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# Scientific Jury Selection

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## WHAT IS SCIENTIFIC JURY SELECTION?

Working from the assumption that particular demographics, attitudes, and broad personality characteristics can predispose jurors towards preferred verdict decisions, social scientists seek to assist justice systems in their selection of jurors at trial. This process commonly known as Scientific Jury Selection involves trying to identify what views are likely to be held by the individuals comprised on a jury and eliminating those people thought to be undesirable to the evidence in the case. In theory, such jury selection procedures were designed to remove biased jurors from criminal trials, who are considered incapable of making fair and impartial decisions (Fulero & Wrightsman, 2009). However, in practice, trial consultants typically advise defence lawyers which jurors are most likely to favour their explanation of the evidence, unfairly biased or not (Lieberman & Olson, 2009). This has led many to question the ethics behind scientific jury selection, particularly when considering that high trial consultancy costs often means only the wealthiest of defendants can afford to make use of their services.

## USE AND ORIGINS

Scientific jury selection was first used within the United States during the Harrisburg Seven trial in 1972. Accused of crimes against the state, and with considerable pre-trial publicity and political interest in the case, some felt the defendants would not receive a fair trial. As such, a team of social scientists began conducting interviews with local residents where the trial was to take place, in an attempt to identify juror characteristics that would be both beneficial and detrimental to the defence case during later jury selections (Schulman et al; 1973). Despite the government spending more than \$2 million dollars trying to ensure the Harrisburg defendants were convicted, the use of social science research is believed to have prevented a conviction, as the trial resulted in a hung jury. Since then, trial consultants have become widely used in the

selection of jurors within the United States. Consultants are now involved in almost all major lawsuits, and whilst originally developed to restrict government influence in criminal trial outcomes, consultants today are more likely to offer advice in civil disputes (Lieberman & Sales, 2007). Elsewhere in the world, tighter legal restrictions, which prevent lawyers from interfering with the selection of jurors, has meant use of scientific selection procedures within countries such as the United Kingdom, have been limited (Willmott, 2016), and throughout Europe, are often not utilised at all (Lieberman and Olson, 2009).

## SCIENCE OR SUPPOSITION?

The general approach of trial consultants is to use community surveys and occasionally mock trials to measure the impact that factors such as occupation, socioeconomic status, age, race, and attitudes towards the law, are likely to have on jurors' reactions to the evidence. However, the extent to which such characteristics offer reliable predictions of what verdicts jurors will choose is highly criticised. Research suggests that demographic factors are weak predictors of the decisions jurors return and, on their own, accurately predict as little as 2% of trial verdicts (Abbott & Batt, 1999). Personality features and legal attitudes also have a weak and inconsistent relationship with the vote's jurors cast overall (Lieberman & Sales, 2007). This has led many critics to argue that trial consultants are therefore making crude presumptions about the influence that juror characteristics have on the decisions made in a case, while little scientific evidence actually underpins such a relationship (cf. Finkelstein, 2010).

## FUTURE OF THE SCIENCE

Whilst the scientific nature of jury selection continues to be questioned, the effectiveness of trial consultancy will remain contested. The need for greater use of social science research grounded in strong methodological designs and utilising advanced analytical procedures is undoubtedly called for. More reliable

discipline that is crucial for ensuring justice is delivered fairly. Yet, while a culture of gaining profit rather than producing justice remains at the heart of the industry, improvements made are likely to be slow and not without resistance.

## CONCLUSIONS

Scientific Jury Selection operates from the assumption that certain individual characteristics not only influence the decisions jurors make during trial, but when measured effectively, can be used to predict what verdicts are likely to be returned in a given case. Although developing out of a need to remove biased jurors from criminal cases, trial consultants are now largely employed within civil cases helping to select jurors biased in favour of the client's version of events. This, alongside a general lack of empirical support that juror characteristics can accurately predict verdict outcomes, has led to on-going debate surrounding the credibility of scientific jury selection as a discipline. In fact, the need for a stronger scientific basis permeates throughout criticism of the methodological procedures trial consultants employ and undoubtedly serves as the foundation from which future Scientific Jury Selection research should begin.

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## QUICK SUMMARY

- Scientific Jury Selection involves measuring and selecting trial juries on the basis of demographics, attitudes, and personality characteristics thought to predispose them towards particular verdict decisions.
- The technique was first used in the U.S. during the Harrisburg Seven trial in 1972 in an attempt to ensure defendants were given a fair trial.
- Empirical evidence has tended to suggest a weak and inconsistent relationship between juror characteristics and verdict outcomes.
- Due to criticisms against the methodologies trial consultants typically adopt, a stronger scientific basis of selection procedures are considered crucial to ensuring the fair delivery of justice.