



## Can Scientific Jury Selection Produce Fair Juries or Just Juries With a Different Bias?

A Review of

Scientific Jury Selection

by Joel D. Lieberman and Bruce D. Sales

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*Scientific Jury Selection* is a well-written volume that reviews the research and issues surrounding scientific jury selection. The authors examine the many factors and methods involved in this process and provide a balanced and comprehensive review of the literature as well as raise important scientific and ethical questions. It is a must-read for anyone interested in going into this area, although much of it would likely be well-known to those who are already experts in the field. Chapters review such factors as methods of acquiring information and applying those methods to the actual process of jury selection.

The volume raises substantial issues about the accuracy and efficacy of the selection process, as well as its ethical and legal implications. To the authors' credit, nearly all the issues that came to my mind were anticipated and discussed in the thought-provoking final two chapters.

The chief issue for me is the question of whether the problem of biased juries can be solved by further attempts at biasing the jury in a different direction. In our adversarial legal system, the goal of scientific jury selection clearly appears to be selecting juries that are biased toward one's side. Thus, whoever does this better may win the case regardless of the evidence or issues related to the concept of justice. To a naïve nonlawyer, this appears to be a distortion of justice rather than an enhancement. The argument from the legal side is that when both sides do this, the ending jury ends up fairly balanced.

However, I see several problems with this argument. First, the resources in any given case are likely to be severely unbalanced. This clearly shows up in cases in which clients are represented by a public defender or a low-paid lawyer hired by a middle-class family who has nowhere near the resources of the prosecutor's office. On the other hand, high-profile, wealthy clients (such as O.J. Simpson, who is discussed briefly in the text) may buy a not-guilty verdict by doing a better job at biasing the jury (which the text suggests is one of the reasons Simpson was not convicted). It is argued in the volume that in many cases the sides are indeed equal and that this may not be as big an issue as it seems. However, in my experience, this is often not the case. The cost of doing jury selection properly is very high, and attempts to do it "on a budget" may result in doing more harm than good.

The use of psychological techniques to produce what are in essence biased juries raises many questions. The goal of the psychologist in the legal system is not to be an advocate but to produce information that is of use to

the judge and jury in making fair decisions. Helping one side bias the jury does not achieve this goal, although it does meet the goals of the adversarial legal system. The conflict between the goals of the psychological and the legal ethical systems has long been a major issue as psychologists have become advocates for one side and have focused on their adversarial rather than psychological obligations.

This is not an issue that is easily settled. It would appear that the courts would be better served in using psychological research and techniques to generate an unbiased and fair jury, one that would listen to both sides and to the evidence. This, however, would require a cooperative rather than adversarial judicial system, and neither side is likely at present to give up their perceived advantages with the current system.

Of course, these arguments are based on the idea that these techniques actually work. The literature review indicates that results are mixed: Some techniques done properly and applied in a suitable manner may be very useful. They are most likely to work when the other side relies solely on intuition or does not have the resources to pursue relevant questions in an accurate manner. Some of the techniques appear to be successful only when done by a highly qualified individual, something that is difficult to define as practitioners often come from very different professional backgrounds and generally do not divulge information on how successful their techniques may be. Lieberman and Sales see a need for better and more precise research as to the relative effectiveness of alternate approaches and how to apply those that work. This would be of great aid to the consumers of these services who can better select what would be helpful for them.

A final issue that this book raises is the consideration of how psychology and law are becoming increasingly interrelated. This involves such issues as testimony in civil and criminal cases as to issues of competency and insanity, family court issues, testimony and evaluation to the psychological and neuropsychological factors that may influence criminal behavior, the role of psychology in hostage and other SWAT team situations, the mental health treatment and prevention services for police officers and other members of emergency response teams, the treatment of prisoners within the incarceration system, jury selection, Health Insurance Portability and Accountability Act regulations, and other related issues. Despite this, many training programs at the graduate, internship, and postgraduate levels still have few opportunities for training in these areas. It would appear that the psychologists of the future would find much of their work irretrievably entangled in one or more of these areas whether they choose to be in forensics as a specialty or not.

This suggests a clear need to develop standards on some minimal level of training for aspiring psychologists in these areas. Some degree of sophistication seems to be as important in this area as courses in assessment, therapy, and general theory. As these forensic interactions increase, the ability of psychologists to understand the underlying issues and demands cannot be limited only to those who specialize in the legal arenas.