ATTORNEY'S VIEWPOINTS OF
THE IMPORTANCE OF DEFENDANT
APPEARANCE AND DEMEANOR IN
A JURY TRIAL

HONORS THESIS
JILL DIMICK
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DR. ARNO WITTIG
This study was designed to determine if attorneys believe that a defendant's appearance and or demeanor may be important in a jury trial. Subjects were interviewed about their opinions and actions in reference to appearance and demeanor. Results confirmed that most attorneys surveyed believe that defendant appearance and demeanor are important. Specific actions to manipulate these traits on the part of the attorney vary on an individual basis.
During the last twenty years much research has been conducted about the significance of variables other than facts which determine verdicts and sentencing in the courtroom. Landy and Aronson (1969) initiated this area of research by studying the effects of a defendant's social characteristics on a negligent homicide traffic accident case. Mock jurors sentenced socially successful individuals to fewer years than socially unsuccessful individuals. Several follow up studies have been conducted with similar results. Reynolds and Sanders (1973) found attractiveness to be an important variable alone. Sigall and Landy (1972) found that individuals described as "loving and warm" received shorter sentences than individuals described as "cold and unapproachable". Kaplan and Kemmerick (1974) concluded similar results when varying defendant trait characteristics in a traffic accident case. Mock jurors also found socially attractive individuals guilty less than socially unattractive individuals in this study.

As well as social attractiveness, there is evidence that the physically attractive have an advantage in the courtroom. Bercheid and Watson (1974) have concluded that we have a predisposition that "beautiful is good". Dion (1972) has also concluded similar results. Efran (1974) found that college mock jurors judged unattractive cheaters guilty more often than attractive cheaters. They also assigned harsher penalties to the unattractive. Kalven and Zeisel (1966) found that 14 % of
the cases in which the jury had acquitted when the judge would have convicted were a result of defendant attractiveness or victim unattractiveness. Snyder (1971) found that in cases involving all male jurors, attractive defendants won more often than unattractive defendants. Reynolds and Sanders (1974) found that unattractive defendants received longer sentences. Berg and Vidmar (1975) concluded that attractiveness of defendants contributed to ratings of their guilt.

The type of crime committed also plays a role in the significance of the defendant's attractiveness. If jurors believe the attractiveness of the defendant aided the commitment of the crime, attractiveness will work against the defendant. Sigall and Ostrove (1975) found that jurors reacted negatively to an attractive defendant in a swindle case. Yet, jurors reacted positively to the attractive defendant in a burglary case.

A defendant's clothing, hygiene, and demeanor as parts of total appearance have also been studied. Lown (1977) found that defendants appearing in prison garb may be at a disadvantage. Lerner, Miller, and Holmes (1976) explain this conclusion through the juror's presumption that there must be a justifiable reason why a defendant is dressed in a certain manner. In fact, attorneys have won cases, claiming failure to allow a defendant to wear street clothes violated defendant rights (Saks and Hastie pp.158). Lown also found that a defendant's hygiene may bias a jury.
Defendants who are unkempt may appear to jurors as wanting to be that way. Research has found that certain aspects of a defendant's demeanor may also be important. Parkinson (1979) found courtesy on the defendant's part and the use of grammatically complete sentences aided a defendant in receiving an acquittal.

Much of the available research has been conducted in simulated jury trials. There is some evidence to support that our actual legal system provides checks to eliminated the bias of defendant appearance and demeanor. Izzett and Leginski (1974) concluded that attractiveness effects were eliminated by the process of jury deliberation in actual court cases. Weiten (1980) found a defendant's attractiveness to have no significance on jurors when a judge instructed them on criteria for guilt.

Problems exist with current research in the area of defendant appearance and demeanor. One difficulty is the inconsistency of evidence. Although many studies support the significance of a defendant's appearance and demeanor in a court case, other studies find no significance. Stewart (1980) found no relationship between ratings of physical attractiveness of defendants and jury decisions in many areas. Kalven and Zeisel (1966) concluded from their research "We find no cases in which the jury convicts a man, so to speak, for the crime of being unattractive." (Saks and Hastie pp.385). Another difficulty involved in current research is that most of it has been conducted as simulated
courtroom cases. Yet, Dr. Michael J. Saks and Dr. Reid Hasties believe that the laboratory setting does not nullify the significance of the results. They state "We are fairly comfortable about generalizing from the laboratory to the courtroom." (pp.154). Another problem which may change over time is the lack of a variety of variables studied in this area. According to Saks and Hastie, defendant self-presentation is a relatively new area of research. (pp.154). There are many variables in this topic area which have been overlooked, ignored, or not researched. For example, there are no studies found through library research, which discuss the role of the attorney in a defendant's appearance and demeanor. Saks and Hastie state "Lawyers are acutely aware of these factors (defendant's appearance and conduct) and they attempt to manipulate them to their advantage during the course of a trial!" (pp. 153-154). It is unclear from what evidence this conclusion is drawn. Attorneys play a significant role in a courtroom case, yet no studies have researched their role in the area of defendant appearance and demeanor. The remainder of this paper will focus on attorneys' opinions about the significance of a defendant's appearance and demeanor in a jury trial.

Do attorneys believe that a defendant's appearance and or demeanor may be significant factors in a jury trial? Do they try to utilize and manipulate these characteristics? If so, which ones? The research question; do attorneys believe that a defendant's appearance and or demeanor are significant in a jury decision?, was examined through interviews with attorneys from two Midwest cities.
Subject: Fifteen practicing attorneys were asked a series of questions about their opinions on the significance of defendant appearance and demeanor. All subjects were currently practicing in Anderson, Indiana or Muncie, Indiana. Length of time practicing ranged from 1 1/2 to 14 years. All subjects had worked with criminal cases and juries. Each subject had prior knowledge about the nature of the questionnaire. All subjects were assured about the confidentiality of their answers.

Procedure: Interview appointments were set up by telephone. Information about the nature of the questionnaire was given at this time. All interviews were conducted in the subjects' offices, during regular working hours.

After introductions, the examiner explained the nature of the survey again and assured each subject that their responses would be confidential. The examiner stated "I am writing an honors thesis about the effects of a defendant's appearance and demeanor in a jury trial. I am interviewing attorneys about their opinions on this subject."

Fourteen questions were asked by the examiner (see Attorney Questionnaire, Appendix A). All questions required a simple verbal response with the exception of question four. This question, a modified Q-Sort, required subjects to list in order of importance
the criteria which juries bases their decisions upon. Index cards, representing five criteria, were given to the subjects to place in order of importance. A sixth card, stating "other, please specify", was given to the subjects in the event that they wanted to add additional criteria. The index cards were shuffled in the presence of the subjects while instructions were given (see appendix B for additional responses). Additional information was asked about questions seven and ten (see appendix C and D). The examiner asked subjects "are there other characteristics that you can think of off the top of your head that might be important?".

After completing the fourteen question survey, the examiner asked subjects for examples of cases where defendant appearance and or demeanor had been important (see appendix E).
RESULTS
DEMOGRAPHIC DATA OF THE RESPONDANTS

All respondents were currently practicing attorneys, working in two cities in Central Indiana. Length of practice ranged from 1 1/2 to 14 years. Most attorneys (53%) had practiced for 6-10 years. Twenty-seven percent practiced for more than 10 years. Twenty percent had practiced less than 6 years.

All subjects had worked with criminal cases. Twenty-three percent of respondents dealt with criminal cases 41-60% of the time. Twenty percent of the attorneys devoted less than 20% of their cases loads to criminal work. Twenty percent also worked with criminal cases 61-80% of the time. Thirteen percent of the attorneys worked with criminal cases 21-40%. Also 13% dealt with criminal cases 81-100% of the time.

All subjects had worked on jury trial cases. Most attorneys (60%) did so less than 20% of the time. Thirteen percent worked with juries 41-60% and 13% also worked with juries 81-100% of the time. Seven percent dealt with juries in 20-41% of their cases and 7% also dealt with them 61-80% of the time.
RESPONSE TO QUESTION ONE

YEARS OF PRACTICE

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<td>20</td>
</tr>
<tr>
<td>6-10</td>
<td>8</td>
<td>53</td>
</tr>
<tr>
<td>11-15</td>
<td>4</td>
<td>27</td>
</tr>
<tr>
<td>16 or more</td>
<td>0</td>
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</tr>
</tbody>
</table>
RESPONSE TO QUESTION ONE

The bar chart shows the number of lawyers based on years of practice:

- 0-5 years: 4 lawyers
- 6-10 years: 10 lawyers
- 11-15 years: 8 lawyers
- 16 or more years: 4 lawyers
RESPONSE TO QUESTION TWO

PERCENTAGE OF CASES WHICH ARE CRIMINAL IN NATURE

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<th># OF LAWYERS</th>
<th>% OF LAWYERS</th>
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<td>13</td>
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RESPONSE TO QUESTION TWO

% OF CASES WHICH ARE CRIMINAL IN NATURE
RESPONSE TO QUESTION THREE

PERCENTAGE OF CASES WHICH INVOLVE A JURY

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<td>81-100</td>
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RESPONSE TO QUESTION THREE

% OF CASES WHICH INVOLVE JURIES
RESULTS OF QUESTIONNAIRE

Subjects were asked to place in order of importance the criteria that they think a jury bases a decision upon. Of the five criteria, "facts and evidence" ranked most important (64.3%). Seventy-one percent of attorneys cited "attorney appearance" as the least important criteria. "Presentation and style of the attorney" ranked second in order of importance by 50% of the subjects. Eighty-five percent of the respondents placed "appearance of the defendant" as second, third or forth in order of importance. "Demeanor of the defendant" was ranked third or forth by 64.3% of the subjects. No subjects ranked "attorney appearance" as first or second in importance.

All respondents agreed that a jury decision can be influenced by a defendant's appearance. One-hundred percent also agreed that a jury decision can be influenced by a defendant's demeanor.

All respondents agreed that a defendant's appearance influences a jury decision "always" (33%), "usually" (40%), or "sometimes" (27%). No respondents stated that decisions are "rarely" or "never" influenced by defendant appearance.

All respondents agreed that a defendant's demeanor influenced a jury decision at least part of the time. Sixty percent of the subjects agreed that demeanor "always" influenced the decision. Thirty-three percent said the decision would be influenced "sometimes." Seventy percent stated that defendant demeanor "usually" influenced jury decisions.
All respondents sited "clothing" as an important aspect of defendant appearance in a jury trial. Ninety-three percent said "hygiene" was also important. Eighty-seven percent of the respondents referred to defendant "hair" and "degree of attractiveness". Seventy-four percent found "age" of the defendant to be important in jury trials.

All respondents found defendant's "speech", "facial expressions", and "conduct" to be important aspects of demeanor in a jury trial. Ninety-seven percent of attorneys said "perceived amount of sincerity" was important. Eighty percent cited the importance of a defendant's "posture". Lastly, 67% said that "perceived amount of confidence" could be important.

Most respondents (86%) agreed that advising a client about appearance and demeanor would influence a jury decision. Seven percent disagreed with the importance of advising. Seven percent also said advising might be important.

Eighty-seven percent of attorneys advise clients about appearance and or demeanor. The remaining respondents said they might give clients advice on these topics.

All respondents agreed that defendant appearance and or demeanor could result in lesser or heavier sentencing. The majority of respondents (67%) said that defendant appearance and or demeanor could cause the innocent to be found guilty and vice versa. No respondents said that defendant appearance and or demeanor does not influence jury decisions significantly.
QUESTION FOUR

PLEASE LIST IN ORDER OF IMPORTANCE THE CRITERIA YOU BELIEVE JURORS BASE THEIR DECISION UPON

CATEGORIES:

FACTS

PRESENTATION AND STYLE OF THE ATTORNEY

APPEARANCE OF THE ATTORNEY

APPEARANCE OF THE DEFENDANT

DEMEANOR OF THE DEFENDANT

* Information on this particular question is based upon 14 responses. One attorney could not determine a certain order.
RESPONSE TO QUESTION FOUR

FACTS

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PRESENTATION AND STYLE OF THE ATTORNEY

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APPEARANCE OF ATTORNEY

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APPEARANCE OF DEFENDANT

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DEMEANOR OF DEFENDANT

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AGREEMENT

71.4 % Appearance of attorney 5th.
64.3 % Facts 1st.
50.0 % Presentation and style of attorney 2nd.
35.7 % Demeanor of the defendant 3rd.
28.6 % Presentation and style of attorney 2nd.
Appearance of the defendant 2nd.
Appearance of the defendant 3rd.
Appearance of the defendant 4th.
Demeanor of the defendant 4th.

14.3 % Facts 5th
Facts 2nd
Appearance of attorney 3rd.
Appearance of attorney 4th.
Demeanor of the defendant 1st.
Demeanor of the defendant 2nd.
Presentation and style of the attorney 3rd.

7.1 % Facts 3rd.
Presentation and style of the attorney 1st.
Appearance of the defendant 1st.
Appearance of defendant 5th.
demeanor of the defendant 5th.
APPEARANCE OF ATTORNEY

#1 rank
#2 rank
#3 rank
#4 rank
#5 rank
APPEARANCE OF DEFENDANT

#1 rank
#2 rank
#3 rank
#4 rank
#5 rank
RESPONSE TO QUESTION FIVE

DO YOU BELIEVE A JURY DECISION CAN BE INFLUENCED BY A DEFENDANT'S APPEARANCE

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<td>MAYBE</td>
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RESPONSE TO QUESTION FIVE

RESPONSE TO QUESTION FIVE

NUMBER OF LAWYERS

16
12
8
4

YES  NO  MAYBE
RESPONSE TO QUESTION EIGHT

DO YOU BELIEVE A JURY DECISION CAN BE INFLUENCED BY A DEFENDANT'S DEMEANOR

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26
RESPONSE TO QUESTION EIGHT

NUMBER OF LAWYERS

16
12
8
4

YES  NO  MAYBE

RESPONSE TO QUESTION EIGHT
RESPONSE TO QUESTION SIX

HOW OFTEN DO YOU BELIEVE THAT A JURY DECISION IS INFLUENCED BY A DEFENDANT'S APPEARANCE

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<td>USUALLY</td>
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RESPONSE TO QUESTION SIX
RESPONSE TO QUESTION NINE

HOW OFTEN DO YOU BELIEVE THAT A JURY DECISION IS INFLUENCED BY A DEFENDANT’S DEMEANOR

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RESPONSE TO QUESTION NINE

RESPONSE TO QUESTION NINE
RESPONSE TO QUESTION SEVEN

WHICH OF THE FOLLOWING DO YOU BELIEVE INFLUENCE A JURY DECISION IN REFERENCE TO A DEFENDANT'S APPEARANCE

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<th>CHARACTERISTIC</th>
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<tr>
<td>DEGREE OF ATTRACTIVENESS</td>
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<tr>
<td>HAIR</td>
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<tr>
<td>HYGEINE</td>
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RESPONSE TO QUESTION SEVEN

DEFENDANT APPEARANCE CHARACTERISTICS

BELIEVE INFLUENTIAL
BELIEVE NOT INFLUENTIAL
RESPONSE TO QUESTION TEN

WHICH OF THE FOLLOWING DO YOU BELIEVE INFLUENCE A JURY DECISION IN REFERENCE TO A DEFENDANT'S DEMEANOR

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<th>CHARACTERISTICS</th>
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RESPONSE TO QUESTION TEN

DEFENDANT DEMEANOR CHARACTERISTICS

- BELIEVE INFLUENTIAL
- BELIEVE NOT INFLUENTIAL

NUMBER OF LAWYERS

SPEECH  FACIAL EXPRESSION  POSTURE  CONDUCT  SINCERITY  CONFIDENCE
RESPONSE TO QUESTION ELEVEN

DO YOU BELIEVE THAT ADVISING A CLIENT ABOUT APPEARANCE AND OR DEMEANOR WILL INFLUENCE A JURY DECISION

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RESPONSE TO QUESTION ELEVEN

![Bar graph](image)

**NUMBER OF LAUVERS**

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RESPONSE TO QUESTION ELEVEN
RESPONSE TO QUESTION TWELVE

DO YOU ADVISE CLIENTS ABOUT APPEARANCE AND OR DEMEANOR

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<tr>
<td>MAYBE</td>
<td>2</td>
<td>13</td>
</tr>
</tbody>
</table>
RESPONSE TO QUESTION TWELVE

RESPONSE TO QUESTION TWELVE

NUMBER OF LAWYERS

YES  NO  MAYBE

16
12
8
4
RESPONSE TO QUESTION THIRTEEN

IN REGARD TO THE SIGNIFICANCE OF A DEFENDANT'S APPEARANCE DO YOU BELIEVE THE FOLLOWING

<table>
<thead>
<tr>
<th>STATEMENT</th>
<th># OF LAWYERS/AGREE</th>
<th>% OF LAWYERS/AGREE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Innocent may be found guilty or guilty may be found innocent</td>
<td>10</td>
<td>67</td>
</tr>
<tr>
<td>Defendants may receive lesser or heavier sentences</td>
<td>15</td>
<td>100</td>
</tr>
<tr>
<td>Appearance does not influence decisions significantly</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
RESPONSE TO QUESTION THIRTEEN

![Bar chart with labels](chart.png)

- A: DISAGREEMENT WITH STATEMENTS
- B: AGREEMENT TO STATEMENTS
- C: AGREEMENT TO STATEMENTS

41
RESPONSE TO QUESTION FOURTEEN

IN REGARD TO THE SIGNIFICANCE OF A DEFENDANT'S APPEARANCE DO YOU BELIEVE THE FOLLOWING

<table>
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</tbody>
</table>
RESPONSE TO QUESTION FOURTEEN

AGREEMENT TO STATEMENTS

DISAGREEMENT TO STATEMENTS

NUMBER OF LAWYERS

A

B

C

4

8

12

16
DISCUSSION

Of first concern in this experimental analysis was the question whether attorneys believe that defendant appearance and or demeanor are important factors in a jury trial. Although factors such as facts and evidence were usually cited as more important, attorneys generally considered defendant appearance and demeanor to be significant enough to warrant their attention in most jury trials. As one attorney stated "any lawyer who is on the ball will not underestimate the power of appearance".

Most attorneys do seem to utilize their knowledge in the area of defendant appearance and demeanor. They may manipulate these characteristics based upon the type of crime in question, composition of the jury, and other factors involved.

Clothing and hygiene were discussed most often by attorneys. These characteristics can be quickly and easily manipulated by the attorney. Several attorneys said that they buy clothing for defendants. Cutting hair and shaving are also defendant characteristics easily controlled. Many characteristics such as speech and amount of perceived sincerity are more difficult to change. Although some attorneys videotape and require pre-trial questioning sessions, these actions are time-consuming and not always successful.

Generally, the attorneys surveyed were aware that defendant appearance and demeanor are factors in the overall picture of a jury trial. Some attorneys go to great lengths to manipulate
these characteristics. Others spend little time and energy developing defendant appearance and demeanor. Overall, attorneys seem to consider appearance and demeanor to be the icing on the cake. Each attorney has his own opinion as to the amount and type of icing needed for each individual case.

Finally, several points should be made about the survey itself. It is time-consuming and difficult to personally interview a large number of attorneys. They are extremely busy. In fact, many attorneys were unable to meet with the examiner due to time commitments. Because of this difficulty, it is hard to study a large sample. It is extremely difficult to make generalizations from a sample of fifteen attorneys. Yet, the results of this pilot study do seem significant enough to recommend that further research be conducted. Included in future studies should be a larger sample. Also, the sample should be stratified, to represent the entire country. Once these sample requirements are met, significant conclusions may be able to be made.
REFERENCES


Efran, M. G. The effect of physical appearance on the judgment of guilt, interpersonal attraction, and severity of recommended punishment in a simulated jury task. Journal of Research in Personality, 1974, 8, 45-54.


Lown, C. Legal approaches to juror stereotyping by physical characteristics. Law and Human Behavior, 1977, 1, 87-100.


CONTENTS

A Attorney Questionnaire
B Additional responses to question four
C Additional responses to question seven
D Additional responses to question ten
E Respondant advice and examples
ATTORNEY QUESTIONNAIRE

1. Years of practice
   a. 0-5
   b. 6-10
   c. 11-15
   d. 16 or more

2. Percentage of cases which are criminal in nature
   a. 0-20
   b. 21-40
   c. 41-60
   d. 61-80
   e. 81-100

3. Percentage of cases which involve juries
   a. 0-20
   b. 21-40
   c. 41-60
   d. 61-80
   e. 81-100

4. Please list in order of importance the criteria that you believe a jury decision is based upon:
   a. Facts and evidence
   b. Presentation and style of the attorney
   c. Appearance of the attorney
   d. Appearance of the defendant
   e. Demeanor of the defendant

5. Do you believe a jury decision can be influenced by a defendant's appearance?
   a. Yes
   b. No
   c. Maybe

6. How often do you believe that a jury decision is influenced by a defendant's appearance?
   a. Always
   b. Usually
   c. Sometimes
   d. Rarely
   e. Never
7. Which of the following do you believe influence a jury decision in reference to a defendant's appearance?
   a. Age
   b. Clothes
   c. Degree of attractiveness
   d. Hair
   e. Hygiene

8. Do you believe a jury decision can be influenced by a defendant's demeanor?
   a. Yes
   b. No
   c. Maybe

9. How often do you believe that a jury decision is influenced by a defendant's demeanor?
   a. Always
   b. Usually
   c. Sometimes
   d. Rarely
   e. Never

10. Which of the following do you believe influence a jury decision in reference to a defendant's demeanor?
    a. Speech
    b. Facial Expression
    c. Posture
    d. Conduct
    e. Perceived sincerity
    f. Perceived confidence

11. Do you believe that advising a client about appearance and or demeanor will influence a jury decision?
    a. Yes
    b. No
    c. Maybe

12. Do you advise clients about appearance and or demeanor?
    a. Yes
    b. No
    c. Maybe
13. In regard to the significance of a defendant's appearance do you believe-
   a. Innocent may be found guilty or guilty may be found innocent?
   b. Defendants may receive lesser or heavier sentences?
   c. Appearance do not significantly influence decisions?

14. In regard to the significance of a defendant's demeanor do you believe-
   a. Innocent may be found guilty or guilty may be found innocent?
   b. Defendants may receive lesser or heavier sentences?
   c. Demeanor does not significantly influence decisions?
ADDITIONAL RESPONSES TO QUESTION FOUR.

Defendant testimony
composition of jury
professionalism of the police officer, if testifying
ADDITIONAL RESPONSES TO QUESTION SEVEN: SIGNIFICANT CHARACTERISTICS OF DEFENDANT APPEARANCE.

Eye contact
Tattoos
Scars
Build
Height
ADDITIONAL RESPONSES TO QUESTION TEN: SIGNIFICANT CHARACTERISTICS OF DEFENDANT DEMEANOR.

- Talking out of turn
- Hesitation before speaking
- Voice tone
- Relaxed nature
- Appropriate responses
- Cockiness
RESPONDANT ADVICE AND EXAMPLES

Defendant should be clean and clean shaven.
Defendant should dress up, but not three-piece suits.
Defendant should not be afraid to look at the jury.
Dress defendant like an average person their age would dress.
No facial hair and a short hair cut.
Make them look like the boy next door.
Do not let defendant stare at the jury.
Do not dress them out of character.
Dress defendant conservatively; not flashy; not dowdy.
Defendant should wear little jewelry
Try to dress defendant in a manner which disassociates them with the crime. (i.e. dress the defendant accused of rape like the boy next door. Avoid red make up, clothing, and nail polish for the defendant accused of a stabbing. The jury may associate red color with blood.).
Attorneys should dress down, maybe wear a ruffled shirt.
Call defendant by name to establish his humanism.
Videotape defendants
Do not put defendants on stand unless necessary
Try to make jury focus on the attorney rather than the defendant.