



Costuming for the courtroom

“Who said that clothes make a statement? What an understatement that was. Clothes never shut up.” — Susan Brownmiller

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Introduction

“Oh my God, she looks terrible! Can you help me make her not look like a hooker?” If I had a dollar for every time an attorney said that to me. Or how about, “He says all he owns are T-shirts and cut offs – and he thinks that’s what he should wear to court. Help!”

Then, of course, there is the opposite but equally frightening comment, “I told him to wear a blue suit, white shirt and red tie – after all, I’ve worn the same blue suit to court for the last 25 years, and I always have all my clients dress just like I do.”

How do these comments come to me? I have been a trial consultant for the past 30 years specializing in live communication skills for attorneys and their witnesses. But more significantly, I am the first trial consultant to apply theater to the law. And as such, I am asked to make “courtroom costuming” comments on a daily basis.

Attorneys generally have some idea that what they wear to court is important. They also generally have an idea that what their witnesses wear to court is important. But in my experience, they are lacking the knowledge that every ex-

perienced theater person knows. As costume designer, Colleen Atwood, so aptly put it, “Costume, hair and makeup can tell you instantly...who a character is.”

I would take it one step further. In the courtroom in addition to telling you *who* a person is, it tells you *what* a person’s character is.

Character

In the theater, when we refer to character, we are referring to the part that an actor is playing. In the courtroom, when we refer to character, we are referring to what Webster defines as “qualities that make somebody or something interesting or attractive.” The three characteristics that people (read: “jurors, judges, arbitrators, mediators”) find interesting and attractive are: *credibility, believability and likability*.

As a trial consultant, my goal is to have every judge, mediator, arbitrator and juror look at the attorneys and witnesses with whom I have worked and find them credible, believable and likable. I don’t want those who sit in judgment thinking, “That suit is two sizes too small for him.” Nor do I want them thinking, “Great shoes!” I literally want them to be reassured by the costume they are seeing and to forget it immediately and look into the attorney’s or witness’s eyes.

And I want this to happen in less than five seconds. Why?

Because all human beings are *already* sitting in judgment on the appearance of other human beings when they are outside the courtroom. It has been well established in the physical as well as the psychological and social sciences that human beings instinctively make snap decisions not because they are evil, but because of survival. In the not so distant past, when we were hunting and gathering and living in caves, we needed to know instantly whether or not a person, animal or situation we encountered was life-threatening (“Dang, that guy swinging from the tree could kill me right now!”) or life-saving (“Whew, there’s my brother – how lost can I be?”). That little alarm bell that rings in our permanent reptilian brain (“friend or foe?”) – sounds the instant we meet someone.

Now, add to this the fact that people are assigned by the role that they are playing in a courtroom setting to sit in judgment. Jurors, judges, mediators and arbitrators have a job to sit in judgment on their fellow man. They are *supposed* to listen to their alarm bells and let those feelings of “life-threatening person” act as part of the way in which they pass judgment.



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If the first thing another person notices about another is appearance, then costuming is the key. My goal, simply stated, is for the alarm bell to always say, "I trust this person completely – credible, believable, reliable – SAFE."

This is much easier said than done. There are never simple solutions, simple answers. No "top ten tips" for what to wear. It just is not that cut and dried. So...let's start with what attorneys do not know about costuming their clients and themselves.

Common costuming misconceptions

- "I always tell my clients, 'Wear what you would wear to church.'" (or "To a job interview.") This may still work in parts of the deep South where I do practice, but even there, it is really risky. Let's start with facts: While I'm not sure from looking at them exactly who is and isn't a church-goer, I am certain that when they do, they are either remarkably over-dressed or underdressed. It seems that God doesn't care what you wear to church anymore – He loves you anyway. And He doesn't seem to be responding to any jury summons lately.

I'll never forget the last time I got into a tiff with an attorney who kept insisting that the witness dress like he would if he was going to church. The witness had said to us repeatedly that he didn't go to church before his child died and since that death he didn't believe in God anymore. Oh, and p.s., we were using that fact in his direct examination as part of the damages. This attorney was like a broken record: "Dress like church; dress like church."

I finally said, "Dress like your attorney is making you go to church with my mother." Funny how the presence of a white female, 55-year-old, former Midwesterner automatically makes you know what her mother must want you to wear to church. So I guess it will always work for you if you show your witness my picture.

- "I have them wear their work clothes." This is particularly popular in employment cases. This is exactly the *opposite* of having those sitting in judgment on your client, easily and quickly pass their attention from clothing to eyeballs. This is inviting a judging person's brain to say in that crucial first five seconds, "I can't believe this woman wore her waitress uniform – wow – what does she think – I'm stupid and don't know where she works? Or maybe she's trying to impress me by telling me with that uniform, 'I'm loyal but they aren't.' Whatever. I hate her already. Of course, I can be impartial about it and still be a fair juror...but... REALLY – who the hell does she think she's fooling?"

- "I love his Marine Corps ring. It says just who he is." I take American flag pins and Rotary insignias off lapels routinely. I divest people of busy watches, bling-bling wedding rings (replaced by simple gold bands), giant stars of David and crosses (sometimes replaced with tiny symbols, sometimes not) every day of the week with a y in it. These are all uniforms – if, as Webster says, a uniform is "a distinctive set of clothes worn to identify somebody's occupation, affiliation, or status" then the world is filled with uniforms and their elements. Unless you are going to talk about something in direct [examination] because it has significance ("This is the ring my mother was wearing when she was killed"), dump it.

- "I just wear what everyone wears to court." Really? You do? Is that why there are so many male attorneys in ill-fitting garb? They remind me of that wonderful Eudora Welty description, "He looked home-made, as though his wife had self-consciously knitted or somehow contrived a husband when she sat alone at night."

And is it because there is safety in numbers that the courts are filled with so many horrible hairpieces? If an attorney can't be honest about his hair, how can anyone trust that he is being honest about what he is putting forth as evi-

dence? Of course, women are more frightening to me most of the time. Many women have chosen to simply dress like men: To wear the female version of the same limiting uniform with which men have been stuck for at least the last hundred years and will be probably for a good hundred more. A look which cries out, "I am not a man, but I can dress like one." Why do that when there are so many other options? Options that cry out "credibility, believability, likeability" instead of "I am wearing my brother's suit from his confirmation that some scary person made over."

Alright, Ms. Smarty-Pants. Then what should people wear to court?

• Color

I never let witnesses wear attorney colors. Attorney colors, in case you haven't been to court lately, are black, slate gray, and navy blue with white shirts for men and women and various hued neckties for men. I prefer witnesses wear earth tones and/or something that brings out their eyes. Rodney Jew (CDS in Napa), an extraordinary trial consultant, told me that earth tones make other people open up to you emotionally when you wear them. No one who is sitting in judgment is going to say to themselves, "My God, earth tones – no wonder I feel myself opening up emotionally to this witness!" It is much more subtle than that – and a great pathway to "credible, believable, likeable."

I am also finding that attorneys who are dumping the "uniform of the courtroom" colors are finding themselves communicating better with those sitting in judgment for the same reason. More than a few times focus groups and jurors who have called an attorney *slick* have come back to call him *honest* when the hair has lost its gel and the suit color has gone from dark blue to warm brown.

• Style

For witnesses, I prefer simple pieces of clothing that are modern but don't



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scream “fashion plate.” I generally like *plain* rather than *patterned*. For men these days, I like soft polo shirt (no logo to judge if possible), slacks, simple sport-coat, very plain shoes and belt. For women, slacks or modest skirt, simple blouse, simple sweater, tiny earrings, simple necklace – maybe – plain wedding band if appropriate. Again, color is earth tones and/or complimentary to eyes when it comes to choice of blouse or shirt.

For male attorneys, why not consider breaking with the realm of the black-gray-blue box? For women, why not choose a style that is best for you rather than a style that is best for your brother? Why not allow the judging people to find you strong, warm and compassionate (very good characteristics for credible, believable, likable women in the courtroom)?

- **Fabric Choices**

Soft, soft, soft, soft, soft. Polo shirts are made of soft fabric, for example. I want people to see witnesses as soft and vulnerable. Soft fabrics do this. I want them to see attorneys as warm, open, caring – softer fabrics for the males and the females make all the difference. I am not suggesting fabric that gets all bent out of shape, but fabric that can retain a shape but appear soft and emotionally inviting.

- **Fit**

You can't trust someone whose clothes are too big or too small, too long or too short. Very few people can wear something right off the rack. A trusted tailor and/or seamstress needs to be at the beck and call of every attorney to help with costume fittings not only for the attorney, but for the witnesses as well.

- **“Persuasive” costuming**

Sometimes you need to make a statement that is persuasive with what a particular witness is wearing. For example, I recently was brought in on a case involving a young girl who was sexually assaulted by management in a fast food restaurant. The first set of lawyers had her “dress up” for her depositions. Her

hair and makeup were beauty salon perky and perfect. She wore a perfect baby blue sweater set. They had her dump her glasses so she would look *prettier*. They coached her to smile constantly during the deposition. Unreal. Literally.

With the new trial team, I was able to bring her to *reality*. I brought back her glasses. Dumped the perfect make up. Had her hair brought back simply into a low pony tail. Put her in midnight blue schoolgirl sweater with soft blouse underneath and a soft plaid skirt. I think of midnight blue as a “three o'clock in the morning color.” That is, the color in the back of your mind when you wake up at three o'clock in the morning to worry. The result? The costuming helped “persuade” the jurors that instead of being “just fine” she needed their help and protection. Sometimes the person I have to fight on this business of not looking *perfect* is not the attorney, but the witness. No matter how battered and bruised a person is on the inside, somehow they want to “look good” for the public – for this court appearance. How often have I had to reassure someone who has been injured in such a way that they have to wear certain kinds of clothing (for example, sneakers for people with bad backs) that they **MUST** wear the sneakers and not the pumps to court. Witnesses sometimes need to allow the jurors to really experience what it is to live with an injury – whether that injury is to the body or the spirit.

Where and when to dress your clients

Always insist on what we in the theater call a “costume parade” several weeks before the deposition and then the court date. Unhappy with what you see? Go shopping in his closet with him or send your paralegal to look over the wardrobe in the closet that already exists. What if there is nothing there that is going to work? It is time for you or your paralegal to go shopping with the client.

If you are balking at paying for clothes, shoes and a haircut, think about how much you are spending on this trial already. You can't come up with another 300 bucks for the people who are sitting in judgment to deem your client “credible, believable, likeable?”

That small investment will come back to you several times over in the settlement (oh, you didn't think that opposing counsel noticed the way your client looked at the depo?) or verdict. I once made a grave error in a case that involved four brothers who were molested by a childcare worker in an after-school program. I let an attorney talk me into just letting them dress like the disheveled threadbare family that they were instead of the poor but clean family I wanted them to be in front of the jurors. You know what the jurors said when they awarded a total of \$25,000 in damages? “What would people like that do with money?” The jurors said specifically that they knew by the way this family looked that they would have no idea of what to do with more money than that if they got it. I made a vow there and then, “Never again.”

Professional costumers

I am pretty good at dressing attorneys and witnesses, but sometimes costuming and fashion professionals become a vital and welcome part of a team. I was working with Tim Tietjen (Rouda, Feder, Tietjen & Zanobini in San Francisco) on a case involving a teenager who was severely burned on her stomach and chest. When I met her, she had Goth black hair, nails, black lipstick, lots of metal and tight black clothing that revealed everything about her anatomy (except the burns which were hidden).

I knew that I wanted her soft and vulnerable and that every suggestion I was making to her fell on her very deaf ears. I enlisted the help of my costume designer friend, Elaine Sausotte. Elaine is a brilliant stage costumer, who has also worked extensively in film and television. I knew that she would be able to come up



Conclusion

Mary Schmich, the famed Chicago Tribune columnist, wrote “Every day each of us wakes up, reaches into drawers and closets, pulls out a costume for the day and proceeds to dress in a style that can only be called preposterous.” There is no need for this to happen to you or your clients ever again. Remember – a

person who is perceived by someone who is sitting in judgment on them as “preposterous” is never going to be perceived as “credible, believable and likable.”



James

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with the perfect *costume* for this witness. Elaine is much more knowledgeable than I am about what is best. She follows the dictates of the ancient Greek philosopher, Epictetus: “Know, first, who you are; and then adorn yourself accordingly.” She was able to go shopping with this teenage girl, help find hair, makeup and clothing choices that were very soft, very vulnerable – but still kept the truth of who this girl was. Her gentle and subtle remake of this witness was brilliant and remarkable and helped us put that poor girl in the sympathetic light that she deserved.

Attorneys can also benefit from the help of real costuming and fashion professionals. I often find myself recommending that female attorneys spend time with a real specialist rather than simply someone who is trying to sell them clothes at Bloomingdale’s. The most brilliant example of this is attorney Linda Northrup (Northrup-Schlueter in

Westlake Village). She went from wearing male pattern suits to persuasively dazzling courtroom garb by hiring such a person. She then went on to use this fashion specialist to help with a particularly hard-looking, unattractive female client. Linda had the fashion specialist remake her client from head to toe for court: clothing, new hair and makeup – a complete makeover. The result? Linda didn’t recognize her own client who was waiting for her outside the courtroom door the day of the trial. Oh, and a big win.

Women are easier to persuade than men that a clothing professional is a good thing. Male attorneys can also benefit from this kind of help, clearly – but it is always harder to get them to understand why. I think that the least a male attorney should do is to listen when his wife or girlfriend says, “Honey – I haven’t seen lapels like that since I went to the prom.”