



# PERSONALIZING CORPORATE DEFENDANTS

How to Tell a Human Story About Your Client's Company

By *Robert F. Tyson Jr.*

**“**You must not allow bias, sympathy, or prejudice to enter into your deliberations.”

This is a basic tenet of any jury trial, and yet, jurors are human. Like it or not, their personal biases, prejudices, and emotions will influence their decisions at trial.

This can be a challenge for defense attorneys, as we are taught to avoid the emotional part of the process. We are rule-followers to a fault, choosing only to present the facts and argue the law.

However, it is time to do more: The defense must learn how to personalize and humanize the corporate defendant. If a jury cannot relate to, or empathize with, the business, then the defense may lose a “David versus Goliath” scenario and face a nuclear verdict.

## **CORPORATIONS ARE PEOPLE, TOO**

When you read the closing argument for the defense in a nuclear-verdict case, what do you typically learn about the corporate defendant? The answer is: nothing. In almost every nuclear verdict, the jury knows everything possible about

the plaintiff, and absolutely nothing about the defendant. This is unacceptable.

In my book, “Nuclear Verdicts: Defending Justice for All,” I focus on the importance of making an emotional connection with the jury, addressing why defense attorneys must personalize the corporate defendant, and detailing how to do so. Getting a jury to identify with a corporate client is especially critical when it comes to damages, as jurors typically impose higher awards against corporate defendants they view as faceless brand names with hefty bank accounts.

A corporate defendant or public entity is entitled to the same fair and impartial treatment as a human being. But the jury has to know the defendant in order to treat them as such. And it is your job to show the jury who your client is and to form an emotional connection between them.

## **TURN A BUSINESS INTO A RELATABLE ENTITY**

Turning a business or brand into a relatable entity enables jurors to



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appreciate and understand the value that your client brings to society, the impact an unreasonable award would have on them, and how it would affect others.

Their corporate story must be told throughout trial, from jury selection all the way to closing arguments. Here's how to do it:

**Corporate Representatives.** Claims professionals, general counsel, risk managers, and defense counsel must partner to develop the corporate story and provide the jury with the basis for how they will identify with the client. This often comes in the form of a "corporate representative"—the person selected to attend every day of trial and serve as the face of the defendant's business. While these representatives may never testify, their presence alone humanizes the company by demonstrating 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," the reality is that no human being can completely leave their biases out of the courtroom. During voir dire, the defense can begin telling its corporate story, setting the stage for when the full 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 recount the corporate story is during opening statements, since 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 reframe the story and tell the jury about the history of the corporation and its representative. Is the client a family-

owned business? Is the representative an immigrant? Does the company have a long history? Hearing this story during opening statement will shape the way the jury views the rest of the evidence and arguments being 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, it is important to take time during preparation to remind them of the business' mission and history. During trial, ask them questions about the company's story and involvement in the community. Also query the client witnesses about their personal experiences with, or loyalty to, the company. Remind them to be human—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. Delaying the story may lessen the

impact on the jury, and the defense runs the risk of not being able to tell the full tale. Closing arguments should be used to reiterate the good that the client has done for the community and to solidify any connection between the jury and the company. If appropriate, tell the jury what an honor it has been to represent the company, and how thankful you are for the attendance of the corporate 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 that your client is more than a faceless corporation, making it less likely they will award a nuclear verdict.

Most importantly, regardless of what your client's particular corporate story is, it must always be a human story. Corporations and public entities are made up of people; not awards, products, mission statements, or financial accomplishments. No matter what business your client is in, the story to the jury must be one about human beings—the people that the jury will ultimately care about. If you are wondering how corporate backgrounds and human stories are relevant, remember that it is justice for all, not just plaintiffs and their lawyers. ■



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