

BY RODNEY R. NORDSTROM

AI's Promises and Perils

AI-assisted jury selection in Illinois.



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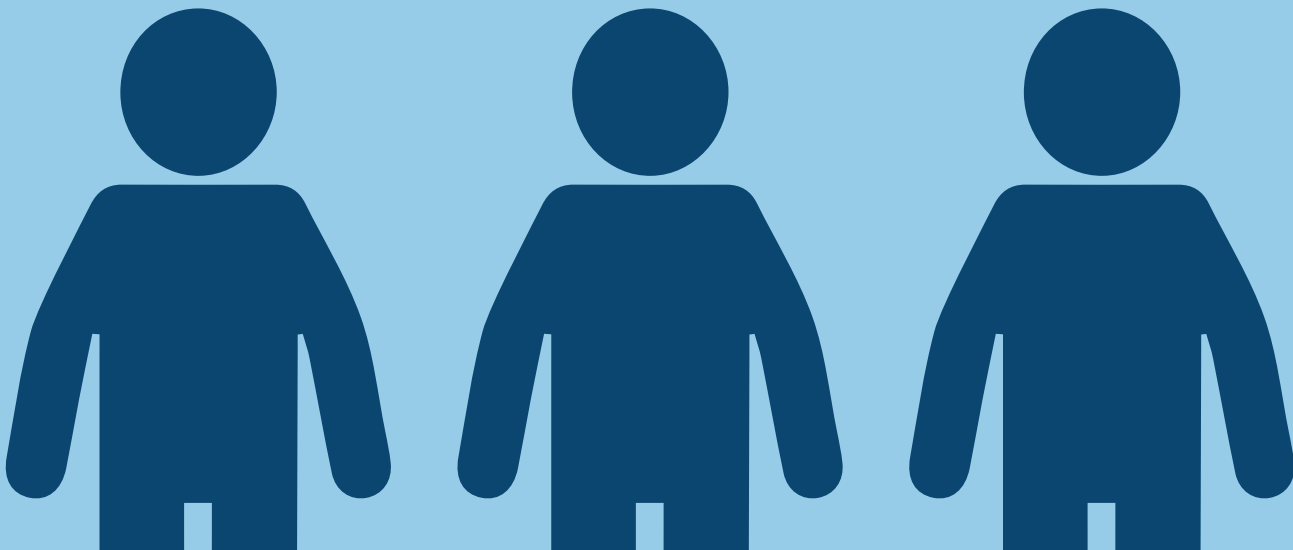
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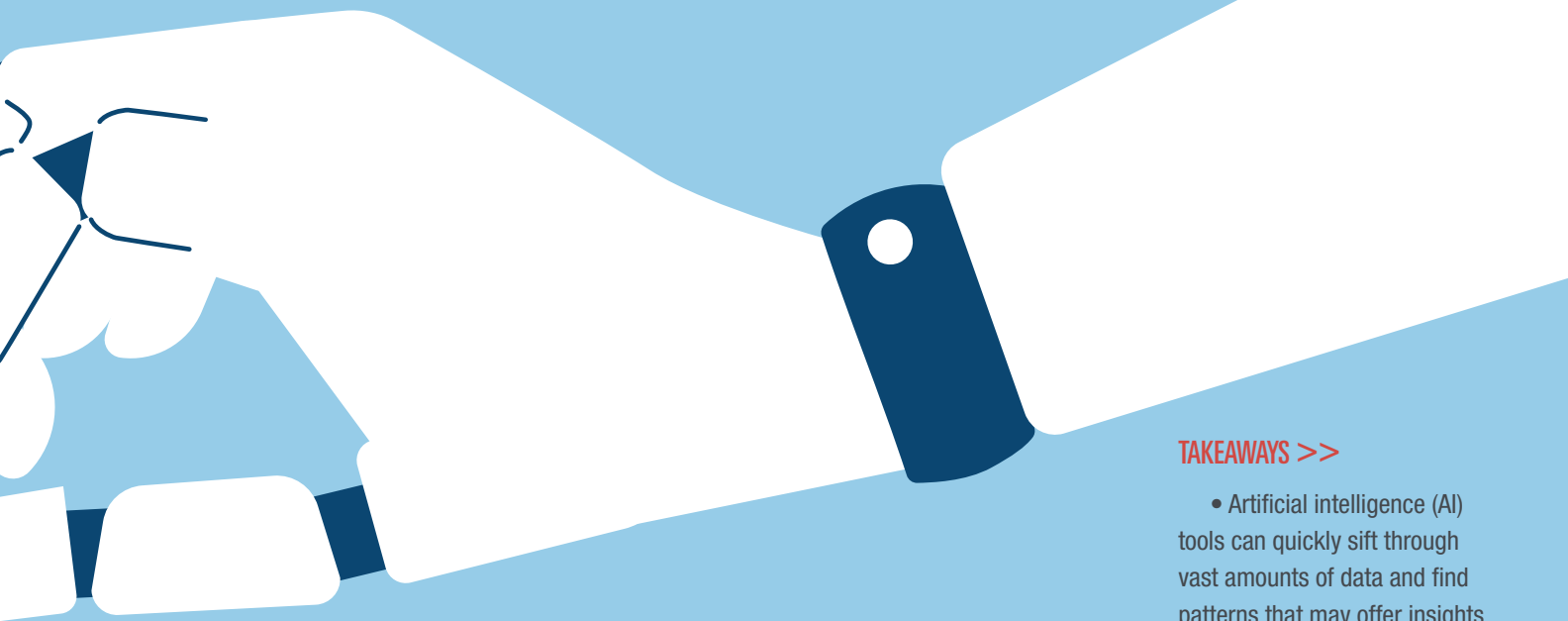
JURY SELECTION IS PERHAPS THE MOST IMPORTANT STEP IN THE TRIAL PROCESS because the composition of a jury determines the outcome of your case. Traditional methods of jury selection have their obvious limitations and advantages when compared with artificial intelligence (AI). The groundbreaking field of AI promises to revolutionize your practice in many ways. This innovative tool when applied to jury selection offers objective insights into potential jurors by identifying jurors' biases and personality patterns that may otherwise go unnoticed.

The State of Illinois has started efforts to address AI dilemmas by recently creating the Generative and Natural Language Processing Task Force (20 ILCS 1370/1-80), which is charged with researching AI and submitting a report.¹ Specifically, the task force will assess legislation, rules, and policies, and educate members and the public at large. Its findings and recommendations may ultimately shape best practices in Illinois.

AI enhances jury selection by utilizing advanced algorithms that quickly process large amounts of objective juror information, like jurors' social media platforms; public records; and other personal online data, including criminal records and political affiliations. The

1. 20 ILCS 1370/1-80, Generative and Natural Language Processing Task Force.





goal is to have AI detect patterns of behaviors, psychographics, and demographics and produce profiles of “ideal” jurors.

As potential jurors can become biased through viewing posts on a relevant topic on social media, AI promises to identify and flag these sources of potential bias. Given this, one has to wonder whether it’s even remotely possible to find an impartial juror.

A person’s personality helps shape biases, and AI can quantify a person’s individual traits. A popular way to view people is through traits on a number of personality dimensions, such as openness, conscientiousness, extraversion, agreeability, and neuroticism (what some experts call “the Big Five”²). AI can assess a juror’s Big-Five makeup for you and then make recommendations based upon your search criteria. These predictive traits are defined below.

The Big Five

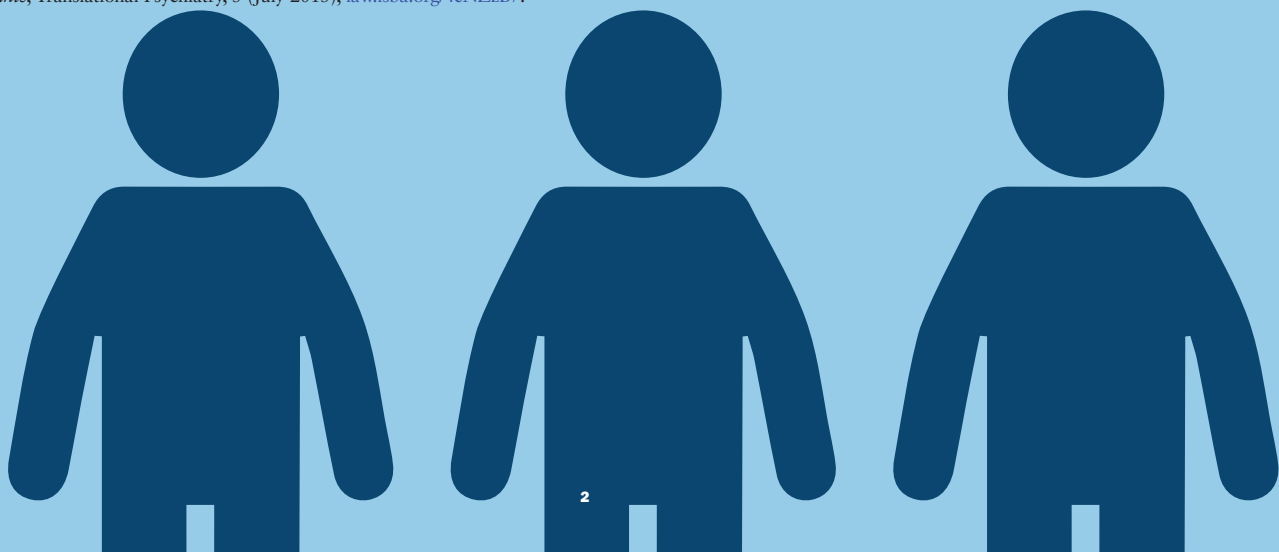
Conscientiousness. The likelihood of being dependable and reliable, and following instructions carefully.

Openness to experience. One’s capacity to be receptive to complex evidence and arguments and listen attentively to both sides while keeping an open mind about case facts. The caution here is

2. R.A. Power & M. Pluess, *Heritability Estimates of the Big Five Personality Traits Based on Common Genetic Variants*, Translational Psychiatry, 5 (July 2015), law.isba.org/4cNZzB7.

TAKEAWAYS >>

- Artificial intelligence (AI) tools can quickly sift through vast amounts of data and find patterns that may offer insights into the inclinations of potential jurors.
- AI also can assist lawyers in crafting questions for jurors and developing case themes and arguments.
- As with any emerging technology, AI may have numerous blind spots, including biases baked into algorithms and a lack of human sensitivity. Attorneys who use AI tools should proceed with caution and use AI-created results for preliminary guidance only.



AI ENHANCES JURY SELECTION BY UTILIZING ADVANCED ALGORITHMS THAT QUICKLY PROCESS LARGE AMOUNTS OF OBJECTIVE JUROR INFORMATION, LIKE JURORS' SOCIAL MEDIA PLATFORMS; PUBLIC RECORDS; AND OTHER PERSONAL ONLINE DATA, INCLUDING CRIMINAL RECORDS AND POLITICAL AFFILIATIONS.

that a high level of openness may lead the juror to be easily swayed or to become bogged down in minutiae during the case presentation. This juror might be prone to asking probing questions in the jury room.

Agreeableness. An increased likelihood to collaborate with fellow jurors in reaching a consensus. Be aware that an overly agreeable juror could be overly passive or prone to being pressured by domineering jurors. This juror might be a follower in order to get along.

Extraversion. An extraverted juror needs social interaction, is outgoing, talkative, and tends toward being action-oriented and taking risks. This juror may dominate the group because they might have better interpersonal skills than a typical juror.

Neuroticism. Proneness to negative emotions like anxiety, fear, and sadness.

This juror is unpredictable and may rationalize his or her decision to a group.

While the Big-Five traits offer a framework for helping to understand juror tendencies, studies still haven't shown a strong positive connection between personality traits and predictable outcomes in a jury context. Remember that a Big-Five analysis is only a starting point in determining which jurors you want to serve on your jury.

In addition to relying on a personal-traits analysis to select your jury, other important factors must also be considered, including a juror's background, experiences, and responses to deliberately crafted questions. Life experiences and biases also influence juror decision-making. Keep in mind, the connection between specific trait analysis and verdict outcome, without factoring in life experiences, is still a field in development.

You may be reading this and thinking, "this is all well and good, but do I need to use AI in my jury trials?"

Here's how it works

Select from one of many free public platforms (e.g., Chat GPT-4o, Claude 3.5 Sonnet, Gemini 1.5 Pro) and tell the AI tool about your case details. The following is a hypothetical series of prompts (all AI-generated answers below and in this article's accompanying tables were produced by Claude AI, created by the AI firm Anthropic).

Trial venue details: "This legal case is about a wrongful death arising from

alleged nursing home negligence. Create a summarized demographic profile of the average prospective juror in Peoria County, Illinois."

Plaintiff characteristics: "White; male, 77; wife died five years ago; has stage-three bedsores/bedridden; dehydration; cause of death: sepsis."

Defendant characteristics: "Large corporation based in Delaware doing business in Illinois; operated 10 other nursing homes in the state for 12 years; history of resident complaints for being understaffed; nursing home cited for four violations in three years."

Preliminary AI queries:

- Provide a profile of the most favorable plaintiff's juror in a wrongful-death nursing-home case in Peoria County, Illinois (see Table 2).
- List the top five *voir dire* questions to identify jurors most sympathetic to the plaintiff in a wrongful-death, nursing-home case in Peoria County, Illinois (see Table 3).
- Provide a short, concise closing statement for the plaintiff (see Table 4).
- Provide short, effective case themes for a wrongful-death nursing-home case in Peoria County, Illinois (see Table 5).

Voila! AI generates answers to your queries instantaneously.

Supplemental questionnaires

One fast-growing area of AI applications for juries is a supplemental juror questionnaire (SJQ). To fully take advantage of this trial tool, one must get the court's approval requesting potential jurors to complete an SJQ in advance of trial. It is best to get an agreement from opposing counsel to use the questionnaire before asking the court for permission to use it. About two-thirds of states, including Illinois, allow for access to jurors' questionnaires one or two days in advance of trial.³

ISBA RESOURCES >>

- Michael J. Salvi & Alexander M. Salvi, *Picking a Civil Jury: A Guide for Illinois Trial Lawyers*, ISBA Store, law.isba.org/4cN5FSm.
- Gleb Tsipursky, *Debiasing the Law*, 111 Ill. B.J. 32 (Nov. 2023), law.isba.org/4e3RYjb.
- ISBA Free On-Demand CLE, *In Your Favor! Understanding the Brain's Decision-Making Process So You Can Win More Cases* (recorded Oct. 2021), law.isba.org/3t5fVv8.

AI streamlines the evaluation of answers to the questionnaires instantaneously. I am reminded of the SJQ used in the O.J. Simpson trial years ago. That SJQ was 79 pages and contained 294 questions. That's a lot of information to sift through in search of that elusive "ideal juror." When I first started my career as a trial consultant, SJQ analysis was usually done by a jury consultant who had to manually crunch the responses, review and interpret the information, and then make an educated guess as to how any prospective juror might vote in deliberation.

Disadvantages. First, you can use ChatGPT-4o, Gemini (Google), and many other platforms such as Poe and Copilot (Microsoft) for no charge. With little practice, you will be able to do a simple query resulting in a succinct, straightforward answer. The more complicated your query, the more the cost. This is because social media queries are time-consuming and a human must individually check for people who have tried to hide their true identity, e.g., by using an alias on Facebook, Instagram, or X (formerly Twitter).

Another disadvantage is that a person, like a jury consultant or paralegal, is needed to help gather and tabulate the necessary

data for analysis in real time. (I do know an attorney capable of doing both AI analysis and juror questioning simultaneously.)

In virtually any case, a jury consultant is ideal because they can help evaluate juror profiles and match the right algorithm to maximize the accuracy of the information. A third disadvantage is that AI can't read a juror's body language or deliver a convincing presentation for you. In short, it would be a mistake to use the extraordinary advances of AI to the detriment of the human element of jury selection.

Advantages. It is argued that AI algorithms can provide a fairer and more impartial selection process. Second, using AI can improve diversity and representation among jurors. Third, it will also allow for quick analysis of your query. Fourth, it is cost effective for routine trial matters, e.g., jury instructions. (See Table 1 for a summary of the pros and cons of relying on AI for selecting jurors.)

Conclusion

The use of AI in jury selections raises ethical issues of privacy, transparency, and potential discriminating effects. AI systems can inadvertently perpetuate existing biases. Inaccuracies and inconsistent information will compound the difficulties faced in accurately

AI Glossary

Artificial intelligence (AI). Computer systems that mimic thinking and learning and can carry out operations that normally call for human intelligence, but at a scale and speed that humans cannot replicate.

Open AI. An American AI research company and the brainpower behind GPT-3 and GPT-4o, which strive to offer responsible, ethical, and user-friendly experiences.

Prompt. The input or query the AI model uses to produce a meaningful and contextually relevant result. An example of a prompt is: "Provide 10 *voir dire* questions for a medical malpractice case in Peoria County, Illinois."

GPT-4o. A free AI-powered language model developed by Open AI, capable of generating useful responses to your query.

Hallucinations. When an AI system generates false, inaccurate, incoherent, or fabricated information.

Query. Asking a platform to perform a specific search based on your criteria.

Generative AI. AI models that create original content derived from data sets based upon your requests.

Deep learning. Technology that aims to mimic the human brain's structure and process vast amounts of data using artificial neural networks. Deep-learning models can recognize personality patterns and make predictions.

Machine learning. A branch of AI employing algorithms that mimic human thought.

Web scraping. The process of extracting data from the internet and structuring it into a more convenient format.

Table 1. Using AI for Jury Selection

| Benefits | Disadvantages |
|--|---|
| Most basic searches are free | Costly for more advanced searches involving personalized social media |
| Instantaneous and mostly accurate | Sometimes hallucinations occur |
| Can use and quickly analyze supplemental juror questionnaire in advance of trial | Needs to be done in real time during trial |
| Presents new and creative approaches to jury selection | Still relies on human delivery of raw data to others |
| Minimizes bias and prejudice | Source of context isn't always apparent |
| Improves diversity in juries | Cumbersome and needs human interpretation to aid in the process |
| Easy to learn basic searches | Advanced features take time to learn |

A PERSON’S PERSONALITY HELPS SHAPE BIASES, AND AI CAN QUANTIFY A PERSON’S INDIVIDUAL TRAITS. A POPULAR WAY TO VIEW PEOPLE IS THROUGH TRAITS ON A NUMBER OF PERSONALITY DIMENSIONS, SUCH AS OPENNESS, CONSCIENTIOUSNESS, EXTRAVERSION, AGREEABILITY, AND NEUROTICISM.

assessing jurors’ backgrounds and life experiences.

But AI also has the potential to revolutionize the process of jury selection and enhance efficiency and accuracy in the courtroom. While it can streamline the selection process, it is not likely to replace human judgment and common sense any time soon. The combination of human judgment and AI together can create a more comprehensive and synergetic approach to jury selection.

In Illinois, we must continue to develop aggressive future-looking policy statements as AI develops. The integration of AI into jury selection is not just an option for Illinois, it’s a necessity to keep pace with the evolving landscape of justice. As Illinois modernizes its judicial system of what AI will be allowed to do in court, it presents a promising opportunity and has the potential to enhance the jury selection process. Illinois’ newly appointed Generative and Natural Language Processing Task Force will play a vital role in shaping these policies. ³

3. P. Hannaford-Agor, *State-of-the-States Survey of Jury Improvement Efforts*, National Center for State Courts, 4 (2024).

Table 2. Most Favorable Plaintiff’s Juror

| Prompt: Provide a profile of the most favorable plaintiff’s juror in a wrongful-death nursing-home case in Peoria County. | | |
|---|---|---|
| RESULTS | | |
| Psychographics | Attitudes and beliefs | Behavioral traits |
| High empathy and compassion | Critical of nursing homes | Analytical and thoughtful decision makers |
| Strong sense of duty and responsibility | Distrustful of large corporations | Good communicators |
| Moderate to high trust in healthcare professionals | Believes in legal accountability | Less likely to have implicit biases against the elderly |
| Personal experience with elderly care | Sympathetic to plaintiffs in wrongful-death cases | |

Table 3. *Voir Dire* Questions for Determining Sympathy for the Plaintiff

| Prompt: List the top five <i>voir dire</i> questions to identify jurors most sympathetic to the plaintiff in a wrongful-death nursing-home case in Peoria County, Illinois. |
|---|
| RESULTS |
| Experience with elderly care: “Have you or someone close to you ever had to place a loved one in a nursing home? Can you tell us about that experience?” |
| Views on nursing homes: “What are your thoughts on the quality of care provided by nursing homes in general?” |
| Trust in corporations: “How do you feel about large corporations, particularly those that operate nursing homes or healthcare facilities?” |
| Empathy and responsibility: “Are you or have you ever been involved in community service or volunteer work with the elderly or vulnerable populations? What motivated you?” |
| Legal system beliefs: “Do you believe the legal system plays an important role in holding individuals and organizations accountable for their actions, especially in cases involving vulnerable individuals like the elderly?” |

Table 4. Generating a Closing Statement

| |
|---|
| Prompt: Provide a short, concise closing statement for the plaintiff. |
| RESULTS |
| <p>Introduction: “Members of the jury, we have shown you the heart-wrenching story of [plaintiff’s name] and the broken promises of [nursing home’s name].”</p> <p>Negligence overview: “The evidence demonstrates clear neglect, understaffing, and failure to meet basic care needs, leading to [plaintiff’s name]’s preventable death.”</p> <p>Witnesses and evidence: “Witnesses testified about deplorable conditions and ignored complaints, showing a pattern of negligence.”</p> <p>Call for accountability: “This case is about holding [nursing home’s name] accountable and preventing future tragedies.”</p> <p>Final appeal: “We ask you to find in favor of the plaintiff and deliver justice for [plaintiff’s name]. Let’s ensure their suffering was not in vain.”</p> <p>Author’s note: These summaries should fit well into a slide presentation, providing clear and concise information for each point.</p> |

Table 5. Seeking Justice

| |
|---|
| Prompt: Provide short, effective case themes for a wrongful-death nursing home case in Peoria County, centered on broken promises and neglect. |
| RESULTS |
| <p>Breach of trust: “The nursing home promised to provide a safe and caring environment for [plaintiff’s name], but it failed to uphold its duty.”</p> <p>Negligence and abuse: “Evidence shows a pattern of negligence, inadequate staffing, and substandard care leading to [plaintiff’s name]’s untimely death.”</p> <p>Systemic failures: “This is not an isolated incident but a systemic issue within [nursing home’s name], affecting many vulnerable residents.”</p> <p>Emotional impact: “The pain and suffering endured by [plaintiff’s name] and their family are immeasurable and should never have happened.”</p> <p>Call to action: “Holding [nursing home’s name] accountable will help prevent future tragedies and ensure that our loved ones receive the care and dignity they deserve.”</p> |

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