

Do We Need Einstein's in the Jury Box? The Role and Impact of Juror IQ

by Alison K. Bennett

What role does a juror's IQ play in jury decision-making? Are low IQ jurors inherently dangerous to defendants? Do we have a right to have a trial by jury with jurors of a certain level of intelligence or mental health? Juror IQ impacts jury decision-making in several ways, and can be an important consideration in jury selection, depending on the type of trial and the complexity of the fact pattern. Low IQ jurors may not be inherently dangerous, but a juror's IQ level warrants attention during jury selection because IQ could be used as the basis for a challenge for cause or may necessitate a peremptory strike.

Intelligence, by Definition

Scientists have strived to define and quantify human intelligence since the Stanford-Binet Intelligence Scale was created in 1916 to measure a person's intelligence quotient, or IQ. Since then, several complementary or alternative theories have emerged. For example, Howard Gardner (1983) proposed the theory of multiple intelligences, in which he postulates the IQ test is inadequate to capture the wide variety of human cognitive abilities. Gardner theorized there are at least eight different types of intelligence, including Spatial, Linguistic, Logical-Mathematical, Bodily-Kinesthetic, Musical, Interpersonal, Intrapersonal, and Naturalistic intelligence. There is also a compelling argument for the role of one's emotional intelligence (EQ), which is purportedly more outcome-determinative of professional success than one's IQ score (Goleman, 1995). As the field of cognitive psychology and related disciplines continue to emerge, so will the theories about how to define and quantify human intelligence.

For the limited scope of this article, a juror's IQ will be discussed in terms of the ability to understand and reason through the facts presented at trial, in a rational manner. This would include people with average or above-average intelligence, as well as those with common sense but slightly below-average intelligence. Thus, a low IQ juror would be defined as one who is fundamentally unable to understand or reason through the facts at a trial, or one who is largely incapable of consistent rational thinking.

Is a "Sound Mind" related to IQ?

In theory, a jury needs to be populated with intelligent, rational thinkers to be able to reach a just and sound verdict. Accordingly, several states, including Texas, require jurors to have "a sound mind." (Sidebar 1) This definition likely originates from the legal concept that a person is presumed to have a sound mind when entering into legal agreements, as defined in Bouvier's Law Dictionary (1984):

That state of a man's mind which is adequate to reason and comes to a judgment upon ordinary subjects, like other rational men. The law presumes that every person who has acquired his full age is of sound mind, and consequently competent to make contracts and

perform all his civil duties; and he who asserts to the contrary must prove the affirmation of his position by explicit evidence, and not by conjectural proof.

By this definition, a “sound mind” reflects the ability to apply reason in a rational manner, in order to judge an ordinary matter. However, it is unclear whether or not this definition equates a sound mind with an average or above-average level of intelligence. Equally confusing is the coupling of the requirement for a “sound mind” with an even more subjective requirement for “good moral character.” While I have observed attorneys move to strike a juror for cause due to insufficient cognitive capacity, I have never had the pleasure of observing a motion to disqualify a juror on the basis of inadequate moral character.

By contrast, the Federal Juror Qualifications (Sidebar 2) avoids the ambiguous requirement for a sound mind and simply requires jurors to “have no disqualifying mental or physical condition.” This suggests the only cognitive requirement for a juror in a Federal trial is the absence of mental illness. This arguably sets a lower bar than the “sound mind” qualification, but also introduces a specific expectation for a juror to be free of mental illness.

The Impact of Low IQ Jurors on Jury Decision-Making

Generally speaking, jurors with above-average or high IQs are potentially more beneficial to defendants. This is not due to the inherent merit of one side’s case over the other; rather, it is reflective of the impact of cognitive deficiencies on decision-making skills. For example, it is a shorter cognitive walk to embrace the presumption of guilt – the notion that the defendant is probably liable or guilty to some degree primarily because a lawsuit or criminal case was filed - than it is for jurors to reason through disputed facts while weighing the burden of proof. Also, low IQ jurors are more likely to rely on their emotions as opposed to trying to analyze a complicated or confusing fact pattern, thus arguments that generate strong negative emotions, such as fear or anger, are more likely to persuade them. Finally, low IQ jurors with a critical thinking skill deficit may depend more on first impressions to make decisions than their tenuous analytical skills, so they are less likely to carefully consider both sides

SIDEBAR 1

Texas Juror Qualifications Qualifications for Jury Service

You do not need any special skills or legal knowledge to be a juror!

To be qualified to serve as a juror you must:

- 1. Be at least 18 years of age;**
- 2. Be a citizen of this state and of the county in which you are to serve as a juror;**
- 3. Be qualified under the Constitution and laws to vote in the county in which you are to serve as a juror (Note: You do not have to be registered to vote to be qualified to vote);**
- 4. Be of sound mind and good moral character;**
- 5. Be able to read and write;**
- 6. Not have served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court; and**
- 7. Not have been convicted of, or be under indictment or other legal accusation for, misdemeanor theft or a felony.**

***Note that the completion of deferred adjudication is not a disqualifying “conviction”.**

**Texas Government Code § 62.102.
General Qualifications for Jury Service
Code of Criminal Procedure,
[Articles 35.16 et. seq.](#))**

and more likely to be persuaded by the first arguments they hear.

Juror IQ as a Factor in Jury Selection

SIDEBAR 2

Federal Juror

Qualifications:

To be legally qualified for jury service, an individual must:

- **Be a United States citizen;**
- **Be at least 18 years of age;**
- **Reside primarily in the judicial district for one year;**
- **Be adequately proficient in English;**
- **Have no disqualifying mental or physical condition;**
- **Not currently be subject to felony charges; and**
- **Never have been convicted of a felony (unless civil rights have been legally restored)**

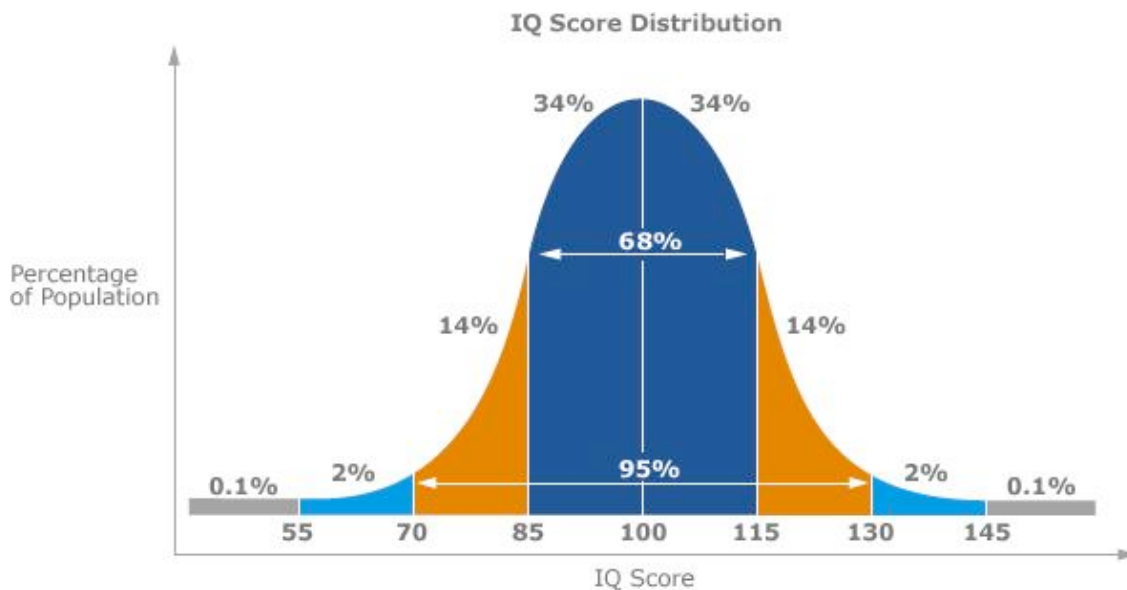
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Prosecutors in the 2008 Holy Land Foundation terrorism retrial likely benefitted from a jury selection strategy focused on juror IQ. The first trial, in 2007, ended in a mistrial after jurors deadlocked on most of the counts against five defendants, including 197 counts of supporting terrorism, money laundering, conspiracy, and tax fraud. The jury also acquitted one defendant of almost all of the charges against him, although that finding was later thrown out by the judge after one juror recanted her vote. Another juror summed up the trial by saying, "The whole case was based on assumptions that were based on suspicions. If they had been a Christian or Jewish group, I don't think [prosecutors] would have brought charges against them" (Krikorian, 2007). By contrast, in the 2008 retrial, all five defendants were convicted on every single one of the 108 counts against them. It is my opinion, after observing jury selection for the both trials, that a focus on juror IQ during jury selection in the retrial played a significant role in changing the outcome. The evidence was similar for both trials, but the jury panels were very different.

In both trials, Justice Department prosecutors accused five Holy Land Foundation defendants, all but one a U.S. citizen, of raising more than \$12 million and wiring it to Palestinian charity committees, who prosecutors said were controlled by the terrorist group, Hamas. Defense attorneys argued that their clients never funded Hamas and sought only to give help to Palestinian families battling poverty caused by the Arab-Israeli conflict. As proof, they pointed to evidence that the foundation had used the funds to purchase school and medical supplies, not weapons. Jurors in both trials had to absorb a complicated storyline, told through FBI testimony, hundreds of documents, videos and translations of wiretapped conversations. Prosecutors dropped the number of

charges against the defendants from 197 to 108 in the retrial, but other than that, the evidence presented was essentially the same, except for a stronger emphasis on the "terrorism fear factor" in the retrial.

What turned the results of the first trial into 108 guilty verdicts in the second? Perhaps one major factor was the difference in the makeup of the second jury panel, and their response to the fear tactics employed by prosecutors. In the first trial, a number of hardship releases were granted to lesser educated jurors who had fewer resources to sustain them over the projected length of the trial. This left a panel of more highly educated jurors available for jury selection. However, in the second trial, there were virtually no releases for hardship, despite several jurors' pleas that jury service for the lengthy trial would force them into bankruptcy. This left the panel with a much higher number of less-educated (and anxiety-ridden) jurors than were available for jury selection in the first trial.



Additionally, the prosecution team, under significant pressure to succeed at the retrial, brought in a trial consultant and changed their jury selection strategy to target the better educated, more articulate and arguably more intelligent jurors for release. As a result, the jurors at the retrial analyzed the same set of facts but convicted each defendant on every single

count. Could the IQ level of the jurors at the retrial have played a role in the different outcome? Could fear and anger have clouded their perception of the facts? Could it be the confusing, complex evidence led them to embrace a presumption of guilt, which would be the cognitively less-challenging verdict? Given the changed demographics of the jury panel, it is entirely possible.

A Colorful but Unsound Mind, Released for Cause

While consulting for a criminal defendant in a different case, I witnessed a potential juror released for cause precisely because she did not “have a sound mind.” During jury selection, a young female juror caught my attention by occasionally glaring at our client. When questioned, her over-simplistic answers and bizarre questions made it apparent her mental faculties were compromised. However, she did not say anything in particular that we could have used to challenge her for cause. The defendant’s attorney was very reluctant to raise the issue of whether or not she had a “sound mind,” but eventually brought up her name to the judge, at the bench. Fortunately he did not have to go into any detail about our concerns because when he mentioned the potential juror’s name, the bailiff quickly interjected, “Oh yeah, Judge, I meant to tell you, she brought a coloring book and crayons and has been coloring in the lobby during breaks.” After this revelation, the judge immediately released her for cause and we saved a peremptory strike.

Clues to a Juror’s IQ

One of the best ways to estimate a potential juror’s IQ level is to read his or her answers on a Supplemental Juror Questionnaire. This is also an opportunity to determine if a person is adequately proficient in English, which is also a qualification for jury service. With this in mind, when drafting a Supplemental Juror Questionnaire, be sure to ask questions about educational background, another indicator, but also include open-ended questions that require critical thinking skills to complete.

During *voir dire*, a potential juror’s verbal acuity when answering questions may provide the best means to assess mental capacity. The effect of anxiety created by the *voir dire* process should be taken into account, but overall, verbal skills are a reliable indicator of intellectual capacity. It is also helpful to note other clues, such as whether or not the potential juror brought any reading materials that would reflect a higher IQ. Additionally, personal hygiene, or lack thereof, could be an indicator of low

IQ or mental health. On a light note, mouth-breathing is usually a dead give-away for low IQ, absent physical illness.

Jury Selection Guidelines

In order to work properly, our judicial system needs reasonable and mentally healthy jurors to make rational decisions. A juror's IQ should be a consideration during jury selection. Regarding jury selection guidelines, higher IQ jurors are generally more beneficial to the defendant. However, defense attorneys do not necessarily need to target low IQ individuals for removal from the jury panel unless they have a strong personal bias or a dominating personality, because lower IQ people tend to be followers, rather than leaders, and are typically less of a threat.

Alison K. Bennett, M.S., a Senior Litigation Consultant with Bloom Strategic Consulting, has accumulated extensive nationwide civil and criminal litigation consulting experience. Her specialties include [witness communication training](#), jury research in the form of focus groups and mock trials, and jury selection. Over the years, Ms. Bennett has addressed a variety of courtroom psychology and trial advocacy topics, both as an author and as a featured speaker at a number of conferences, including American Bar Association and Texas Bar Association events.

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Editor's Note

You know how 'they' say as you get older, time seems to fly by faster? 2010 has absolutely flown by for me. This is our last issue for 2010 and we wanted to offer a full plate (so to speak) as you go into the holidays. To that end, we have articles on self-presentation in the courtroom; thoughts on what we can learn (if anything) from negative political attack ads; a review of the research on police deception in interrogation and how that influences jurors as they consider confessions; using hyperlinked briefs to power up both your argument and your persuasiveness; a look at the role and impact of juror IQ; a psychological approach to *voir dire*; and a review of the research on the role of the juror foreperson. As you peruse these (with holiday fudge and hot cider) all of us at the American Society of Trial Consultants wish you and yours the best of holiday times and success, health and happiness in the New Year.

In 2011, we hope to continue to bring you thought-provoking pieces that make you think as well as improve your litigation advocacy skills. We are in a time in this country where we have to continually assess and re-assess whether strategies in persuasion are still effective or if we have to re-group and re-vamp and re-approach the venire. As you practice and run up against new concerns, perspectives and attitudes-it helps us a lot to hear from you about topics you'd like to learn more about in *The Jury Expert*. Send me an email and tell me what topics you want to have in our 2011 issues. We'll see what we can do to make that happen. Think of it as our gift to you. Happy Holidays.

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