

# Teach Defense Lawyers How to Humanize Your Insureds

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## Executive Summary

It's time for defense attorneys to avoid the "David vs. Goliath" scenarios that play out in courtrooms, which lead to nuclear verdicts, according to Robert F. Tyson Jr. Here, Tyson, the author of the book "Nuclear Verdicts: Defending Justice for All," explains why defense attorneys have to ignore prior training to stick to the facts and adopt new trial skills to humanize corporate defendants, summarizing some of the ideas he'll share during a session of the Nuclear Verdicts Defense Institute, in June.

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Insurance carriers, are you and your defense counsel ready for the "perfect storm" of litigation that is coming once the pandemic is over? Are your teams trained to defend against the increasing wave of nuclear verdicts—jury verdicts of \$10 million or more, or those in which non-economic damage awards are disproportionate to the economic damages—that is sure to come?

If you cannot confidently say "yes" to these questions, the time to remedy that is now!

One way is to make sure your defense team knows how to personalize—read humanize—the corporate defendant. The following are some core ways to do just that and, ideally, minimize the chances of an exorbitant jury verdict at trial.

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## Avoid an Angry Jury

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The No. 1 emotional motivator of a nuclear verdict is anger. Because of this, plaintiffs' attorneys are increasingly employing a number of tactics to incite juror anger at the corporate defendant. As a result, the average jury award has skyrocketed in the last 10 years, with recent data for trucking industry defendants revealing that the average size of verdicts from 2010 to 2018 spiked from just over \$2.3 million to just under \$23 million, and things only got worse during the pandemic.

The new reality is that justice has been hijacked by creative plaintiffs' lawyers throughout the country. Change now lies in the hands of defense attorneys and in-house counsel. To mitigate the onslaught of nuclear verdicts, attorneys must learn new trial skills and change the way they communicate with juries. This can be a challenge for defense attorneys, who are trained to avoid the emotional part of the process and to just present the facts.

It's time for defense attorneys to alter their strategy by helping a jury identify with a corporate client. If a jury cannot relate to or empathize with the business, the defense may lose a "David vs. Goliath" scenario and face a nuclear verdict.



Tyson & Mendes has created a trial academy called the Nuclear Verdicts Defense Institute, which teaches defense attorneys how to stop nuclear verdicts. This June, attorneys from competing firms are invited to learn the methods outlined in the author's book, "Nuclear Verdicts: Defending Justice for All." Through psychology workshops, expert panel discussions, small group activities and demonstrations, experienced defense trial attorneys will practice and learn the advanced trial skills for defusing juror anger and defending against astronomical jury verdicts throughout this three-day immersive educational experience (June 23-26, 2022 in San Diego).

At its conclusion, each attendee will receive accreditation as a Nuclear Verdicts Defender, certified in the methods for defending against nuclear verdicts.

The Institute is best suited for practicing attorneys since part of the experience involves using the strategies discussed in front of other attendees. Insurers may want to send their own in-house counsel or outside defense firms used by their corporate clients.

Attendees must apply and be accepted to the Nuclear Verdicts Defense Institute.

**For more information or to access our online application,  
visit [nuclearverdictsdefense.com](https://nuclearverdictsdefense.com)!**

Learning to personalize 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 vision, and how such businesses contribute to their communities are what enable jurors to relate to corporate defendants.

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### **Remember, Corporations Are People, Too**

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When you read the closing argument for the defense in a nuclear verdict, what do you typically know about the corporate defendant? Usually 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.

In the eyes of the law, a corporate defendant or public entity is "entitled to the same fair and impartial treatment" as an individual human being. But the jury has to feel like they really "know" the defendant to be able to treat them as such.

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### **Turn a Business Into a Relatable Entity**

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Turning a business or brand into a relatable entity enables jurors to appreciate and understand the value your insured 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 is how:

**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 to 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 this person may never testify, their presence alone humanizes the company, demonstrating its regard for the lawsuit and its outcome.

**Voir Dire.** Jury selection is the defense’s only opportunity to identify and excuse 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 signal their corporate story—setting the stage for when the full story is told during trial. Framing the client’s story as early as possible and continually reiterating it will help the jury remember the information you want them to retain.



### Wrapping Things Up: A Closing Argument

While defense lawyers should not wait until closing arguments to convey the human side of a corporate story, it’s a great time to reinforce the messages delivered at trial.

Here’s an example of a forceful closing argument:

It is easy to throw around accusations. It is easy to file a lawsuit. But it is very difficult to defend one. I don’t mean financially, because you cannot consider the costs of all of this, or attorney’s fees over the last three years. You will receive a jury instruction on that.

It is difficult to put your and your business’ reputation in the hands of 12 strangers and say, “Hold me accountable.”

But that is what my clients are doing. They have flown across the country to be here with you. You have met the CEO of this company, who has been here every day for the last three weeks, even when the plaintiff hasn’t been here. He has done what he and this company have done their entire careers: They have shown up, they accept responsibility, and they are here for you to hold them accountable. And you know why? Because they care. They care about their employees, they care about their products, and they care about the plaintiff.

It has been an honor to represent this corporate citizen.

**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? Why does the company even exist?

Hearing this story during opening statement will shape the way the jury views the rest of the evidence and arguments presented.

**Witness Testimony.** If your attorneys plan to question client witnesses, it is important they take the time during preparation to remind them of the business' mission and history. During trial, they should ask the witnesses questions about the company's story and involvement in the community, as well as their personal experiences with, and loyalty to, the company.

And remind them to be human. Such testimony fosters a connection between the jury and the corporate defendant.

**Closing Argument.** The defense must 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 the client has done and to solidify any connection between the jury and the company. This information is just as relevant for your insured as background information is for the plaintiff.

Plaintiffs' counsel should not be the only person in the courtroom connecting with the jury.

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## Humans Run Corporations

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Putting a face to a company name and sharing the story behind a brand will not guarantee a win, but it will help. 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" vs. "Corporate America."

Regardless of what the corporate story is, the defense team must always convey it as a human story. Corporations and public entities are made up of people—not awards, or products, or mission statements, or financial accomplishments. No matter what business your client is in, the defense's story to the jury must be one about the people the jury will ultimately care about. Human beings must be the focus.

Insurers should also insist their defense lawyers learn how to become better trial lawyers by continuing their education and receiving adequate training on how to avoid nuclear verdicts in a post-pandemic world. There are many resources for defense attorneys, including a new trial academy created by Tyson & Mendes.

The only way the insurance and defense industries are going to turn the tide against nuclear verdicts is to learn from each other. Remember, it is justice for all, not just plaintiffs and their lawyers!