

Intro : [00:00:00](#) This is Michael Cowen and welcome to Trial Lawyer Nation. Well, the jury panel can send to the court over, the bailiff says all rise. I know we're here, and it doesn't matter who they are. Nobody should be above the law, a lot of us talk about that, but you actually done it. That's how you also maintain quality control over your practice. Yeah, that's a question I get asked a lot. Here's the answer. Welcome to the award winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm. And now here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen : [00:00:39](#) Today on Trial Lawyer Nation I'm so excited because we have David Ball on the show. Most of you probably know who David is. For those of you who don't, he is the father of The Reptile. He is the author of David Ball, Damages, which most of us have on our desk and used when we draft opening statements and our closing arguments. That is our outline. He has probably done more good for more trial lawyers than anyone else in the industry. I'd like to thank you so much for coming on the show.

David Ball : [00:01:06](#) Well, thank you for asking me. This is fun.

Michael Cowen : [00:01:09](#) David, we've had the pleasure of working with you today. But not everybody in our audience might know a whole lot about you. I mean, I think most people have heard of you. What is it you do?

David Ball : [00:01:22](#) What do I do? My mother would ask me that question. We'd get home from school and she'd look at me like, what do you do? I work well, I mean, I started in this to try to help attorneys make complicated things clear. My background is theater, like Joshua, like Jessica, like a number of people with theater background. A lot of what we learned in theater is extremely useful. In fact, Catherine and James call their grow, what can we learn from theater or what can we learn from actors for whatever it is? There is a great deal of useful stuff and one of the hardest things, when you're dealing with a lot of plays, I worked in a classical repertory company. How do we make this stuff, which is from another era, it's complex. It's often in weird language like Shakespeare computer. How do we make this stuff crystal clear to an audience who's listening to it? And, uh, after watching my first few trials, I realized lawyers have two problems. One, they're boring as hell and two, they're not very clear about what they're talking about. So that's where it all started. I think I describe what I do now is helping to strategize a case to maximize the principles of what we've learned in the neurosciences is about how people really make conclusions

well, how we make decisions, how we know things like logic really has very little to do with how people make their decisions. And so, in a way, I'm kind of a bridge, I think between the hard sciences of things like the neurosciences right here at Duke, which is behind me by about a half a mile is where they do this work. Artemis and I in fact are working on a national science foundation grant that's been going on for about the past year and probably has another few years to go before we're really done with it on things that have to do with how jurors may make their decisions.

David Ball :

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And so how do we get jurors to see things the way we want them to? Because logic doesn't do with the law school kind of logic of telling them your case and they'll understand your case. And if you're on the right tells that this got nothing to do with how people make decisions and what does have to do with it. And how do we translate that into things that you're allowed to do in trial. How do we do that in a way that will motivate jurors to do what we want them to do? Uh, we may want them to do something very badly, but if they don't want to do it, they're not going to do it. People don't make their decisions on the basis of justice. That's a hollow justice as a result of something that you think you want, not just now where people start. So, there's all those different kinds of things, but the ultimate pay off is can I look at the materials of your case? Can I look at what we have to work with? Can I look at the laws today? For example, we talked about some of the laws and rather more detail than than we needed probably, but how do we look at what we've got in order to put this stew together into some, but something that somebody really wants for it to come out the way we want it to come out. The whole process of trial in general is an alignment. We are trying to align the jurors wants, with our wants. It doesn't mean they're the same ones, but it's to find a way to align the things that jurors want or that we can make them want with the things we want. We want money for our clients.

David Ball :

[00:04:50](#)

The jurors want other things. We've got to show how I can get what I want. If you can get what you want, it's this basis of any good persuasion. Only things have changed a great deal now with what we've learned about persuasion from incredible work in the neurosciences in the past 20 years, 15 years. Um, we're surrounded Artemis and I, we're working with a group over at Duke, our sir, and we'll sit in a room with seven or eight people, five or six people. And I realize, and I think very highly of my intellect, I realize I'm the stupidest person in the room. Uh, not in terms of knowledge, just in terms of sheer intellect. And when you work with people like that and you see where they are in terms of their research and you see the lines between

right at the edges of what they do, that's too far. We can't use that in trial. It's still experimental and the stuff that really is pretty solid, and then I combine that with all this stuff I learned in the theater about what real storytelling is. For example, as opposed to a lot of storytelling that's out there, but real storytelling where we're jurors really want to hear your story and not just they're going to go ga-ga cause you're telling some story. Cause there are stories in, there are stories. When you put all this stuff together, how do I maximize everything you've got to work with so that I can align the jurors wants, what we know the jurors will want, what our focus group testing shows they will want. In terms of everything else that the jurors can be brought to want. I want them to want things that'll give them a result that they want, but that at the same time will give me the result that I want in the trial, which is a lot of money for the clients.

Michael Cowen : [00:06:27](#) Could you give an example?

David Ball : [00:06:28](#) Uh, yeah. The basis of what The Reptile is about. You said at the beginning as the father of The Reptile, I was a father of the reptile not the father of The Reptile. Um, but the fundamental thing about The Reptile is by getting the jurors to want themselves to be safe, that's their one. That's what we get them to want to live in a safe world, safe for themselves and their kids and their family and the people they love, that's what they'll get from what they want. But in order for them to get what they want, we will also get what we want, which is money for our client.

Michael Cowen : [00:07:09](#) Because the only power they have in the jury room is to give or deny money.

David Ball : [00:07:12](#) Exactly, and in fact, by not giving the money, if we're doing this well, and I don't care what people call a reptile or something else, that's totally irrelevant. But if they do it well, it's not just the, they realize that a good verdict will make their world safer. It's that a bad verdict will make the world more dangerous than it is now. In other words, once they walk in there as jurors, the status quo is gone. They're going to walk out of there with either a more dangerous or a safer world. They can't walk out the same way. If they don't provide a full and fair verdict, they're opening the door. It's a gateway open gateway to other people being shown. Nobody's going to bother to disturb you if you want to do these dangerous things that makes us more, that makes us more dangerous, at least around here. Yeah. Um, whereas if you go the other way, the concept of incidence, a

funny story about this, the concept of deterrence was sort of where I started this whole business.

- David Ball : [00:08:10](#) I thought right from the beginning that the best thing about trials was that it made other people behave. People had nothing to do with this case. Learn that if I texted and well it was before text, but if I do something bad and it hurts somebody, I'm gonna get in trouble. I'll be hauled into court, I'll be sued, it'll cost me a lot of money, I better be safe. So, when I first started teaching this in the 1990's yeah, it was the early 90's, lawyers told me I was full of crap. That that's punitive damages, David. That's not compensation and Artemis still makes fun of me. One of the things I did eventually was sit down and read, torts the restatements. It would just manifest clearly that a large purpose of compensation is to deter, and you don't have to lecture the jurors about that point. They come in knowing that if you ask your clients, why they're doing the case. They'll say, well, I need the money, but also I want to make sure this doesn't happen to anyone else. That is the purpose of compensation. Punitive damages simply means more money to deter even more.
- Michael Cowen : [00:09:16](#) I think that's where, we see time and time again, verdicts and let's just say it's a regular auto case that will, one one driver is a particularly careful rear end somebody else, that person has a back surgery and you see verdicts like a a hundred thousand dollars for prior medical, 200,000 or medical and future and 25,000 for pain. How in the world could you say it's only worth \$25,000, and have a lifetime of pain. It's because the jurors didn't feel that the defendant deserved to pay the money.
- David Ball : [00:09:48](#) And it is not about who deserves to do what. It's about, I want, if you're using a reptilian approach, whether you call it that or not, it's nothing new. We just codafide it. Well a lot of it was new, but the approach, the jurors will allow that much money in a verdict instead of a hundred or \$200,000, they'll get you into a seven figure verdict for a missed case. Because they'll see that it's giving them what they want. Just providing justice for somebody. They don't understand what the \$25,000 is going to do for pain, and they're right. It doesn't do a damn thing for them.
- Michael Cowen : [00:10:32](#) Because people don't naturally think of what we call non-economic compensatory damages as compensating people.
- Speaker 4: [00:10:38](#) Well, we call and until I got started yelling at people not to call accidents, accidents, and not to call awards, awards. When I first started saying that, people thought you're crazy. It's called an award, David, we have to call it an award and there are

accidents. They're called accidents. I'm saying we'll stop doing that. Just like the concept of deterrence is where you can go to the jurors to grab them by the throat and bring them in because that's what they want. If you show them that their verdict can deter and when some venues are not allowed to say that explicitly, but you can always convey the necessary information, all you need to do is touch that button. In most cases, you don't even need to do that. They understand that, but you want to touch the button because jurors believe that in small cases you can't do any good and so you need to help frame even this small case.

David Ball :

[00:11:26](#)

That's why our missed cases suddenly went from couple of hundred thousand dollars to consistent seven figure verdicts. It's why wrongful death cases that when I first started working and people were overjoyed if they got \$1 million, and I'm saying to myself, \$1 million in someone is dead. How much more harm can you do to a person? Then you kill them and they died in agony. Okay, a million and a half dollars maybe. And what people have learned now, is if you get the jurors on that wavelength of either wanting something for themselves, be it they're safer or you've made them feel very important or something else that they come in wanting already wanting that million dollar verdict is \$20 million is \$30 million. And on one level or another, the lawyers right now who are operating at that level are doing that very thing. They're not stamping their foot and saying we want justice. They are, but in addition, they're showing the jurors what they are going to get out of. Rodney Jew, who's the brilliant consultant on the West coast. I haven't seen him in many years, but he used to teach with them all the time. Great. Well, I admire Rodney an immense of enough. Um, you know about his FM radio station. W I F M, what's in it for me? He was with it long before the reptile existed and he was absolutely right. I learned this story in a variant. I learned this in a very interesting way. We're sitting here in Durham, North Carolina right now, we're two miles from the courthouse. When I first started, I wasn't looking for a job as a trial consultant. I was in theater and I wrote plays and I wrote novels and I wrote stuff like that. I was watching trials for some reason having to do with that part of my life. I was new, I didn't know you were allowed to talk to anybody in live that was like in a play. You can't talk to the actors though. I can't talk to the lawyers that I've been, I'd watched five or six trials. It's for that other reason. In trial in this one trial was an elderly woman who lived in the room who is one of the wealthiest people in North Carolina, and no, this was not one of the Dukes. This is somebody else. And the trial was about, she'd been hit from behind a stop light in her car and now her neck was sore. She

can move her neck, but once she turned to the right, it was sore, somewhat limited range of motion. It was certainly not serious and I could see it was very hard for her to go through this. It was not pleasant and the trial was going on for several days. I knew this woman didn't need the verdict she might get if she were lucky, which would be 10 or \$15,000 in those days. That's all people were getting in those cases. So one day I thought maybe I'd better ask the judge if I can do this, but after trial in the hall approach during incident, ma'am, all due respect, but I see what you're going through is not very pleasant. She said, no, I hate every minute of this. They said, why are you doing this? She said, I thank God every day that that man hit me from behind, and I thought, Oh, you're doing it because you're a crazy lady.

David Ball :

[00:14:43](#)

I didn't say that. I said, the whole purpose follow up question. Tell me about that please. She said, well, she said, this man comes up behind me. I have sitting there and my big Mercedes, which has two huge red lights on the back and my foot was on the brake pedals and they were really bright red plus. It had this great big Chrome bumper and it was broad daylight and overhead is this big bright light, the signal light for the intersection. And he didn't see any of that. He just hit me. If I hadn't been there, if he hadn't hit me, he would've killed three children in the cross rock right in front of me. That's why I'm here. People have got to stop driving like that. She knew it without ever reading the reptile book. She knew it without reading the principle that I stuck in the reptile book about you need to show people the worst possible harm that that negligence could have caused because that's what the case is about. We're not going to ask for a verdict to justify the dead to, compensate for the death of three children. But the level of negligence is that serious. So is that little fender bender case with a sore neck, a major case? You bet it is. You bet it is because if it doesn't come out to a just amount, you're giving people permission to continue. It's like what defense lawyers are doing now when they say you can't get hurt in a wreck under eight miles an hour, which is a not A true statement and B, no judge should allow any defense attorney to say it without an expert, but the worst thing it does is it is teaching people that it's okay not to look where you're going at eight miles an hour or so. Now the kid pulls out his thing to text on his, he's pulling up to a light.

David Ball :

[00:16:26](#)

You're teaching them. It's like you can't really hurt anybody, might cause a little tense instead of you can kill people when you do that. So that the very act of defending the case, the defendant's very act defense attorney is very active, defending

the case is creating greater danger. You can say to the jury, when you allow that kind of thinking to prevail, when he says that and you make your decision, you become complicit and allowing that, that's a little bit of too far in the direction of, coercion. But it's, it's that general kind of thinking that they are trying to get a person who did a lethal danger, trying to get him a pass. But by doing that, they're telling other people that this wasn't a big deal. You can make that argument. In most cases, the act of defending what somebody did wrong, dangerous is telling other people, other employees in that company, for example, that don't worry about it. We'll defend you if you drive through a stop sign. We'll defend you if you, put a drug out on the marketplace and, and whatever that is the wrong or the doctor doing the wrong thing. You're always playing the game on the playing field of what the jurors want. What's good for the jurors. Look, this is a community effort trials. It is a community activity. It was invented in Greece to protect the community. That's why we started trials. Trials were started to protect the community, to get rid of the Hatfield and McCoy battles to get rid of private revenge, which is why, by the way, that to this day a crime is called an act, a crime against the state. To emphasize the fact that any crime is not a crime against you. It's against the state. The state will settle this and once it's settled, if you try to get revenge, you've committed another crime.

David Ball : [00:18:24](#)

So, that's how it started for community safety. It's always been community safety. The concept of community safety is so embedded in our law that they really have to do some circuitous thinking at various appeal court levels to get rid of that concept. That's why it's there. All we're doing, and the reason I leapt at this thing of the reptiles cause it played right into what I've been trying to do, which is how do we get the jurors to want something that'll give us what we want.

Michael Cowen : [00:18:53](#)

And how do we figure out what the jurors want?

David Ball : [00:18:56](#)

Well, we know that we can do focus groups, but we also know a lot from the neurosciences. What motivates us to want things? What are the drives that are inherent in human beings that keep us alive? If we could go in and had jurors of teenage boys and told them that if you could make the case come out our way, you'll all get laid tomorrow. We'd win all our cases because by us winning they get laid. We can do the same thing. Not quite on that vulgar kind of level, but that same thing too. What are the wants that people have? We want to be safe. We want to be okay. We want to be important. We want to have an effect. We want to be admired. We we want to be respected.

We want to avoid people doing things to us that are humiliating. That's how Donald Trump won the election by going to the people who fell for generations humiliated by the elites. They didn't go to our schools. They didn't talk like us. They talked funny. We put on shows like making fun of the hillbillies and all. We'll put yourself in the shoes of those people and how it felt to see themselves mock night after night after night for years, and there's a certain anger that builds up because they're being disrespected, which is something always to look for.

David Ball : [00:20:10](#)

What is their, in your cases where your client has been injured in a way that leaves him disrespected? There's a very powerful thing. If I disrespect somebody in the wrong environment, I can get myself killed. You disrespect somebody in the inner city, in the hood, in prison and alone, and in a lot of private schools where the kids are very cut off from the rest of the world. Even in public schools, you can get in a whole lot of trouble for disrespecting somebody. That's what bullies do. They disrespect you. That's why it hurts so much. It's not just that they're stealing your lunch money. They're making you into an asshole in front of all your friends. That's ultimate humiliation. What insurers want. They want to keep people from doing that to them and you can frame much of what the bad guys do in those terms. Why when a company does things with its drivers say that are dangerous to the general public, that means they're disrespecting me. They do not respect me as a human being. They don't respect my wellbeing. You make the argument in closing, what do they respect?

David Ball : [00:21:20](#)

They respect their money. Look at the level of care they put into over the course of this trial. They have every right to defend themselves. Look at the level of care they put to protect their \$10 million. All those boxes at the other end of the room. Everything in there is to help them protect themselves. They hired two of the best defense attorneys you can find in the entire state to come in and protect their \$10 million. That's the only reason they're here. If we said, okay, we don't want your \$10 million, those guys would go home. That's why they're here. They're doing their job. They have the right to do their job, but I'm just asking you to compare the level of respect they have for their money, to the level of respect they have for everybody in public who's got to drive those roads where they're untrained drivers are driving around putting us all in danger, putting our children in danger.

David Ball : [00:22:07](#)

If they respected us, they wouldn't do that folks. Let's say that instead of human beings in that truck, let's say in the back of the truck, they had their \$10 million and \$50 bills. Do you think

that untrained driver would have been driving that truck so that when he gets in a wreck, their five, \$10 million goes flying all over the place? No, they respect that, but that human and that same driver, that untrained driver was driving the truck in spite of being able to knock us all over because he didn't look or because he was a bad driver because he didn't care all the reasons that he was a bad hire. So you compare, and this is just an example of how do you go to what they want. I want to be respected and in some cases that is the most important thing a person ultimately wants.

David Ball :

[00:22:54](#)

Another reason for that. It's bred into us. You go back through evolutionary times and back to the tribal era. If you were disrespecting their tribe, that's a matter of life and death. You're dead. That's why humiliation feels so painful. It's your brain that is wired to say, do anything in the world to avoid being humiliated because once the others feel they should humiliate you, you're dead meat, your gone, you won't survive. So the only ones of us who survived were the ones who had such a strong. That's why if you are humiliated by something when you were nine years old, you remember it like it was yesterday. If I walk in, if I'm doing one of my seminars, there's a couple of hundred people in the room and I walk out in the middle of the room and I pick you out and you're sitting there and I do something to humiliate you, which is real easy for a speaker to do in front of any group. You'll remember that moment forever and everyone else in the room will hate me for having done it. That's one of the reasons, by the way, you want to be very careful in trial when you're cross-examining the bad guys. Don't humiliate them. Respect them, treat them decently. Jurors don't want to see that you back them into corners and forced them to say crap. They don't believe the crap you get them to say, but mainly don't humiliate people. So, that you ask, what are the wants? How do we know what they are? We simply look at what are the fundamental drives that keep us alive. Um, if people are starving, you could win the case by giving them food. Well, you can't do that. As I say, teenage boys get them laid. They'll give you the case in return or the only way they can get laid is if you. Even if they give you the case, well, we don't want to do those two things. We can't do those things, but we sure can do these other things. We can sure show them how the behavior of what people are doing. The other side brings in what they call an independent medical examiner, which is astonishing. Three lies in one title, independent medical examiner. Those are three separate lies in one title.

Break :

[00:24:51](#)

What do you like to meet host Michael Cowen in person? If so, here's your chance. Trial Lawyer Nation is excited to invite our

podcast listeners to Michael Cowen's Trucking Bootcamp on Thursday, October 10th in San Antonio, Texas. Join us for a full day of trucking education hosted by Cowen Rodriguez Peacock. This is a complimentary CLE. That's right, there's no fee to attend. However, seating is limited to 75 plaintiff attorneys for details. Send us an email to podcast@triallawyernation.com and now back to the show.

Michael Cowen : [00:25:27](#)

That's crazy. I'm so many cases we have like we want to mediate with you, but we need to do an independent medical examination of why and can write it for you. I can tell you that I'll spot you. You're going to have a person and they're going to say that my client wasn't really hurt and that everything was preexisting and I'm not going to give a crap.

David Ball : [00:25:45](#)

What you do is rather than just disagreeing with their conclusion, you show what they did wrong in their methodology to show that they purposely arrived at the wrong conclusion. You say to your expert, how could they possibly say X? How could the defense expert possibly say that? What did they have to do wrong? And your expert will say they had to violate this rule of analysis or something like that. One source of this is Dorothy Sims and all of her work. There's a local source here. One of the brilliant people we're working with in the neuroscience people, The a guy named Pate Scheme who is also a lawyer, who's one of the great neuroscientists in the country and he spent a year in with the justice department and in Washington, and now he's on a campaign of getting lawyers to understand just how to do this. What constitutes a reliable causation, is methodology. In other words, he's the doubt paradox expert.

Michael Cowen : [00:26:39](#)

In my, my experience was a lot more limited years, but I think just listing the facts that allow jurors to understand that it is an incredible lack of respect of the jurors to say that I am independent when I was picked and paid for by the other side.

David Ball : [00:26:55](#)

And it's even more of a lack of respect when I deliver as the independent medical examiner, when I deliver my analysis and conclusion and the jurors then found out that I did not do, unknowingly did not do something proper so that I could come to the conclusion that I want. That's disrespecting the jurors. If you help the jury see it that way. And then you do say to them in closing, don't you think if they could've gone any place in the country and found somebody to come in here and testify and say what they wanted them to say without violating the requirements of their own profession, that's who they would have had. But no they brought in somebody who thought that

by talking quick enough or be complicated enough, you would buy into that. And that is a lack of respect. When you frame it that way, instead of just saying, well, they're lying to protect themselves because we allow people to lie to protect themselves, but don't disrespect me. One of the great offenses for the legal offenses for trial lawyers is to try the lie. The lie of say the doctor to the patient that's bad. Worse is for a doctor to get up on the stand and lie to the jury because that's disrespecting me. That doctor lying to the patient didn't disrespect me. But when the doctor, the witness, anybody gets on the stage and misleads me, that's disrespecting in the same way I am even disrespects them.

Michael Cowen : [00:28:25](#) Not only does it disrespect them, but it endangers them. Because if you can hurt someone and then pay someone money to lie your way out of it, then you could hurt anyone.

David Ball : [00:28:38](#) That's again, what do we want? I want to safe world. So, if somebody's going to bring in experts and we're going to give a pass. If you go back, I've been working on something, that involved my going back in detail through damages three, which I have not done it a long time. And I tell lawyers all the time, never do a case without first paging through every bit of that. I don't care what else you use. There some such wonderful stuff out there. There's Nick rally stuff. There's, there's the reptile. The kingdom now calls the edge. There's wonderful stuff in there is the ranch stuff. There's a that, what was the one where we were talking about just that Sari de la Motte. One of the things I like, I, that I, that I love about what I've been able to do. When I first started writing my first theater for trial book, there was nothing, nobody was doing much of the way of teaching a major overall strategy and there were certainly no books on damages that doing it and precious little elles and I like to think that the damages stuff helped give rise to this whole other industry. In one sense, I should hate it. I create it all my own competitors. In another sense it's a, it's the greatest thing feeling in the world for me is that that me along with the publishers did something that that nurtured this whole other thing. So, it's a total different world to be an attorney now that if you go back through damages damages three, easily 80% and maybe close to 90% or what everything else is covering is in that book and I'm not claiming credit for it all because I borrowed bits and pieces from lots of the opening.

David Ball : [00:30:17](#) My opening really started as far as I know with a wonderful consultant years earlier in Minneapolis, named Diane Wiley, who had sort of the promo opening that I refined and came up with this one, so I'm not saying it was mine, but I'm saying that

resource is what I think should be at everyone's elbow all the time along with their other stuff. What I tell lawyers now is you have wasted 90% of the time you've been reading books and sitting in seminars, because you don't remember 90% of it. You can't before every case. Take a full day. It is worth it, or at least do this monthly or something. If you're doing a bunch of cases, take a day, at least a half a day and page through everything. Look at your highlights, examine it in the light of the case you're doing right now and you'll see things you never saw before. When somebody else tells you that, and I'll say, oh, what a great new idea. No, it's not. I've been telling them that for years and so have other people. So much is lost because you sit at a seminar and the only ideas you remember, the ones that gonna help you in the next case.

Michael Cowen : [00:31:22](#)

It's so true.

David Ball : [00:31:23](#)

And it is very true. When I used to teach acting here at Duke and Carnegie in Pittsburgh and places like that where people were really intent on going into acting careers, same thing I'd say to them, you take all of your notes from all of your teachers, all the books you read, all the Stanislavsky, all the Quahog and all the other stuff and review it all periodically. Don't let it drop out the back end. And I think the reason I'm bringing this up now is because I've been looking through damages and realizing how much of it is there. Now, In a lot of cases, other people have taken and refined what's in the book and done some very nice work with it. Nick in particular has done that. Um,, Nick Rally I'm talking about, uh, and there are others who've done the same thing. Don Keenan did a lot of that. I'm not saying they took my idea, they didn't any more than I took somebody else's idea. But is there refinement is the taking going to there and taking it to the next step. That I think has been such a difference so that now in 2019 to be a good trial advocate, you've got the resources to do it. If you go back 20 years, all you had was did you happen to be talented? What we've got now is lawyers with far less natural talent than what we would consider. The geniuses are doing better because they work harder at acquiring all this stuff and the geniuses from a very young age don't bother.

Michael Cowen : [00:32:46](#)

We are so blessed to have so much stuff now the, at first it just seems like it's almost overwhelming now because you have so many, so many books and so many people out there. I've been trying, I'm finally at a point in my career where one, I can afford to go work with multiple people were used to be like, you know, I mean you're, you're worth it but you're not cheap. So, like the first time I ever worked with you, that was what I could do that

year. That was the money I have, and I have the time because I don't have a hundred cases anymore than I'm trying to handle on my own.

- David Ball : [00:33:24](#) I think what you get there is by doing the a hundred cases you had well enough to get yourself in a position of getting better.
- Michael Cowen : [00:33:30](#) Although have I learned to say no to 90 of them? I would have gotten there a lot quicker. But that's a whole other story.
- David Ball : [00:33:36](#) They don't teach you the word no one law school, do they?
- Michael Cowen : [00:33:39](#) No.
- New Speaker: [00:33:40](#) Neither do they when you're trying to be a total of trial consultant, it is very hard. I keep telling Artemis, you don't need to do that much work, but a, she loves it and she loves that level of it and she's in demand, but she's, she finds it so hard to turn somebody down. And I understand that.
- Michael Cowen : [00:33:56](#) Going back to, you know, so at first it seemed overwhelming, but now that I've had the, and when you first read the books and like, okay, well this is, this conflicts with this, which one is right? What I've been talking to my partner, Malorie and Sonya about when we work with different people, you realize the core, it's common. You know, there's different spins on it, but it's, you know, it's gotta be about the jury and you can't tell them what to think you have to give them the information they need to come to their own conclusions in a way that they're going to come to the right conclusion, hopefully.
- David Ball : [00:34:28](#) You have to motivate them. The motivate look, any case can be decided logically, either way, any issue in a case they cannot be decided logically. Either way does not come before a jury. Theoretically. And in practice, that's pretty much how it is. So if they can decide a case logically, either way, they can walk out feeling I was 100% logical. There's no difference in politics. It's the same thing. You can support Trump logically, you can support anti Trump logically. Logic is not the differentiator. What is it that is? And that's where you get to the motivation and that's where you come back to the what's in it for me. Not that doesn't mean money. It doesn't mean even self benefit. Some people take great satisfaction in knowing they've helped others. Uh, that can be enough for those people. It's even better if they're helping others and making themselves safe at the same time. But that's one of the real fundamentals. Um, if, cause if you take that away, if, if you allow these trials to be

what some legal thinking says they are, which is information into a computer, feed us out the conclusion, which is a very naive view of human nature that existed around the early 19th century. Uh, and, and, and God way exacerbated and wants to law schools took over, uh, where, where the, the concept of anything beyond pure logic was anathema. We simply have to leave that in the dust. We're not saying ignore logic, we're just saying doesn't make any decisions.

- Michael Cowen : [00:36:01](#) It's funny, my wife has been, uh, calling me like, maybe I should go to law school. Her motivation is if I died, then she can take ownership with a law firm. It's not that she has any interest in practicing law. I said, I don't think it would be good for you. And not because you're not smart enough to go, but because to be a lawyer, you have to hear a set of facts and say, I can argue this or I can argue this and you are a normal human being that will hear a set of facts and say, this is right and this is wrong in law school breads that out of you.
- David Ball : [00:36:32](#) Well, and there's a, a debate, I'm involved with somebody right now. It's like a criminal defense lawyer who says, I'm only going to defend people I think are innocent. I said, then you have no right having the privilege of a bar card, you don't even begin to understand the system. Well logically that person is right. Logically, to him is more important than, I don't help a guilty person to escape than it is to do what the constitution says the lawyer up to do. Now the he's on 100% logical ground and to me it's, it's, it's unethical and it's immoral and he needs to turn into his bar card and go drive a bus or something.
- Michael Cowen : [00:37:14](#) Of course on the plaintiff's side, I am trying to only defend, represent people who are legitimately and badly injured, but that's different though. We're bringing the case.
- David Ball : [00:37:21](#) Can't do any good. Beyond that, the criminal lawyer losing a case to which he's made the government needed burden has done some good. Yes, he has done what we need to have done. Uh, in fact, one of the problems we're having with criminal law right now, which is why I wrote the book on criminal cases, is, is precisely that people have forgotten what the prosecutor's burden really is. The seventh amendment of the sixth amend, whichever amendment criminal. And as I was mixing them up, six, is all but dead. I mean, people are not getting trials and over, they no longer have the real, they have the right to a trial and a great amount of self sacrifice. That's called the trial penalty. You get a six months if you just do a plea, but if you go to trial and you're guilty, you're going to get six years. That's the

trial penalty. So they have essentially lost that, right? It's a mess of a situation.

- Michael Cowen : [00:38:10](#) I know a situation where the judge who took bribes from multiple lawyers got six years. One of the lawyers who paid the bribe went to trial and went 20. Not to say he doesn't deserve to be in prison, but it's just amazing.
- David Ball : [00:38:23](#) Well and you know the judge or judges in Pennsylvania who were sentencing your kids to extra long-terms undeserved term because they're getting kicked back from the prison. I mean that it's a human institution. You've got to expect that stuff, but for a lawyer to say that he will not take anyway, that's criminal stuff. Not really of interest to people on this thing, but it's the same principle of what's logical. The one side is not logical to the other side and vice versa, so that you cannot depend on your logic to win a case. You have to depend on how do I get the most important single thing? How do I get them to want what I want them to want it? It's a fundamental principle that every actor understands. How do I get my character to get past an obstacle to get where my character wants, but that's fundamental to any kind of decent acting at all. We're in the same thing. I want the jurors to want something, but they don't come in wanting it. How do I get them to want it? By taking the materials of the case and framing it in a way that they will want what I want them to want. That's probably the main goal of everything I do, and it preceded the reptile. It became highlighted in the reptile and is never going to get less important because that's the principle of all persuasion.
- Michael Cowen : [00:39:38](#) You had mentioned that something, uh, and this little phrase I heard earlier on, uh, "real storytelling". What do you mean by that?
- David Ball : [00:39:48](#) The way many people talk about storytelling leaves out the single most important element. We hear people talk about, you gotta put in sensory stuff and you got to do a narrative and nobody quite knows what a narrative means. And some people will define the narrative and you do this and you're doing, all of those things are wonderful, but they're not the core of the story. And that's what's being left out as far as I can see in the way people are told, whether it's lawyers or ministers who spend a lot of time learning about story, uh, or others who tell stories what is it that's left out? And if you look at the great storytellers, Shakespeare, Chaucer, Sophocles, Moliere, on stage or in movies or in, in what used to be called in the middle, that middle ages, the Schoeps, the guys who would come in and tell their stories. And since there wasn't a whole lot of television

in the middle ages, they were it. So when they showed up the entire time, we sit down, sit there and stare at them and they had a story to tell that story had better work, a story, a better work of that person was not going to get any money and he would starve to death. So, what did stories by evolution learn? You have to make people want to hear the next part of the story. It's called narrative thrust. What is it at this moment that makes me want to sit here and listen to the next thing you're going to tell me or show me on the screen or show me on the stage? What is it that keeps me, it's called dramatic tension. It is a tension between this moment and the next moment. And that next moment can be an hour off and could be two minutes off in the great storytellers. Someone like Shakespeare, he's got a bunch of these going on at any given time. The a line makes you want to hear what somebody is going to respond to. Otherwise it's not a very good line. A scene starts this way, we want to get to get to, how's this going to come out. We want to get to, is Hamlet gonna get revenge. That's way at the end of the play. And so you have all these things going. Those are thrust they make me want, it's not the same as foreshadowing. Foreshadowing just tells me something might happen in the next scene. There's no thrust there at all. That's nothing unless it's foreshadowing of something I really want to see. So if somebody comes in and does a bad thing, they kick a little puppy dog across the street. It's a forward because now I call these forwards, these devices. I now really want to see that guy get his comeuppance. I will be walking through the living room. If I had a kid watching television and he'll be watching a movie I've seen a million times and I'll see the bad guy do the equivalent of kicking the puppy into the street where the bus runs it over and it goes squish and I'll stand up. I've seen it a million times. I know what's going on. I stand there all over again and I want to see it happen again.

David Ball :

[00:42:39](#)

You can watch a Christmas story, the movie a billion times, and you're always waiting for the scene where Ralphie beats up the bull, not Ralphie the older one. I forget his name. In fact, you're looking forward to it even more because you know it's going to happen, so it's not surprise. It's doing something that people want to see what's coming next. Everyone in show business on some level understands this principle. Every decent minister who uses stories in her preaching understands this principle. Every play, right? There are no good playwrights who don't understand that principle and use it all the time. Yet people tease lawyers to tell stories and never mentioned that little principle to them as the only thing that keeps people listening. Yes, there's lots of values. I'm, and I include myself, if you look at my own instructions on how to tell stories, I left that out. It is

so assumed that if I do these other things, dramatic thrust will happen. No, you have to make it happen or you don't even need story to do it, but anything you can do, we love packages. You give me a package that got my name on it. I want to open that package. So the Unabomber killed so many people. I want to open that package.

David Ball :

[00:44:02](#)

The news going around in those days, is it you and Obama are out there. He's mailing things to university professors in the sciences, so university professor in the sciences gets a package. I want to organize, probably not the unabomber, we're going to open this up in bluey. That's a forward, if I put a box on my table in trial and I cover it with something and I look at it or adjust it every so often, every single juror is now dying to know what the hell is in that box. Why? Because we have a deep seated need to find out something that's being kept from us or if the boxes for us, we want to open it boxes mean presents, presents mean we're loved. It's a big deal. Those are forwards. You cannot keep a kid from wanting to open his Christmas presents. If those presents are out there, that little monster is going to creep downstairs and open the presence. I did a, we all did it. Those are forwards within the context of a story. They tell you where to put the, they help me by using forwards, put your attention where I need it. That's the skill of a story. So, that if there are particularly important points, I will try to craft these things I call forwards so that jurors will want that to come so that when it comes they're listening with 10 ears, they're all ears to hear that thing, whatever it is, and there's different kinds of ways to do that.

David Ball :

[00:45:25](#)

Like you got a bad guy, we want to see something bad happened to them. It's not quite that simple in trial and it's very case specific is very particular to the story and as if relatively sophisticated thing to do for people who are not natural born storytellers, but you can learn to do it. Unfortunately, as far as I can see, and I have to admit it, I don't know everybody who's teaching stories is teaching all these under what other wonderful things about telling stories. But all of those wonderful things without dramatic thrust don't give you an effective story. They can give you an emotionally moving story, which is okay if you do it in the right place because an emotionally moving story in the wrong place can kill you to have someone in the mood to hear an emotionally moving story. Yes. And you have to have somebody who doesn't think you have to have a jury who will not regard it as a manipulation. I, I familiarly get calls from people as a David, I did this story in closing. There's wonderful first person story. Everybody was in

tears when they heard it and then they went back and they were out for 90 minutes and I lost.

- David Ball : [00:46:29](#) And then I talked to them later and they said they had all loved me until I told that story. They said yes, we cried. That's why we hated it. All we talked about and deliberations was how you did nothing but maneuver us emotionally. I'm not saying don't tell first person stories. In closing, I'm saying, you damn well better have tested in about three or four focus groups before you dare to use it. It's a very powerful tool. You don't mess with stories unless it is like day in the life. Videos don't ever show the jury a day in the life video that you haven't tested carefully, thoroughly in a proper focus group and a well-run focus group because two thirds of the time, and that's a real statistic day in the life videos not day in the life. Yeah, day in the life videos. Lower your verdict. Two thirds of the time that people show them, they lower your verdict for a whole variety of reasons and you can't spot those times. Jurors will spot them cause you're not looking at the same thing they are.
- Break : [00:47:25](#) Trial Lawyer Nation is proud to partner with trial guides, leader in continuing education for civil plaintiff and criminal defense trial lawyers with books, DVDs, CLE's, and live webinars and more visit trialguides.com and use code TLN 19 at checkout to receive our exclusive podcast discount on any trial guides, products that's TLN for trial lawyer nation, and the number 19 discount expires August 31st, 2019 and now back to the show.
- Speaker 2: [00:47:59](#) I mean, Malorie and I had a case where we've spent a incredible amount of time and money doing an animation that we thought absolutely proved our case, and we showed it to a couple focus groups and they thought it absolutely proved that.
- David Ball : [00:48:11](#) Same with exhibits. Same with the exhibits. The work Don Keenan is doing right now, he sorta puts on everything in little threes, but one of his group of three is in the work he's doing. How is the focus group now? Don was one of the real early attorneys, one of the earliest of the attorneys, uh, who brought focus groups into his practice. Um, but now this has become extremely important to him and it's because none of us are smart enough to shut our eyes and put ourselves in the position of a juror. We can't, you can't even put yourself in the position that your spouse is, but you'll know it really well.
- Michael Cowen : [00:48:41](#) Well, we also have the curse of knowledge cause we already, before we start the story, we already know what they did wrong and what the outcome was. We're already upset. We're already emotionally invested, right?

David Ball :

[00:48:50](#)

They're not at all. And it's not even a mini, the knowledge you that the a principle of play writing is called context and context is one of the principles of the ball opening in the damages book. It's not what's in there. That alone that wins all these cases, it's what's in there where it's in there. If you change the order, you're changing the context of each new piece of information. Will Shakespeare knew that some of the most powerful moments in Shakespeare would be trivial in a different, just flipped two scenes around same information makes the same sense, but now they're trivial. Let me give you an example of context. People are always doing these closings in which they talk about. John was a wonderful dad. John would take that little boy out in the backyard and the sun would be shining and he played with his kid and he throw them the wiffle football and a little boy would throw the wiffle football back and now dad can't do that anymore. The jurors staring at you with blank stare saying this also. So what the hell? Who cares now reverse that. If the story is dad can't move, dad is flat on his back. When little Joey comes to see him, little Joey has to step up on a stand to look down to see his dad who can't even lift his hand to wave at him. Joey sees dad will never be able to touch him again or hug him again or walk with them again. Let me tell you a little bit about what it used to be like. Here's this video dad throwing the football, the dappled son, the little boy catching the ball. Dad runs over his swings and every one in the courtroom cries at the same information, but the context is no different because now you know every major tragedy on theater, in theater, all Shakespeare, all the Greeks, the audience came in knowing the outcome. There were all familiar stories or when they weren't. Shakespeare told you the ending at the beginning of the play. Look at Romeo and Juliet. He's talking about star crossed lovers who die before they have a chance to get very far in life. So now we're watching through. That's the prologue here. Now you're going to see everything that happened and your watch for a few scenes and then then suddenly, suddenly there's this wonderful most romantic scene ever written where Romeo turns and sees this beautiful woman we know that's the daughter of the enemy is the son of the enemy and Oh my God, isn't that all this shit? They're going to be dead and that is where you cry. That is what gets the really tragic level, profound tears, nothing but context. You could have said left out the dying part til later and you would never have had that moment. You would never have had a moment this powerful because now you've combined the horror of what went before with the beauty of the wonderful thing that went before that awful moment. That's context and the you don't need to worry about context with that with the opening that I teach because it's done for you. You don't need to worry about that at all. When people do other kinds of

openings and there are other ways to do openings. I have to say there is no one way to do anything in this business you know that because you've worked with a number of different people in different teachers as people should.

David Ball : [00:52:11](#)

There is not one way. There is not so and so says to do it this way, so you've got to do it that way. No. If you're going to do the opening I teach, you've got to do with the way I teach it or won't work, but you don't have to do that opening. I think you should I think it's usually the best way to do it. But you can do other things, but you have to do those other things. Right. It's similar to when people say you can't do such and such because it doesn't work in front of a jury and you're puzzled. You say, well wait a minute and exists to do that, or wait a minute, Spence says to do that or David says to Donald me to put myself in their company, but you know, these people say to dart emphasis to do it.

David Ball : [00:52:47](#)

I'll put her in that company. The reason. Some people say you can't do that, it's cause he don't know how to do it. Yeah. For example, one of the most important chapters in the damages book is how to get jurors to decide cases on the basis of preponderance. That saves case after case after case. We know what works because the jurors talk about it and they talk about it and in deliberations with each other and they do that thing with their hands or when we ask them or somebody we can have other people that were interviews, we know they're doing it. We know that's made a difference in the outcomes and yet there are lawyers that you can't talk about the law to the jurors. They get insulted. They think you're a lawyer hiding behind the law and their right if they do it wrong. So, when you're trying to judge about what works and what doesn't work before you judge it, make sure when you hear somebody say something doesn't work. If you hear me saying that something Spence teaches doesn't work, the first question to ask is do I know how to do it? And the chances will be high. Don't. That's why I'm saying it won't work. So, you can be, it's not just a matter of who says what, it's a matter of one of those things. So for example, people do an opening and put everything into the opening that I say should be in the opening, but they'll screw up the context and say, Hey, this opening doesn't work. And I'll say, no, because you did it wrong. How do you do it? Right? You go to the chapter in the damages book and it's there. You go to the chapter and Nick's running with the bulls book and it's there.

David Ball : [00:54:09](#)

You go to such and such your book over there and Keenan will show you how to do it there. If you do it right and you're dealing with an honest teacher, it'll work. Unless you're just, you know,

a total screw office. Throwing it together is my point. You do it right.

Michael Cowen : [00:54:23](#)

How do you figure out whether something will work?

David Ball : [00:54:26](#)

You do tons of focus groups and not just focus groups in the normal sense of focus groups, bring people together. There's a million other ways. Artemis who I know does one of these things, is always teaching people you do a focus group every time you get on a bus, you do a focus group every time you're around other people, you're waiting the line. People love to talk about this stuff. I do something that I guess you could see as a little bit creepy. I go to the mall and I go up to people and I say, I'm working on a jury case and I need to get some opinions. I'll buy a dinner. If you talk to me for half hour, one person, not 24 people, like a big focus group. Uh, but I'll do it over and over and over. If it's the afternoon, I'll buy you an ice cream. Listen, I just, I don't do that with children, that be terrible. I learned and I'm very uncomfortable doing that. I'm not kidding. I am not comfortable in the context of approaching strangers. When I was a kid, I could not go to a bar to meet a date. If my life depended on, I could not do it. Some of the other end of the borrower winking at me and I wouldn't be able to do. I just can't.

Michael Cowen : [00:55:29](#)

I am the same way, that's probably why my wife doesn't mind me traveling so much because she knows I have no game.

David Ball : [00:55:36](#)

I forced myself to do it here because there's so much to be learned. That's half of the input. The other half is this incredible stuff from the neurosciences and related things. There's a great deal of wonderful information about tribalism, which is a deeply inbred embedded thing in the human psyche, that we can measure it. We can see it, that's having such an enormous effect. Right now we're having a problem that lawyers are just beginning to finally see. And that is if you've got jurors for more than a day or two, they start looking each other up online. They don't just look you up in your case, in your experts, which they do. So you need to know what's out there. But they want to know who this person is sitting next to them. So here's David the liberal and I find out that this person, my right is a avidly energetic supporter of Trump and we've looked for, we find this out about each other.

David Ball : [00:56:30](#)

We're not going to agree with each other about a damn thing from then on, including this case, whatever that person says, I'm going to contradict and vice versa. Which means if I'm a criminal defense attorney, I love it. I just love it because I don't

want them to agree, right? But we need either unanimity or, 10 of 12 like like you need in Texas or you know, whatever it is, wherever anybody I think is nine of 12 in Kentucky, which is really kind of nice. But we need that, and so we've had to go to things about what makes tribes, how do you break the tribal thing? How do you bring the tribal thing? How do you bring that together? How do you appeal to one side with one thing into the other side with another thing? In other words, you take something that has a great deal of effect on the conservative mind, which is literally a physically different mind than a liberal mind.

David Ball : [00:57:20](#)

Every, every society including in some animals have both liberal bent and conservative men, which basically means people who want to try things new ways and people who want to keep things the way they were and things that come off of those. That constellation of of drive, for example, the conservative mind, I don't mean conservative politically, although they overlap. Conservatives react very strongly to anything that has to do with slime or infection or dirt. They love purity, they love cleanliness and anything that isn't like that makes them really uncomfortable and if it's really bad it can make them sick to their stuff. They really hate it. That to them is evil. If the people pushing climate reform, we're framing their arguments in terms of the slime and the filth and the disgusting stuff that we're going to have, the way things been going with the climate. We'd be making a lot more progress with climate control, but they don't do that. But if I use that in a case to show that the harvest is, somebody created this level of infection that crept up and rotted the internal part of the arm and the clots falling off and you couldn't even scrub them off a table, they were so that kind of slimy, disgusting stuff that will make that injury much worse to a conservative now to a liberal, I have to go find something else that'll work with a liberal but nowhere near as strong.

Michael Cowen : [00:58:48](#)

I think one of the dangers is that by and large, the trial lawyer community tends to be pretty left-wing and we spend time with each other though all the time and we have a common language and we have ideas of work with each other. We say things that we don't realize are going to trigger somebody on the other side. I think it's so important to spend time talking to them. I'm lucky I have in-laws. I live in Texas, for a long time to volunteer with the boy scout troop and you know, very, conservative bunch.

David Ball : [00:59:20](#)

One of the reasons you have a rich way of approaching things, you're not just approaching it from that narrow point of view.

Michael Cowen : [00:59:25](#) Right, because you know one, you learned that most of the people that are conservative, whether you agree with them or disagree on the politics are decent people, but you also learn how they talk and how they think and that, you know, you say certain things that it triggers a different,

David Ball : [00:59:41](#) What's happened today is the opposing sides over Trump have stopped thinking that the people on the other side are decent people. To my side, the liberals, everybody who supports Trump is a racist, is hateful, is terrible. It loves dishonesty, hates women, all that they think, for example, with some justification that all this abortion stuff is anti-woman when that's not even in the heads of the people that were doing it

Michael Cowen : [01:00:09](#) If I'm going to try a case and any of my jurors are whatever the opposite either. If I'm conservative, they're liberal.

David Ball : [01:00:19](#) You have to bridge the gap.

Michael Cowen : [01:00:20](#) I think they're evil. In my mind it's going to come across.

David Ball : [01:00:23](#) It's not just that it's that you have people on the jury. I think she's evil, right? If I'm a Trump person and she is not a Trump person, if I'm a pro abortion person, she's an anti abort. We're now at the point where people are accustomed to screaming, foul, horrible things to each other in public, online and now even in public and when you bring that into the deliberation room, I don't care what you think about the case. I disagree and that's what happens. You need to, we can bridge them, but first we need to understand what tribes are, how, how deep they are. That is not a logical battle and that we have very distinct methods of solving that, but you can't just let it go cause this. I think that problem, I don't think I'm absolutely sure that that problem, which has been getting bad is going to get so much worse over the next few years. That is going to be a menace.

Michael Cowen : [01:01:11](#) And I just try not to speak in a way that it's gonna identify me with either tribe and I make darn sure that my social media, I try to be so disciplined to keep those opinions to myself.

David Ball : [01:01:23](#) I have said on Facebook a lot, I hang out on Facebook a lot because it's my own little focus group. I really do. I do a lot of things on that thing that people don't realize I'm doing focus groups with them, but I'll continually see trial lawyers posting online, strong opinions about abortion, about Trump, about things like that. And I'm saying, don't do this because some jurors will find you jurors almost invariably now we'll find you

and look up who you are. They'll look at your social media, not every single time, but enough. So you really need to worry about it a lot, much more than you think. The more they're told not to, the more they do it and they'll find this out and they'll hate you. You become one of the enemy and you've lost them right there. And they'll say back to me, I still have a first amendment right. And I'm saying, no, you don't. No, you really don't. You have a fiduciary responsibility. Your client, that trumps your first amendment. If you want to put it in legal terms, and it does trump your first amendment. You cannot indulge yourself that way. If you want to do that, go on and use a fake name.

- Michael Cowen : [01:02:26](#) No, that it's totally ineffective at changing anyone's mind or position. It is.
- David Ball : [01:02:29](#) But people use Facebook to vent more than change people's minds. Well, don't. If you do trial law, I can do it. I don't deal. I don't even go to trial. Artemis goes to all the trials. Now since I've stopped going into trials, I can say in public anything I want because nobody's going to associate.
- Michael Cowen : [01:02:43](#) Yeah, there's things that you write on your Facebook. I would not write on mine, but you don't. You're not going to go in front of a jury yet.
- David Ball : [01:02:48](#) But every so often I'll say I'm a lawyer just having a little disagreement with some of the other night on abortion in fact, and we disagreed profoundly on it. This is a good guy. I really liked this man. He's, I respect him highly. He's a good person, but we're having this disagreement about in the middle of this amount. I said, wait a minute, wait, wait. Let's take this offline. You don't want and get rid of this and you don't want this online, and explain why he was fine with it. Some people get very upset when I tell them because they don't realize that if you are a trial lawyer, you have accepted responsibility that trumps your ability to have free speech like that. You just, you just don't, and if you do, if you're going to do it, you'd better tell you clients cause somebody sooner or later is going to nail you. I don't know that it can result in a lawsuit, but I would say that that is negligent.
- Michael Cowen : [01:03:38](#) Well, not only that, but if your client is in the other tribe and he looks or she looks you up, you are an idiot. And you know, you're not a bad person.
- David Ball : [01:03:47](#) But my point is, the bigger the thing that I'm worried about is not the individual lawyer, uh, and you, the relations between

you and your client, that's a problem. My big problem is this battle that goes on in the jury that we have got to find a way to stop it, and that's sort of been the bulk of stuff I've been teaching with Artemis over the past year or two is when the problem for starting to manifest itself. I think we're approaching this being as dangerous to us as tort reform ever was what we fixed or reformed pretty much with a reptile. We now like the conservative jurors that we used to work so hard to develop ways to make sure we could spot and get rid of. Now we'd like them because they're our best jurors. Don Keenan held a what's it Centennial park in Atlanta? A wake for tort reform. But about eight or nine years ago it was very funny, but it was also very accurate. But now we've got this problem and it's trickier because it involves attitudes that are much deeper than anything in tort reform. Any of those attitudes where they were deep but they weren't like these, these are, these are existential level problems to people are the difference between a Trump and a non Trump person on the abortion thing right now. The people who think abortion is bad. This is a profound, deep value in these people. They are as right as the people on the opposite side. This is two absolutely right positions fighting with each other. You can't resolve it. All you can do is think a person who thinks differently for me has got to be evil.

David Ball :

[01:05:22](#)

So if you are against abortion, you hate all women, well they don't hate all women. That's not what they're doing in their minds. It's got nothing to do with hating or liking women. It's got to do with God hating abortions for the honest ones, which is the large majority of them and vice versa. So you've got to, without making any value judgements that all, you've got to realize that's what you're dealing with. Now what can we do that can be of greater priority for those two sides to unite for the duration of this trial. We know the basic principle, you and I can be fighting and suddenly somebody can come in trying to kill us both and you and I instantly unite because we're both in danger and we need each other to save ourselves. You want world peace tomorrow, tomorrow, I guarantee you tomorrow if the Martians attacked tonight, there'll be no more battling among tribes in the world.

David Ball :

[01:06:16](#)

Yeah, a gone like that. Soldiers in battle, the worst racists on the planet in the foxhole with a black guy who hates racism the most and suddenly they need each other to survive. That's gone for the duration of that. What we're trying to do in the, in the fox hole of the trial and we know how to do it. I mean, we can do it. It's just your that still gets back to we're using what does the juror want that we can use to get him to see that the best way to get it is by uniting with a juror on the other side and how

do we do it in a way that what they both want together will give me what I want. That's the principle. That's probably my whole guiding principle right at this point. Not in criminal cases.

Michael Cowen : [01:07:02](#) One thing I've noticed the difference between theater and trial lawyers is rehearsal. I've yet to see a trial lawyer who's preparing for a multi-part, potentially multi million dollar case or hearse nearly as much as a community theater or a 30 people are going to be in the audience. It's true.

David Ball : [01:07:21](#) A trial is, I think as far as I can think is the only area of public performance, which is what being a trial lawyer is. It's the only place saying no where they don't rehearse. People get up and do a voidire who've never done that voidire before they'll get up to do their opening and it's not that they're nervous on that can be a big part of it, but you want to get rid of some nerves, do it in front of real people a few times before you go and you'll be less nervous and trial. Not zero nerves, but less nervous. Uh, look, if the best lawyers in the world practice, there voidire the night before trial, who the hell is everybody else to think they can get away with not doing it. Practice it the night before. I know you're busy. I know there's a million schedule in advance. Seven to eight in my office. 10 people randomly pick. You don't have to pick them carefully, like focus group jurors and run your jury selection voidire on them. Uh, so that by the time you get to trial the next morning you have to court the next morning. It's your second day. You've done this already. I mean, a lot of other benefits to do at rehearsal is extremely important. You cannot fully rehearse on your own. A full rehearsal means a dress rehearsal. You cannot have football practice without eventually having scrimmage against another side and maybe your own teammates, but there's other people trying to kill you.

David Ball : [01:08:43](#) You got to do it in the most realistic way possible in theater before a show opens in a major theater or on Broadway, it will undergo preview after preview after preview after preview. The only difference between preview and final dress rehearsal is as an audience there. And you do it over and over and over again so that by the time you get to opening, you're flying, you've worked out the bugs, you're not that terrified anymore and you're ready to go. The first time in front of an audience is terrifying. If you wanted to find, pick your favorite actor, if you want to find them, I had that 20 minutes before opening night without a preview. Where do you find them? Go to the bathroom. They're puking in the toilet. That's where you find them. And that's not a joke. Uh, well the problem with that is when you're on a stage, you have a million things to concentrate on. You're being Hamlet. When you're a lawyer,

you've got your peers and the judge and the jury is watching you. It distracts your attention from where it needs to be. So you seem very nervous. You cannot be a leader of human beings when you're very nervous and the best lawyers are leaders of human beings. People teach. I know Spence teaches when you're very young and just starting out, it's fine to say two jurors, I'm really nervous. This is hard to do. I haven't done this before. This might do it the first couple and then never do it again. Because while it's cute and affection gathering, it's not going to inspire me to lead you forward and to lead to be led forward by you. Um, so I think as a good thing for people to know, maybe to fall back on, but we want people who seem, if you're nervous about giving your opening, I don't trust you about anything else.

David Ball :

[01:10:29](#)

I don't care how cute I think you are. Why would they trust you? You're not as safe Haven. And then we get into a whole other area which has been developing for the past few years. And it very difficult to get up to speed at just about is ,and this, this whole area of charisma. What is it about charisma that people who don't have much charisma can learn? So the first hard part is how do you isolate out what are the factors of charisma? And there's a bunch of those. And then how do we teach it to other people? Well, one of the most important things about charisma, whether it's with a lawyer or a movie star or a singer or a minister or an athlete, what is it? People feel safe when they're around you. Someone very carries charisma. Cause why our sub, our unconscious brain knows that it is safer when I'm around important people than when I'm not.

David Ball :

[01:11:20](#)

You don't ever think that. But we gravitate that way because back in the day in the tribe, when we were evolving, that was the safe place to be. So we took pleasure in being near the important people. So somebody with that kind of importance holds charisma. I want to be with them. I want them do agree with me. I want all that sort of thing. How do you do that? When you're a lawyer? How do you gain that charisma? And it's largely not going to go through it all today, now, but it's largely in what it is that you're doing and how you're doing it. That makes people feel safe by being in your circle, by being with you so that they feel better whenever you get up to talk, they want now to please you because on a totally unconscious level, they feel safer with you. That's why you can watch the guy who plays Hannibal Lecter playing this horrible character, but you'll watch him doing it and nobody else cause we feel safe around that actor. Even though we feel terrified around this character, he's simultaneously protecting us because it's that actor who's protecting us. That's one of the fundamentals of charisma. We

teach people now how to achieve some of that. Storytelling helps with charisma because storytelling creates a relationship. I don't tell stories unless I value you. Correct. Charismatic person values you. So you, we look at everything you know from Hitler who had great charisma from his people, learning a whole lot from Trump, who has great charisma from his people. Why does Biden have so much charisma from some people I have done with respect to some people and not with others? What are the differences there? Why did so many people love Streisand? Why did you Barbara Streisand, why did she, and we isolate those things out and we look at them for other, it didn't like any other kinds of science research. You create a hypothesis and you test it and you see if it repeats itself and then you try to make it fail, etc. You come to as really exciting conclusions. Why? Because a person with charisma almost by virtue of just talking to people, makes them want what he wants. That's ultimately what charisma does, whether it's religious or performance or in law charisma. And that's become a very powerful tool in that initial thing. How do I get them to want what I want them to want?

Michael Cowen : [01:13:32](#) It is so hard to do that if you're sitting there nervous trying to remember what to say next.

David Ball : [01:13:38](#) Well, it's also hard to do it because if you ask most people will charisma is they can't even answer it. I couldn't when I started doing this and I'm still working on it. It's not easy. There are no, there are a couple of places now where there's good sources for finding out a little bit about it, but it's a tricky one to isolate, but when you can break it down to its elements to at least look at what it's accomplishing and can I accomplish the same thing with my personality that Robert Redford could accomplish for a lot of people with his personality or that Elvis could do. I can't sing like Elvis and I don't look like Elvis are there that I could do that would put me on the same footing at least with that group of six or 12 people. I got a great tool.

Michael Cowen : [01:14:16](#) Is confidence part of the charisma?

David Ball : [01:14:18](#) I think it's very hard for me to feel safe with somebody who seems scared. That's really how I got into this topic with you just now. A charisma is very, very hard for a person who seemed Wally, what was that guy's name? The nervous while he on television years ago, whatever his name was, uh. Very hard to feel the charisma that person, uh, because he's, he's scared. How can I feel safe around a person who looks scared? That's one of the reasons that women need to do more to develop a rich voice, not allowed voice, not a deep voice with a rich voice.

Why? Because that's associated with strength. We don't think of that consciously that way. But many women have as rich a voice as any man, even though it's pitched in octave higher and those are much more persuasive. It's hard even to think of really good lawyers who don't have really great voices. So I send people off to voice coaches for a few lessons to help them develop their voices. Um, why? Because if you talk like that or if you do what Joshua tries to get you not to do, you know, that little California upswing at the end, uh, you want somebody who knows how to talk. And most people who are in that position know what naturally anyone can learn it. So that kind of stuff becomes very important. But if somebody who's nervous, if somebody is really nervous, it's better not to lie about it. It might be better to just fess up as better than just blundering, because blunder makes you even less of a charisma person. But it's better to do the rehearsals the night before so you're less nervous the next day so you don't have to put yourself in the position of admitting you're nervous.

Michael Cowen :

[01:16:01](#)

This has been awesome. If someone wants to learn more from you, what are some ways they can do it?

David Ball :

[01:16:10](#)

If they're criminal defense attorneys, they can do it for free with their offices by calling me and getting their offers online and I'll teach them how to do the criminal defense stuff we're doing now. If they have some money, I just as soon get their money. But, but I don't know, I'm not in that game for money. Especially public defenders in February, given the book away for free to public defenders for the work that Artemis and I do together, or each on our own separately. Uh, we do, sort of mainly what we do is consulting. We do a lot of teaching. I'm trying to travel less. So I do a lot of teaching now by video. Uh, which means I can teach almost anytime anybody wants me to teach cause I don't have to travel any place and then don't even need to charge much money, if anything for it. What are you do now? If somebody wants me to do a few hours of the CLE, I tell them to send \$500 to my food, local food bank here in Durham. But, my whole goal is to teach this stuff to the best of my ability. Uh, we rarely turn something down that we think worthy it needs to be doing because somebody doesn't cause the case, doesn't have the money to do it. Especially with criminal stuff, especially especially with capital cases, but even in a lot of civil cases where Artemis and I do a lot of work with the Brady center on gun control, gun violence or whatever the hell the name of that place. A wonderful group, wonderful people working with it, doing really hard work. How do you get a jury to unite on an issue against guns? Well, they do and we don't need to charge for that.

Michael Cowen : [01:17:39](#) So that's awesome, and in the show notes we'll have your website, and the phone number of the one wants to call. So please check out the show notes if you want to get a hold of David. If you are a plaintiff's lawyer, I highly encourage you to do that.

David Ball : [01:17:53](#) Then we do not work for insurance defense lawyers don't bother to call unless it's in connection with what has been a plaintiff's case. You know what I mean? We also, I would like to say this, we really encourage people because it helps us a lot. This is selfish. We really encourage people to contact us with short answer questions. Like if somebody has some questions about what I said today, send me an email. It is jurywatch@gmail.com one more time jurywatch@gmail.com put Artemis's thing up too on the on the show notes or whatever they are. We love to get these brief questions. If there's a time limit, if you need to know something by tomorrow morning, put in the subject line, need to know by tomorrow morning, we will do, we'll move heaven and earth to try to be able to do one or the other of us doing it because we learn a lot from those questions about what's needed out there. Uh, and the clock does not start running on short answer questions.

Michael Cowen : [01:18:50](#) Well, thank you so much David. I really enjoyed working with you today and I've really enjoyed talking to you on this podcast.

David Ball : [01:18:56](#) Thank you sir. Thank you for having me do it. And uh, thank you all for being patient enough to listen to it all.

Exit Audio : [01:19:13](#) [inaudible]

Break : [01:19:13](#) Thank you for joining us on trial lawyer nation. I hope you enjoyed our show. If you're listening to this episode on a mobile device, please click on ratings review and leave our show a five star rating and write a review. If you're listening to this episode from our website, please leave a five star rating on the episode page. We'd love to reach more listeners and doing this well more attorneys find this podcast. You can also visit our website at www.triallawyernation.com to opt in to our mailing list so you can stay updated on a new episodes. I promise we won't spam you and thanks to your feedback, we've improved our podcast website. There's now a resources tab that you can click that shows you all the books we've mentioned on our podcast. If you have a Facebook account, please send us a request to join our private group called trial lawyer nation insider circle. This exclusive group will allow you to hear about our guests before an episode airs, interact with the show and get a sneak peek at

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