

Daily Journal

www.dailyjournal.com

THURSDAY, JUNE 22, 2017

PERSPECTIVE

How to humanize a corporate defendant

By Robert Tyson

Remember when TV personality and sportscaster Erin Andrews was awarded \$55 million after suing two hotel management companies when one of their guests filmed and posted a nude video of her online? Had the defense personalized the corporate hotel defendants at trial, perhaps the jury would not have found them liable for \$26 million each for failing to protect Ms. Andrews' privacy and safety.

Typically, lawsuits against corporate defendants result in a "David vs. Goliath" scenario played out in front of a jury; nice for plaintiffs' attorneys, but for defense attorneys, it can often be an uphill battle where the jury cannot relate to the corporate defendant enough to drive a defense win.

Learning to personalize (read, "humanize") the corporate client by telling their story — family, pride of ownership, community standing and more — is essential to reducing potential exposure at trial, diffusing juror anger and minimizing the likelihood of a runaway jury verdict. Stories about employees and officers, the company's values and visions, and how such businesses contribute to their communities are what enable jurors to relate to corporate defendants.

Getting a jury to identify with a corporate client is especially critical when it comes to damages, as jurors will impose higher awards against corporate defendants they view as faceless brand names with big bank accounts. The defense can, of course, request the jury be instructed that a corporation is "entitled to the same fair and impartial treatment" as a human being [CACI 104] — but it is unwise to rely on that instruction alone.

To turn a business or brand into a relatable entity a jury can connect with, begin by telling a story, and telling that story throughout jury selection, opening statements, witness examination and closing arguments.

Corporate Representatives

Selecting the corporate representative to attend trial is an important first step. He or she will be the face of your client's business — so choose wisely. This individual should be introduced to the jury on the first day of trial, and should be present every day during trial proceedings. This person may never testify, but they will still serve as the "face" the jury ties to a defending company. Their presence alone demonstrates the business' regard for the lawsuit and its outcome.

Voir Dire

Jury selection is the defense's only opportunity to eliminate prospective jurors who hold anti-corporate sentiments. Even with instructions to "not let bias, sympathy, prejudice, or public opinion influence your verdict" [e.g., CACI 100], jurors are still human — and it is impossible to completely set all biases aside simply by walking into a courtroom.

Voir dire is also the defense's chance to begin telling their corporate story. The questioning should incorporate background on the business — setting the stage for when the full corporate story is told during trial. Framing your client's story as early as possible and continually reiterating it will help the jury remember the information you want them to retain.

Opening Statement

The best time to tell the corporate story is during opening state-

ments. Plaintiffs' attorneys typically focus on the defendant's conduct during this time, not the actions of the plaintiff. For this reason, defense counsel should use opening statements to tell the jury about the history of the corporation and its representative sitting in the courtroom. Is the client a family-owned business? Is the representative an immigrant? Has the company been in business for more than 50 years? The jury needs to hear about the business' mission, its purpose and its community involvement.

Even if the defense has no plans to revisit this information with evidence during trial, it must still be

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said! Weaving this story into the opening statement will help shape the way the jury views the rest of the evidence and arguments presented.

Witness Testimony

Depending on the defense strategy, you may not end up calling any client witnesses for examination. If you do plan to question client witnesses, however, take the time during preparation to remind them of the business' history. During trial, ask them questions about the company's story and involvement in the community. Also ask the client witnesses about their personal experiences with and/or loyalty to the company. Such testimony fosters a connection between the jury and the corporate defendant.

Closing Argument

Do not wait until closing arguments to convey the corporate story. The delay will be too late to have any real impact on the jury. Furthermore, you run the risk of never being able to tell the tale if you do not present sufficient evidence to support it during your case.

In closing arguments, tell the jury about your own appreciation for the company and the corporate representative — that it has been an honor to represent them. However you convey it, remind the jury of the good your client has done for the community and solidify their connection to your company representative.

Putting a face to a company name and sharing the story behind a brand won't guarantee a win, but it will help a jury see your client as more than a faceless corporation. A jury that can identify with your client is much less likely to satiate its anger and bias with astronomical damages than one that has only been provided enough information to simply view the case as a resented example of the "little guy" versus "Corporate America."

After all, we know of a famous jury who never heard the story of two hotel management companies, and as a result, awarded the plaintiff \$55 million.

Robert Tyson is the founding partner of *Tyson & Mendes LLP*.



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