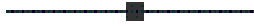


When the CEO Takes the Stand



By Dr. Noelle Nelson



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CEOs have a bad rap with the public — and thus with most jurors — because of some bad apples that have demonstrated gross excesses and uncaring attitudes. This perception has been true for many years, but has been increasing over the past decade with the development of the 24-hour news cycle, business networks, and social media, which spread news of corporate wrongdoing at lightning speed.

CEOs who have not been trained how to behave in the public eye are often caught off-guard and blurt out wildly inappropriate responses to, say, a tragic event or mass company layoff, or when questioned about their huge salaries in the face of a hurting

economy. Add to this the advent of reality shows such as “Undercover Boss,” where CEOs are routinely portrayed as desperately out of touch with their employees, and it’s no wonder jurors may be inclined to view CEOs as entitled, rapacious, clueless and heartless individuals.

The majority of jurors are not CEOs, do not count CEOs among their close friends, and do not have CEOs as spouses or family members. Their opinions of CEOs are formed by what they see, read, and hear, not by personal experience. As a result, by the time CEOs take the stand during trial, many



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jurors — well meaning as they may be — may be prejudiced against them, rendering the testimony ineffective or even harmful.

Yet, as we well know, there are countless CEOs who work hard, stay true to a corporate vision, care deeply about their customers and employees, and exemplify the very best of American capitalism. More often than not, that is your client. Somehow, you must help your client to overcome the negative stereotypes so that your CEO's testimony becomes credible and sympathetic to the jury.

— Physical Appearance and Body Language —

CEOs are upper-class members of society who enjoy a position of significant power. The jury will expect them to look the part. Appearance should be neat and clean, clothes in keeping with the perceived status, although preferably on the conservative side. Jewelry should be kept simple and unobtrusive to avoid being distracting.

Body position and eye focus contribute greatly to juror impressions of sincerity and help to establish the witness' credibility. CEOs on the stand should keep their body and head in a "square position." Their body should remain open and straight, their head looking forward, and their hands resting either on the arms of the chair or on their lap. At no time should they cross their arms over their chest (a sign of defensiveness). It will be easiest to maintain the "square position" if they don't cross their legs, but simply keep their feet on the floor.

The "square position" conveys honesty and sincerity. CEOs should avoid speaking with their head cocked, or turned to one side, as these positions may be interpreted as showing weakness or dishonesty. And the witness should not adopt a common CEO "head position," where the head is held slightly up. That can convey arrogance and a

superior attitude, which may be resented by jurors.

Gestures for the sake of expressiveness are acceptable. However, gestures made out of nervousness or habit — such as repetitively adjusting a tie, fussing with hair, fiddling with ear rings, or running hands over the face — communicate insecurity and anxiety and are

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to be avoided. A simple rule of thumb: *“Keep your hands off your face and off yourself.”*

Jurors may interpret lack of eye contact as shiftiness and evidence of lying. Therefore, eye contact must be clear, direct, and sus-

tained. Encourage your CEO witness to look at the jurors at certain points during direct examination. When not looking at them per your instruction, the witness should look directly at whomever is talking: you, opposing counsel, or the judge. When they need to

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think, tell them to avert their gaze downwards or sideways.

— **Vocal Patterns and Vocabulary** —

Although CEOs are answering questions when on the stand, in truth they are talking to jurors. A priority is making sure the CEO is understandable and appears sympathetic to this audience. Explain to your client that jurors are at a distinct disadvantage, because they can’t say “Huh? What did you say?” if something goes by too fast, or “I didn’t get that,” if they didn’t understand. Under-

standing is the first step in persuasion. Thus, to ensure he or she is comprehensible to jurors, the CEO should adhere to the following principles:

- Speak in short sentences.
- Take frequent pauses.
- Don’t string more than two thoughts together with “and.”
- Don’t speak in convoluted sentences with a myriad of subclauses.

CEOs should communicate in ordinary language. When choosing words, a good rule of thumb is to use vocabulary that the average 15-year-old would readily understand. “Nonplussed,” for example, is a poor choice of word. “Puzzled” is an adequate synonym. The CEO should avoid business jargon, since it accentuates the distance between the CEO and the jurors. People are more readily persuaded by those individuals who are like themselves, who speak their language. Plus, if jurors don’t know the meaning of a business buzzword, they may concentrate on trying to figure it out, and will most likely miss hearing the witness’ next two or three sentences.

— **Emotional Impact** —

Many CEOs inhibit their emotions, appearing disconnected and cold. Although these may be desirable traits in a business setting, they are damaging in a courtroom. Decisions of all kinds are made at the emotional level and then supported with logic. If the CEO doesn’t “connect” emotionally to his or her testimony, the jurors won’t either — and, in the absence of that vital component of the decision-making process, the CEO’s testimony will lack persuasiveness. In fact, the more complex the business issues, the more important it is to employ emotion as a persuasive tool.

To make sure CEO testimony has the necessary emotional punch, the CEO should speak in the first person and in subjective

terms. A common flaw in CEO testimony is speaking primarily in third person and in objective terms.

By making testimony subjective, the CEO

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gives jurors something to which they can more easily and directly relate. If they can't relate, they won't be persuaded. When possible, CEOs should recount an event as if they were describing a movie scene. To do so,

they must “flesh out” the event in terms of actions, behaviors and dialogue, rather than simply relating a list of facts.

Describing the event as a “movie scene” gives life to testimony. It involves the jurors in the situation by engaging their senses, which allows them to relate more subjectively to the testimony, thereby significantly increasing its persuasive power.

CEOs should include their emotional reactions as they occurred when describing the event. Help your CEO clients accomplish this by asking them during the preparation stage, “How did you feel about that?” If they can convey an emotion, tell them to include it when describing that event on the stand. As CEOs are encouraged to express emotion in a general fashion, their testimony will acquire added subjective richness and depth, both of which contribute greatly to the jury's ability to empathize with their view of events.

The CEO should also adopt a “winning” attitude, one of sincere cooperation, whether answering questions on direct or being cross-examined. This is difficult for many CEOs, especially when questioned by opposing counsel. Trained to compete, to be “number one,” CEOs find it difficult to avoid the “battle mode” on cross-examination.

However, regardless of opposing counsel's attacks, sarcasm or insinuations, the CEO should remain calm and forthright. A sincere effort to cooperate in a calm and steady manner, regardless of opposing counsel's provocations, will earn the CEO the approval and esteem of jurors. Jurors tend to be more sympathetic towards witnesses who behave with courtesy and courage in the face of a rude cross-examination than to those who respond in a hostile and defensive manner.

— **Communicating Facts** —

CEOs are trained to stay one step ahead of their competition — if not more — and to

analyze the tactics and plans of their competitors. Much of their ability to lead corporations is based on how successfully they out-figure and out-maneuver others. If CEOs apply the same kind of thinking when testifying, however, they may appear conniving, manipulative or evasive, and lose juror sympathy.

To present the facts in a convincing and sympathetic manner, CEOs should be instructed as follows:

- Listen carefully to the question asked.
- Don't try to formulate the answer before the entire question has been asked.
- Think before you speak.
- Don't try to second-guess what your attorney "really" wants or what opposing counsel is "really" after.
- Answer only the question asked.
- Jurors must be guided to your interpretation of the facts; therefore, they must be able to follow a clear, logical line between the questions asked and the answers given.
- Be willing to say, "I don't understand the question." This can be difficult for a bright person to do. However, if you don't thoroughly understand the question, in all likelihood the jury won't do so either and will be grateful for your request for a reformulation. You increase the perception of similarity between the jurors and yourself and, thereby, increase sympathy.
- Don't argue the case. That's what your attorney is for. Your job is simply to answer the questions asked. If you find you have trouble answering a particular question, repeat part of the question in your answer.
- If you have to explain something, a business procedure, for example, take an educative approach. Think of yourself as explaining the procedure as if it were foreign to the jurors. Inform and instruct, but do not talk "down," "to" or "at." Where possible, use common everyday experiences as analogies to facilitate juror understanding.

— The Female CEO —

In 2000, only three women ran Fortune 500 companies. At the end of 2010, 15 women did so. Although the percentage of female CEOs is still very small relative to the number of male counterparts, the number is rapidly increasing in all sizes of businesses. If your CEO client is a woman, she may have certain challenges in front of a jury that a male would not face, predicated on cultural norms.

Society dictates what is appropriate male and female behavior. Even the younger generations still accept to a large degree the different societal expectations placed on the two genders.

Simply put, women are expected — based on stereotypical assumptions — to be warm, expressive, nurturing, emotional, and friendly. They are expected to be more focused on the needs of others than on their own — regardless of their position in the workplace. The female CEO who testifies in aggressive, defensive, arrogant or brusque manner is judged more harshly than a male CEO who behaves similarly. The techniques described are the same for both genders, but are that much more important for your female CEO to adopt fully.

— In Conclusion —

Though they may be intelligent, resourceful and astute business people, CEOs often need as much pre-trial witness preparation as those individuals who have never testified in court. The CEO's testimony is often the critical component of a business litigation trial. It is up to counsel to ensure that the CEO is not only prepared to testify regarding the facts surrounding a case, but also able to do so in a convincing and believable manner.

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