

# CORPORATE COUNSEL

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## Humanizing the Corporation: Tips for Successfully Representing Large Corporations in the Courtroom

### From the Experts

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When representing a large corporation in a jury trial, making the corporation seem “human” can be as important as developing strong trial themes. Many jurors have negative feelings about big companies. It may be due to negative press reports about the company or simply a bad experience using the company’s products. Unlike an individual litigant who can more easily be portrayed as being just like the jurors, it is more difficult for jurors to relate to corporations - they don’t have kids, they don’t have jobs, they don’t coach little league and they don’t go to church. There is a chance that you may face an uphill climb before you even begin.

Experienced plaintiff’s counsel, particularly when representing an individual, will attempt to leverage the ingrained biases against corporations. They will suggest that the faceless billion dollar corporate defendant made all of the critical decisions at issue in furtherance of corporate greed--and entirely indifferent to the safety and welfare of real people.

But there are a number of effective ways to combat this uneven playing field by “humanizing” the company. These will increase the chances that deliberations focus on the facts and not about preconceived negative emotions about corporations. It is important, however, that the process of humanizing the corporation start long before the trial begins. Mistakes made in discovery can be nearly impossible to overcome at trial.



Diego M. Radzinski/NLU

### Depositions of Company Witnesses

There are a number of infamous examples of corporate witnesses who lost a case before the completion of discovery by coming across badly at a deposition. Body language, demeanor, wardrobe and facial expressions can reflect extremely poorly on a company. Each witness must be prepared to appear likeable, reasonable and credible. An evasive, hostile or blabbering witness can do incalculable harm. Often appearance is as important as substance. Does the witness appear trustworthy? Can the jurors relate to the witness? A stiff, robotic witness or a combative, aggressive or evasive witness will only reinforce jurors’ biases about corporations.

This is particularly true of a 30(b)(6) deponent who literally speaks on behalf of the company.

Counsel should provide special instructions for videotaped depositions of company witnesses, including advising the witness that a videotape picks up every facial expression, sound or body movement. Corporate witnesses should look directly into the camera instead of looking down or away or at counsel. Attire should be neat and appropriately related to the nature of the employee’s job. Additionally, except for compelling reasons, during depositions counsel should conduct a bona fide trial direct examination that may be played during the actual trial proceedings to counter

the testimony designated by plaintiff, or introduced should the witness become unavailable by the time of trial.

## **Voir Dire**

Provided your jurisdiction allows for a meaningful voir dire of potential jurors, this process can prove critical to humanizing the corporation, including baking into questions what the corporation does and how it helps people every day. Where permitted, take full advantage of individual juror questioning to further ferret out bias. In courts where the voir dire process is limited, it is imperative to at least identify those jurors who have been or have had family members terminated or downsized by corporations. Push hard for jury questionnaires, which often provide more “red flags” (e.g., those who have filed lawsuits against a corporation or think your company’s product should be banned). When time and court rules permit, Internet searches on potential jurors will allow you to learn as much as possible so that you can use your strikes wisely.

## **Corporate Representative**

As a general matter, having a corporate representative sit in court throughout the trial is another helpful tool in “humanizing” the company. Ideally, this is a key witness who has knowledge of the relevant facts in dispute. In many instances, we prefer an executive level witness to show the jurors that the company understands that the case is important and is taking it seriously. In certain jurisdictions, however, plaintiff’s counsel is permitted to call the corporate representative to the witness stand and cross-examine him about anything relevant to the case, whether or not he has personal knowledge of the issue. A wide-open cross may not be worth the risk. But if you decide if it is worth the risk, selecting the right corporate representative is even more imperative. The last thing you need is to have your company representative discredited on cross-exam and then sit at counsel table for the jury to see as the face of the company for the rest of the trial. Factors such as likeability, race, gender and communication skills should be considered in the selection process.

## **At Trial**

If you have a corporate representative present during trial, the corporate representative should be advised to refrain from looking at her iPad, iPhone, BlackBerry, etc. and to remain attentive while the jury is present. The corporate representative should also be instructed to be aware that the jury will be watching, so she should avoid grimacing, shaking her head or otherwise reacting to the testimony/evidence, rulings or argument. She should act in a way befitting the face of the company - courteous, respectful and calm.

Counsel for the company will also be viewed by jurors as the face of the company. Thus, the company will benefit from, or be penalized by, counsel’s actions and demeanor. The use of plain spoken language, folksy and conversational, as well as relating to jurors in demeanor and dress (no expensive clothes or jewelry) will assist in humanizing the corporate defendant. The opening statement should include, to the extent permitted, a discussion of the ties the company has to the local community, state and country, the number of employees and the economic and human benefits derived from the company’s business and services. Note, however, that where there is an unrelated guilty plea or some other type of harmful evidence about the company that counsel has successfully excluded in limine, or that otherwise would not be admissible, counsel must be very careful that the “good company story” presented in opening or in witness examinations does not open the door to an attack from plaintiff’s counsel with the very evidence that was successfully excluded.

Direct exams of company witnesses should include personalizing the witnesses with brief asides or discussions of their families and other background subjects that enable jurors to relate to them as human beings. Stories that assist jurors in visualizing in a positive way how colleagues interact at work can also be helpful.

## **The Bottom Line**

Corporations are made up of real people and, if presented in the right way, jurors should be able to relate to and identify with them. By presenting the corporation

not as a nameless, faceless conglomerate, but as a group of folks just like the jurors, defense counsel can successfully even the playing field and cast the dispute as one between people. Doing so can dismantle jurors’ ingrained biases against corporations and allow jurors to like the corporate defendant in the same way they might like an individual plaintiff.

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