

# The Objective Reality of Evidence and the Utility of Systematic Jury Selection\*

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Significant relationships between jurors' demographic characteristics, attitudes, and verdicts have stimulated an interest in systematic jury selection. However, critics of this approach argue that verdicts are based on the strength of the evidence presented rather than on the composition of the jury. This analysis of demographic and attitudinal data and the responses to a vignette collected from a jury-eligible sample explores the association between perception of strength of evidence and both case-relevant attitudes and demographic characteristics and then examines the amount of variation in verdict explained by juror characteristics when strength of evidence is already taken into account. The findings point to the inclusion of strength of evidence in systematic jury selection procedures.

## INTRODUCTION

There is a growing interest in the possibility that the participation of social scientists in the jury selection process can increase the likelihood of obtaining a jury that is attitudinally unbiased and open-minded, at minimum, or even somewhat biased toward one of the litigants. Referred to as systematic jury selection (Kairys, Schulman, & Haring, 1975) or scientific jury selection (Saks, 1976a), the techniques of social science are actually employed not to select the most unbiased jurors but to exclude from the jury those persons who are least likely to render a fair and impartial verdict (Suggs & Sales, 1978) since the law only allows attorneys to reject potential jurors, not to select them. Despite the misnomer, systematic jury selection has received considerable attention inasmuch as it suggests that rigorous and standardized scientific

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procedures may be more effective than the individualistic and experiential judgments made by an attorney during voir dire.

Methodological and statistical techniques to select an attitudinally unbiased jury during voir dire have been detailed elsewhere (Berman & Sales, 1977; Kairys, 1972; Kairys et al., 1975; McConahay, Mullin & Frederick, 1977; Schulman, Shaver, Colman, Emrich, & Christie, 1973). Generally stated, the most well known procedure requires a survey of the general population to discover those demographic and other public information variables about which information can be obtained during voir dire that most accurately predict case-relevant attitudes that cannot be ascertained otherwise during voir dire. To the extent that there is little or no measurement error, this technique assumes that the attitudes, opinions, and beliefs of prospective jurors can be predicted with known levels of confidence, thus enabling the prosecution or defense to reject as jurors those persons whose attitudes are least favorably predisposed to their side of the issues in the case. The likelihood of obtaining the desired verdict can then be increased by retaining those jurors whose demographic and background characteristics "predict" the type of favorable attitudes that will predispose them toward a particular verdict.

### **Demographic Characteristics, Attitudes, and Verdict**

Although the relationship between demographic factors and jurors' verdict has been substantiated, it is evident that there is no uniform set of predictor variables that can be applied universally. For example, Simon (1967) reports that mock trial verdict is related to juror's ethnicity and education but unrelated to sex, age, religion, occupation, or income of juror. Yet Bronson's (1970) analysis of "death-qualified" juror's finds that those most in favor of the death penalty are white, male, higher income, lower education, and Republican jurors. In summary, mixed findings have emerged from numerous attempts to assess the relationship between juror's decisions and demographic characteristics (Davis, Bray, & Holt, 1977; Saks, 1976a). Differences are due in part to methodological variations in operationalizations of the "juror" (e.g., actual jurors, jury-eligible residents of an area, and students), the type of case or stimulus (e.g., criminal or civil), presentation of the case or stimulus (e.g., actual trial, video tape, written transcript and vignette), and the nature of the dependent variable (guilt vs. innocence and severity of sanction). In addition, it is possible that the reported differences in the association of demographic variables and jurors' verdicts may reflect such things as regional or cultural differences from one jurisdiction to another.

Similarly, inconclusive relationships have been noted between juror's demographic characteristics and their attitudes (Davis et al., 1977). Racism, for example, is reported to be higher among older, less educated persons in low status occupations who are or have been married and who attend church regularly (Rokeach & Vidmar, 1973). Politically conservative jurors are young, better educated persons with higher incomes who reside in urban areas (Reed & Reed, 1977). Finally, there is a growing body of evidence to substantiate the presumed relationship between juror attitudes and juror decisions. The relationship of authoritarianism to verdict (Boehm, 1968; Bray & Noble, 1978; Mitchell & Byrne, 1973; Rokeach & Vidmer, 1973) and to

severity of sanction (Bray & Noble, 1978; Thayer, 1970) is well documented. Juror decisions have been found to be related to such additional attitudes as liberalism (Reed & Reed, 1977), social approval (Buckhout, 1973), punitiveness (Thayer, 1970), and one's belief in the underlying cause (person vs. environment) of the crime (Saks, 1976a).

Although the entire causal linkage remains to be empirically assessed, the existence of bivariate relationships between demographic characteristics, juror attitudes, and verdicts has provided sufficient cause to incorporate the procedure into actual jury selection situations. Demographic data have been used to predict juror decisions in such nationally known trials as Angela Davis (Moore, 1974; Sage, 1973), Joan Little (McConahay et al., 1977) and the Harrisburg Conspiracy Trial (Schulman et al., 1973). The failure to convict in these and other "political" trials has lent credibility to the effectiveness of systematic jury selection, so much so, in fact, that some social scientists (Etzioni, 1973; McConahay et al., 1977; Shapely, 1974), have stated publicly that systematic jury selection procedures are effective.

Others remain unconvinced by the available data, however, and point out that each application of the technique must confront such methodological problems as operationalization, sampling, data reduction, and model building (Berk, Hennessy & Swan, 1977; Berman & Sales, 1977). A prevalent view is summarized by Berk et al. (1977), who state that scientific jury selection will do no worse than the typical attorney in voir dire screening. This view gains credibility when prosecutors, unaided by social scientists, use their peremptory challenges to excuse those rated most highly by the defense on the basis of elaborate jury selection techniques (Schulman et al., 1973).

### **The Research Problem**

The methodological limitations notwithstanding, the presumption that attitudes are the predictors of the verdict is criticized for overlooking the importance of a major intervening variable—the evidence. Some trial attorneys and social scientists argue that verdicts are based on the strength or weakness of the evidence rather than jury composition (Saks, 1976a; McConahay et al., 1977). Indeed, Kalven and Zeisel (1966) report agreement, presumably based upon the evidence, between judge and jury in 78 percent of the cases studied. Simon (1967) notes that jurors review each piece of evidence introduced and rely on the record in making their verdict. Finally, Saks (1976a) reports on a study conducted with Werner and Ostrom in which the amount of evidence was more than three times as powerful, and the strength of the evidence was more than seven times as powerful, as were attitudes in determining the verdict of former jurors. This argument suggests that attitudes play a very small part in the determination of guilt or innocence: verdicts are based upon the strength of the evidence, and the evidence is independent of the jurors' demographic characteristics and attitudes. Berk (1976:296) concludes his critique of jury selection techniques by stating that ". . . jury decisions are based on the assessment of empirical facts and that objective reality (or, more accurately, consensual reality) may explain the lion's share of juror decisions. In this context, it is less clear what contribution social science insights can make in jury selections."

To be sure, evidence is an important variable in determining the verdict. At issue,

however, is the question of the relationship between juror attitudes and perception of the strength of the evidence. If strength of evidence is an absolute, extraneous to the composition of the jury, then there should be no association of strength of evidence and juror attitudes. If, on the other hand, strength of evidence is relative, then jurors' attitudes may influence their perception of the weight of the evidence. Although Boehm (1968) reports that 62 percent of the verdicts were consistent with the evidence regardless of the juror's level of authoritarianism, it is noteworthy that anti-authoritarians were significantly more likely than authoritarians to render lenient verdicts in the presence of strong evidence. Similarly, Reed and Reed (1977) report that political conservatives were more likely than traditional conservatives to base their decisions on the evidence and less likely to decide the case before deliberations. Finally, Doob (1976) finds that various pieces of evidence introduced by the prosecutor were given more weight by jurors who were informed of the defendant's prior criminal record than by those jurors who were uninformed. These results suggest that juror attitudes affect the interpretation of or weighting assigned to the evidence and, therefore, affect the verdict.

This discussion of the importance of the evidence raises two related questions, the answers to which may suggest severe limitations with the present attempts at systematic jury selection. First, is the perceived strength of the evidence presented during the trial unrelated to the case-relevant attitudes of the jurors? Second, how much added variation in the juror's verdict is explained by case-relevant attitudes when perceived strength of evidence is already taken into account? These two questions focus research attention to the relationship among case-relevant attitudes, perceived strength of evidence, and verdict among a jury-eligible population.

## METHOD

During the time of this research, all persons chosen for jury duty in St. Louis County, Missouri, were randomly selected from the roll of registered voters. Data were obtained from a simple random sample of the registered voter list to assure that the research sample was representative of those residents most likely to be called for jury duty. Although 340 names were obtained, only 305 home interviews were completed. As usual, attrition resulted from inability to locate and refusal to cooperate. In addition, however, those who had been notified of future jury duty and those whose occupations would exclude them from jury duty, e.g., police officer, physician, attorney or teacher, were disqualified from the interview. Demographic characteristics, personal history information, and attitudes obtained during the interview were utilized to operationalize the variables under consideration.

In addition, a six-page description of a "hypothetical case" was presented to each respondent. The vignette was based on a transcript of an actual jury trial involving a young, black male charged with murder under the state's felony-murder rule. The transcript revealed that the prosecutor's case was based almost entirely upon police testimony pertaining to the identification of a suspect, the recovery of incriminating physical evidence, and initial statements made by the accused. The defense countered by suggesting that the police, saddened by the death of a fellow officer, were falsifying

information in their eagerness to punish the accused. The defense then attempted to highlight inconsistencies in police testimony and interpret the existence of incriminating evidence as due to a police conspiracy. The transcript was simplified to present (1) the description of the crime, victims, and accused, (2) each of the prosecutor's major points of evidence or testimony, and (3) each of the defense's major points of evidence or response to the prosecutor.

### Demographic and Background Characteristics

Dichotomous coding (0 to 1) was used for sex (1=female), race (1=nonwhite), marital status (1=married) and religious attendance (1=at least weekly); interval categories were used for age and years of education, and occupation was grouped according to current U.S. Census Bureau categories. In addition, background information pertaining to prior military service and prior victimization were coded as absent (0) or present (1).

### Case-Relevant Attitudes

Two scales were constructed to measure attitudes relevant to the case. A four-item Likert scale of attitude toward the police summed respondent scores on a five-point agree-disagree or likely-unlikely scale to each of the following: (1) "In a situation where it comes down to the word of the accused person against the word of the police, how likely are you to believe the police?" (2) "It is likely that the police would plant evidence on a suspect accused of killing another police officer." (3) "The police today have too much power." (4) "The police discriminate against those who are poor and black."<sup>1</sup>

Similarly, attitude toward punishment was operationalized by a five-item Likert scale consisting of the following case-relevant items: (1) "If the police have arrested an individual and the prosecuting attorney has brought him to trial, there is good reason to believe that the man is guilty." (2) "If a man has been found guilty once but then released by another court, he probably did commit the crime." (3) "The level of violent crime would be reduced if the courts would convict alleged lawbreakers more often." (4) "If the person on trial does not testify at his trial, there is good reason to believe he is concealing guilt." (5) "The courts are far too technical in protecting the so-called constitutional rights of those involved in criminal activity."<sup>2</sup> Designed to differentiate between what Skolnick (1966) refers to as legal guilt and factual guilt, these items assess the respondent's willingness to abridge certain due process considerations and presumptions of innocence in favor of punitive sanctions based on crime control strategies and presumptions of guilt.

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<sup>1</sup>The attitude toward police scale had a mean value of 14.59 and a standard deviation of 2.38, indicating rather positive attitudes toward the police. The item-to-total correlation coefficients ranged from .39 to .63.

<sup>2</sup>The attitude toward punishment scale had a mean value of 16.06, a standard deviation of 3.71, and item-to-total correlation coefficients ranging from .59 to .66.

## The Verdict

After the respondent had read the “hypothetical case” presented during the interview and when the interviewer was assured that the respondent understood the points made in the vignette,<sup>3</sup> each respondent indicated the verdict he or she would make based on the evidence at hand. A small number (13.1 percent) were unable to state a choice, 37.4 percent voted guilty, and 49.5 percent voted not guilty. A followup question to determine the certainty of their decision (very, somewhat, uncertain) enabled the location of each respondent’s verdict on a constructed scale of 1 (very certain of innocence) to 7 (very certain of guilt), with the “don’t know” respondents at the midpoint.<sup>4</sup>

## The Evidence

Only after the respondent’s verdict was obtained was each respondent asked to review and rate each point of information and evidence presented in the vignette. Specifically, the respondent was asked to indicate for each of the prosecution’s points whether it was unfavorable, irrelevant, mildly favorable, or extremely favorable to the prosecution. Similarly, each element in the defense’s case was rated as unfavorable, irrelevant, mildly favorable, or extremely favorable to the defense. Principal component scores without iterations, that is, regression weights, were obtained separately for the prosecution’s evidence ratings and the defense’s evidence ratings and a scale value was computed by weighting each item in terms of its contribution to the total score. The respondent’s scores on the prosecution’s evidence and the defense’s evidence were expressed as a product of a linear regression equation. The higher the respondent’s scores, the greater the respondent’s estimation of the strength of the case made by the evidence introduced.

It is noteworthy that perceived strength of evidence was obtained separately for both the prosecution’s evidence and the defense’s evidence, rather than as a single measure. This permitted the respondent the opportunity to indicate that both the prosecution and the defense had a particularly strong or weak case. Indeed, the correlation coefficient between perceived strength of prosecution’s evidence and perceived strength of defense’s evidence was  $-.27$ , indicating that the two may be viewed as independent variables lacking multicollinearity.

## RESULTS

A brief examination of the relationships found between attitudes and demographic characteristics among jury-eligible respondents precedes the analysis of

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<sup>3</sup>The interviewer first inquired whether the respondent had any questions about the points made in the vignette. After answering whatever questions arose, and even in the absence of questions, the interviewer suggested that the respondent read the vignette a second time to focus on details “now that you have the overall picture.” Finally, the respondent was asked whether she or he understood the prosecution’s case and the defense’s case. It was only after an affirmative response that the respondent was asked to render a verdict.

<sup>4</sup>The scale of verdict had a mean of 3.78 and a standard deviation of 2.33, reflecting both the greater frequency of “not guilty” verdicts and the variability in degree of certainty.

perceived strength of evidence to illustrate a problem commonly confronted in systematic jury selection. Also, an understanding of these relationships will be useful in discussing the effect of strength of evidence in the covariation of attitudes and verdict.

### Demographic Characteristics, Attitudes, and Verdict

It is evident by the data presented in Table 1 that age, race, and prior military service are significantly related to attitude toward both police and punishment, that marital status is associated with attitude toward police, and that education and prior victimization covary with attitude toward punishment. These relationships would suggest that prodefendant jurors should be young, nonwhite, highly educated, married, with no prior history of military service, and, strangely, with a prior history of victimization.

Yet further examination of the data in Table 1 reveals the presence of two practical problems. First, the combined independent effects of these nine demographic and background variables explain only 9 percent of the variation in attitude toward police and 15 percent of the variation in attitude toward punishment. Much of the variation in respondent attitudes is unaccounted for by the "predictors." This distinction between statistically significant and substantively significant "predictors" is crucial in systematic jury selection (Saks, 1976b).

Second, it is apparent that verdict is associated with only age and prior military service. The other "predictors" of attitudes—race, education, military status, and prior victimization—have no apparent relation to verdict. In addition, the nine independent variables explain only 8 percent of the variation in verdict. Therefore, knowledge of those demographic and background characteristics related to respondent's attitudes does not provide sufficient information to predict the respondent's verdict.

**Table 1. Association of Selected Respondent Characteristics with Attitude toward Police, Attitude toward Punishment, and Verdict (Pearson Correlation Coefficients)**

Respondent characteristics	Attitude toward police	Attitude toward punishment	Verdict
Age	.21 <sup>a</sup>	.26 <sup>a</sup>	.19 <sup>a</sup>
Sex	-.02	.01	-.05
Race	-.19 <sup>a</sup>	-.14 <sup>a</sup>	-.08
Occupation	-.02	-.02	.03
Education	.01	-.26 <sup>a</sup>	-.08
Marital status	.14 <sup>a</sup>	.09	.11
Religious attendance	-.01	.06	-.10
Crime victim	.05	-.12 <sup>a</sup>	-.02
Military service	.17 <sup>a</sup>	.15 <sup>a</sup>	.18 <sup>a</sup>
<i>R</i> <sup>2</sup>	.09	.15	.08

<sup>a</sup>*p* ≤ .05

**Table 2. Zero-Order Pearson Correlation Coefficients among Attitudes, Strength of Evidence, and Verdict**

	Attitude toward punishment	Strength of prosecution evidence	Strength of defense evidence	Verdict
Attitude toward police	.20	.32	-.17	.30
Attitude toward punishment		.24	-.23	.29
Strength of prosecution evidence			-.27	.45
Strength of defense evidence				-.66

### Strength of Evidence and Verdict

The bivariate coefficients presented in Table 2 demonstrate the nature of the relationships found among case-relevant attitudes, perceived strength of evidence, and verdict. As anticipated, the more favorable the attitude toward police and toward punishment, the more likely the respondent is to render a verdict of guilty based on the case presented. Similarly, the greater the perceived strength of the prosecution's evidence and the lower the perceived strength of the defense's evidence, the greater the likelihood of a guilty verdict.

The significant zero-order association between case-relevant attitudes and perceived strength of evidence is a preliminary indication that attitudes do influence the interpretation of the evidence. Further exploration by means of partial coefficients lends additional strength to that argument. The bivariate coefficient of .30 between attitude toward police and verdict is reduced to first-order coefficients of .18 and .25 when strength of prosecution's evidence and strength of defense's evidence, respectively, are partialled. When both measures of strength of evidence are controlled, the second-order partial coefficient is .15, indicating that strength of evidence is an intervening variable in the association of attitude toward police and verdict. Similarly, the first-order partial coefficients between attitude toward punishment and verdict are .21 and .18 when prosecution's evidence and defense's evidence, respectively, are controlled. The second-order partial coefficient of .12 is a substantial enough reduction from the observed zero-order partial to suggest that strength of evidence is an intervening variable in the covariation of attitude toward punishment and verdict.

These data suggest that case-relevant attitudes of the jury-eligible respondents are related to and may influence the respondents' perception of the strength of the evidence presented by both prosecution and defense. Evidence is not a completely objective factor introduced into the courtroom; each juror will interpret the strength of the evidence in some degree of concordance with his or her attitudes. The path model presented in Figure 1 sheds further light on this question and addresses the issue of the relative contribution of case-relevant attitudes to the verdict when perceived strength of evidence is taken into account.<sup>5</sup>

<sup>5</sup>The value of a path model rests in its ability to present schematically the causal sequence purported to "explain" the variation in the dependent variable. Not only does this enable a diagram of the direct effects or direct causal linkages between each independent variable and the dependent variable, but it demonstrates the degree to which any independent variable affects the dependent variable indirectly by the influence on



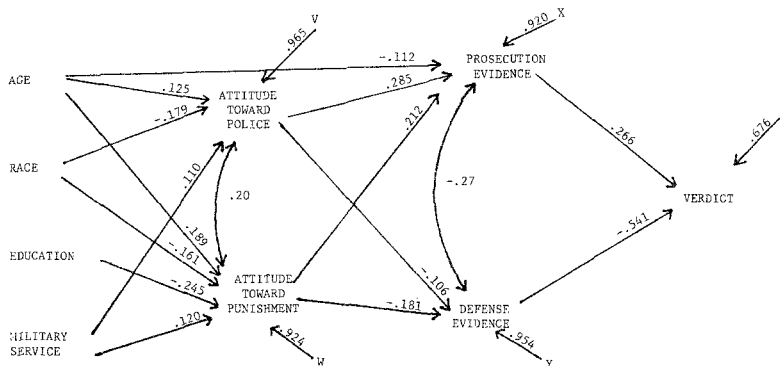


Fig. 1. A model of the causal relationship among case-relevant attitudes, strength of evidence, and verdict.

The path diagram more formally asserts the causal sequence implicit in the findings above: (1) demographic and background factors precede the case-relevant attitude toward police and attitude toward punishment (which are not causally related); (2) these variables causally precede the perceived strength of prosecution evidence and perceived strength of defense evidence (which are not causally related); and (3) verdict is the dependent variable. The model has been trimmed by including only those path coefficients which are twice their standard error, resulting in the omission of several extraneous variables and indicating no direct causal effect of the remaining extraneous variables on verdict.

It is not too surprising to find that strength of prosecution evidence and strength of defense evidence are the major explanatory variables of verdict, but it is interesting to note that neither case-relevant attitude has a significant direct causal effect on verdict. In fact, although the eight independent variables explain 54 percent of the variation in verdict ( $F=36.149, p<.001$ ), the two case-relevant attitudinal measures account for less than 2 percent of the explained variation once strength of prosecution evidence and strength of defense evidence are entered into the equation.

These results are consistent with those discussed above. Demographic and background characteristics do not significantly explain verdict. The partial correlation coefficients suggest, and the beta coefficients in the path model illustrate, that case-relevant attitudes do not affect verdict independent of perceived strength of evidence.

## DISCUSSION

The efficacy and viability of systematic jury selection rests primarily on (1) the existence of bivariate relations found among demographic characteristics, case-

one or more other independent variables that directly affect the dependent variable. Thus, Figure 1 illustrates that defense evidence and prosecution evidence are the only factors to directly affect verdict; the influence of all other variables upon verdict is indirect. The path coefficients indicate the size and direction of the direct effects. Variables V, W, X, Y and Z in Figure 1 represent "unknown" variables, and their path coefficients indicate the direct effect of these unknown variables.

relevant attitudes, and "juror" verdict and (2) the failure to convict in those few trials in which its use is known. Yet, attorneys and others frequently voice the opinion that verdicts are decided on the strength of the evidence, not on the composition of the jury. This sentiment assumes that the strength of the evidence is an absolute rather than relative factor that operates independent of the characteristics and attitudes of the jurors.

The data suggest that the strength of the evidence is relative, influenced by case-relevant juror attitudes. Attitudes toward those issues which constitute the basis for the case and toward those social groups which testify during the trial influence one's perception of the strength of the evidence presented by prosecution and defense. Moreover, it is apparent that these attitudes contribute to the juror's verdict only indirectly. The direct causal effects of case-relevant attitudes do not account for a significant amount of the explained variation in verdict. Verdict is directly affected by the perceived strength of evidence, as Berk (1976) contends, yet the perceived strength of evidence is related to juror's case-relevant attitudes.

These results must be viewed as tentative, however, because of inadequacies in the research. An obvious limitation of the present analysis, as well as many others, is the use of individuals making private decisions rather than groups making public decisions. The degree to which the results are misleading cannot be specified, although at least one experimental study has demonstrated that group decisions are invariably the same as the position initially held by the majority of its individuals (Nemeth, 1976). Until more research becomes available, however, it would be unwise to assume that individual views will not be affected in some way by the dynamics of small group decision-making processes. Secondly, the data are based on interviews with a jury-eligible sample, but not necessarily a sample representative of those most likely to actually sit as jurors. Exclusions of potential jurors due to economic hardship, illness, family needs, and, of course, for "cause" often reduce the heterogeneity among potential jurors to a point where fine discriminations become methodologically impossible. Third, the limitations inherent in correlational analysis render the findings and conclusions tentative. The use of a vignette with no systematic variation produces results that are informative but inconclusive.

Fourth, this analysis is limited to a unique case—a charge of murder, the felony-murder rule, a young, black male defendant, a white male police officer victim, and a defense argument of a police conspiracy. In comparison, Feild (1978) finds that jurors' case-relevant attitudes significantly increased the amount of explained variation in verdict beyond the direct contribution of the evidence in a simulated rape case. It may well be that certain types of demographic information and case-relevant attitudes provide greater predictive utility in some cases than in others. Finally, of course, there is a growing body of literature which indicates that ratings by subject-jurors differ more in comparisons of transcripts to live trials than in comparisons of live trials to audio or video tape presentations (Farmer, Williams, Lee, Cundick, Howell, & Rooker, 1976).

For each of these reasons, the results are only suggestive. Nonetheless, these findings support the earlier work of Boehm (1968) and Reed and Reed (1977), and focus attention on the necessity of further research to explore the relationships among attitudes, evidence, and verdict. Research of this nature is compelling if only because

there is little evidence that verdicts can be predicted by demographic data alone. As pointed out initially, the disparities in research findings indicate that no uniform set of predictors is available. What's more, statistically significant associations, which may account for less than 25 percent of the variation, are a far cry from powerful predictors.

These findings also raise issues of interest to jury selection practitioners. Attempts should be made to incorporate specific evidentiary information about the case in the survey of jury-eligible respondents from which "predictors" for the jury selection are to be derived. One obvious utility of data pertaining to perceived strength of evidence lies in its increased predictive power over case-related attitudes. As in any statistical model of etiology, the ability to correctly predict the dependent variable increases as the number of intervening variables between the independent or predictor variable and the dependent variable decreases. While evidentiary questions cannot be raised during voir dire, they can be incorporated into the jury-eligible community survey from which the association of demographic characteristics and case-relevant attitudes is currently obtained. By examining the relationship between strength of evidence and other data obtained in the survey, the voir dire questions may focus on those particular demographics and attitudes found to be predictors of the respondents' perception of strength of evidence. Presently there is an assumption that certain demographics will predict certain attitudes; the inclusion of evidentiary information in the survey changes the assumption to one in which the demographics and attitudes predict a responsiveness to evidence. By moving in this direction, there is an increased probability of correctly predicting the verdict because a major intervening variable—the evidence—is viewed as, indeed, a variable.

A second utility of strength of evidence data relies on the attorney's willingness to incorporate social science techniques into her or his presentation or defense of the case. Each of the prosecution and defense points of evidence can be examined, the opponent's strongest points and one's own weakest points can be identified, and the presentation or rebuttal can be modified to dwell upon those evidentiary points which hamper one's case. In short, a rating of the strength of each piece of evidence, each witness, each cross-examination, and so forth will enable a more selective presentation of the case.

Finally, the relative effects of strength of prosecution evidence and strength of defense evidence should not be overlooked. It was the strength of the defense's evidence that explained the most variation in the verdict. Stated in the contrary, it appears that a weak defense is more important than a strong prosecution in the guilty verdict. This implication that the juror is not so much swayed by the strength of the prosecution's evidence as by the defense's failure to provide some reason to vote for acquittal suggests the presence, at least among those sampled in this analysis, of the presumption of "guilty until proven innocent." The degree to which such a presumption appears in other respondents (see Kaplan & Simon, 1972) may substantially alter the position of the defense or prosecution in the presentation of evidence.

In conclusion, the discussion and debate of the ethical implications of systematic jury selection (Etzioni, 1974; Herbsleb, Sales, & Berman, 1978; Moore, 1974; Saks, 1976a) is premature, if only because the social scientist has yet to elevate the procedure to a predictive science. Such discussions are not irrelevant, however, since

increased attention to the juror's receptiveness to evidence may have an impact upon not only the selection of the jury but also the presentation of the evidence during the trial.

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