

Juror Research: Does a Party's Attire Impact Juror Perceptions?

By

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Overview: A lawsuit was filed by a plaintiff who claimed a contractor working on a "cost plus" agreement cheated the builder by accepting kickbacks from subcontractors. Plaintiff claimed the cost for building was fraudulently increased by approximately \$300,000. Plaintiff was suing for damages, attorney fees and punitive damages.

Facts: A contractor in a southwestern state was retained by a Texas businessman to build a commercial business building in the contractor's home state. In fact, the building was to be built in the city in which the contractor resided. The plaintiff did not want the usual estimate and contract but rather opted for a cost-plus contract. Under a cost-plus contract, the contractor would divulge the cost of each subcontractor's contribution and then add ten percent to that to cover the cost of overseeing as a general contractor. Under the plan, all bills would be made available for inspection by the plaintiff (the builder) and the originals would be maintained at the office of the defendant (the contractor). At the completion of the building, there was a final payment of several hundred thousand dollars due. The builder accepted possession and control of the building and agreed to pay the contractor the outstanding sum. The builder then put the balance due in escrow and filed suit against the contractor for an amount more than the final payment placed in escrow. He claimed in his suit that the general contractor had routinely solicited and accepted kickbacks from subcontractors and this vastly inflated the cost of the building. In support of his argument, the builder brought forth other contractors who would testify they could have retained the same subcontractors for much less money, and a second group of contractors who would testify they had built identical buildings in other states for less.

Research Plan: It was apparent, through the reading of depositions and an analysis of documents, that this case may very well come down to jurors' decisions about the truthfulness of the builder vs. the general contractor. It had been determined there was a high probability the builder would present himself as a Texas entrepreneur and he would be dressed expensively. It was also determined his wife, in similar expensive attire, would be at trial. This was supported by videotaped depositions of the plaintiff, in which he wore very expensive suits and a Rolex watch, and carried a hand-tooled leather briefcase. The research design incorporated the presentation of the plaintiff in this constant condition. The defendant was presented in three separate formats. He was presented to a group attired in a suit and tie, showing his own degree of wealth; attired in work clothes; and, lastly, wearing Dockers dress slacks, a long-sleeved shirt and a corduroy jacket. One of the primary focuses of the research was to determine the likeability and believability of each of the primary witnesses, as shown to various groups.

Case Findings: The first finding did not change across groups. This finding was that casual, southwestern state working people tend to view wealthy businessmen who seem

to represent Texas millionaires with suspicion. Word association tests generally anchored the plaintiff to words that were pejorative in nature. Many jurors found the plaintiff to be “slick”, “untrustworthy” and “arrogant”. Terms used to describe his wife were so negative they would be considered personal attacks.

The variable in this research was the presentation of the defendant. Although his testimony remained exactly the same in each of the three dress conditions, he was found to be more or less credible depending upon the jurors’ perception of his physical being, as illustrated through his dress.

When the defendant was dressed as a moderately wealthy businessman, he was often compared to the builder. Jurors tended to dislike him and found his character similar to that of the plaintiff. Several jurors remarked this was a “battle between big-dollar thieves”.

When the defendant presented dressed as a working man, he was quickly detected as understating his position. The jurors felt he should have had more respect for the circumstances he was in and dressed more appropriately. Other jurors commented it appeared he was dressing down on purpose. The level of trust the jurors would put into the general contractor when he was so attired was generally low.

When the contractor was dressed in “southwest business casual”, he was well regarded. Jurors found him to be friendly, persuasive and honest. They contrasted his position of a successful builder who still knew what a hammer was to a Texas millionaire. The jurors generally liked him and therefore tended to believe his version.

The focus group jurors tended to bond more with the general contractor dressed in southwest business casual. Human beings are herd animals and, as such, we gather with like species. Zebras don’t gather with elephants, deer don’t gather with sheep, and working class jurors do not gather with Texas millionaires. They do tend to identify with someone who appears to be a leader within their own sub-society.

Lessons Learned:

1. You can judge a book by its cover. Or, more appropriately, you can design the cover of a book so it will more accurately portray the content of the book. You can design a cover that will tell a reader what is really going to be inside. The same can be said for the outside shell of a witness.
2. You must have a quality witness to begin with. Although this research has not taken the extra step, there is a clear inference that jurors judged what they heard against what they saw. If more research groups had been conducted and the quality of testimony was changed as the new variable, the outcome would probably have been different.

3. “Carpetbaggers” were identified as such at the end of the American Civil War. They were generally perceived as opportunists from the north who went south with the purpose of exploitation. The “carpetbagger” pallor can be cast upon a plaintiff and jurors may believe he comes from east Texas with the purpose of exploiting the working people of the southwest.
4. It is better to have a sympathetic plaintiff than what appears to be a battle between wealthy businessmen. A general contractor, without regard to his or her wealth, can best be referred to as a working person rather than a high level investment or consulting entrepreneur.

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