

A Psychopath in the Courtroom?



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THE TOPIC MIGHT SEEM PECULIAR TO those working in the realm of civil (and not criminal) litigation. In fact, it is unlikely that any of the players in a civil courtroom will ever search for a “psychopath” therein. Nevertheless, the cumulative effect of corporate misdeeds and the negative press surrounding them has produced such cynicism toward corporations that some people would characterize them as social predators, or psychopaths (see *The Corporation*, 2003).

This phenomenon has relevance to the litigation environment because of the risk that some potential jurors may be predisposed to find against the corporate client before considering any evidence. Attempts to sway someone with strong negative opinions about corporations are almost certainly futile, because these individuals feel passionately that corporations are corrupt, cunning, and even malicious. As triers of fact, these jurors will not be converted even with the best arguments or evidence. They will actively work toward convincing others to align with them.

Fortunately, with effective voir dire techniques, scientifically-based juror questionnaire items, and careful analyses of personal background and social media data, it is possible to identify and eliminate these potential jurors in many cases. The good news is that the majority of people do not hold a bias against corporations that is so strong they cannot be persuaded. Once the most unfavorable jurors are dismissed, the challenge then becomes demonstrating to the remaining jurors that the corporate client is not at all like a psychopath, but rather, a good citizen.



Psychopathy Defined

Emerging from early psychiatric work with “morally insane” patients, the concept of psychopathy has a long history, particularly in the context of institutional (typically, correctional) settings. Individuals with psychopathy exhibit a constellation of emotional, interpersonal, and behavioral symptoms that serve to fulfill selfish desires but are detrimental to others.

What comes to mind when you hear the term “psychopath:” a cold-blooded serial killer like Dr. Hannibal Lecter or a ruthless terrorist such as Osama Bin Laden? Certainly, these individuals fit the clinical description of a psychopathic personality type. The truth is, however, that many individuals who never commit a violent crime and may be generally regarded as “normal” still fit the basic description of a psychopath because they exude a callous disregard for the wellbeing of others and lack remorse or guilt (among other traits and behaviors).



The Psychopaths Among Us

While many notable murderers may have been true psychopaths (e.g., Ted Bundy, John Wayne Gacy, Jr.), psychopathic personality traits exist on a continuum and are observed in individuals whose behavior, while likely destructive and even deviant, may not be violent or violate any laws. There has been an emerging interest in psychopathy in pop culture and an increasing focus on its emotional

and interpersonal components, evident in leaders and prominent public figures in our society. In 2007, the preeminent expert and developer of the assessment tool for psychopathy co-authored a book entitled *Snakes in Suits: When Psychopaths Go to Work*, in which psychopathic behavior in the corporate environment is examined.



Corporations as Psychopaths

Since the mid-1800s, corporations have been considered a legal entity with equal protection as individuals. As such, jurors are instructed to regard a company as legally equivalent to all other “persons.” It is reasonable then, with this instruction, that jurors would ascribe personality characteristics to the corporation and assess its conduct according to expectations they would have of individual persons. Unfortunately, those evaluations are often unfavorable and harmful to corporate clients in the courtroom. How jurors feel about corporations in general will naturally color their assessment of a specific corporation, rendering the presence or absence of anti-corporate bias as one of the most important factors in jurors’ decision making.

Recent verdicts against large defendant corporations correspond with the results of decades of jury research, demonstrating that people do have higher expectations about the conduct of companies as compared with the conduct of individuals. While the actions of individuals and corporations are evaluated using much the same criteria, more is expected of a reasonable

corporation – in the way of responsible decisions, causation, and foresight – than of a reasonable person. The threshold for “punishable” conduct is much lower for corporations than for individuals.

In cases involving individual plaintiffs against company defendants, plaintiffs’ counsels can swiftly and successfully capitalize on the presence of irrational, morally-driven, emotional triers of fact with strong views about corporations. Juror beliefs that large companies are “greedy,” “callous,” “manipulative,” “apathetic,” and solely focused on self-interest are typically firmly-entrenched and impervious to any facts or evidence that may be contradictory. Their beliefs are simply reconfirmed when they learn about a company’s less-than-perfect environmental track record, financial priorities, testing protocols, or employee relations. The ensuing consequences for defendants can be devastating.

Jurors with strong anti-corporate bias are likely to strongly agree with the following statements, each of which corresponds to one or more selected criteria for psychopathy:

Psychopathic Trait	Anti-Corporate Belief
Lack of empathy	Companies really don't care about what happens to individuals unless it affects the bottom line.
Failure to accept responsibility	Lawsuits are necessary to hold companies responsible for their actions.
Glibness	Corporate representatives will say or do whatever it takes to increase profits and appeal to public opinion.
Grandiosity	Corporations act in their own best interest, not the interest of the public.
Deceit/Manipulation/Conning behavior	Corporate executives often try to cover up their harmful actions. Conspiracies among corporate executives are common.
Reckless disregard for the safety of others	Companies choose profits over safety.
Failure to conform to social norms	Corporations cut corners and seek out loopholes in pursuit of increasing their power and profits.
Impulsivity	Most companies react to an incident by blaming an individual, rather than by evaluating their own corporate actions, policies, or procedures.
Poor behavior controls	Companies cannot be trusted to "do the right thing" if they know they won't get caught. The only way to keep corporations honest is by awarding damages against them.
Parasitic lifestyle	Corporations exploit government and individuals in pursuit of their goals.



Corporations as Good Citizens

Working to convince a juror with deeply held anti-corporate beliefs that a corporation is a good citizen is likely to be a fool's errand; however, many jurors who have doubts and fears about large

corporations may still be open to persuasion. These jurors need to hear a "good company" story that works as a foil to the portrayal of the corporation as a psychopath by focusing on corporate decisions and actions that portray good citizen virtues of sympathy, honesty, responsibility, thoughtfulness, and diligence. The good company story should be woven into case themes, promoted in attorney

argument, introduced in voir dire and openings, and echoed in witness testimony. Corporate fact witnesses are perhaps the most direct avenue through which jurors judge a company's character. If the corporate representative acts hostile, dismissive, angry, haughty, or arrogant under cross-examination, jurors may assume that is the culture of their entire organization. Witness effectiveness training that emphasizes credible demeanor and positive messaging is critical.



Finding a Solution

An important first step in framing a case is to acknowledge the potential impact of jurors' perceptions of the corporation as a social predator. While eliciting entrenched beliefs about any topic is a challenging task in voir dire, it is absolutely necessary to identify unfavorable jurors. Specific

questioning strategies are recommended to first normalize jurors' responses to general and case-specific issues and to then probe into potential bias by encouraging jurors to express their true attitudes and opinions. Recognizing anti-corporate sentiments that correspond with psychopathic traits and determining the strength of those beliefs provides a foundation for discerning bias.

Jurors' evaluations of the "individual" stem primarily from their perceptions of fact witnesses. Traits that prove effective in the corporate world may not bode well on the witness stand, especially if many jurors already consider corporations at best to be uncaring and selfish. Teaching witnesses about juror expectations and worldviews and empowering them with strategies to dispel negative perceptions through repetitive, simulated direct and cross-examinations is essential to overcoming the risk of jurors coming to believe there is, in fact, a psychopath in the courtroom.

About the Author



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