

The Corporate Litigant – Tips for Defeating Juror Bias Toward Corporate America

Introduction

Our recent experience in cases involving corporate parties leaves no doubt that juror perception of large corporations has not fully recovered from the succession of scandals, mass layoffs and government bail-outs that marked the past decade. Those events have created unprecedented levels of juror hostility toward large corporations that remain prevalent amongst many jurors today. While some studies cite optimistic trends reflecting a slow but steady recovery from this anti-corporate sentiment,¹ our recent work suggests that despite gradual improvements, some are not so quick to forgive and forget. So, faced with a potential anti-corporation bias in the jury-eligible population, what is a corporate litigator to do? Application of three critical strategies set forth in this article will help you adapt to and overcome the current attitudinal climate.

Psychological Background

According to various scientific experts, Americans' persistent bias against large corporations and their perceived culture is nothing new. Behavioral scientists and market research firms have been examining public opinion regarding corporations long before the financial and housing crises in 2007-2008. For example, Twenge, Campbell and Carter (2014) have assessed levels of trust – specifically, trust in individuals and confidence in institutions – in the United States over the past 40 years.² Their work revealed that between 1972 and 2012, Americans became significantly less trusting of one other. Additionally, they found that during this period, Americans became much less confident and trusting of large institutions, such as the news and media outlets, large businesses, religious organizations, health care providers, Congress and the United States President. Confidence in these establishments and individuals reached an all-time low in 2012. Recent publications suggest that this trend will likely persist over time. A 2013

¹ Since 1999, Nielsen has conducted the Harris Poll Reputation Quotient (RQ), which measures the reputation of America's most visible companies as they are perceived by consumers. Consumers are asked to identify and rate the nation's most visible companies based on their reputation, whether good or bad. Results from the 2014 RQ suggest an overall improvement in corporate reputation. According to the RQ, 20% of consumers say that corporate America's reputation has improved – an almost 25% increase from the 2013 number, and double what was reported in 2012.

² Twenge, J., Campbell, K., & Carter, N. (2014). Declines in trust in others and confidence in institutions among American adults and late adolescents, 1972-2012. *Psychological Science*, 25(10), 1914-1923.

Gallup poll based on a random sample of 1,011 adults found that Americans continue to worry about the size, influence and power of big companies.³ Specifically, over 60% of Americans expressed dissatisfaction with the size and power of major corporations. While satisfaction levels rose slightly from 2011 and 2012, they remain significantly lower than those recorded earlier in the last decade. Findings from 2013 also attest to the fact that the public's overall perception of corporate America remains relatively grim. The annual RQ poll conducted by Harris Interactive is an assessment tool that captures perceptions of corporate reputations across industries and among multiple audiences. Harris Interactive's research evaluates perceptions across twenty attributes that are grouped into six dimensions of reputation: products & services, financial performance, workplace environment, social responsibility, vision & leadership and emotional appeal. According to the 2013 RQ poll, the percentage of people who consider corporate America's reputation "excellent" or "good" was 28%, whereas people who considered corporate America's reputation "poor" or "very poor / terrible" made up 44% of total responses (random sample of U.S respondents = 14,512).⁴ This negative perception is particularly prominent in the financial services industry, where poor reputations still plague banks, insurance companies and financial companies. Such findings speak to the challenges confronting corporate entities as they attempt to rebuild their public image on a daily basis, and perhaps more importantly, as they face civil litigation.

It should be noted that Americans' suspicion and dissatisfaction with large corporations seems to extend beyond just high-level executives. Research suggests that when exposed to the immoral behaviors of a group's higher-ranking members, people may view other members of the same group more suspiciously, regardless of their ranking in the group. Thus, the misdeeds of higher-ranking group members impact perceptions of *all* group members. Therefore, the recommendations below do not only apply to CEOs and Directors, but also to individual employees that may testify in the case as well. Sawaoka and Monin (2014) examined this "moral spillover effect," in which the immoral actions of one individual (or corporation) lead

³ Newport, F. (2013, January 17). Americans Similarly Dissatisfied With Corporations, Gov't. Retrieved from <http://www.gallup.com/poll/159875/americans-similarly-dissatisfied-corporations-gov.aspx>

⁴ The Harris Poll 2013 RQ Summary Report: A Survey of the U.S. General Public Using the Reputation Quotient. (February, 2013). Retrieved from <https://www.harrisinteractive.com/vault/2013%20RQ%20Summary%20Report%20FINAL.pdf>

people to develop negative moral impressions of other associated individuals.⁵ In a series of experiments, Sawaoka and Monin (2014) confirmed that merely being associated with a corporate scandal (*e.g.*, being employed by a company that was involved in a scandal – even if the employee was not directly involved) carries a moral stigma, eliciting distrust and suspicion from others. Clearly, this psychological proclivity to deem an individual “guilty by association” has the potential to result in dangerous consequences for corporate litigants.

Tips to Overcome Jurors’ Biases Toward Corporate America

So what does all this mean for corporate litigants? It means that corporate litigants must be proactive in their efforts to minimize anti-corporate sentiments among potential jurors. These types of biases often occur on a subconscious level and therefore some jurors may be entirely unaware of their existence, making these individuals all the more dangerous when it comes to flagging them as potential “problem” jurors during voir dire.

Our experience and research leads us to believe that application of the following three strategies can help mitigate anti-corporate sentiments:

- 1. Successfully Uncover Anti-Corporate Biases During Jury Selection.** It is crucial during jury selection to expose and identify potential jurors who harbor negative feelings toward corporations (see our previous newsletter entitled “*Breaking Down the Barriers to Bias: How to Uncover Bias During Jury Selection*” for useful strategies to encourage jurors to freely admit their biases during voir dire). Our analysis of focus group jurors in cases involving corporate parties reveals that jurors’ decision-making is often correlated with various demographic and value-belief characteristics. These trends vary from case to case, but several seem to be constant regardless of the subject matter.

For example, when dealing with corporate litigants, jurors’ decision-making is often correlated with educational attainment. Jurors with less educational

⁵ Sawaoka, T. and Monin, B. (October 16, 2014). Moral suspicion trickles down. *Social Psychology and Personality Science*.

attainment are more likely to feel less secure in their jobs, lack experience working in a management role, occupy “blue collar” or low-wage positions, and / or have changed jobs frequently in recent years. Given these findings, it makes sense that jurors with less education exhibited heightened anti-corporate attitudes.

Interestingly, our research suggests that jurors who have been hit hardest by the recent recession are not necessarily a corporate defendant’s worst nightmare. To the contrary, we have found that jurors who were severely impacted by the recent recession or housing crisis were often *less* sympathetic to a plaintiff’s allegations against a corporation and tended to respect practical or conservative decisions on the part of larger corporations, such as pay cuts.

In many cases, political affiliation has proven to be a strong predictor of anti-corporate bias. Jurors who identify as Democrats most frequently display the greatest levels of anti-corporate bias, while jurors identifying as Republicans demonstrate a proclivity toward a corporate defendant regardless of any preexisting anti-corporate stereotypes.

Age has also been a predictor of corporate biases, with jurors between the ages of 20 and 35 often voicing strong anti-corporate stereotypes, while older jurors seem to hold a more favorable view of large corporations and their role in both the economy and the community.

Another observation is the correlation between jurors’ professions and their opinions of large corporations. Our research most commonly reveals that jurors who work in fields related to the sciences are more inclined to strictly adhere to the nuances of jury instructions and the law, often resulting in more conservative, pro-defense verdicts. On the other hand, we have found that the most vocal pro-plaintiff jurors in cases involving a corporate defendant often work in fields related to sales, social work and the arts.

While the goal of seating a jury entirely free of anti-corporate bias is an unrealistic one, we believe that exploration of jurors' employment history and beliefs about large corporations during jury selection can greatly minimize the risk of seating "problem" jurors. To that end, ask prospective jurors the following questions during voir dire:

1. *What is your occupation? Please provide your job title, company name and industry.*
2. *If you are currently unemployed, what was your last place of employment?*
3. *Have you ever held a managerial / leadership position in any company or organization? If yes, please state the name of the company / organization, your roles and responsibilities.*
4. *Have you, a family member or close friend ever worked for a large corporation? If yes, how would you describe the experience?*
5. *Have you, a family member or close friend ever left a job at a large corporation on unpleasant terms? If yes, please explain.*
6. *Have you ever had any negative experiences dealing with a large corporation? If yes, please explain.*
7. *What are your thoughts and feelings about large corporations in general?*
8. *What do you believe to be the most common stereotypes regarding large corporations or the individuals who work for them? Would you say there is some truth behind these stereotypes?*
9. *What are your thoughts and feelings about CEOs of large corporations?*
10. *To what extent do you agree or disagree with the following statement: "Large corporations treat their employees like numbers instead of people."*

11. *What three corporate scandals do you remember most and why?*

2. Build A Positive Corporate Image. All too often we forget that a trial is an opportunity to *educate* jurors. When representing a corporate litigant, it is critical to develop a positive corporate identity for your client. Aim to encapsulate this in a few powerful demonstratives that can be introduced during your opening statement. The goal here is to show the jury how your client differs from existing stereotypes of corporate America.

The use of effective demonstratives is critical when educating jurors about your client's corporate identity. Providing jurors with concrete examples that support this positive image will prevent them from relying simply on their preconceived notions of large corporations as they proceed to examine your client's actions and intentions. Your demonstratives should inform the jury about the positive public and civic acts that your defendant has performed and the charities which it is involved. Discuss the number of jobs the corporate client has created, the number of franchise owners involved with the company (where applicable) and other facts that similarly help jurors view your client as more than just an enormous, faceless machine. We have created a hypothetical large corporation named Global Corp to help illustrate the type of demonstrative aids you might want to consider to emphasize your client's civic image:

GLOBALCORP

Board Of Directors Oversees Major Charitable Initiatives


Theodore
Brinkman


Roger
Crane


Nancy
Gray


Derek
James


Robert
McCormick


Suzanne
Li


Sheila
Phillips


Phillippe
Smith


Helen
Winslow


**FEEDING
AMERICA**


**Habitat
for Humanity**


St. Jude Children's
Research Hospital


**THE
SALVATION
ARMY**


the
YMCA


**American
Red Cross**


goodwill


**United
Way**


unicef

Demonstratives should also aim to emphasize your clients' value to society. The following is an example of how the addition of a simple demonstrative can humanize a corporation and its employees by portraying them as *fellow citizens*:

GLOBALCORP

73 million clients / 126 countries





14 MILLION+
Americans helped by Global
in retirement planning






67,000+
Americans helped by Global
in home refinancing (2012-2014)



HOME REFINANCE DIVISION

Another critical component of developing a positive corporate image involves educating jurors about your client's history. Stereotypes often arise as a result of a lack of information. With this in mind, you must ensure that jurors get to *know* your client. Early in the trial, provide jurors with a timeline that outlines the company's history and development. The timeline should highlight the most notable steps, accomplishments, and, in some cases, struggles, that allowed your client to become the powerful corporate force it is today. This type of demonstrative can help to humanize a corporate litigant, as it breaks down an often intimidating façade of power and success. By providing a more personal window into your client's past, you will help jurors see your client as more than "just another large corporation."

Take AIG or New York Life, for example. Effective timeline demonstratives for these companies would highlight the long and challenging processes that were involved in building the successful corporations that we see today. With regard to AIG, when jurors learn that AIG started from a humble, two-room office in Shanghai, it will be much more difficult for them to write off AIG as a mega-corporation. In this case, the suggested timeline demonstrative would also introduce jurors to the individual who started AIG, Cornelius Vander Starr, in order to cultivate a more personal connection with the defendant and erode any unfavorable preconceptions of the company. Similarly, an ideal timeline demonstrative for New York Life would educate jurors about the company's early history and first president, James DePeyster Ogden, while also noting several unique facts that bolster an overall positive corporate image; for example, New York Life was the first U.S. company to issue policies to women at the same rates as men, and was also the first company to insure people with disabilities. As previously stated, this is your opportunity to *educate* the jury by introducing (or re-introducing) your client in a way that differentiates it from any preexisting anti-corporate stereotypes.

3. Putting The *Right Face On Your Client.* Though it is not always possible to identify or select specific employees to act as ambassadors for the corporation, there are still several steps you can take to humanize the corporate defendant through the use of your client's company representatives. Ideally, these representatives should be charismatic, likeable and credible, thereby engendering juror empathy with the *real* people behind the company. It is easy for jurors to despise or punish a faceless mega-corporation, but it will be more difficult for them to do so when face-to-face with real, likeable human beings.

Regardless of whether these company representatives are predetermined, it is extremely important to be cognizant of the determinants jurors use to assess a witness' credibility. Extensive witness preparation will be critical when working with any company representative in order to put the right face on your client. Those selected as company representatives must not only be prepared to testify about the subject matter of the case, but also about their personal knowledge of the company's values. These individuals should embody the positive corporate image discussed in the second point above (*See* "Build a Positive Corporate Image"). In other words, their individual values, goals and achievements should reflect those of the greater corporation. Furthermore, it is critical to leverage a company's values and characteristics when justifying any scrutinized behavior of the individual representatives. In this way, the testimony of these individuals should make clear that, given the extent to which they live and breathe their company's efforts and values, they would never jeopardize the greater corporation by committing a personal misdeed.