

Choosing the Right Corporate Representative



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“Is there anything you would like to say to my client right now?” asked the attorney roleplaying plaintiff’s counsel in a recent witness preparation session. The witness, a corporate representative for a trucking company whose driver had been involved in the plaintiffs’ family member’s fatal motor vehicle accident, responded flatly: “No.” He then reiterated that he did not believe his trucking company was at fault. The attorney reacted approvingly and moved on with questioning. To their surprise, however, the jury consultant in the room immediately halted the action to discuss.

What was it about the witness’s simple, one-word response that caused concern? Although a simple “no” may intuitively seem like the safest option in the face of a potentially dangerous question, this type of answer—especially given in front of a jury—could set this company up for a punishing, “nuclear” verdict.

One of the roles of a jury consultant is to understand the psychology of the decision-maker. In this wrongful death suit, the sharpness of this “no” would likely reinforce many jurors’ anti-corporate attitudes

and stereotypes, not to mention make them angry at how callous the curt response made the company sound. Such jurors think of corporations as cold and calculating, willing to cut corners and compromise on consumer safety in the pursuit of profit. A corporate representative can quickly find themselves playing the part of “corporate supervillain.”

So, what do attorneys and companies need to understand about selecting and preparing a corporate representative, and what would have been a better response to that question?

THE ROLE OF THE CORPORATE REPRESENTATIVE

When it comes to juror attitudes, corporate defendants often operate at something of a disadvantage in the courtroom. The law may consider corporations and individuals to be on equal legal footing, but the same cannot be said for jurors. Plaintiffs are, as a rule, much easier for jurors to relate to than a company, organization, or government agency. The tendency to depersonalize corporate defendants can

have troubling consequences during deliberations—a jury sufficiently galvanized by a sympathetic plaintiff may go so far as to forget or even deliberately ignore the relevant law in their eagerness to award compensation (i.e., reverse engineering their verdict upon realizing that a defendant must be found liable for a plaintiff to receive money).

A well-chosen (and well-prepared) corporate representative not only plays a critical role in preventing this scenario but also in neutralizing juror anger in cases where the jurors believe that the defense does hold some liability. Specifically, a corporate representative is a key player when it comes to delivering the defense narrative of the case while combating the plaintiff’s narrative, which is often engineered to stoke juror outrage by presenting a tale of calculated corporate misconduct or catastrophic incompetence.

Indeed, one of the more common plaintiff narratives in litigation involving a corporate defendant is “profits over people,” wherein a cold, calculating corporate entity sacrifices consumer safety in the pur-

suit of maximum profit. This story leans on jurors' existing negative views about corporations (which have mostly trended further downward over recent years), making for a relatively easy sell. By selecting the wrong representative—one who implicitly or explicitly embodies these stereotypes—corporate defendants could unintentionally do plaintiff counsel's job for them.

Because jurors scrutinize corporate representatives and view their testimony, attitude, and demeanor as reflective of the company, it is critically important that the representative be able to short-circuit jurors' stereotype-driven expectations. That is, the company's "human face" should be human.

KEY CHARACTERISTICS

Empathy. One of the most important characteristics is for a corporate representative to show empathy: "the ability to understand another person's feelings, experience, etc." A display of empathy not only communicates that the defendant cares about the case, but also acknowledges the human element at play. A corporate rep who can express empathy will run counter to the plaintiff's attempts to paint the defendant as callous and uncaring. The rep can help demonstrate to jurors that it is possible to have empathy for the plaintiff without assuming liability—a crucial distinction jurors themselves will have to make when they proceed to the verdict form.

Returning to our opening anecdote, after the jury consultant explained how a jury might respond to the original answer, counsel and the witness discussed what an empathetic approach would be for their situation that would also ring true. In the next run-through of cross, the corporate representative responded, "I am so sorry for your loss," before adding that "[our company] does not want to see anyone involved in an accident ever." This time, his answer acknowledged the magnitude of the plaintiffs' loss while clearly establishing that his company values public safety and understands the gravity of what occurred. In other words, when it comes to questions of safety and shared regret over the outcome, this response positions the company and the general public on the same side.

Regardless of how effective this strategy can be, we find it often causes unease. As in our example, the primary concern expressed by the rep and the attorneys is that jurors will equate empathy with culpability—that any-

thing resembling an apology is tantamount to an admission of fault. However, it is best understood simply as an acknowledgment of the hardship that the plaintiff has experienced. The key is to empathize without suggesting liability, which can be achieved by deploying phrases such as:

"I am so sorry that this happened."

"We understand how difficult the loss of your [spouse/child/parent] has been."

"I know this situation has to be so hard on you."

Note that in none of these phrases does the speaker offer to shoulder any culpability for what the plaintiff has experienced. Rather, the focus is on confirming that the defense recognizes what the plaintiff is going through and seeks not to dismiss it, but only to defend itself from being unjustly blamed for it.

Of course, sincerity is an essential element of a successful show of empathy. When we conduct post-trial interviews with jurors, the corporate representatives who consistently earn the most plaudits are those who "seem to have a heart" or who "seem sincere about their testimony." To this end, your rep should not sound coached or scripted, or seem like they are forcing or exaggerating their feelings; jurors are quick to take offense when they sense that a witness is regurgitating pre-written talking points. Depending on the case circumstances, a potential representative also may hold feelings of defensiveness, bitterness, or anger, and thus struggle to express empathy without those complex feelings bleeding through. This situation requires careful work to help the witness separate their emotions about the litigation from their emotions about the plaintiff's hardship—or, if needed, it requires the selection of a different representative.

Non-Verbal Behaviors. A witness's non-verbal behavior also goes a long way toward conveying sincerity. For example, eye contact and an open, engaged posture (e.g., leaning slightly forward, not crossing arms or legs) on the stand are often interpreted as indicative of truthfulness and sincerity. Meanwhile, jurors have told us in post-verdict interviews that they watch the corporate representative even at counsel table. A representative who appears disengaged (e.g., doodling, looking down, using their smartphone, drifting off) will reflect poorly; be cautious about considering a rep who will be tempted to worry about their sales numbers or other work at the expense

of their focus on the trial. And, although remaining robotically stoic from counsel table is one extreme to avoid, corporate reps who shake their head, make audible noises, or make faces in response to testimony against your case can undercut your defense as well as their own credibility.

Verbal Behaviors. Corporate representatives should take particular care to avoid coming across as condescending or defensive in their responses, as these behaviors reinforce jurors' anti-corporate stereotypes. Witnesses should be prepared to avoid the urge to correct, talk down to, or snap at opposing counsel. Maintaining a calm, collected, and confident demeanor in the face of provocation can further humanize a witness and even lead jurors to view the cross-examining attorney as a bully.

It is important for company witnesses to maintain their credibility by providing testimony that, as one juror has put it post-trial, "gives the bad with the good." That is, if a corporate representative provides only a rosy picture of the company and its policies, jurors will view such testimony as biased. No company is perfect. Reps must be willing to concede the occasional small, unflattering point for the sake of the bigger picture.

CONCLUSION

With judicious selection and proper preparation, a corporate representative can provide a notable boost to a defendant's case. Choosing a corporate representative who can express compassion and empathy, rather than taking a stiff, "corporate mouthpiece" approach, can go a long way toward turning down the temperature—and damages assessments—in the deliberation room.



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¹ Nadeem, R. (2024, February 1). 2. Small and large businesses, banks, and technology companies. Pew Research Center. <https://www.pewresearch.org/politics/2024/02/01/small-and-large-businesses-banks-and-technology-companies/>

² *empathy* noun - Definition, pictures, pronunciation and usage notes. Oxford Learners Dictionaries. (n.d.). https://www.oxfordlearnersdictionaries.com/us/definition/american_english/empathy.