seems closely related to whether jurors would have considered being a foreperson.

Regarding the other four concepts, deliberation satisfaction ($r = -.07, n = 241, n.s.$), ratings of the foreperson ($r = -.10, n = 235, n.s.$), impressions of other jurors ($r = -.01, n = 245, n.s.$), and impressions of humanity in general ($r = -.02, n = 244, n.s.$), there were no significant correlations to jurors' willingness to have been foreperson. This is notable because one might think that having higher deliberation satisfaction, higher ratings of the foreperson, and more positive impressions of other jurors in the deliberation, and of humanity in general would make a person more or less willing to want to lead. Nevertheless, it also seems plausible that thoughts of others (including humanity in general and the foreperson) would be unrelated to whether a juror would want to be foreperson because of the variety of reasons people choose to lead. Likewise, deliberation satisfaction might be unrelated to whether one would admit to have wanted to be foreperson, given again, the variety of reasons that motivate people to want to lead. Some people wish to be foreperson because they believe they could outperform the forepersons they have seen (indicating a lower satisfaction with the foreperson and possibly the deliberation), whereas others may wish to be foreperson for other reasons entirely.



In sum, no demographic characteristic was related to whether jurors indicated “No,” “Maybe,” or “Yes,” to wanting to be foreperson. However, two behavioral characteristics, being foreperson and more speaking, were both related to a juror’s likelihood to say they wanted to be foreperson. First, forepersons were significantly more likely to report wanting to be foreperson than jurors who were not foreperson, perhaps this is due to an egotistical desire to not appear as though one was not chosen or did not assert themselves to do something they would have wanted to do, or thought they would have been good at doing. Second, jurors who spoke more were significantly more likely to say they wanted to become foreperson. This is likely explained by those jurors’ comfort and willingness to talk a lot in a group and therefore their tendency to be willing and comfortable leading a group. In the end, age, speaking quantity, and actually becoming foreperson were the greatest predictors in what jurors answered in response to whether they would have wanted to become foreperson. Finally, the willingness to be foreperson was tied to two concepts measured in the questionnaire, self-efficacy about democracy, and self-efficacy about deliberation. Jurors who said they would have wanted to be foreperson or would maybe

have been foreperson had higher self-efficacy than jurors who said they would not have wanted to be foreperson. Thus, self-efficacy might be an integral factor when jurors are considering whether they want to take on a leading role in a deliberation.

Research Question 5

Each of the 249 mock jurors were asked to select two people in their jury who stood out to them. Most participants provided at least one name (or enough descriptive info for it to be clear who they meant), leading to a total of 477 jurors named as standing out. Of the 249 jurors in this study, 65.9% were named as standing out at least once by another juror, while 34.1% were never named in such a capacity. With this in mind, I focus on RQ₅: Are there particular characteristics associated with jurors who stand out to other jurors in the deliberation? Table 13 shows the breakdown of jurors who stood out by demographic characteristics compared to the overall population of jurors.

Forepersons. As previous scholarship would suggest, forepersons were more likely to stand out than other jurors in the deliberation room. Forepersons made up 8.8% of all jurors, but they were 13.4% of jurors identified as standing out. A Chi-square test indicated this difference was statistically significant, $X^2(1, N = 249) = 4.51, p < .05$. Forepersons have been found to be more influential than other jurors in the deliberation (Diamond & Casper, 1992), and to be influential in a group of people who do not know each other one would seem likely to stand out. Only three of the 22 forepersons in this study were not reported as standing out to any jurors in their deliberations. One of these forepersons were female, the other two were male. Two of the forepersons who did not stand out to other jurors in their deliberation, one male and one female, were the only two forepersons to speak less than the average juror in their deliberations. A t-test showed that forepersons who stood out spoke significantly more than forepersons who did not

stand out, $t(20) = -2.27, p < .05$. This data revealed a trend that forepersons were more likely than other jurors to stand out in the deliberations, except for forepersons who spoke less than other jurors in the deliberations.

Sex. Males (50.9%) and females (49.1%) stood out to others in the deliberation in almost identical amounts. A Chi-square test showed no significant sex difference in whether a juror stood out $X^2(1, N = 249) = .39, n.s.$ Furthermore, when examining who stood out within each sex of the participants, males and females stood out in statistically equivalent amounts to each other, $X^2(1, N = 477) = .25, n.s.$ In terms of standing out to other jurors in the deliberation, therefore, sex did not play a role.

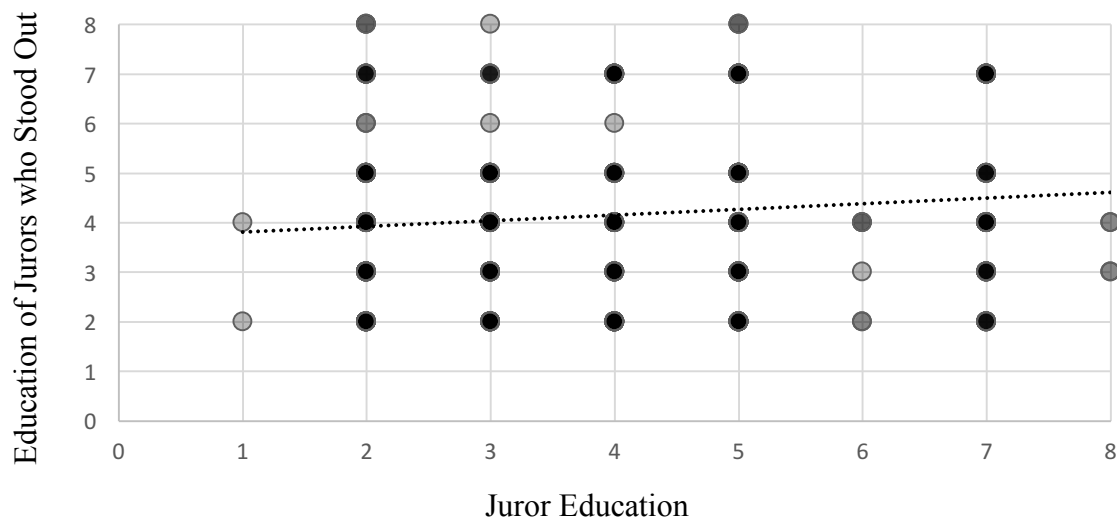
Race. The race of jurors who stood out matched the race of the population of all jurors closely. This indicates that no jurors of a particular racial background were more or less likely to stand out, $X^2(1, N = 249) = .72, n.s.$ A Chi-square test also showed no significant difference in the rates at which white jurors or jurors of color selected other white jurors or jurors of color to stand out, $X^2(1, N = 463) = .29, n.s.$ Thus, race was unrelated to who stood out to whom during the deliberations.

Age. The age of jurors who stood out in the deliberations closely matched the population of all jurors. The average age of all the jurors (47.77 years old) matched the average age of the jurors who stood out (47.51 years old). Age was not significantly correlated with number of times a juror stood out ($r = -.01, n = 249, n.s.$). Furthermore, age of the juror was also not significantly correlated with the age of the jurors who stood out to them ($r = -.02, n = 477, n.s.$). Thus, age was unrelated to who stood out and to whom during deliberations.

Education. The highest education level completed of jurors who stood out in the deliberations tended to match the population of all jurors closely as well, with the exception that

jurors with a master’s degree (14.7% of jurors who stood out compared to 12.4% of the juror population), Ph.D. (1.5% of jurors who stood out compared to 0.8% of the juror population), and associate’s degree/professional degree (19.3% of jurors who stood out compared to 16.9% of the juror population) were slightly more likely to stand out, and jurors with a bachelor’s degree were slightly less likely to stand out (23.9% of jurors who stood out compared to 26.5% of the juror population). Nevertheless, education was not correlated with the number of times a juror stood out ($r = .06, n = 249, n.s.$). However, the education of the jurors and the education of the persons who stood out to them were significantly and positively related, ($r = .12, n = 477, p < .01$). This means that higher-educated jurors were more likely to say other highly-educated jurors stood out and lower-educated jurors were more likely to say other lower-educated jurors stood out. Figure 9 shows this slight trend.

Figure 9
Juror Education and Education of Jurors Who Stood Out



Key

- | | |
|------------------------------------|-----------------------------|
| 1 = Some High School | 5 = Bachelor’s Degree |
| 2 = High School Diploma/GED | 6 = Some Post-Graduate Work |
| 3 = Some College | 7 = Master’s Degree |
| 4 = AA Degree/ Professional Degree | 8 = Ph.D. |

Employment Status. The employment status of the jurors who stood out matched the employment status of the population closely with the exception of homemakers and full-time employees being slightly more likely to stand out, and part-time employees being less likely to stand out. Chi-square tests showed that full-time working jurors stood out statistically more than other jurors, $X^2(1, N = 249) = 3.16, p < .10$; and part-time working jurors stood out statistically less than other jurors, $X^2(1, N = 249) = 4.65, p < .05$. Chi-square tests also indicated that part time or full-time employees did not select certain employment statuses to stand out at rates different than what chance would expect (full-time versus all else: $X^2(1, N = 477) = .09, n.s.$; part-time versus all else: $X^2(1, N = 477) = .11, n.s.$). It appeared as though working full-time made jurors stand out more than other jurors during deliberations and working part-time made jurors stand out less than other jurors, but employment status did not affect who stood out to whom.

Marital Status. The marital status of the jurors who stood out also matched the marital status of the population closely with the exception that married people were slightly less likely to stand out and cohabitating and widowed jurors were slightly more likely to stand out. Chi-square test results showed that married people did not stand out more or less than other jurors, $X^2(1, N = 249) = .49, n.s.$; and single people did not stand out more or less than other jurors, $X^2(1, N = 249) = .64, n.s.$ Chi-square tests also showed that the marital status of jurors did not relate to marital status of those who stood out to them (married versus all else: $X^2(1, N = 474) = 2.24, n.s.$; single versus all else: $X^2(1, N = 474) = 6.11, n.s.$). This means that in terms of standing out to other jurors in the deliberation, marital status did not play a role.

Table 13
*Characteristics of Jurors Who Stood Out Relative to
 All Jurors*

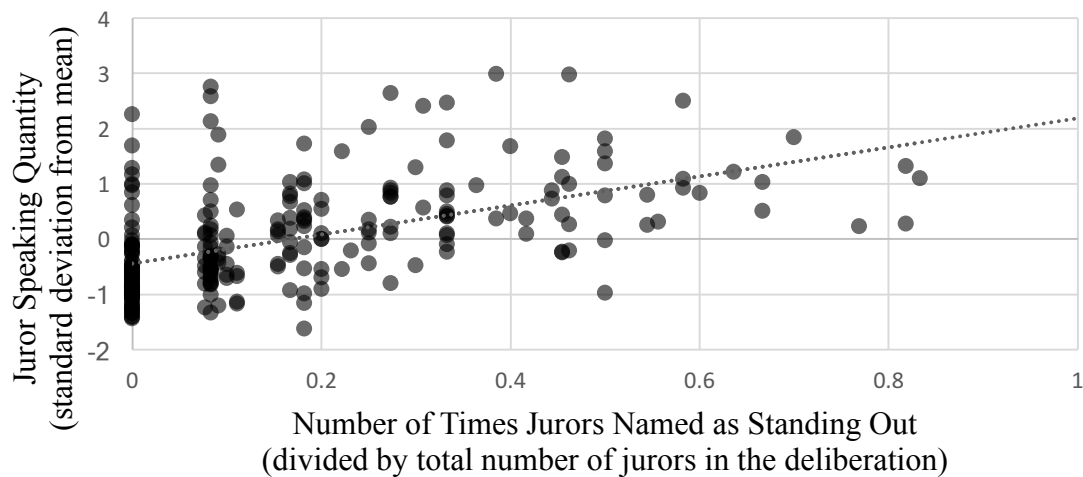
Measures	All Jurors %	Jurors Who Stood Out %
<i>Foreperson</i>		
Was foreperson	8.8	13.4
Was not foreperson	91.2	86.6
Total	100%	100%
<i>Sex</i>		
Male	50.2	50.9
Female	49.8	49.1
Total	100%	100%
<i>Race</i>		
White	75.5	75.9
Asian	2.0	1.9
Black or African American	10.0	10.9
Hispanic, Latino, or Spanish Origin	5.6	4.0
Middle Eastern/North African	0.4	0.2
Native Hawaiian or other Pac. Islander	0.8	0.4
Mixed Race	4.4	5.0
Other Race	1.2	1.7
Total	100%	100%
<i>Age</i>		
18-35	23.3	24.5
36-55	41.8	43.2
56-75	34.9	32.3
76+	0.0	0.0
Total	100%	100%
<i>Highest Level of Education Completed</i>		
Some High School	0.4	0.0
High School/GED	21.7	19.7
Some College	20.1	20.1
AA/professional deg.	16.9	19.3
Bachelor's Degree	26.5	23.9

Some Post Graduate Work	1.2	0.8
Master's Degree	12.4	14.7
Ph.D.	0.8	1.5
Total	100%	100%
<hr/>		
<i>Employment Status</i>		
Full Time	49.0	52.6
Part Time	23.7	17.0
Student	0.4	0.8
Retired	13.7	13.8
Home-maker	6.4	9.2
Unemployed	5.6	5.7
Disabled	1.2	0.8
Total	100%	100%
<hr/>		
<i>Marital Status</i>		
Single	38.2	38.4
Married	47.8	46.0
Cohabiting	1.6	2.3
Divorced	10.4	10.3
Widowed	2.0	2.9
Separated	0.0	0.0
Total	100%	100%
<hr/>		

Speaking Quantity. Jurors who spoke more during deliberations were more likely to stand out. The average speaking turns of those who were named as standing out by other jurors was .60 standard deviations higher than the mean of all jurors. Furthermore, the number of times a juror was named as standing out, divided by the number of jurors in that group (given that juries in this study ranged from 9-13 people) was positively correlated with the speaking-turns number of deviations from the mean for that juror ($r = .52, n = 249, p < .01$), as seen in Figure 10 below. As common sense would suggest, speaking more made jurors more likely to stand out to others. Additionally, the standard deviation from the mean number of times a juror spoke was significantly and negatively correlated with the standard deviation from the mean number of

times the jurors who stood out to them spoke ($r = -.09, n = 477, p < .05$), indicating that the less a juror spoke, the more the people they selected as standing out spoke.

Figure 10
*Number of Times Jurors Named as Standing Out
by their Speaking Quantity*



To summarize, being the foreperson, speaking quantity, education, and employment status all were related to jurors' naming of who stood out to whom. Full-time working jurors were significantly more likely to stand out than other jurors, and part-time working jurors were significantly less likely to stand out than other jurors; however, employment status was unrelated to who specifically stood out to whom. On the other hand, highly educated jurors were not more or less likely to stand out, but they were more likely to select other highly educated jurors who stood out. Finally, jurors who spoke more were more likely to stand out in general and the less a juror spoke correlated with the more the jurors who stood out to them spoke. These findings are indicative of the idea full-time working jurors who speak a lot are more likely to make an impression on other jurors in the room. They may be more accustomed to working in groups and perhaps even taking a leading role, which makes them more likely to stand out to others in the room, especially to those who speak little. Furthermore, highly educated jurors are more likely to

make an impression on other highly educated jurors, indicating that jurors seek out others with similar levels of education as themselves.

Moving beyond the quantitative responses, I also looked at the reasons that jurors provided as to why jurors stood out. Jurors were asked to explain why they named a juror as standing out, and open-ended responses were examined qualitatively for positive, negative, or neutral/unclear rationale. The data showed that the majority of people identified as standing out in the deliberation were identified as so for positive reasons. Nearly three-quarters (73.8%) of jurors gave positive reasons for why another juror stood out to them, compared to 11.3% of jurors named as standing out for negative reasons. A total of 14.9% of jurors were identified as standing out for neutral/unclear reasons. These responses were ones that typically mentioned a trait that was not overtly positive or negative, and there were no cues indicating whether the statement was intended to be positive or negative. Examples included statements such as “Talked a lot” or “Strong views.” Additionally, any statement unrelated to a positive or negative trait such as “Sat across from me” or “Strong in favor of plaintiff” was also coded as neutral or unclear. Ultimately, I decided to focus on the positive and negative assessments. With this in mind, I now move to discuss the positive and negative reasons jurors stood out.

Regarding positive reasons, jurors frequently cited stand-out jurors for being *effective and controlled communicators*. For example, responses included: “Very articulate,” “Reasonable,” “Presented their side well,” “Kept a level and intelligent head,” “Well thought-out statements,” or “Gave honest and reasonable views with supporting evidence.” Next frequent were comments that described a juror’s *open-ness to others’ ideas*, such as “Very open to different viewpoints,” “Looked for information from both sides,” “Made sure we looked at all perspectives,” “Listened well,” and “Open-minded.” The third most common reason a juror was cited for standing out for

positive reasons was for *being a good foreperson or leader* of the group. These comments included “Our chairperson. Very fair,” “Excellent foreperson,” “Fantastic foreperson, well-reasoned in his own opinions,” and “Good foreperson, guided group so all were heard, concise reasoning.” Notably, these leadership-based comments also sometimes referred to people who were not the foreperson, but did a good job assuming a directive role, such as “Took control in a good way,” or “He had good leadership, and good points,” “Supervised jurors well,” “Stuck to facts and helped keep us on track,” and “For assistance to the foreperson.” Less common but present, jurors stood out for positive reasons because they had some sort of specific *knowledge or experience*, such as “Her experiences were really helpful,” “Had knowledge that was explained well,” “Knowledgeable of medical practices,” or “He had a lot of experiences with health issues.” An interesting final thematic pattern was one word employed frequently to describe someone who stood out, and that word was “passionate.” Jurors made comments such as “She was very passionate about her positions,” “Very vocal and passionate about the way he felt,” “Passionate, clear, well thought out” and “Passionate and well-articulated arguments.” In general, jurors stood out to each other in positive ways primarily due to their communication skills, including communicating passionately. Being open to others, and having specific skills or experiences were also common ways to stand out.

Negative reasons jurors stood out to each other most regularly had to do with specific *thoughts or opinions*, particularly if the respondent thought they were wrong or incomplete. For example, “Focused on the irrelevant items,” “Took things as facts that weren’t,” “Speculated too much, didn’t seem to stick to the facts presented,” “Bleeding heart, not listen to logic,” and even “Very dumb,” and “No common sense on facts.” The second most common reason jurors stood out for negative reasons was if they were *too talkative or often interrupted others*, such as

“Frequently interrupted others while talking,” “Would not shut up,” “Talked too much,” and “Tended to speak out ‘whenever’ he wanted.” Lastly, the third most common reason associated with why jurors stood out had to do with being *too opinionated or stubborn*, such as “Refused to listen to anything but her own opinions,” “Tried to get her opinion across and ignored the others,” “over the top and not willing to compromise his opinions,” or “Very opinionated.” Overall, the negative reasons jurors gave for why others stood out were more streamlined into fewer types and generally had to do with their opinions and how they communicated them.

In summary, jurors were much more likely to stand out for positive reasons in this study. Particularly, jurors were the most likely to positively stand out if they were perceived as engaging in effective and controlled communications. They were also likely to stand out if they were open to others’ ideas, had good leadership qualities (whether they were the foreperson or not), specific knowledge or experience relating to the trial, or if they were passionate communicators. Fewer jurors overall stood out for negative reasons, but when jurors did, it was most commonly attributed to having irrelevant or disagreeable thoughts or opinions; especially if they communicated those thoughts or opinions in an overly verbose or interruptive way. Finally, jurors were likely to stand out negatively if they were too opinionated or close-minded to new ideas, the other side of the coin to jurors who positively stood out for being open to others’ ideas. Overall, communication played a large role in what reasons jurors stood out to each other, for better or worse. Communication, though not often mentioned explicitly, was a powerful tool for jurors to use during the deliberation to either stand out in positive or negative ways.

Discussion

Being foreperson is an important role during jury deliberations. It is this reason that federal jury instructions require every jury to have one. However, juries have only one foreperson, which means that the other people on the jury cannot be foreperson. My two final research questions for this study dug a bit deeper into jurors' thoughts and feelings about being foreperson and their perceptions of who stood out in the jury, whether those people were the foreperson or not. In reviewing whether jurors would have wanted to be foreperson, we now better understand how many people would be interested in taking on that role, or at least who will say such. Furthermore, knowing the reasons for why jurors say they would, would maybe, or would not want to be foreperson helped shed light on what components contribute to jurors' reasoning for their preferences. As for the jurors who stood out to others in the deliberation, these open-ended data have aided understanding in who, whether the foreperson or another juror, stood out to others and why they did so.

In this research, most jurors reported that they would not have wanted to be foreperson, or that they would have maybe wanted to be foreperson. Only a very small percentage of jurors in this study said that they would have wanted to be foreperson; the majority of those jurors were male and they typically offered reasons having to do with their skills or experience in a leadership role, and the positive contribution they could make to the group. For the vast majority of jurors who did *not* want to be foreperson, it had to do with their *lack* of specific skills or experience and less to do with them not wanting the role because of personal preference or disinterest. The group of jurors who answered "Maybe" fell mostly into a pattern of giving reasons for why they would be a good foreperson, with a smaller portion of those who answered "Maybe" providing reasons why they might not be a good foreperson. Overall, the reasons

associated with whether jurors would want to be foreperson centered around their skills or experience with leading. Most commonly, jurors gave positive reasons when answering “Yes” or “Maybe” and negative reasons for answering “No.”

Sex, race, age, education level, employment status and marital status all were unrelated to how jurors answered the question of whether they would have wanted to be foreperson. Only a couple of characteristics or behaviors measured in this research were related to a juror wanting to become foreperson. First, jurors who were foreperson were much more likely to answer “Yes” that they would have wanted to be foreperson, which is perhaps unsurprising, given that they just completed the duty. Only one foreperson answered “Maybe,” and one foreperson answered “No.” Next, jurors who had spoken more during the deliberations were significantly more likely to answer “Maybe” or “Yes” than jurors who spoke less. A willingness to speak more than others and the comfort with doing so do seem to be good predictors to a jurors’ likelihood to have wanted to lead. Further, higher ratings of self-efficacy about democracy and self-efficacy about deliberation were significantly correlated with jurors’ likelihood to say “Maybe” or “Yes” to wanting to become foreperson. If jurors feel they can make a positive impact to democracy as a whole and to the deliberation in which they just participated, they were more likely to be open to wanting to lead such a group. Other concepts measured in this research, deliberation satisfaction, ratings of the foreperson, impressions of other jurors and impressions of humanity in general were not related to whether a person would want to be foreperson themselves. A willingness to be foreperson may be born from a variety of experiences and levels of satisfaction within a jury deliberation, but in this research only self-efficacy, speaking quantity, and being foreperson were significantly positively related to jurors’ willingness to lead.

The open-ended questionnaire items also explored what jurors stood out to others during the deliberations and why. Specifically, about two-thirds of jurors were named as standing out to others at least once, and about one-third of jurors were not identified as standing out to others at all. Forepersons, highly educated jurors, full-time working jurors, and jurors who spoke more were more likely to stand out than their counterparts. Furthermore, the majority of jurors who were identified as standing out (nearly three-quarters) were selected for positive reasons, while a much smaller portion of jurors (about one in ten) were named as standing out for negative reasons. The positive reasons most typically had to do with a juror's communication skills or open-ness to others' views. The negative assessments most commonly had to do with jurors' views or opinions being perceived as mistaken or close-minded, or for those individuals' poor communication qualities when expressing their views. Communication abilities were cited frequently for negative reasons as with positive reasons when jurors stood out. Because jurors were more likely to stand out for positive reasons than for negative reasons, it showed that skilled communicators made more of an impression on others during deliberation than poor communicators. Furthermore, being foreperson, highly educated, working full-time, and speaking often were characteristics or behaviors that made jurors more likely to stand out indicating that they could be associated with positive communication qualities overall.

The open-ended responses to the questionnaire in this research allowed for a qualitative look at jurors' thoughts and opinions regarding being a foreperson or a person who stood out during the deliberations. However, this methodology was applied in a limited manner. Future research could gain a much deeper understanding of jurors' thoughts and perceptions with a more detailed approach such as additional questioning or interviews. Asking jurors for specific qualities that they believe make a foreperson or juror helpful or harmful to the deliberation might

also allow for a more comprehensive catalogue of responses. In this study jurors were allowed to interpret the aspect of “standing out” as either positive or negative and it resulted in fewer jurors standing out for negative reasons. Jurors might have stood out for negative reasons just as frequently, but because of norms of politeness and participants’ desire to be affable and agreeable perhaps they were more likely to cite a person who stood out for positive reasons. Furthermore, asking jurors to answer whether they would have wanted to be foreperson is not the same as measuring whether they would actually be willing to be foreperson. Instead, a more experimental approach could help us to test this disposition more accurately. However, giving jurors the opportunity to answer a question is still an important method for gaining insight to their perceptions and this study was the first of its kind to analyze such views. Future research can build on this study to help us better understand the dynamics of jury deliberations and how forepersons and other jurors impact the discussions and the outcome. After all, these deliberations and group dynamics are important to our justice system and contain the capacity to directly shape and affect our communities and society at large.

Chapter 7

Toward Better Understanding Juries and their Forepersons

Across a number of years of studying juries and especially jury forepersons, I have read about and talked to a number of mock jurors and forepersons as well as actual jurors and forepersons about their experiences. Many of them say that involvement in the jury process produced a newfound appreciation for their citizenship. They often say the same to other researchers, popular authors, and through their own writing. As one juror who wrote about her jury service in an article for her local library put it:

Being stuck in a windowless room with 22 other people whom you have never met can be an interesting experience. It is its own little society, its own little subculture...I am so glad that I got to experience jury service in the Bronx. Not only did it give me a break from my regular routine, it gave me a perspective on the criminal justice system in the United States that I simply did not have before. I was actually a *participant* in the legal system in this country, *and I did not have to go to law school!* How great is that...I now watch the many true crime television shows that I had watched before jury service, but with a newfound perspective. (McDermott, 2011, para. 9, 11, 14).

Not only are jurors forming bonds with each other, but they become tied in very important ways to those involved in the trial as plaintiffs and defendants. Another juror recounts this connection in a blog post:

The first time I served, some 25 years ago, led me to see how profoundly essential the jury enterprise is to the radical, ever-elusive vision of equality our founding fathers had for our country...

My husband and I went to a White Sox game on the city's south side. During the second inning, a group of guys arrived and filled the empty seats next to us. The man in the seat beside me looked familiar. How, from where, did I know him? My mental Rolodex of faces shuffled through images. Eventually, the scene where I'd "met" him emerged: the courtroom in Waukegan, Illinois.

I quietly gasped. He was the defendant.

The Chicago area had seven million people in 1992. The ballpark has more than 40,000 seats. Surely, our reunion had Powerball lottery odds. The word miracle, I thought, was invented for occasions like this. What else describes it?

After gathering my wits, I tapped him on the shoulder.

'I know you,' I said.

He, no surprise, didn't recognize me.

'It was in court. I was on the jury that acquitted you.'

His stunned face spun enough narrative threads to fill a novel. How was this possible? So much to unpack here! Suddenly, his freedom from prison had a tangible, human source. Gratitude sputtered out of him as he struggled to absorb I was one of twelve people who'd changed the direction of his life.

And I too felt — saw — our system in a new light. It was, dare I say, beautiful. Our democracy grants the awesome power of judgment to its citizens like a wave: cresting when the state asks us to serve, then moving beyond our grasp after we've been dismissed, binding citizens in a fluid, dynamic relationship. After the trial, juror and defendant became peers, free to reunite as fans of a pastime utterly fundamental to American life. (Elieff, 2016, para. 9, 10-18).

Jury duty comes with the individual benefit of increased civic engagement by jurors (Gastil et al., 2010), but it also comes with a great benefit to the community in the form of power to the people through determining what type of behavior is acceptable or not. More than 250 years ago, John Peter Zenger, whose history was noted in Chapter One — about a *New York Weekly Journal* printer who exposed the corruption of a royal governor in New York — would have been determined by a royally appointed judge to be guilty if not for a jury's decision otherwise. That pivotal moment exemplified the power and privilege of serving on a jury and how it can operate as a “bulwark against tyranny and corruption,” as Chief Justice William Rehnquist once said (1979). Because juries are so central to our legal system, what occurs within the closed-door deliberations that lead to their verdicts is of great importance.

A key figure in jury deliberations is the foreperson. At the start of the deliberation, a foreperson takes the responsibility of presiding over the discussion. This can mean that the foreperson organizes talking turns, announces breaks, determines how and when to vote, keeps the deliberation focused, and so on (Ellison & Munro, 2010; Gastil, 2008; Hekkers, 2002; Manzo, 1996). Regardless of the fact that legal instructions do not indicate any of these things explicitly, forepersons have been shown to be incredibly important to the process of decision-making. Forepersons speak more than the other jurors (Devine et al., 2001; Hastie, 1993; Strotbeck et al., 1957), they are rated by other jurors as more influential to the discussion (Diamond & Casper, 1992), and their preferred damage awards are more predictive of group final damage amounts than other jurors (Boster et al., 1991). However the foreperson decides to apply their role is formative to the process of the deliberation and their communications may affect the communications of those they lead. The results are paramount to our justice system; after all, it is through these deliberations that citizens have essential discussions about what our

society should allow and what it should condemn. These groups of citizens set the standards by which future cases and even policy may be affected. Therefore, what we can learn about the jury foreperson and their role is important.

This study is one of the first to look at who leads a jury discussion, how they are selected to do so, how they communicate and facilitate the deliberation, and how their communications and behaviors may impact the perceptions of the jurors. By law, and to protect their autonomy, jury deliberations are kept private; as a result, researchers have a difficult time learning about the processes by which juries make these decisions. This study was a valuable step in the direction of shedding light on the role of the jury foreperson and that of the other jurors. To do so, this study first examined who becomes forepersons. Research suggests it is most often those considered more privileged in American society: white, educated males above the age of 40 (Boster et al., 1991; Devine et al., 2007; Diamond & Casper, 1992; Dillhay & Nietzel, 1985; Ellison & Munro, 2010; Feller, 2017; Foley & Pigott, 1997; Hastie et al., 1983; Hastie et al., 1998; Kerr et al., 1982; Simon, 1999a). Who these forepersons are can have an important effect on how legal decisions are made, because if forepersons typically come from specific walks of life, our legal system may reflect the ideologies of particular groups of people and not necessarily those of the society at large. Next, this study examined how those jurors became foreperson; whether they were self-selected or nominated by members of the group is important when considering who becomes a leading voice of the group. Additionally, whether they were immediately accepted as a foreperson or instead reconsidered by another juror or felt the need to provide further justification to others to accept their nomination is also important for the process by which a foreperson becomes such. Finally, this study looked deeper into how those forepersons communicated during the deliberations. Specifically, how often did they speak in

comparison to the rest of the group, how egalitarian were they, and what type of deliberation did they lead (verdict-driven or evidence-driven) are all important factors when learning about jury forepersons and what happens inside jury deliberations.

In this final chapter, I return to the conceptual frameworks and methodological approaches for this research, discuss this dissertation's expectations, and reflect on the data results. I then present limitations of the study and avenues for future research. Finally, I close by discussing the broader implications of this research for our understanding of juries and their essential role in our justice system.

Review of the Data

To examine the role of forepersons as well as that of the other members of a jury, I employed a multi-method approach. First, I observed video recordings of mock trial jury deliberations, including who the foreperson was, analyzing the process by which they were selected, as well as how the foreperson communicated and facilitated the deliberation. Specifically, I watched for how forepersons were nominated, whether they nominated themselves or were nominated by another; I also observed their style of deliberation as either verdict-driven or evidence-driven; their egalitarian behaviors; and their communication quantity (as it related to the standard deviation from the mean for their group). For my second approach, I gave each participant in the mock trial a questionnaire after their deliberation concluded. This questionnaire asked about four concepts that were central to this study: (1) juror satisfaction with the deliberation; (2) juror self-efficacy about democracy and deliberation; (3) juror ratings of the foreperson; and (4) juror impressions of other jurors and impressions of humanity in general. The combination of these two methods allowed me to investigate how forepersons were selected,

how they communicated and behaved, as well as how their communications and behaviors may have influenced jurors' perceptions of the foreperson, the deliberation at hand, and broader concepts within democracy, deliberation, and humanity.

Some of the hypotheses and research questions for this study were born from an exploratory perspective because not much research has looked at how forepersons are selected, nor has much research looked specifically at how they facilitate deliberations and what kinds of impact that may have on jurors' perspectives. My expectations and research questions fell into three main categories: (1) about the foreperson, specifically who they were, how they were selected, and how they communicated; (2) jurors' perceptions of the experience and society, and how these related to the foreperson; and (3) whether jurors wanted to be foreperson and jurors who stood out during the deliberation. These categories of questions were reflected in each of the three results chapters, Chapters Four, Five, and Six. Here I will summarize each of these and discuss the main findings emerging within each line of thought.

First, my expectations regarding who became foreperson mapped broadly on what previous scholarship has seen in terms of sex (Boster et al., 1991; Devine et al., 2007; Dillhay & Nietzel, 1985; Ellison & Munro, 2010; Feller, 2017; Hastie et al., 1983; Hastie et al., 1998; Kerr et al., 1982; Simon, 1999a) and race (Boster et al., 1991; Devine et al., 2007). Specifically, this study found whites and males were more often forepersons. What differed in these data from previous scholarship was the younger people (under the age of 35) were more often forepersons, as opposed to scholarship that has stated they are typically over the age of 40 (Ellison & Munro, 2010; Foley & Pigott, 1997). This study also found that married people were more often foreperson, which had not been measured previously. Looking at how one became foreperson, females and males self-nominated themselves at relatively equal rates. But jurors — both male

and female — when nominating others, were more likely to nominate a male than a female. Furthermore, females were more likely to face a nomination reconsideration or justification. In terms of how forepersons communicated and behaved, females were slightly more predisposed to lead in more egalitarian ways than males, but jurors who spoke more received significantly higher egalitarian scores. It is likely that the more communicative forepersons used their speaking turns to engage in more egalitarian behaviors. Lastly, this study explored the two approaches to deliberations defined by Hastie et al. (1983), and found that non full- or part-time working jurors and single jurors were significantly more likely to lead verdict-driven deliberations, which were defined by previous scholarship to be better overall. Jurors under the age of 35 and those who nominated themselves tended to be more likely to lead evidence-driven deliberations, though these results were not statistically significant, likely due to the small number of forepersons that made up this study.

In regard to my expectations and research questions focused on jurors' experiences and perceptions, as measured by a questionnaire after deliberations, I discovered more about how the impact of forepersons' communications. Overall, jurors reported higher satisfaction with the deliberation when the foreperson engaged in a less egalitarian style, offered fewer communications overall, and self-nominated themselves. Jurors rated their foreperson higher when a foreperson used a more egalitarian style and a greater number of communications. Also, jurors' impressions of other jurors were significantly higher when their foreperson used a less egalitarian style. And finally, jurors had significantly more positive impressions of humanity in general when their foreperson engaged in an evidence-driven deliberation. Taken together, it seems most beneficial to the other jurors in terms of satisfaction with the deliberation, impressions of other jurors, and impressions of humanity in general for the foreperson to be less

egalitarian, less communicative, lead an evidence-drive deliberation, and be self-nominated. On the other hand, as a foreperson, it is more beneficial to them in terms of their ratings by other jurors to be more egalitarian and to speak more. These differing ways of assessing the deliberation in terms of who benefitted is interesting. One would think that the foreperson would be rated higher when the deliberation was more satisfying or jurors had more positive impressions of other jurors and humanity in general; this was not the case, though. Rather, it seems that the foreperson might instead stand apart in comparison to the deliberation overall and when jurors felt things went well they were less inclined to credit the foreperson for those assessments; similarly, if things did not go well, jurors might be more inclined to make a point in the questionnaire that it was not the foreperson's fault and report higher ratings of them. Self-efficacy was unrelated to any of the communications of the foreperson, but it was related to the activity of jurors themselves. Jurors who spoke more were more inclined to report greater self-efficacy when it comes to democracy and the deliberation. As we saw in this study, self-efficacy seemed to be such a deeply rooted concept that no one foreperson or one deliberation could influence it. However, jurors who spoke out more likely did so either because of the perception that their voice matters and that they can make an impact on democracy and the deliberation, or as a result of such a perception.

Lastly were my research questions about whether jurors wanted to be foreperson and jurors who stood out during the deliberation. Most jurors (aside from forepersons) reported that they would not have wanted to be foreperson, or that they would maybe have wanted to be foreperson. Those who said "Maybe" were more likely to give reasons explaining why they would have been a good foreperson, and those who said "No" were more likely to give reasons why they would not have been a good foreperson. No juror demographic could explain who

wanted to become foreperson. What could explain that was speaking quantity: jurors who spoke more were more likely to say “Yes” and “Maybe” that they would have wanted to become foreperson. Furthermore, as we saw with speaking quantity from the chapter with questionnaire results, jurors with more positive concepts of self-efficacy about democracy and deliberation were more likely to answer “Yes” or “Maybe” that they would have wanted to be foreperson. In terms of who stood out during the deliberations, those who spoke more also stood out more. A willingness to speak more came hand in hand with the willingness to lead, the likelihood to stand out to others, as well as the perception that one can make a difference and influence democracy and the deliberation they engaged in. Moreover, jurors most often selected others who stood out for positive reasons, rather than negative or unclear/neutral reasons. Therefore, those jurors who were talking a lot, were willing to lead, and had high self-efficacy were also typically well-received by their fellow jurors who found them to stand out. The reasons given for all jurors who stood out — both good and bad — support the idea that *communication matters*; the way a juror communicated was often cited in jurors’ reasoning.

This study, in its totality, has illuminated several things about forepersons as well as other jurors in a deliberation. First, important inequalities to work through in terms of how and how often males and females, white jurors and jurors of color, highly educated jurors and less-educated jurors, old jurors and young jurors lead. People of color were not represented equally in terms of leadership roles. In addition, females did not assert themselves or other females to be foreperson as often as males did, and when females did, they were more commonly treated with pushback in the forms of nomination reconsiderations or nomination justifications. This is especially problematic because it appears through this research that females tended to lead in more egalitarian ways, though more research on these patterns is needed. Furthermore, evidence-

driven deliberations have been said to result in greater deliberation satisfaction by jurors (Hastie et al., 1983), however, this study did not find that to be true. This study did find, however, that evidence-driven deliberations led jurors to have greater impressions of humanity in general. These concepts could be related and how both studies measured and defined them might play a role in the mixed results. Lastly, this study illuminated the trend that jurors who spoke more were more likely to have positive concepts of self-efficacy, both about the deliberation and about democracy. Those jurors were also more willing to want to lead and were also more likely to stand out to other jurors for positive reasons.

Limitations and Future Research

This research has some important limitations that merit mention. First and foremost, I want to address the number of cases. The resources and time that go in to planning and running a mock trial are large, and I was fortunate to collect a total of 22 mock juries over the course of a seven-month period. The total participants in this study was 249, and the number of forepersons was 22. These numbers, however, do not lend themselves well to statistical analyses. In particular, inferential comparisons between forepersons was difficult. Because of this, achieving statistical significance was challenging. To adjust for this, I accepted a p -value of .1 for statistical significance and noted where that occurred, but until we analyze these relationships across many other jury settings, we will not have a stable grasp of the conceptual connections. That said, I see this research as an important step in pointing to certain issues and patterns in juror communications and experiences. This is the first study of its kind to explore the communications and behaviors of forepersons and how that can relate to jurors' perceptions of various concepts, so it can serve as a building block for future studies.

Second, some scholars have warned against the use of mock juries for research. Arguments against mock trial research mainly center around the reality that participants are aware that they are taking part in a research study and are not making the legally binding decisions that come with a real trial (Bornstein, 1999; Diamond, 1997; Nuñez et al., 2011; Weiten & Diamond, 1979). Unlike an actual trial, mock trials or trial simulations are typically limited to only one afternoon (just a few hours) of deliberation, and participants are not required to continue discussion until they reach a verdict. Because of this, mock jurors may be less likely to use their strongest efforts to persuade one another, for it would not affect them once a certain time limit is reached. Adding to this, participants know that their verdict is not real and the human aspect of actually deciding the fate of a person or persons is simply not present. As displayed in the vignettes opening these chapters, one of the most important aspects of serving on a jury is the responsibility one feels to their community and to the justice system. Further, jurors are aware that they are being observed and video-taped, whereas actual jury deliberations are kept private; this may limit or change the amount and types of communications that are shared. However, it is also the case that research comparing mock juries to real jurors has found little differences between the two, supporting the use of mock juries for research purposes (Bornstein, 1999; Bray & Kerr, 1979; Devine et al., 2001). Laws protecting the privacy of actual jury deliberations makes mock juries the best way — and only legal and ethical way, as accessible to me — to gain empirical insight into phenomena that occur inside jury deliberations.

A third and related limitation is the honesty and image management of the participants. Because they knew they were being video recorded for research purposes, they may not have acted as they otherwise would. It has long been determined that research participants are motivated to behave and respond in socially desirable ways (Kidder et al., 1986). One could hope

that the research participants would desire to act in certain socially amenable ways for the reasons of being in a group and thus that temptation would be present in an actual jury, but it is impossible to know whether the additional knowledge of being video-recorded for research purposes intensifies that. Furthermore, the data from these questionnaires are reliant upon self-reported information, which is vulnerable to the same limitation. However, self-reported data are common for measuring perceptions, as this study did. Still, another approach such as interviewing or more open-ended questioning might be a better way of getting a participant to discuss their perceptions, rather than having them select their level of agreement with prepared statements on a Likert scale. After all, research has shown that people tend to use these types of scales in different ways which could skew the data. For example, some respondents tend to be more extreme and commonly use the outer-most points of the scale, while others tend to be more conservative and hug the center (Austin, Deary, Gibson, McGregor, & Dent, 1998). Future research could employ other methods such as open-ended questioning or interviewing to gain a more varied and inductive approach to learning about the participants' perceptions.

Lastly, because of the desire to have a short set of questions for jurors after their long day of information processing and deliberations, and the fact that I was borrowing the time of participants paid by another research firm for other purposes, I limited my questionnaire data to one page. It is challenging to accomplish a great deal in a matter of 16 questions. For example, Hastie et al. (1983) found that evidence-driven deliberations were superior in terms of deliberation satisfaction, and I only asked three closed-ended questions regarding satisfaction with the deliberation: that of their satisfaction overall, that of their verdict, and that of their opportunity to contribute. This may not be enough to establish whether a juror was satisfied with a deliberation. Closed-ended questions, like those used in this study, and especially in small

amounts, are vulnerable to misinterpretation by participants. Although closed-ended questions allow a researcher to more easily compare answers across participants, I cannot guarantee that the questions I was intending to ask were the same questions the participants were attempting to answer. Furthermore, Hastie et al. (1983) also found evidence-driven deliberations to be superior due to the discussions including a greater variety of topics, which this study did not measure. Future research could include more questions about each of these concepts, or even measure additional concepts regarding the deliberation or regarding jurors' perceptions not looked at here.

Implications

I now turn to a discussion of what I see as the two main implications of this research for our understanding of juries in the American justice system and broader democracy. The first is that the forepersons in our juries do not necessarily represent the communities in which they preside and instead reproduce many of the hegemonic tendencies in our society. And second, that more education is necessary for jurors to understand the role of the foreperson, what it means to be a good foreperson, and the importance of their decision in selecting one. As a final piece, I nonetheless will contend that despite its shortcomings in perpetuating many issues of inequalities in America, the jury is still an integral part of our justice system and one that must not be neglected or reduced because of those weaknesses. Rather, we must confront those weaknesses directly and use what we know to work to correct them.

First, it matters who becomes foreperson because the foreperson is influential to the deliberation. We know they are influential because their communications and behaviors affect the jurors in terms of their perceptions of the process, of others, and of humanity in general. The fact that forepersons are influential fuels the argument for why it matters who they are. As

Chapter Four showed us, females and minorities are not equally represented as leaders for these groups and their influence on our justice system is ever-important. Our nation prides itself on having a fair justice system, yet the groups that are most marginalized in our society and in need of fair representation in our legal system are under-represented in the groups that could decide their fates. The different experiences of those who are not leading the deliberations are exactly what we need to improve upon the current system. If we can work to make those voices more represented in the deliberations as leaders we can assure that our justice system is operating as it was intended by our founders: as a means for the people to speak on behalf of their community. The jury strives to do this, but it is imperfect. We need to do much more to ensure that not only the voices of the affluent or privileged are prevailing.

Furthermore, this dissertation also sheds light on the fact that few jurors actually reported wanting to be foreperson while most of them cited not wanting to do so because they did not feel they were skilled enough to take on the role. This shows us that the average juror likely does not know what the role of foreperson entails and therefore assumes that it is beyond their ability. Jurors in general need more information about what it means to be foreperson and how a foreperson can effectively lead. This research has shown us that forepersons who speak similar to the average number of speaking turns of the other jurors tended to engage in fewer egalitarian behaviors in effort to control for who speaks and when and also tended to lead evidence-driven deliberations that aligned with more positive perceptions of the jurors. On the one hand, forepersons perhaps can typically be trusted to self-nominate because those that did generally did well in terms of inciting better perceptions of the jurors, though such self-nominations almost certainly run counter to a desire to diversify the foreperson pool. This work is just a starting point; as we learn more about what makes superior forepersons, we can better educate jurors and

implement this knowledge in the form of jury instructions given by the judge to jurors before deliberations. An increased knowledge in what it takes to be a good foreperson will likely result in more jurors feeling empowered to take on the role, and in that case rather than there being little to no discussion before one is selected, jurors will be equipped to more thoroughly consider who they feel should lead.

Juries in general receive a lot of scrutiny regarding whether they function in democratic ways, and this research shows there are many challenges. But the bottom line in my view is that a jury as it stands is better than alternatives. Some legal scholars have suggested the use of bench trials (trials with only a judge and without a jury), or elected representatives to serve on professional juries, but this has not been done in the United States (Sanders, 1997; for more on this debate see Gastil, 2008; Litan, 1993). In spite of the critiques that juries sometimes get in the media (Lettow Lerner, 2015), political, social, communication, legal, and feminist scholars still argue for the jury's importance. Juries constitute a means of participatory governance in the American judicial system that many argue cannot be adequately substituted by a single judge or appointed representatives. Scholarship demonstrates that a jury of 12 will offer greater common sense to decision-making (Gastil, 2008; Hans & Vidmar, 1986; Litan, 1993), have greater collective memory (Hastie et al., 2002), and rely on fewer biases (Searcy et al., 2005) than one individual judge. Fregoso (2009) implied the significance of a jury when she advised a people-centered approach to what she calls "human security," which she described as empowering communities in the democratic process of justice making. She recommends that citizens "take collective action to witness, observe, and monitor state agency" and a jury does just that (p. 25). History demonstrates that judicial hegemony has produced "harsh and dubious doctrine," and this has been improved with "the value of citizen participation" (Litan, 1993, p. 47). We cannot

expect that the *few* always can, or will, be attentive to the interests of the *many*. To remove the jury is to omit the voice of the “many” in the American judicial system and we must preserve — and improve — their ability to inject values into this branch of government. The people of the United States are fortunate to have a right to a fair trial by a jury of their peers, and rather than criticizing the jury to the point of its extinction, I believe we must work to make it much more democratic. Research such as this is one step in the right direction, and much more work is needed to help our juries further evolve to fulfil their democratic ideal.

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Appendix A: Codebook**Sheet 1: Deliberation codes***Unit of analysis:*

The unit of analysis will be a mock civil jury deliberation.

Identifiable Data**Trial: Trial Number**

The identifying number given to each mock trial observed. They will be ordered starting with 1.

Group: Trial Group

The identifying number given to each mock trial group observed. They will be ordered starting with 1, and will restart with each new trial. Typically, there will be two groups per trial.

Ttype: Trial Type

What type of trial is it? The following options are common, but I will go back and retroactively add other types if they are not already on this list.

1. Medical Malpractice
2. Personal Injury
3. Legal Malpractice
4. Unlawful Termination

County: Trial County

The county in which the mock trial takes place will be coded. The following codes refer to the following counties:

1. King County, WA
2. Kitsap County, WA
3. Snohomish County, WA
4. Clark County, WA
5. Benton County, WA
6. Pierce County, WA
7. Multnomah County, OR
8. South King County, WA

Length: Deliberation Length

Total length of the deliberation in minutes beginning when the facilitator leaves the room and the jury is instructed to begin.

Verdict: Final Verdict

What is the verdict that the jury reached?

1. In favor of the plaintiff

2. In favor of the defendant
3. Hung

FSex: Foreperson's Sex

The sex of the foreperson presiding over the deliberation, as determined by their response to the pre-screening questionnaire.

1. Male
2. Female

FAge: Foreperson's age at the time the study takes place

The age of the foreperson presiding over the deliberation will be determined by their response to the pre-screening questionnaire. This was a write-in answer so the exact number they reported will be coded.

FRace: Foreperson's Race

The race of the foreperson presiding over the deliberation. This will be coded using their pre-screening questionnaire which follows the likely 2020 US census options for race. Participants may select more than one of the following options:

1. White
2. Asian
3. Black or African American
4. Hispanic, Latino, or Spanish Origin
5. American Indian or Alaska Native
6. Middle Eastern/North African
7. Native Hawaiian or other Pacific Islander
8. Mixed
9. Other

FEd: Foreperson's Highest Education Completed

The highest education completed of the foreperson presiding over the deliberation. This will be coded using their pre-screening questionnaire which includes the following options:

1. Some High School
2. High School/GED
3. Some College
4. AA or Professional Degree
5. Bachelor Degree
6. Some Post Graduate Work
7. Master's Degree
8. Ph.D.

FEmp: Foreperson's Current Employment Status

The current employment status will be coded based on what the foreperson answered on their pre-screening questionnaire.

1. Full Time
2. Part-Time

3. Student
4. Retired
5. Homemaker
6. Unemployed
7. Disabled

FMar: Foreperson's Marital Status

The current marital status will be coded based on what the foreperson answered on their pre-screening questionnaire.

1. Single
2. Married
3. Cohabiting
4. Separated
5. Divorced
6. Widowed

Nomination Type

NomType: Foreperson Nomination Type

The type of foreperson selection will be coded by observing the discussion surrounding the selection of foreperson, and who makes the nomination.

1. Self-nominated— This may be characterized by the foreperson making some sort of offering or self-volunteer to be foreperson, it could consist of them raising their hand or verbally volunteering such as by saying “I will be foreperson” or “I’ll do it” or “I’d like to volunteer.”
2. Nominated by another female—This would consist of another juror, a *female* (determined by each participant’s self-reported data), suggesting that the person in question be foreperson, such as by saying “How about Scott” or “I think Scott should be foreperson” or “I nominate Scott.”
3. Nominated by another male—This would consist of another juror, a *male* (determined by each participant’s self-reported data), suggesting that the person in question be foreperson, such as by saying “How about Scott” or “I think Scott should be foreperson” or “I nominate Scott.”

Other: Other Foreperson

Was anyone else suggested to foreperson? If more than two people are suggested to be foreperson (including the person that becomes foreperson), the coder will only code for the most recently discussed two people.

1. No
2. Yes, the other person nominated themselves
3. Yes, the other person was nominated by the foreperson
4. Yes, the other person was nominated by the same nominator that nominated the foreperson
5. Yes, the other person was nominated by another female
6. Yes, the other person was nominated by another male

Nomination Caveats

NomRecon: Nomination Reconsideration

Was there a nomination reconsideration during the discussion of this person becoming foreperson? A nomination reconsideration is when another juror suggests the need for a vote on the nomination, or otherwise further discuss it before a decision is made, such as by saying “should we take a vote?” or “does everyone agree that X should be foreperson?”

1. Absent
2. Present—another male reconsidered the foreperson
3. Present—another female reconsidered the foreperson
4. Present—the foreperson reconsidered themselves

NomJust: Nomination Justification

Was there a nomination justification during the discussion of this person becoming foreperson? A nomination justification occurs when a juror (either the foreperson nominated in question, or another juror) gives or asks for some sort of reasoning or justification for why this person should be foreperson. *Justifications* offered typically include seating location at the head of the table, or previous experience serving on a jury, such as “Well, s/he is seated at the head of the table,” or “I have served on a jury before.”

1. Absent
2. Present—another male justified the foreperson
3. Present—another female justified the foreperson
4. Present—the foreperson justified themselves

Foreperson Style

Egal: Foreperson Egalitarian Style

Conceptual Definition: This refers to the foreperson’s style as either proactively egalitarian or non-egalitarian. Egalitarian leadership style will be scored on the presence or absence of the five following behaviors. These behaviors suggest an attempt to create a more fair and equal deliberation. Whether the foreperson is successful is not measured by this variable, but if they make these attempts, they are expressing a more or less egalitarian foreperson style. Scores will range from 0-5 for the presence of all or some of the following five behaviors:

Operational Definitions:

0. Solicitation/Prioritization—The foreperson asks for the opinions of quieter jurors or makes statements explicitly prioritizing them because they haven’t spoken much. This would be present if the foreperson says, “we haven’t heard from X in a while, let’s hear from them,” or “X raised their hand a while ago, and they haven’t spoken much so let’s let them have a turn.”
1. Curbing—The foreperson trying to curb the speaking quantity of overbearing speakers. This would be present if the foreperson says something like “let’s give someone else a turn to speak.”

2. Corrects for interruptions—The foreperson will step in if a juror is interrupted by another speaker and try to give the floor back to the original speaker. They might say something like “Wait a minute, X, Y was talking, let’s let them finish.”
3. Creates a queue—The foreperson tries to organize speaking turns based on who raises their hand, they create small ques throughout the deliberation to make it clear to the group who will speak and in what order.
4. Statements of equality—The foreperson makes a statement about how the opinions of everyone are equally important. This could be in the form of standing up for another juror, saying that their opinion matters equally, or even stating that they themselves are not to be considered more important even though they are the foreperson.

Foreperson Communications

CommQuant: Foreperson Communications Quantity

Conceptual Definition: This refers to the quantity of a foreperson’s injection of their own voice, opinions, or thoughts into the discussion. It will be determined based on the standard deviation of the speaking turns of other jurors. The coder will take a tally of the speaking turns of each juror on a separate document and then compare the average speaking turns to that of the foreperson. A speaking turn will be defined as a juror holding the floor for at least one complete statement, and will not include times that they begin talking but then stop because someone else is talking. Enter the exact number of standard deviations (z-score) the foreperson is above or below the average of the other jurors.

Deliberation Style

Delib: Deliberation Style

Conceptual Definition: Hastie, Penrod, and Pennington (1983) discovered two different approaches that juries took in their deliberation: verdict-driven or evidence-driven. A verdict-driven deliberation style generally begins with a vote, or the stating of each juror’s preferred verdict; this style is characterized by a strong sense of the goal as reaching a verdict and begins with positions in conflict or disagreement. An evidence-driven deliberation style typically does not require jurors to pick a side or state their preferred verdict at the start, but instead jurors spend time discussing the evidence of the case.

1. Verdict-Driven—The deliberation will be coded as verdict-driven if there is a vote on the juror’s opinions near the start of the deliberation, mainly, before everyone has gotten to share their thoughts openly and without being tied to one verdict or another.
2. Evidence-Driven—The deliberation will be coded as evidence-driven if jurors are free to discuss their thoughts openly at the start of deliberation and without the pressure to pick a side if they do not wish to do so.

Sheet 2: Survey Codes*Unit of analysis:*

The unit of analysis will be a mock juror, and information from their survey.

Trial: Trial Number

The identifying number given to each mock trial observed. They will be ordered starting with 1.

Group: Group Number

The identifying number given to each mock trial group observed. The first digit will be the number for the trial (i.e. 1) followed by the group number within that trial (i.e. 01) starting with 1 and typically there will be 1 or 2 groups per trial. Therefore, group 2 for trial 11 will be numbered 1102. y will be ordered.

JNumber: Juror Number

The identifying number given to each mock juror observed. The first digit will be the number for the trial (i.e. 01) followed by the group number within that trial (i.e. 02) followed by the juror number as assigned by their seating from left to right. The Principal investigator will provide the coder with a seating chart. Therefore, juror 9 for group 2 in trial 11 will be numbered 110209.

JSex: Juror Gender

The sex of the foreperson presiding over the deliberation, as determined by their response to the pre-screening questionnaire.

1. Male
2. Female

JAge: Juror Age

The age of the juror will be coded based on what they answered on their pre-screening questionnaire. This was a write-in answer so the exact number they reported will be coded.

JRace: Juror Race

The race of the juror will be coded based on what they answered on their pre-screening questionnaire.

1. White
2. Asian
3. Black or African American
4. Hispanic, Latino, or Spanish Origin
5. American Indian or Alaska Native
6. Middle Eastern/North African
7. Native Hawaiian or other Pacific Islander
8. Mixed
9. Other

JEd: Juror Education

The highest level of education completed will be coded based on what the participant answered on their pre-screening questionnaire.

1. Some High School
2. High School Diploma or GED
3. Some College
4. AA Degree or other Professional Degree
5. Bachelor's Degree
6. Some Post Graduate Work
7. Master's Degree
8. Ph.D.

JEmp: Juror Current Employment Status

The current employment status will be coded based on what the participant answered on their pre-screening questionnaire.

1. Full Time
2. Part-Time
3. Student
4. Retired
5. Homemaker
6. Unemployed
7. Disabled

JMar: Juror Marital Status

The current marital status will be coded based on what the participant answered on their pre-screening questionnaire.

1. Single
2. Married
3. Cohabiting
4. Separated
5. Divorced
6. Widowed

Survey Responses

For the full survey including scale responses, please see Appendix A

S1: Survey Question 1 answer

The juror's response to the question "Please rate your satisfaction with the quality of the jury's deliberations" will be coded as 1-5.

S2: Survey Question 2 answer

The juror's response to the question "Please rate your satisfaction with the jury's verdict" will be coded as 1-5.

S3: Survey Question 3 answer

The juror's response to the question "The other jurors gave me enough of a chance to express my opinions about the case" will be coded as 1-5.

S4: Survey Question 4 answer

The juror's response to the question "Under our form of government, people have the final say about how the country is run, no matter who is in office" will be coded as 1-5.

S5: Survey Question 5 answer

The juror's response to the question "I take seriously my responsibilities as a citizen" will be coded as 1-5.

S6: Survey Question 6 answer

The juror's response to the question "Compared to other members of your jury, how much did you participate during deliberations" will be coded as 1-5.

S7: Survey Question 7 answer

The juror's response to the question "How important do you feel you were to this jury today" will be coded as 1-7.

S8: Survey Question 8 answer

The juror's response to the question "In the future, how willing would you be to choose your foreperson as the leader of a similar group" will be coded as 1-7.

S9: Survey Question 9 answer

The juror's response to the question "Rate the influence of the foreperson" will be coded as 1-7.

S10: Survey Question 10 answer

The juror's response to the question "How well do you think the foreperson tried to ensure all voices were heard" will be coded as 1-7.

S11a: Survey Question 11 answer

The juror's response to the question "Would you have wanted to be foreperson? (circle and then explain)" will be coded as 1-3.

1. Yes
2. Maybe
3. No

S11b: Survey Question 11 reason

The juror's open ended response to the question 11 above will be entered verbatim.

S12: Survey Question 12 answer

The juror's response to the question "Did you feel that all jurors had a fair opportunity to contribute" will be coded as 1-7.

S13: Survey Question 13 answer

The juror's response to the question "How open-minded was the jury to each other's ideas" will be coded as 1-7.

S14: Survey Question 14 answer

The juror's response to the question "How do you find people in general to be" will be coded as 1-7.

S15: Survey Question 15 answer

The juror's response to the question "What is your opinion of the world" will be coded as 1-7.

S16a1. Stood Out Name 1

For the question "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you," the first name will be entered.

S16a2. Stood Out Rating 1

For the question "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you," the first open-ended response will be rated as one of the following:

1. Positive
2. Negative
3. Unclear/Neutral

S16a3. Stood Out Reason 1

For the question "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you," the first reason will be entered verbatim.

S16b1. Stood Out Name 2

For the question "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you," the second name will be entered.

S16b2. Stood Out Rating 2

For the question "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you," the second open-ended response will be rated as one of the following:

1. Positive
2. Negative
3. Unclear/Neutral

S16b3. Stood Out Reason 2

For the question "List the name of 2 jurors that stood out to you during this deliberation, and describe why they stood out to you," the second reason will be entered verbatim.

Appendix B: Questionnaire

Name: _____ Date: _____ Group: _____

PLEASE CIRCLE THE FOLLOWING ANSWERS:

1) Please rate your satisfaction with the quality of the jury's deliberations:

1	2	3	4	5
very unsatisfied	unsatisfied	neutral	satisfied	very satisfied

2) Please rate your satisfaction with the jury's verdict:

1	2	3	4	5
very unsatisfied	unsatisfied	neutral	satisfied	very satisfied

3) The other jurors gave me enough of a chance to express my opinions about the case:

1	2	3	4	5
strongly disagree	disagree	neutral	agree	strongly agree

4) Under our form of government, people have the final say about how the country is run, no matter who is in office:

1	2	3	4	5
strongly disagree	disagree	neutral	agree	strongly agree

5) I take seriously my responsibilities as a citizen:

1	2	3	4	5
strongly disagree	disagree	neutral	agree	strongly agree

6) Compared to other members of your jury, how much did you participate during deliberations?

1	2	3	4	5
much less	somewhat less	the same	somewhat more	much more

7) How important do you feel you were to this jury today?

1	2	3	4	5	6	7
not at all important						very important

8) In the future, how willing would you be to choose your foreperson as the leader of a similar group?

1	2	3	4	5	6	7
never	almost never	occasionally	sometimes	frequently	almost always	always

