

The Attractiveness-leniency Effect

Stephen Juan ("Juan on Wednesday") wrote in the *Sydney Morning Herald* recently:-

"Research shows that physically attractive people enjoy many advantages over unattractive people in courts of law. It is called 'the attractiveness-leniency effect'. It means that there is a greater likelihood that a physically attractive defendant will be acquitted of a crime. It also means that if convicted, the sentence will be lighter if the criminal is attractive."

What Juan did not say, however, is that the so-called "attractiveness-leniency effect" may work as well for a barrister as for a defendant!

The presence of the phenomenon first came to my attention some years ago when, as a law student, I attended a criminal trial in the District Court. The defendant had been apprehended whilst in the commission of an armed robbery of a suburban bank, having become stuck in wet cement outside the entrance to the bank. There were many witnesses for the prosecution. The defence called no evidence. Counsel for the defence had, however, done his homework well. The defendant had undergone a physical transformation to resemble Don Lane, who, at the time, was Australia's most popular public figure according to surveys taken by the *New Idea* and the *Women's Weekly*. This, when coupled with the defence counsel's skill, not unlike that of a game show host, and teeth like Donny Osmond's, overcame the apparently insurmountable difficulty of the defendant's case. What a combination! After a mere 10 minutes' deliberation the jury came back with a verdict of not guilty.

Building on this experience, I resolved to undertake a poll on the effect of courtroom appearance and found, quite expectedly, that most people regarded attractiveness in an advocate and/or defendant as a friendly, self-assured expression, stylish hair and well-proportioned body, while characteristics of unattractiveness were identified as an unrefined, unfashionable and informal appearance, round face and stout body.

The lesson was obvious: a plaintiff or defendant should be modelled in the likeness of a popular contemporary public figure and, for the barrister, good deportment and personal refinement accounted equally for a well-rounded knowledge of the law and advanced skills in advocacy.

My findings have recently been confirmed in clinical studies undertaken by the American Psychologists Association (see, e.g., Juan's article referred to above), which show that juries are "swayed one way or the other by the physical attractiveness of defendants, plaintiffs and witnesses", often in complete independence of the facts of the case.

What then can a barrister do to take full advantage of the "attractiveness-leniency effect"?

Application of the phenomenon to the client

History is full of instances where ugly defendants have been tried, convicted and executed almost in one stroke. Quasimodo being a good example: I mean can anyone really suggest that an overweight, foul-breathed, dribbling hunchback with teeth resembling a rock formation and with one eye pointing north and the other pointing south received a fair hearing from his peers? If, however, his defence counsel had taken the time to consider the hunchback's appearance it might have been a different story.

The lesson to the practitioner is simple - an ugly client is an unsuccessful client. Therefore, evaluate the client's appearance in conference and, if the client comes up looking like a dud, implement defensive measures of repair. For example, I have found that both judges and juries will respond

more favourably to a person resembling a Gold Logie Award winner than someone who resembles a potato - the old "Ray Martin" defendant. While some barristers may think it difficult to convert a potato into Ray Martin, do not despair.

A sharp pair of scissors, a bottle of Grecian 2000, a well-made set of false teeth and an instructing solicitor with a steady hand will do the job in under two hours.

Although, generally speaking, if one puts one's mind to the task there is little, if any, difficulty in transforming the most misshapen and unattractive client into a popular Australian personality - just the other day I was faced with a client whose appearance could be restructured only to resemble that of Alan Jones: regrettably, he lost.



Application of the phenomenon to barristers

Although not the subject of clinical studies, it has become apparent to me that the "attractiveness-leniency effect" has equal application to counsel as it does to the client. Moreover, with the abolition of the "no advertising" rule, qualities in a barrister, such as good grooming and deportment, are ever more important. Which judge or jury would not be swayed by a Larry Emdur over a Les Patterson?

This is not to say that the Bar, as a collective, presents an image of unrefinement. Quite the contrary. However, in my opinion, more must be done to take full advantage of the "attractiveness-leniency effect".

With advocates increasingly required to attend court in street attire as opposed to robes, the tide of fashion is ever rising. More and more sartorial elegance abounds within members of the Judiciary - neckties are often complemented by a matching handkerchief arranged alluringly from the top left pocket of a carefully selected and fashionably correct suit, or chic feminine apparel is thoughtfully accessorised. One can often feel the critical eye of the judge when one rises to

address. Indeed, it has been recounted to me that a particular Family Court Judge refused to hear an advocate solicitor because his jacket did not match his trousers. Pointedly I ask "how long will it be before the Barristers Disciplinary Tribunal and/or the Court of Appeal are asked to determine cases entitled *In re a Barrister's Trousers?*".

In addition to a barrister's personal obligation to good grooming, in my opinion, he or she has a duty to the court, and to his or her client, to ensure that the instructing solicitor is appropriately attired. For example, after having read that a consultant psychologist at Jury Behaviour Research Inc in Los Angeles recommended glasses for a defendant with shifty eyes designed to moderate the shiftiness, I have taken to carrying half a dozen or so frames of various styles into court for every hearing where I am instructed by a solicitor.

On the eve of "deregulation" and historical change the public eye is ever more focused on our profession. Newshounds like nothing more than a "barrister" story. What current affairs programme would not relish the opportunity to pursue a hapless barrister down Phillip Street? Is it not, therefore, all the more necessary that we ensure an appropriate standard of dress and presentation to the public?

Accordingly, I urge the Bar Council to implement the following measures:-

1. As part of the reading programme, pupils must be required to undergo grooming and deportment classes conducted by those members acknowledged as among the best dressed and most refined at the Bar.
2. A committee must be appointed to advise and publish guidelines on what and what not to wear in any given case ("The Appropriate Apparel Committee").
3. A "jury psychologist" should be appointed to counsel and advise practitioners on whether he or she ought to have worn a looser-fitting suit or dress, in circumstances where robes were not required; whether that suit or dress ought to have been in bold colours or pastels; whether or not he or she should have opted for plain fabric or a fabric with stripes: whether or not spectacles were to be preferred to contact lenses.
4. A dietitian should be made available to every member to discuss matters of the girth. (Given the current state of the Bar, maybe two?)

We must keep pace with change!

For my part, as evidence of a personal pledge to the profession, I have committed substantial funds to plastic surgery and cosmetic dental reconstruction, to the acquisition of a co-ordinated wardrobe for any courtroom occasion; I have spent many hours with a copy of *Chitty on Contracts* balanced squarely on my head while cross-examining the cat; and I have undergone a one-week intensive course at the Max Rolley Academy of Voice.

The results?

Well, they speak for themselves. □

Round and About

Some police officers must take special courses in circumlocution. In a recent case at Campbelltown, an officer wanted to tell the Court that he had chased three suspects, seen running from the scene of an attempted smash-and-grab. He chased them, first in a vehicle and then on foot before arresting one of them. His account included these gems of verbal precision:

- "I observed three males, all wearing dark clothing, to decamp from ...
- Constable X caused the police vehicle to follow three males ...
- I exited the police vehicle...
- I also climbed over the gate and entered the construction site, becoming in foot pursuit of the three male offenders.
- A short time later ... I again became in foot pursuit of these offenders."

Contrast this with the pithy brevity of the suspect's replies:

- Q. What were you doing with your arms in the window of the shop?
A. I'm not answering no f...ing questions.
- Q. Who was with you when you did the break-in?
A. I'm not f...ing saying nothing.
- Q. Why did you run away from the shop when the alarm went off?
A. I'm not f...ing saying.
- Q. Do you wish to read and sign my note-book?
A. Get f...ed. □

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