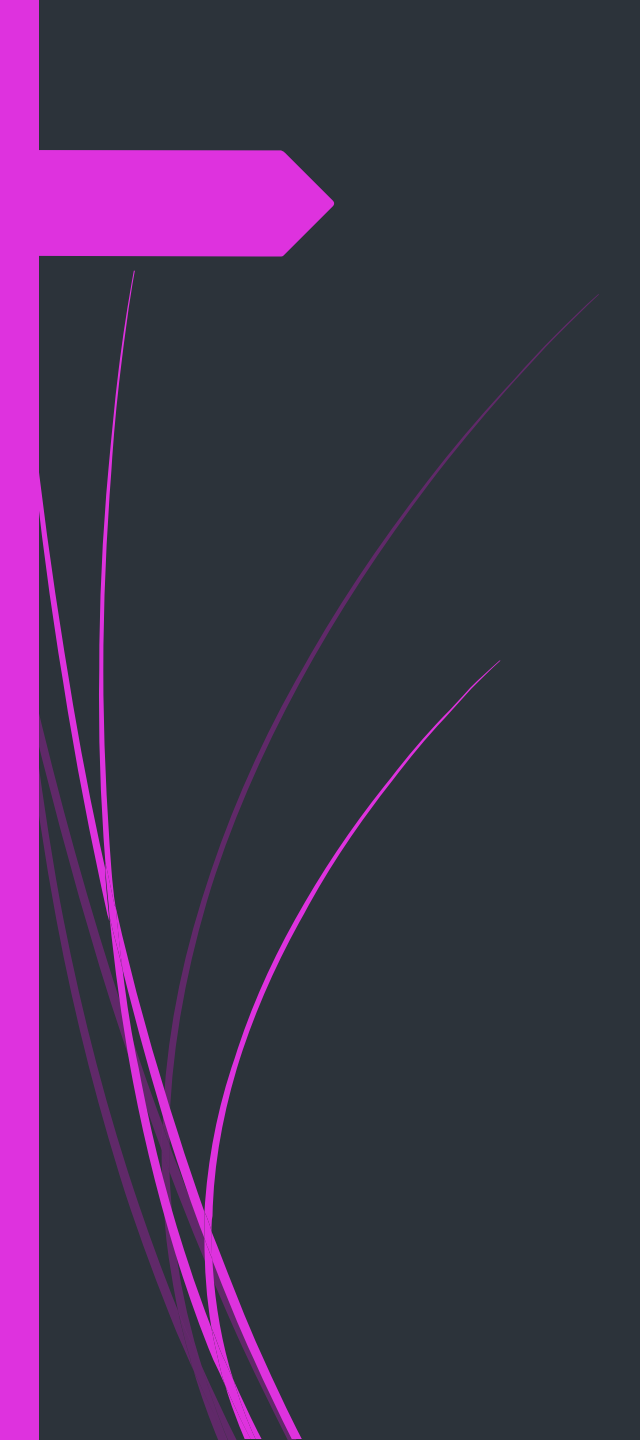# AI: Part of a Transformative Approach to Jury Selection

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- Interest in AI the past couple of years

- See Litigtion Simulation Services on Facebook for updates

- Hoosier Justice: AI and Jury Selection in Indiana (Hoosier Justice: AI and Jury Selection in Indiana, <u>Res Gestae</u>, Sept. 2024, Vol. 68, No. 2, pp. 19-23)

- AI Assisted Jury Selection in Illinois: Promises and Perils (Promises and Perils: AI in Jury Selection in Illinois, <u>Illinois Bar Journal</u>, October 2024, Vol. 112 No. 10, pp. 26-31)

- How AI is Revolutionizing Witness Preparation (<u>Indiana Lawyer</u>, November 20, 2024)

- Ethical issues of using AI in jury selection (in preparation)

QUESTIONS
1. Have you ever used AI as part of your overall trial practice? Yes/No

2. Have you ever used AI for jury selection or witness preparation? Yes/No

Focus Groups/Mock Trials

- Goal is to discover LIFE EXPERIENCES
- THEME DEVELOPMENT

Introduction to AI – Significant Milestones

- Deep Blue (chess-grand master Kasparov 1997), Watsonx, and a self-driving rover on Mars

- AI medical procedures are now commonplace

- Even using a cell phone to record the number of steps a person takes in a given timeframe (Murdaugh murder trial, 283 steps in 4 minutes)

Flow Chart for AI

Input

Black Hole

Select AI program:
Claude
Poe
Gemini
ChatGPT4o

Limited queries

Learning
Designers don't even know

Recommendations

Common Terms

- Scraping/Mining
- Hallucinations

Levels of AI Juror Search

I. You do the research yourself and get recommendations from AI, then draw your own conclusions $

II. I do the research and match AI recommendations, combine them with live focus group feedback to get a workable case theme – no juror scrubbing $ $

III. Have algorithms look at the data you input and then you make the final decision to accept or reject the juror-advanced juror questionnaire helpful, but not required $ $ $

IV. Requires advanced juror information (supplemental juror questionnaires) - AI ranks jurors (1-12) from most favorable to least favorable $ $ $ $

➡ Each service charges depending on the complexity of your search

➡ Supplemental Jury Questionnaires

How to Make Better Queries

- Provide contextual information
- Test your queries – retest based on AI responses
- Avoid complex sentences and jargon that might confuse AI
- Ask for references or sources of the information it generates

Sample Case on how AI can Help with Jury Selection

- Example of level I research
- Nursing home/wrongful death case in Indiana

Provide a profile of the most favorable plaintiff's juror in a wrongful death nursing home case in Marion County, Indiana.

Psychographics:
- High empathy and compassion
- Strong sense of duty and responsibility
- Moderate to high trust in healthcare professionals
- Personal experience with elderly care

Attitudes and Beliefs:
- Critical of nursing homes
- Distrustful of large corporations
- Believes in legal accountability
- Sympathetic to plaintiffs in wrongful death cases

Behavioral Traits:
- Analytical and thoughtful decision-makers
- Good communicators
- Less likely to have implicit biases against the elderly

Provide short, effective case themes for a wrongful death nursing home case in Marion County, Indiana.

"Broken Promises and Neglect: Seeking Justice for Our Vulnerable Loved Ones"
Key Points:

- **Breach of Trust:** "The nursing home promised to provide a safe and caring environment for [Deceased's Name], but they failed to uphold their duty."
- **Negligence and Abuse:** "Evidence shows a pattern of negligence, inadequate staffing, and substandard care leading to [Deceased's Name]'s untimely death."
- **Systemic Failures:** "This is not an isolated incident but a systemic issue within [Nursing Home's Name], affecting many vulnerable residents."
- **Emotional Impact:** "The *pain and suffering** endured by [Deceased's Name] and their family are immeasurable and should never have happened."
- **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."

Note: Avoid using "pain & suffering"; use synonyms like torment, misery, agony, etc.

List the top 5 voir dire questions to identify jurors most sympathetic to the plaintiff in a wrongful death nursing home case in Marion County, Indiana.

1.	**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?"
2.	**Views on Nursing Homes**: "What are your thoughts on the quality of care provided by nursing homes in general?"
3.	**Trust in Corporations**: "How do you feel about large corporations, particularly those that operate nursing homes or healthcare facilities?"
4.	**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?"
5.	**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?"

Provide a short, concise closing statement for the plaintiff.

Introduction:
- "Ladies and Gentlemen of the jury, we have shown you the heart-wrenching story of [Plaintiff's Name] and the broken promises of [Nursing Home's Name]."

Negligence Overview:
- "The evidence demonstrates clear neglect, understaffing, and failure to meet basic care needs, leading to [Deceased's Name]'s preventable death."

Witnesses and Evidence:
- "Witnesses testified about deplorable conditions and ignored complaints, showing a pattern of negligence."

Call for Accountability:
- "This case is about holding [Nursing Home's Name] accountable and preventing future tragedies."

Final Appeal:
- "We ask you to find in favor of the plaintiff and deliver justice for [Deceased's Name]. Let's ensure their suffering was not in vain." These summaries should fit well into a slide presentation, providing clear and concise information for each point.

How Confident are you in Juror "A"?

- AGE
- GENDER
- RACE
- MARITAL STATUS
- EMPLOYMENT
- EDUCATION
- CRIMINAL RECORD
- HOBBIES
- PROPERTY RECORDS
- LICENSES
- LAWSUITS
- ZIP CODE
- TWEETS
- LIKES
- LINKEDIN
- NEWS/NEWSPAPERS
- VOTING HISTORY

QUESTION
3. Are you confident that AI will help select favorable jurors for your case?
Yes/No

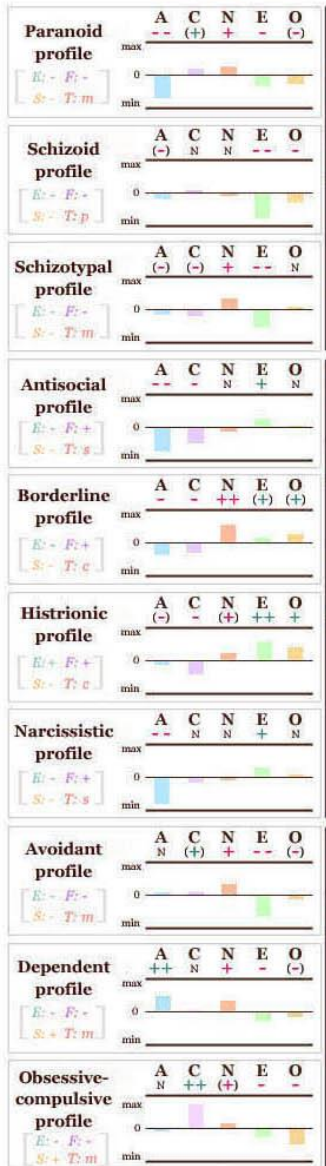…jury selection and voir dire based on the heightened risk of undue prejudice as the result of pretrial publicity, including **investigation of potential jurors' public social media posts**…and allowing robust follow-up voir dire on this issue.

The Big Five personality dimensions, a.k.a. the 5 Factor Model

+ it's 30 facets according the NEO PI-R Personality Inventory [featured with 4 meta factors] & 35 prototype Big Five profiles!

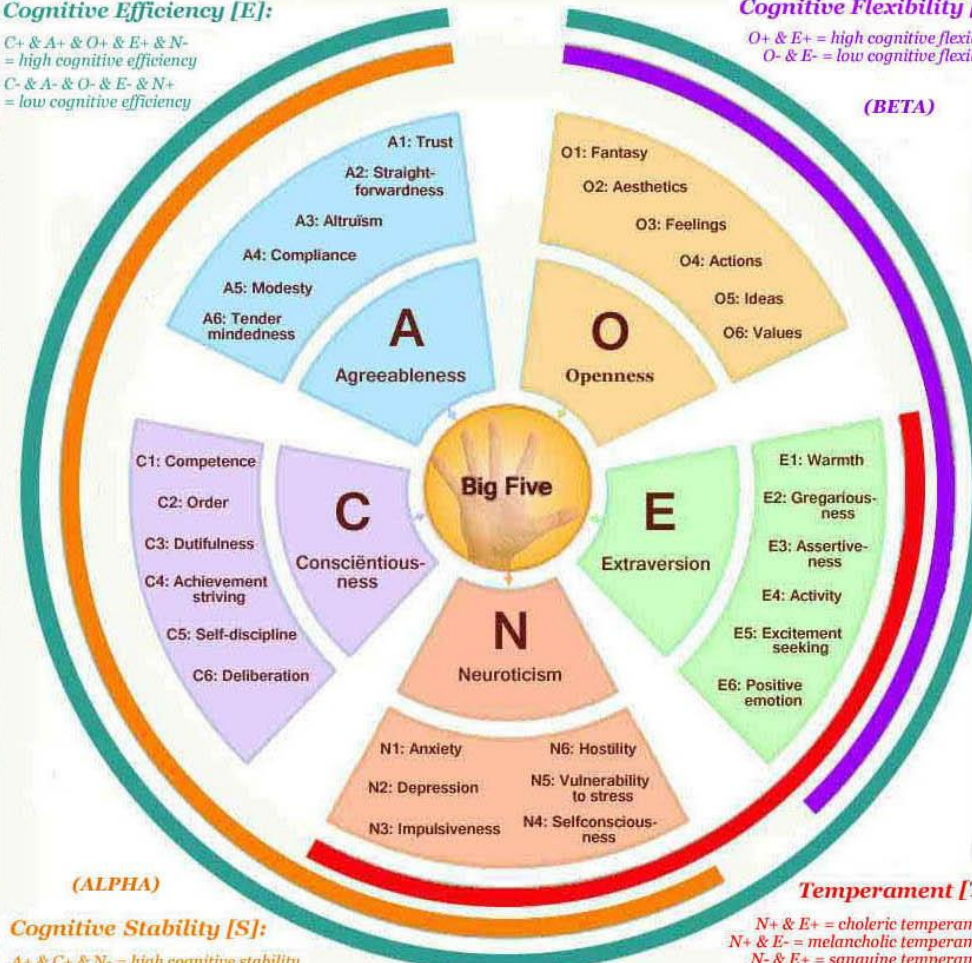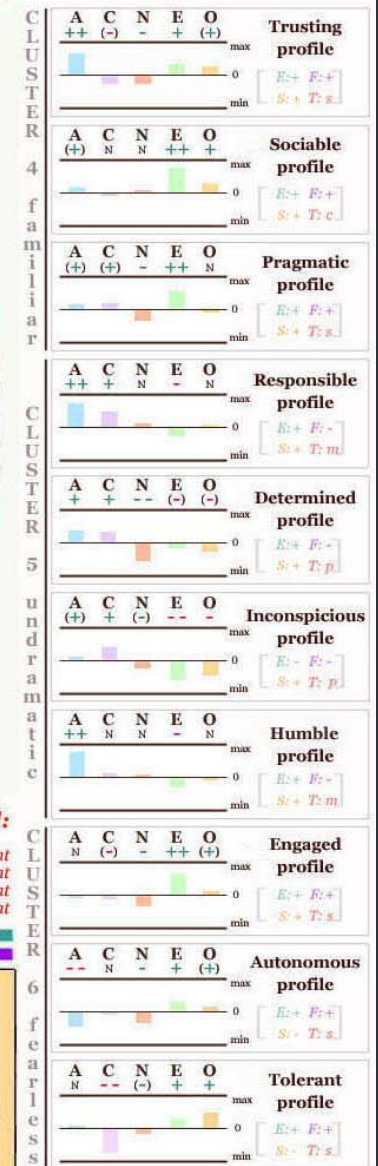## 10 Expert consensus Big Five profiles:

Cognitive Efficiency [E]:
C+ & A+ & O+ & E+ & N- = high cognitive efficiency
C- & A- & O- & E- & N+ = low cognitive efficiency

Cognitive Flexibility [F]:
O+ & E+ = high cognitive flexibility
O- & E- = low cognitive flexibility

(BETA)

10 Counterpart Big Five profiles:

CLUSTER 1 odd

Profile	A	C	N	E	O		
Paranoid profile	--	(+)	+	-	(-)	E: - F: -	S: - T: m
Schizoid profile	(-)	N	N	--	-	E: - F: -	S: - T: p
Schizotypal profile	(-)	(-)	+	--	N	E: - F: -	S: - T: m

CLUSTER 2 dramatic

Profile	A	C	N	E	O		
Antisocial profile	--	-	N	+	N	E: - F: +	S: - T: s
Borderline profile	-	-	++	(+)	(+)	E: - F: +	S: - T: c
Histrionic profile	(-)	-	(+)	++	+	E: + F: +	S: - T: c
Narcissistic profile	--	N	N	+	N	E: - F: +	S: - T: s

CLUSTER 3 fear

Profile	A	C	N	E	O		
Avoidant profile	N	(+)	+	--	(-)	E: - F: -	S: - T: m
Dependent profile	++	N	+	-	(-)	E: - F: -	S: + T: m
Obsessive-compulsive profile	N	++	(+)	-	-	E: - F: -	S: + T: m

Big Five dimensions (wheel):

A — Agreeableness
- A1: Trust
- A2: Straightforwardness
- A3: Altruism
- A4: Compliance
- A5: Modesty
- A6: Tender mindedness

O — Openness
- O1: Fantasy
- O2: Aesthetics
- O3: Feelings
- O4: Actions
- O5: Ideas
- O6: Values

C — Consciëntiousness
- C1: Competence
- C2: Order
- C3: Dutifulness
- C4: Achievement striving
- C5: Self-discipline
- C6: Deliberation

E — Extraversion
- E1: Warmth
- E2: Gregariousness
- E3: Assertiveness
- E4: Activity
- E5: Excitement seeking
- E6: Positive emotion

N — Neuroticism
- N1: Anxiety
- N2: Depression
- N3: Impulsiveness
- N4: Selfconsciousness
- N5: Vulnerability to stress
- N6: Hostility

(Big Five center)

(ALPHA)

Cognitive Stability [S]:
A+ & C+ & N- = high cognitive stability
A- & C- & N+ = low cognitive stability

Temperament [T]:
N+ & E+ = choleric temperament
N+ & E- = melancholic temperament
N- & E+ = sanguine temperament
N- & E- = phlematic temperament

Counterpart profiles:

CLUSTER 4 familiar

Profile	A	C	N	E	O		
Trusting profile	++	(-)	-	+	(+)	E: + F: +	S: + T: s
Sociable profile	(+)	N	N	++	+	E: + F: +	S: + T: c
Pragmatic profile	(+)	(+)	-	++	N	E: + F: +	S: + T: s

CLUSTER 5 undramatic

Profile	A	C	N	E	O		
Responsible profile	++	+	N	-	N	E: + F: -	S: + T: m
Determined profile	+	+	--	(-)	(-)	E: + F: -	S: + T: p
Inconspicuous profile	(+)	+	(-)	--	-	E: + F: -	S: + T: p
Humble profile	++	N	N	-	N	E: + F: -	S: + T: m

CLUSTER 6 fearless

Profile	A	C	N	E	O		
Engaged profile	N	(-)	-	++	(+)	E: + F: +	S: + T: s
Autonomous profile	--	N	-	+	(+)	E: + F: +	S: + T: s
Tolerant profile	N	--	(-)	+	+	E: + F: +	S: + T: s

Summary table:

A — Agreeableness 'focus on the other'	C — Consciëntiousness 'focus on results'	N — Neuroticism 'emotional instability'	E — Extraversion 'focus on the outside world'	O — Openness 'focus on the new'
HIGH A(+): adapter	HIGH C(+): focused	HIGH N(+): reactive	HIGH E(+): extravert	HIGH O(+): exploring
MEDIUM A: negotiater	MEDIUM C: balanced	MEDIUM N: responsive	MEDIUM E: ambivert	MEDIUM O: moderate
LOW A(-): challenger	LOW C(-): nonchalance	LOW N(-): resilient	LOW E(-): introvert	LOW O(-): preserver

* The 10 expert consensus profiles (displayed on the left side above) represent average values from 478 expert ratings published in 2 reports (Samuel & Widiger, 2004 + Lynam & Widiger, 2001); the 10 counterpart profiles (displayed on the right side above) represent the complementary parts of the expert consensus profiles. Additionally, 1 'neutral profile' + 14 other profiles derived from results reported in other studies, have become available (these 15 profiles are displayed below).

Plaud for Witness Preparation

Description of Witness Preparation Using Plaud

QUESTION
4. Is it okay to research a juror's social media history (as long as it is legal) when considering them as jurors?
Yes/No

First Use of Generative AI in a Federal Trial
U.S. v. Pras, DC

- Pras, rapper, claims his defense lawyer was ineffective for using AI to draft his closing argument.

- "The closing argument was defective, unhelpful and missed opportunity that prejudiced the defense."

- Pras' appeal was denied last month.

Ethics

- Ensuring compliance with court rules
- Addressing potential biases in AI algorithms
- Transparency and disclosure considerations
- All "scrubbed/mined" data is public
- Explainable AI
- How will courts react?
- How will jurors feel about a deep dive into their personal history?
- Hallucinations

What is Explainable AI (XAI)?

- IBM: www.ibm.com/topics/explainable-ai
- Explainable AI is used to describe an AI model, its expected impact and potential biases
- Helps characterize model accuracy, fairness, transparency and outcomes in AI-powered decision-making
- Helps build confidence in the results

AI Hallucinations

- AI hallucinations pose a critical threat to any AI search. Is AI trustworthy ?

- A digital mirage – they are simple mistakes of either omission (leaving some data out) or commission by making up stuff

What Causes AI Hallucinations?

- ➡ Misinformed decisions – Medicine/Investing

- ➡ Reinforces bias: hiring practices when AI unfairly favors a particular demographic/psychographic

- ➡ We all know about the popular case when AI drafted a brief containing nonexistent and factitious citations

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