ABSTRACT OF THE DISSERTATION

Expert Witness Compensation and Juror Decision Making

by

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Previous research has shown that expert witnesses who are highly paid for their testimony are perceived as “hired guns” (Cooper & Neuhaus, 2000). The hired gun effect occurs when an expert witness is less effective due to jurors’ negative perceptions of the expert witness’s compensation. To further understand the nature of this effect, Study 1 examined whether the hired gun effect occurs when a higher-paid expert witness is less effective as a result of subjects’ comparison of the higher-paid expert witness’s compensation to an opposing, lower-paid expert witness’s compensation. Although the hired gun effect occurred even when a comparison between two differing compensations was not present, the hired gun effect became more exaggerated when a comparison was present. In particular, as the discrepancy between the two expert witnesses’ compensations increased, subjects’ ratings of the higher-paid expert witness were significantly lower than subjects’ ratings of the lower-paid expert witness. Because we cannot control the high compensation an expert witness may receive for his work on a case, Study 2 examined whether using different litigation strategies to disclose a highly-paid expert witness’s compensation may reduce the negative impact of the hired gun effect. That is, by altering how and when compensation is disclosed, the hired gun effect may be diminished. Some subjects read about the highly-paid expert witness’s compensation during direct
examination, while others read about the highly-paid expert witness’s compensation during cross-examination. The way in which the information was disclosed was also manipulated, such that the highly-paid expert witness refuted or did not refute the high compensation. That is, in answering the opposing attorney’s question about compensation in the refutation conditions, the highly-paid expert witness responded, “I am charging the same amount that I would make if I was working in my practice; the compensation I receive in my everyday work is the same fee I charge for being an expert witness.” It was hypothesized that disclosing an expert witness’s high compensation during direct examination would be the most effective strategy due to previous research on stolen thunder (Williams, Bourgeois, & Croyle, 1993); however, preemptively disclosing the expert witness’s high compensation proved to be the worst strategy. The most effective strategy was disclosing an expert witness’s high compensation during direct examination and subsequently refuting it when the opposing attorney brings it up during cross-examination. The theoretical and practical implications of these studies are discussed.