

Intro: This is Michael Cowen, and welcome to Trial Lawyer Nation - You need to show people the worst possible harm that that negligence could have caused, because that's what the case is about - What I'm asking you to do is to focus on what you can control, because that's where the power lies - The Dalai Lama has a saying that, "In the face of anger, justice evaporates." - If you can't focus group it, you have to be very, very critical of your process - The facts aren't good, you can't create a miracle - We can agree to disagree and be zealous advocates for our clients - Quit worrying about looking perfect, you're not going to. That'll come in time, but you can still be an effective litigator - 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: Today on Trial Lawyer Nation I'm back in the studio with my partner Malorie Peacock.

Malorie Peacock: Hey there.

Michael Cowen: On our last episode we were talking about trial prep, because we were getting ready for a trial, and now we've tried the case, and we wanted to share a little bit with you about what we learned in this trial, and kind of the difference between the planning and then the reality once you get into the courtroom.

Malorie Peacock: Yeah, I think that's true with every trial, what you plan is not always what ends up happening in the courtroom, but I think a lot of the things that we did plan for happened perfectly. So, I think it'll be interesting for the viewers to learn what happened.

Michael Cowen: Yes, and spoiler alert, I'm just going to go ahead and start at the end. We did end up winning the trial, I'm happy to say. It would be really embarrassing to have done a whole episode and share it with the world about how we were prepping for trial and then get a goose egg. But it will happen sooner or later, but luckily it didn't happen this time. So, the jury did find the defendant negligent and awarded \$3,420,000 in damages. Not as much as what I wanted, but it's still a lot more than the client could've settled for, so we're happy with it. I think the trial went fairly well, but a little bit of background on the case, too. Malorie, you want to give some of that?

Malorie Peacock: Sure. So, this was a construction site accident case, and so it's a little different than what we usually do. We do a lot of trucking, but we also do workplace injury here. In this case, our client was working on a utility pipeline construction project where they had to dig trenches, install new utility lines. The company that he was working for was digging out the trenches, OSHA has a lot of rules and regulations about what you need to do to protect workers inside of trenches, this company does none of them, sends our client into the trench. Predictably, the trench collapses on top of him, and the force of the dirt of the trench pushes him into the pipe that he was working on and kills him.

Michael Cowen: And OSHA did find that the company did not provide the required trench protection, although we had all kinds of evidentiary fights about how much of that we could not get into evidence, and what we could say about that, because the jury has to make their own independent decision, they're not bound by the OSHA, and the OSHA investigation settled also with not a final trial, so that was interesting. For those of you outside of Texas, in Texas we have optional workers' comp, and this company did not have workers' compensation in place at the time. They claimed that they should have, and they actually have another lawsuit against an insurance agent that's going to happen later, but they did not have workers' comp coverage, so we actually directly sued the employer, which is different than most of these cases where you're going after a general contractor, or a third party.

Michael Cowen: So, let's talk about some of the challenges. Let's just start, first of all, with some of the logistical challenges, because we were set for trial on a Tuesday, and we were supposed to be the only case set for trial that Tuesday. It was the Tuesday of Martin Luther King day week, and we were guaranteed we were going to go, we had all our experts ready, we had our hotels reserved, we had a U-Haul reserved to haul down all of our trial exhibits and posters and stuff. But what happens?

Malorie Peacock: Yeah, so we got a call from the court saying that it just wasn't going to happen. I mean, it just there was issues with whether or not we could get a jury panel, there were issues with the court schedule, there were just all kinds of issues. So, they decided to bump us to the next week, which kind of set us into panic mode a little bit, because we had planned everything for the week we were supposed to go, and they just moved us up one week, so we had almost no time to recoup and gather everybody again, make sure the experts were available, make sure we were available, all that kind of stuff.

Michael Cowen: In fact, we were driving into town, we had ... it's about a four hour drive from San Antonio where we live to Edinburg, Texas where the trial was going to be, and we were almost to town to go meet with our clients for additional trial prep when we got the call that it was going to be yet another week.

Malorie Peacock: Right. Luckily, while it was a big kind of deflation for us, we had all our energy going, we were worked up, we were ready for the trial. Luckily, they only pushed it a week, so we didn't have to redo a lot of work or anything like that, and our expert was fortunately available. So, it all ended up working out just fine to have it the next week. But, you just have to kind of roll with the punches.

Michael Cowen: Yeah, I think that's the lesson learned, I think, from that is you just have things happen that are totally outside your control. Getting mad is just wasting energy, so you just have to accept life for what it is. If the expert wasn't available we either would've done a trial deposition, because defense counsel couldn't claim unavailability, they were supposed to be there ready for trial, or we would've had to just beg for another date, which we didn't want to do. So, that's, I guess, the first lesson there.

Malorie Peacock: Right, and I think with the case itself there were a lot of challenges. It sounds like a cut and dry case, someone gets sent into a trench with no trench protection, the trench collapses and kills them, that sounds like an easy win. What were some of the challenges that we faced in the case itself?

Michael Cowen: Well, I think one of the biggest challenges we had is we had to try a case with no eye witnesses. What I mean by that is, of course, our client ... our decedent is dead, the foreman actually for the company had died of unrelated causes in the interim before he could be deposed, there were two employees that we identified in our witness ... our, no sorry, investigator went and spoke to them and it sounded like they were going to say great things, we subpoenaed them for depo, they refused to show up. So, we're left with the choice we can have them arrested, but I doubt that their testimony will remain favorable.

Michael Cowen: So, what we had is we had really good employee statements that were given to the police department when they investigated, and then there were statements given to OSHA. Although OSHA doesn't give you the individual witness statements, because they want to protect the anonymity of what employee said what. We can have the summary, and then OSHA did at least summarize what the foreman and what the owner of the company told OSHA. But it did present a challenge to try the case on witness statements. Luckily, they're all admissible statements third party opponent, but I think one of the consequences of that is there was a fight as to whether a certain document the defense had, they claimed it was something that they created six months after the incident where they claimed that our guy was actually instructed to work in a shallow part of the trench, and he chose to jump into the deep part, and it was his sole choice of breaking instructions and not following his training that caused the trench collapse and his death, which was pure hearsay, I thought.

Malorie Peacock: I thought so, too.

Michael Cowen: But I think ... when they were claiming it as a business record, I think that because we got in all our statements I think the judge wanted to even it out and give them a fair fight. I think that that ended up getting out because of that.

Malorie Peacock: Yeah, so that was a challenge for liability that there were no eye witnesses that could come and testify, but we also had some challenges, I think, in the damages area.

Michael Cowen: We did, but I want to go back liability more, one thing I found, and you're looking at the case, and we read the witness statements and they seem solid, because we read the OSHA conclusions, they go with the OSHA conclusions, we're fine. When you're actually trying the case they're usually written by the police officer, or they're written by somebody ... In this case they wrote them in Spanish they had translated. They're not really super detailed-

Malorie Peacock: Yes.

Michael Cowen: ... and I think they all left enough ambiguity. Like they said, "Oh, we were digging in the trench." Well, they didn't say specifically what part of the trench they were digging in, and we could tell from OSHA's conclusions, at least OSHA after talking to them concluded that they were in the deep part of the trench, but we didn't have ... they didn't put, "We were in the part of the trench that was nine feet deep.", because nobody had thought about these arguments at the time, and so we couldn't ask the kind of follow-up questions you would ask with a witness, and it made it more difficult.

Malorie Peacock: Right, and for a little background for people listening that don't know anything about trenches, which I did not know until we worked out this case-

Michael Cowen: Me neither.

Malorie Peacock: ... there are some rules that OSHA has about what kind of protection you need in trenches that are more than five feet deep, and trenches that are less than five feet deep, and the problem with this particular trench is that it was angled at a slope. So, there was a portion of the trench that was nine feet deep, and there was a portion of the trench that was like four feet deep, and there was a question about where were people working, where were they instructed to work, and it makes a difference for our case for what kind of trench protection would actually be required.

Michael Cowen: And whether they were negligent or not.

Malorie Peacock: Right, and whether they were negligent in what they did provide. So, it actually that was a key component of the case that it was difficult for us to have follow-up questions about, just because of that.

Michael Cowen: Yeah. It worked out, but it was harder than I thought it was going to be when we were first planning the trial, and it wasn't really until the week before when we're getting ready to try the case that I really realized like, "I really wish I had someone to ask follow-up questions."

Malorie Peacock: Yeah, I think also the power of the testimony, or the statements even, or the evidence, is lost when you don't have a live witness. So, we had to get all of these statements in through our expert witness. So, somehow we had to present them to the jury in a way that was useful, and so that's the solution that we came up with is that we would present them through our expert. But because there were not follow-up question a lot of it was lost and it gave fodder for cross-examination, because there aren't details in there, so the cross-examination is, "Well, what about these details?", and the expert would have to say, "Well, I don't know, this is what I have.", you know.

Michael Cowen: Yeah.

Malorie Peacock: So, they lost a lot of power that we would've otherwise had with a live witness.

Michael Cowen: We were also able to use them when we cross-examined the owner of the company, because he wasn't there that day, but he came in and still gave their story saying, "Well, based on our investigation, this is what happened, and this is why it was all right." So, we were able to put them up on a screen, and use them to cross-examine. But it's still not as powerful as having a real witness there.

Malorie Peacock: Right, right, and there's just questions unanswered. I mean, we had questions that were unanswered about the case, so I would imagine the jury did too, which makes all of your evidence less powerful, and it just gives more for the jury to talk about back in the jury room, and wonder about, and question about, and ultimately I think it brings your damage award down a little bit. If the live witnesses had been there maybe it would've been higher because they would've been sure of what we were saying.

Michael Cowen: Yeah, I think that's very possible, and it also meant that at first on this case I thought it was such a slam dunk I didn't really have to work on preponderance as the standard, and then we used the Keith Mitnick's, "Doubt is not an out.", talk about preponderance, but I really did have to talk about the burden of truth, because they were going to be able to raise some doubts just because of the fact that the statements weren't written to answer all of our questions, the statements were just what a witness told the police that day. So, we needed that.

Malorie Peacock: Right.

Michael Cowen: And thank you, Mr. Mitnick, I've used that many times and it works.

Malorie Peacock: It works. It's so powerful because it's always the defense says, "What about this? What about that?", and throw anything at the wall that sticks. I mean, in every case I've ever tried that's been part of the defense's strategy, but we don't have to prove things beyond a reasonable doubt. So, we just have to keep reminding the jury of that, and the best thing is doubt is not an ... I mean, it's just so powerful and it's so memorable for jurors.

Michael Cowen: Reminded me of Johnny Cochran. So, I want to talk about we had some challenges on damages as well.

Malorie Peacock: Yeah, yeah, so there were ... it was a huge combination of factors in this case that gave us challenges for damages. The first was that our client was working under someone else's name with a social security number that was not his because he wasn't documented.

Michael Cowen: Usually, because I know if we don't explain this we're going to get some comments about, "That should never come in. Why did you let that in?"

Malorie Peacock: Right.

Michael Cowen: And we would normally, and we had briefed it up exclude this evidence, because the law in Texas and most states actually is that evidence of legal status is not admissible, but in this case, because we only had witness statements and half the witness statements called him by one name, and half called him by another, and then they explained in the police report that there was a different name, we could not find a way to prove our case without it.

Malorie Peacock: Right, and so it goes back to only being able to try it through the witness statements instead of the actually witnesses, we had to make a choice, do we get these statements in and does the jury make sense of them, I mean, in some kind of way, or do we keep out the status? I mean, our other issue was that we were afraid that it would come out some other way, and if we didn't address it, the elephant in the room, then it makes it a bigger deal.

Michael Cowen: Yeah, there is a second argument that the defense had for admitting our client's immigration status, and it's one that actually really pisses me off, and I like the defense lawyers, they're friends of mine, but they did a good job defending their client. They made whatever arguments they could to win this argument just really, really got under my skin, because I really love our client and believe that she's a legitimate and sincere person. But they'd only been married for nine days-

Malorie Peacock: At the time that he died.

Michael Cowen: ... at the time that he died. She thought they were common law married before that, but they had their wedding ceremony nine days before he died. They didn't have a lot of pictures, they just weren't ... It's an old case. We took over this case from another lawyer, long story, but it was 10 years between the time of the death and the time that we got to try the case. We'd had been on it for two years priming it for trial the whole time, we finally got to go two years later. But back at the time, they didn't own phones that had cameras, and so there aren't pictures a lot, there just are very, very few, and they made the argument that the jury could consider whether this was a real marriage or this was a sham marriage to get him papers.

Michael Cowen: Another thing is our lady was a bigger lady, and she was a couple years older than him, and I think they were kind of implying, hoping the jury would think, "Well, why would a guy like a lady that's obese and older than him?", that this had to all just be a sham to get papers. Unfortunately, we were convinced that there was enough of a risk that the judge was going to let in the immigration status or exclude our when statements, which would've been just as bad, because then we would've lost on liability, that if we didn't address in voir dire, that it would be a problem.

Malorie Peacock: Yeah, and I think there's a lot of attorneys that forget, and I've heard a lot of attorneys say this, a limiting motion is not a motion to exclude it for the duration of the trial, it's a motion to approach the bench before you talk about it, that someone has to open a door, there has to be a reason later on in the

trial, and the problem is that that means that the judge can always change their mind based on the way that the trial goes. Whenever you have any kind of limiting motion, that's always the risk. So, you have to weigh that with the odds of it coming in, because what you don't want to do is not address it, and not talk about it, and then it comes in during the defense's case-in-chief and there's nothing you can do about it.

Michael Cowen: And we did find out in jury selection that at least there are some jurors that absolutely came forth and said, "Wait a minute, this is a case where someone is undocumented working under someone else's name, and they're suing after they got killed, or counter-suing to fake a kill.", and like, "I can't do that. That just offends me so much." That's what some of the jurors said, not me.

Malorie Peacock: Right, right.

Michael Cowen: That they just could not even consider finding anyone negligent or allowing any damages. So, if we hadn't voir dired on it that could've been very bad.

Malorie Peacock: Right, right, we could've got some people on the jury that would've, I mean, just totally tanked the case.

Michael Cowen: But so that was a challenge, that was a real challenge. We also had no real ... Our guy was a very low wage earner, so we didn't want to even try to put in economic damages. We also didn't have tax returns, any tax returns that would've been filed would've been under someone else's name, we wouldn't have a right to go get them.

Malorie Peacock: Right, we just didn't really have a good way to prove what the lost earnings were-

Michael Cowen: And we didn't want to, because it would've anchored it to a low number.

Malorie Peacock: Right, right. It wouldn't have been that much.

Michael Cowen: In fact, the defense actually brought up how much he made and said, "If you find negligence, then \$9 an hour, which is what he made, would be a good measure for her loss."

Malorie Peacock: Right, right, and it was a low number. I mean, I think we calculated it out, and it would've been I think like \$600,000 or something like that-

Michael Cowen: Yeah.

Malorie Peacock: ... over the course of his lifetime, so that was not a good anchor for us.

Michael Cowen: Yeah.

Malorie Peacock: I guess the jury didn't use that-

Michael Cowen: Right.

Malorie Peacock: ... method to calculate. It's always hard to know what method they used, but-

Michael Cowen: Yeah. They did ask for a calculator, so they used something.

Malorie Peacock: Yeah, they did ask for a calculator. So, that's something that was interesting, we got ... during the jury deliberations, and I actually don't know if this happens in every state or how it works, but in Texas the jurors will write a question to the judge, and the judge will present the question to the lawyers, and then the judge decides how to answer it, with input from the lawyers if the judge asks for it. Most of the time the answer to most questions is, "You have all the information you need, please go back and keep deliberating.", but we got some interesting questions in this case, or some interesting notes.

Michael Cowen: Yeah.

Malorie Peacock: So, the first note, I thought, it was maybe 30 minutes after they started deliberating, and we got a note already, which always your heart skips a beat a little bit, you're like, "Oh, my gosh, do they have a verdict already? What's going ..." A fast verdict is usually not a good verdict for a plaintiff. Anyway, so we got the note and it was that the court reporter forgot to give the exhibits to the jury. They were asking for the exhibits. So, that one was nothing.

Michael Cowen: Yep.

Malorie Peacock: The second note that we got was about common law marriage. So, this was an interesting challenge for everybody, how do you answer this?

Michael Cowen: Yeah, because it was not part of the case, they were legally married, there was no question about it, but in deposition our client had contended that she was common law married from the day that he moved in with her, which is about a year and two months before he was killed. We didn't even bring it up, I don't think, on direct, because it wasn't relevant. The fact that they loved each other, they lived together for a year and two months, they had gotten married, they were married, we're talking about the lost future. But the defense lawyer brought it up-

Malorie Peacock: During the cross-examination.

Michael Cowen: During the cross-examination to try to attack her credibility, and then also brought up stuff like, "Well, you were receiving ..." which normally it wouldn't come in, but we had realized the judge, who I really liked by the end of the trial, I don't want to sound like I'm criticizing him, but we had a judge whose inclination is just to let it all come in and let the jury sort it out.

Malorie Peacock: Right, and a lot of judges, I think, are like that, because it's less likely to be overturned if the jury hears everything, versus if there's something left out that was critical. I don't know, maybe both ways-

Michael Cowen: Well, I think some of the stuff we objected enough we may have created a reverse where on our ... if we wanted to appeal it, but I'm not going to appeal a multi million dollar verdict case, but one of the things, so here's a thing he brought out, "Well, you were on food stamps, did you tell them when you got common law married that you had another wayer and you weren't eligible for food stamps anymore?", and stuff like that, and then it let him get into some stuff that wasn't as pretty. It really kind of gummed up the works, and what do you do at that point?

Malorie Peacock: Yeah. Right, and so then the jury came back with a question about what is legally required to be common law married, or something to that effect.

Michael Cowen: And they thought there was a time period-

Malorie Peacock: Right, right, and that's-

Michael Cowen: ... which is not ... in Texas law there is no time period.

Malorie Peacock: Yeah, it's a misconception that I think almost everybody has. I always hear people tell me, "You have to be married for six months." I don't know where people get this from, but that's what everybody thinks.

Michael Cowen: Right, and I wanted to instruct the jury that if they're asking the question, why don't we just tell them the truth? You'd have to agree to be married, live together as man and wife, and hold yourself out to other people as man and wife, there's no time limit, and the judge said, "No.", he just ... I think we finally got a note saying, "That's not an issue for you to decide in the case.", or something.

Malorie Peacock: Right, right, because ultimately we were debating whether it would be ... if we sent the regular note back, which is, "You have all the information you need to decide this case, please decide it.", I think we were saying it would improperly mislead the jury that they need to make a decision about common law marriage in this case, which they did not, because they were legally married.

Michael Cowen: And we were aware that ... and of course, we can't talk to them, they're in that other room, that maybe they were confused thinking that was something we had to prove in order to recover on the case, which is that we got a marriage certificate, they were legally married.

Malorie Peacock: Right, right.

Michael Cowen: In fact, at that point I'm just like, "Maybe we should introduce the marriage certificate." I thought since there wasn't controversy we didn't need to put the-

Malorie Peacock: Right.

Michael Cowen: ... certificate in evidence. I thought I had addressed it in my closing, too, I don't remember, but-

Malorie Peacock: We had addressed it, it was something ... and this is the case if you've ever watched a focus group deliberate, they go off on these weird tangents, and this one person just can't get something out of their head, and so then they're all just talking about it for hours sometimes about some non-issue in the case, and then they all move on from it and never talk about it again, and proceed accordingly.

Michael Cowen: And they came around, and I heard this secondhand, because I've not spoken the jurors, but I had lunch with the defense lawyer and he spoke to the jurors, and he said that evidently there were a couple that were against us, and what brought them around was the foreman said, "Look, we all took an oath. We have to follow these instructions, we have to base it on the evidence in the case.", and that brought them around to doing the right thing, but there were three jurors that just ... who didn't particularly like our lady and didn't want to give her money. I think part of it is just the prejudicial stuff that came in kind of spilled over and just falsely made her appear to be in their eyes not worthy.

Michael Cowen: That's a problem when you're representing people, especially in this political environment, you're representing people that aren't educated, you're representing people that ... She actually was legally a U.S. citizen, but you're dealing with issues with undocumented status. I mean, it brings out some ugliness in some people that we just have to know is there, and it's a bit of a wild card when we try cases, which is why we normally would keep it out, but in this case-

Malorie Peacock: There was just-

Michael Cowen: ... there was no way it was going to stay out.

Malorie Peacock: There was no way.

Michael Cowen: For those of you listening said, "Yes, I would've kept it out. I would've found a way.", the judge was not going to let us redact and type in a different name in reports-

Malorie Peacock: Right, that-

Michael Cowen: We thought about it, we talked about it, but it wasn't going to happen. So, it's better to have a jury maybe hearing the bad stuff and not give you as much money than to not hear the evidence of liability and give you no money.

Malorie Peacock: Right, right, and it was a really tough decision that we really, really went back and forth on, and like Michael said, we briefed it and made it kind of game time decision of what we were going to do the night before. We had all the briefing ready to go, I mean, we know what the law is, it just ... we decided on a cost benefit analysis that this was the best way to do it, and ultimately didn't work out, I mean,-

Michael Cowen: Yes, but when you're in trial you just have to go ... sometimes you just have to go with your gut, make the best decision you can make, and try the case, and then I wish we had perfect answers so then our clients only get one shot, but that's what you can do.

Malorie Peacock: Yeah. Well, and sometimes what's legally allowed, or what you could do is not necessarily the best strategy for the case. So, just because you can do something doesn't mean you necessarily should in every case, and you just ... that's what makes this an art and not a science.

Michael Cowen: Exactly.

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Michael Cowen: So, we had the pretrial, on I guess the Monday we just did a pretrial in the afternoon, and did jury selection the following Tuesday. So, we had a juror panel that was told to come on Monday, sat around all day Monday, and then went in Tuesday morning finally to actually get to ... and I don't know if some of them would've been on a panel the day before and not selected or not.

Malorie Peacock: Yeah.

Michael Cowen: But they were already ... Sari de la Motte talks about it from hostages she wrote ... you want to talk about hostages, the second day of having wasted your whole first day. A lot of people were not thrilled to be there.

Malorie Peacock: Yep, it was a low energy group, I will say. They not thrilled to be there, and frankly, and Sari is right about this in her book that they don't understand what's going on or what's even coming next. They don't know if they're going to have to keep doing this over and over and over for days. No one tells them any of this information. Lawyers know, but they literally have no ... they don't even know when lunch is, like she says. So, it's stressful to be in a situation where you really, really don't know what's going on, and I think that you handled this really well in voir dire, you gave them the basics right up front like, "This is what we're doing. This is our plan. These are our goals. Hopefully we can get you out of here quickly."

Michael Cowen: And I wasn't ... I can't really take credit for it, because what I did is I took what I've learned ... I decided to try Sari de la Motte voir dire. I've tried different methods. I like a more inclusive voir dire, whether I'm right or wrong scientifically, I can't tell you, but it's what I've been doing lately, and it seems to work more often than not. I can't tell you what the result would've been had we done it differently, but I liked that the ... So, yeah, I followed her method, which is first of all you tell them what we're doing and why we're here, and you create that designed alliance like I want to try to give you a choice, and then I think I felt pretty good about doing her thing where we bring up, "This is a case about something that happened in the workplace. Anyone here have safety rules in the workplace?" And the weird thing we did is that some people had jobs, and the jobs to this project, even like teachers where OSHA rules applied, and people liked them.

Malorie Peacock: Yeah, well and there was a kid on our ... I say kid, because I think he was maybe 18 or 19, so it's probably his very first ability to be a juror-

Michael Cowen: Yeah.

Malorie Peacock: ... he gets called, right? He actually ended up on our jury, and he knew about OSHA rules from his theater program in high school. Apparently they had to follow some kind of OSHA rules when they were building sets and stuff like that. So, I think was just amazing how almost everybody was familiar with them.

Michael Cowen: Right, and I felt really, really good about it, one things Sari ... because I talk to Sari, I work with Sari as a coach, and so I was talking to her about my voir dire, and one thing she said it's like, "Just don't start off with ..." like I would've done before I worked with Sari is like one of the things I'm afraid of in this case is my client's undocumented, because you'll get a lot of pushback. But we started talking about, "This case involves a death. What do you think, is it okay to sue for a death?"

Michael Cowen: Well, you do it for a devil's advocate when no one's going to bring it back. I can't remember, I think it was under the workplace safety rules where I brought out, I didn't want to do it under money part. What if the person who got killed is undocumented, does that make any difference? We had two boarder patrol agents on our panel, which is you're going just by demographics would scare

you, and they were both super strong on it doesn't matter whether you're documented or not, you still have the same right to the workplace safety-

Malorie Peacock: Right.

Michael Cowen: ... and we got to do a little talking with them about how they get criticized a lot, but actually the heroic efforts where they're like going out and ... now, they're arresting them afterwards, but they are going out and rescuing people and putting their own lives in danger sometimes that when people get stuck in bad places when they're trying to cross, either in the water, or out in the desert somewhere or something. I also think ... neither one of them made it on the panel, but I actually think either one of them would've been fine for us on the issue, shockingly enough.

Malorie Peacock: Yeah, I thought so too. The things that they said, and their thoughts about the value of human life were really touching. Both of them had touching stories about it. They didn't end up on the jury, but-

Michael Cowen: Yeah. One thing that did disappoint me is at the end I asked, "Well, who would like to be on the jury?", and less than half the people raised their hand. I was hoping for more than that, and I think what happened is I'm learning a new skillset from Sari, and so into getting them ... I was already good at getting people talking, but the going back and forth between being authoritative, and then being questioned, and learning how to do that, I think I did a good job with that. What I did not do a good job at all was creating a group. I didn't get them talking to each other, I just forgot. I was so wrapped up in, I guess, the new things I was learning, I forgot to get them to talk to each other and create a group, but I think that is partly why I didn't have so many want to be there, because they didn't feel like they were part of a group yet.

Malorie Peacock: So, I had the exact opposite reaction that you did, and I told you this-

Michael Cowen: Yes, you-

Malorie Peacock: ... at the time of jury selection, I was actually shocked that so many people wanted to be on the jury. In my mind, people don't want to be on a jury, so I was shocked anybody raised their hand, and it was a significant number of people that said that they actually wanted to be on the jury after jury selection, because they were interested, and they thought it was something they could be a ... because you said, "I only want people that can be fair.", and these people raised their hand and said, "I'm interested, and I think I would be a good juror for this case.", which I was just shocked that so many people raised their hand.

Michael Cowen: Yeah. We did have some good people on it, too, and I liked the jury we ended up with, and even some people that didn't want to be there ... we had two poor alternates, they sat there through the whole trial, and then they got let go when deliberations started, and we got to talk to them. They were very happy to have

been part of the process, they wanted to know what happened. One of them actually friended me on LinkedIn afterwards, and wanted ... like I said, it was really ... So, by the time they went through the process they were glad they did, but at the beginning ... I have such high standards for myself.

Michael Cowen: It's like, "Yeah, we got a multimillion dollar award, but it wasn't eight figures. Yeah, a lot of the jurors wanted to be on there, but they didn't all just fall in love with me, and want to be a part of my group, and stuff." It's just you're always striving for perfection. It's not that I'm going to beat myself up over it, but you always want to do better. So, I know that one of the things I'm going to work on next time with Sari, and next time for my trial when we're doing our practice stuff is the group formation part of voir dire, getting people to talk to each other more, because I think that's kind of my next step on my path to mastery.

Malorie Peacock: Yeah, yeah, I mean, I think that whenever you're learning a new skill you have to put it together piece by piece, you can't just jump in be perfect immediately at it. I thought you did a great job, and like I said, I was shocked by how many people actually wanted to be on ... I had the opposite reaction, so I was excited about that, I mean, just generally. So, what was interesting about voir dire is that when you do an inclusive voir dire, I've noticed this because I've seen you do it a few times, I've done it before, when you do an inclusive voir dire, sometimes it can force the hand of the defense attorney, because many attorneys do exclusionary voir dire. When you don't do an exclusionary voir dire the defense attorney has a lot more questions that they need to get out than they normally would. Usually they can be the buddy that comes in and is nice, or whatever, but when you do an inclusive voir dire it kind of puts some of the defense attorneys kind of outside of their wheelhouse a little bit, and kind of forces them to be reactive instead of proactive, I guess.

Michael Cowen: The other thing is when you really get to listening to people and communicating to people and letting them talk, and respecting them, a lot of defense lawyers don't want to hear it and they shut them down, so a lot of times you get that contrast. This particular lawyer on their side actually was a very gifted people person, and the actually does plaintiff's work as well, and he did not have that problem. But we've often had that benefit when we've done the inclusive voir dire, but with this particular lawyer ... I mean, he was good. I mean, I-

Malorie Peacock: I think he did a good job. He had people talking-

Michael Cowen: Yeah, definitely.

Malorie Peacock: ... and we learned you can't stop learning from the venire panel as soon as the plaintiff's side sits down, you can learn so much from the defense's voir dire too about who you want, and why you want them, and getting strikes out of those, too. I think some of our cause strikes actually came out of the defense's-

Michael Cowen: Yeah, absolutely.

Malorie Peacock: ... questions, rather than ours. So, we didn't strike a lot of people for cause in this case, but that wasn't our goal.

Michael Cowen: Right.

Malorie Peacock: I don't know if that's right or wrong, but that's sort of the way it shook out in the end. I think we only struck two or three people for cause maybe.

Michael Cowen: Yeah, I think there's some more maybe further up that weren't going to be reached-

Malorie Peacock: Right, that we didn't end up talk about, we didn't need to talk about them, because we just weren't going to get that far. But that wasn't our goal.

Michael Cowen: Yeah, it's a little scary, but like I said, the couple times we've done it it's worked out, and people have self-identified when we're trying to find out who's on our team that they're not on our team. Again, I think we discussed this before, I'm not sure the times when I've gotten a bunch off people for cause, I'm really getting people that don't like our case, or if they're just, "Okay, I don't want to be here, I'm learning the game. I'm going to say, 'Answer the question this way.'"

Michael Cowen: But so many judges now just come and ... I think this judge was all right, I don't think he would've, but so many of them just, "Will you follow my instructions? Will you follow the law? Are you telling me you're going to break the law and disregard what I tell you?" The standard from some judges it's so hard to get a cause strike. I know people would, again, the disparate, "Well, no, will you start doing it?" Well, yes, I have done it right, and if the judge follows the law they sent them off for cause, but I know judges they just feel it's their job to rehabilitate every juror, and they raise the standard higher they should've been. Yes, I could go appeal it and maybe win, but I'd rather just win.

Malorie Peacock: We had our pretrial Monday, we had voir dire in the morning on Tuesday, and then there was a big question about whether we should do opening statement, whether we should start evidence, what we should do next, and why was there a big conversation about that, I guess?

Michael Cowen: I forgot, but-

Malorie Peacock: So, there was a timing issue, but also I think all of us felt like we didn't want to do opening statements, and then not presented the evidence. I think if the defense agreed to, and the big thing about that is your opening statement is a preview of evidence, and if you don't start with the evidence right away people aren't going to remember what you said.

Michael Cowen: Yeah.

Malorie Peacock: I mean, especially after a really long day, people are not primed to listen to you anymore, and they're already mad that they ended up on the jury. Some of them. Some of them wanted to be there, so you know.

Michael Cowen: Yeah. The opening I didn't feel any hostility in the opening, I felt like I had good eye contact, good body language, talking to the jurors. I don't know if you noticed anything different?

Malorie Peacock: No, I thought it went well. One of the things that we decided for the opening is we had made a bunch of visuals for this trial, I think it was about 100 big boards that we made for the trial, and some of them were supposed to be for opening, and we decided that we didn't want to use any visuals in opening. Why did we decide that?

Michael Cowen: Yeah, in fact, at first we're excited to use the visuals, because we worked a lot with Rodney Jew, and these other individuals, and he showed us this method. One, honestly, it was a logistics things that the Rodney Jew method, to do it properly calls for four tripods that you set up, because boards made up the same time, they play off each other, and this courtroom was not one where we could set up ... it just wasn't enough room.

Malorie Peacock: Right, it was a small courtroom.

Michael Cowen: It was a tight space, but the other is I was working with Sari de la Motte again preparing my opening, and I already decided I didn't want to use like 50 boards, but she says, "If you tell the jury it's a simple case, and then you use 50 boards to prove it, then your actions and your words aren't ... 50 boards is not simple." So, we decided not to, and she convinced me that me being able to draw things on a flip chart showed more authority, and that I do well in teacher mode, and I'm credible when I'm in teacher mode, and that that is something that would be better than using all those boards, at that point ... not that we didn't use a lot of them later-

Malorie Peacock: We did.

Michael Cowen: ... and because nothing that's spectacular on the opening, and I'm not unhappy about the opening, but like I said, I did a combination Sari/David Ball with a slight modification on the first few lines, because neither one felt right. Sari agreed with us these are guidelines, not set in stone rules. But I felt good with the opening, then our first witness was our expert, and then we did use a bunch of boards.

Malorie Peacock: Right.

Michael Cowen: Why?

Malorie Peacock: So, like the jurors, I knew nothing about trenching operations, or anything like that, before we started working on this case, and I'm sure all the lawyers know out there, and have experienced this, when you have a case you have to learn basically everything about what you're going to present to the jury. I mean, you need to be a master of the information. But then once you're a master of the information, you've mastered it so well that sometimes it's hard to put it back into regular terms and regular words for people who've never heard this information before to understand.

Malorie Peacock: So, the purpose of the boards is to make your expert speak English, and slow down, and give authority to everything that they say. A lot of experts want to say, "Well, based on my training education experience this is why this is the way they should do it, or this is why this is negligence.", or whatever you're trying to get out of them, but jurors don't just believe an expert because that they're an expert, I mean-

Michael Cowen: On the contrary, I think jurors have trouble with believing people who are paid money to talk.

Malorie Peacock: Yeah.

Michael Cowen: And as they should, and so one thing is everything our expert said had authority behind it, and we actually ... we learned this from Rodney Jew and Amy Gallaher Hall that on the lower right hand corner, and so they ... we point it out, and they start seeing it, we'd put where it came from. So, we'd have a picture of the publication or document that it comes from, we have the board that we wanted, our spin on it, and then we'd have where it came from for every little bitty piece of information, and it forces the experts to do piece by piece so the jury has time to do it. If they're wandering off from listening to him they can read it themselves, but it also shows them that, "Hey, we're not just saying this. This is a legitimate authority.", which the other side didn't have.

Malorie Peacock: Right, and so we did it for all the regulations that we wanted to talk about, because there's a lot of regulations in trenching operations. Regulations, they read weird. I mean, they're weird, they're hard to understand, and especially if you don't know anything about trenches when you read them it just sort of goes over your head. So, really breaking them down, and giving the jury space to read them themselves, hear the expert explain what they are, go back and read it ... I mean, it took forever. I mean, it took a long time to get through some really basic information, but having that basic foundation of knowledge I think really helped us build our case in the way that we wanted.

Michael Cowen: Yeah, and I think the first we had to talk about it, What is OSHA? Why do we have OSHA there? Because people were getting people, you have to protect people, and then in this vote we have rules, and these are mandatory rules, they have to be followed, they're not options, and bad things happen, and people are injured or killed when they don't follow the rules. Then we had to go into what

trenching was and why it was dangerous, and then you got to have an authority for that, and then I don't want to have just this big long regulation.

Michael Cowen: So, and we didn't make this up, we got it from an OSHA poster, but we said, "You have to do the three S's, you have to do what's call it sloping, which is where you have a general slope instead of a straight up and down wall of the trench. Shielding, which is using the trench box. Shoring, which is having an engineer come out and design the system to keep the trench from collapsing." But you have to do one of those three, and those are the only three things you can do. So, if you don't follow the three S's you endanger the lives of your ... actually, what we came up with, you're gambling with the lives of your employees if you don't use the all three S's. If you do, then you're protecting them from being killed by cave-ins. I think that simplifying it made it so much easier, and you can remember the three S's real easy.

Malorie Peacock: I will say that for people listening, this strategy isn't something that you can come up with the night before and it will work, we actually worked on this for ... I've been working on it for over a year, the visual aspect of it. We worked for days with our expert to come up with a plan for what order we're presenting things in, so that it made sense, and we're building the blocks, we're building the tower of evidence, but how the expert should present it, how where to stand, where to point, how to talk about it. All of those things have to be practiced, and it's not something that comes naturally, especially to expert witnesses who aren't used to doing testimony that way.

Michael Cowen: And he wasn't comfortable with it, and I love him, but he's a soft-spoken, not particularly dynamic speaker. Very credible person, I think-

Malorie Peacock: Yes.

Michael Cowen: ... and very knowledge, but I think, this allowed him to be off the witness stand, be more teachery, and I don't think he would've presented as well had we not had all these visuals. But yeah, it was a lot of ... and even after we'd printed them we found things that we needed to change when we went through them, and ... Another thing we found is that like, we had 100, and you think I want to put this one little point in this little ... and then you find that some of your posters are repetitive.

Malorie Peacock: Right.

Michael Cowen: So, some of them we had already planned not using, and some of them I made a game decision, because I could tell that the jury already got it, and if I had used that next poster that I was going to start losing them, and just by just watching body language, eye contact with people as to whether or not they're getting it, I skipped some posters once we got in there.

Malorie Peacock: Yeah. Yeah, so that's what's the cool thing about the posters is ... The problem with a PowerPoint is that it's harder to make those little decisions, like you're skipping past stuff, and then you're lost, and you can't ... whereas the posters you just look at it and you say, "I'm not ready for this one, go to the next one.", or whatever. And you're right in the jury's face, so you can see if they're getting it, if they're reading it, if they're on the same page, if you need to go back, if they're lost you can go back, you can keep referring back to things easily. So, that's kind of why we liked the printed posters in that scenario better than the PowerPoint, it's a little easier to go back and forth.

Michael Cowen: Yeah. Yeah, we used the computer to present documents, and photos, and I did do some PowerPoint for my closing-

Malorie Peacock: Right, and it made sense there.

Michael Cowen: ... just to present, but that was more because I was going through some evidence, if they say this ... most of the judges they're just going to take notes, so if they say, "X, look at exhibit ...", and I'd put it up, "... exhibit three on page five it says this. In exhibit eight on page two it says this, write this down, so if they say this, this is how you argue it back, and it's where you can look, because I knew that they were going to try to accuse him of a couple issues that I knew we were right.

Michael Cowen: But yeah, I'm glad we used the posters, but it took two sessions, multi-hour sessions with our expert to get him somewhat comfortable with doing that, and that it also ... we also had to make sure we had them in the right order so that we weren't digging for stuff at trial, so we had to put them some place easy to reach in the right order. Stacks that weren't too big but not too small. I mean, it was just practice, that's all I can tell you.

Malorie Peacock: It was, it took a lot of practice. It's not something that just materializes overnight. The other really cool thing that happened with the boards, which I just loved, because I made a lot of the boards, and so I really loved them, but is that if the jury wanted you to move out of the way so they could see the boards so they could make sure they understood it, they would just ask in the middle of ... they would say, "I can't see that.", or, "Can you move a little bit over?", and I thought that that meant they were really connecting with the method. They were getting it, they were understanding why it was important, what they needed to look at, and they cared about looking at it, so-

Michael Cowen: And I felt they comfortable enough to ... I mean, it doesn't happen in most trials, but actually speak up and say, "I didn't get that. Can you hold it differently? Can you get out of the way so I can see better? Or can you ask someone else to get out of the way so we can see better?"

Malorie Peacock: Right.

Michael Cowen: It was nice, because you felt like you're building your team.

Malorie Peacock: Yeah, yeah. So, that was ... I don't know if that had to do with boards, or if it had to do with this jury panel, or what it had to do ... I mean, who knows, but I appreciated that the jury seemed to understand how we were using them, and what they needed to get from that information. So, after the expert, we did have some videos that we had to present, some police officer testimony to prove up photos, and information that they found, and people that they interviewed and stuff like that.

Michael Cowen: And how the trench was when they got there, and-

Malorie Peacock: Right. So, we actually had a person in our office do the video edits and take out the really long pauses and stuff like that, which I actually think was great, because each of our videos was only ... I don't think any of them was over 15 minutes long.

Michael Cowen: No, they were all under 15 minutes.

Malorie Peacock: Which was awesome, and that way we could play them quickly, we're not boring the jury, and we spaced them out so we weren't playing a bunch of videos back to back.

Michael Cowen: We did damages first, and then kind of the forensic pathologist autopsy kind of bridge between liability and damages, and then you did all the damage witnesses.

Malorie Peacock: Yeah, and to correct you, we did liability first, and then we did the forensic pathologist-

Michael Cowen: I thought that's what I said, okay. We did liability first, and then we did the forensic pathologist as a bridge, because she has her opinions is the medic knows the injury was consistent with our theory in the case on liability, and then she also talked about how he was killed, and it was gruesome, unfortunately in this case, and then moved on into damages. So, you had to discover some stories of this case, so what did you do to find out what those stories were and how to tell them?

Malorie Peacock: So, I spent a lot of time with the client and her witnesses. So, frankly, the only way you get it is by spending time, and building trust, and listening to stories, and listening to unfortunately the same stories over and over, until they feel comfortable to tell you the real stories. So, every client ... I think it was, was it Randi McGinn that said this? That clients tell you what they think that you want to hear, sometimes to get you to take the case, but they often tell you what they think will be helpful to the case, because they don't know anything about presenting cases.

Michael Cowen: Right.

Malorie Peacock: So, to get the real stories you just have to spend time and build that trust. So, a lot of the stories we didn't get until the day before trial, even though I had met with the clients and her witnesses multiple times-

Michael Cowen: And at the house, and everything you're supposed to do.

Malorie Peacock: ... everything, and the night before we got some new stories that were great that we ended up using in trial.

Michael Cowen: Yeah, and not that the new stories were like something different, it just they were details that we didn't have before as far as-

Malorie Peacock: Right, right.

Michael Cowen: ... things they'd done together.

Malorie Peacock: The thing is that the details are important. It can't be ... it's never effective to say, "I'm sad because he died." They know that. They want to know how you're sad, or what are the things that you're missing out on, and it has to be stuff that people can connect to, and that are specific, and spending time teaching your client how to tell stories, and what makes a good story is something that you cannot skip. People don't know how to tell stories-

Michael Cowen: And not just the client, but her daughter, or her sister-in-law, her sister-

Malorie Peacock: Everybody. Luckily in this case we had just a really great client, and really great witnesses, but our client was sort of a natural storyteller-

Michael Cowen: Well, we didn't realize that until the end, because-

Malorie Peacock: That's right. Right.

Michael Cowen: ... she was so guarded, and part of it is she had been kind of passed around, she did not ... before our firm had got the case did not necessarily feel particularly ... and it could've been her perception, because the lawyer she had before seemed to be ... the ones I've known are nice people, but she did not feel very respected in the process, the continuances made her feel ... So, she was just distrustful, she felt very disrespected, she had a lot of still grief, and depression that wasn't fully treated, and I think it took a lot to break through to her. Now, one disadvantage, you did all the workup on this case, and so I literally ... you and I had talked about strategy, but other than I think I did the pathologist depo?

Malorie Peacock: Right.

Michael Cowen: And I was going to do the co-worker depositions, and they were too scared to show up and didn't show up for their depositions. So, I didn't really meet the client until a few weeks before trial, and I didn't really get to know her until like a couple of days before, and I was still going through the emotional journey of the case during the trial, and I have mixed feelings about that. On one hand I was really connected with her, on the other hand, I was probably ... there's nothing wrong with showing emotion in trial, but I think I was overly emotional.

Michael Cowen: I mean, I cried more than I wanted to in closing. I got mad and yelled once at the defendant, he deserved it, I mean, because I thought he had manufactured the report that they had put in, and then we had discovery fights to compel documents, and all their training documents were dated after our date of our death. There were no training documents they gave, and then on the witness stand it was, "Oh, I'm sure I have them in the archive. I'll bring them back tomorrow.", and I just lost it, "What are you going to make them? You're going to go make them up like you made up the other document."

Malorie Peacock: Yeah.

Michael Cowen: But I should not have yelled, that was unprofessional. It was real-

Malorie Peacock: It was real.

Michael Cowen: ... I just snapped, but I think had I not been going through the journey, had I'd been able to process far enough in advance before trial, I may have been a little more in control, a little less sobby during my closing, because I don't know if it was too much or not. I just don't know.

Malorie Peacock: Well, and it's hard to know, we didn't ... who knows what the jury thought about it. I don't know what the jury thought about it, but I think that there is something to be said for making sure that you fully processed your case, and your own emotions, and your own connection to it before trial, because I think it made the trial harder for you. So, I don't know that it was ineffective, but I think for you emotionally it was a much rockier road through the trial than ... So, I think it was a more stressful for you. I just think it was harder for you to enjoy it, and I mean, it was harder for you.

Michael Cowen: Yeah, the liability part I was having a blast, but it was an emotional ... the trial was emotionally rough on me.

Malorie Peacock: Yeah.

Michael Cowen: I mean, that drive back with got this multimillion dollar verdict, that I just ... it's a weird feeling. I felt good the next afternoon, but it just took me time to process, because it was such ... we were dealing with so much pain.

Malorie Peacock: Yeah, yeah, and this is kind of a unique case. I mean, trying a really gruesome death case is different than trying a back injury case, it just is. There's a different kind of emotion attached to it, and different kind of emotions from your witnesses, and it's I think ... psychologically it's always tougher to try this kind of case, just because it is. So, if you don't give yourself time to deal with that, then it just it can really take a toll on you.

Michael Cowen: Yeah, luckily I actually exercise during the week, we did our protein shakes, I meditated every morning before trial, prayed every night. I just did the things I needed to do to keep mentally as ... I think we were sharp the whole time of the trial, I never thought the energy dropped, I didn't-

Malorie Peacock: Yeah, yeah, I think it went pretty smoothly overall.

Michael Cowen: Yeah.

Malorie Peacock: Everything kind of went smoothly, I don't know how else to say it. The witnesses were available, we didn't have any weird calls where people didn't show up or something like that. I mean, there was ... when I did put on the damages witnesses, they went pretty smoothly, they told the stories that I expected them to tell. There wasn't any crazy something that came out in the trial that was unexpected or anything like that really from them. That all worked out, I think.

Michael Cowen: Yeah. The one last thing I want to talk about, and it's something I had heard about before, but I never experienced it before, and we talked a lot about this, is the potential of a trial to heal.

Malorie Peacock: Yeah. Yeah, that was something I'd never seen before.

Michael Cowen: Yeah.

Malorie Peacock: So, how did it play out in this case?

Michael Cowen: Oh boy, I'm going to get emotional. So, one of the biggest harms I thought is that we had a woman who felt that she was disrespected, that nobody cared about her, that no one cared about the death of her husband, the \$20,000 something fine that OSHA gave did not particularly change that out of a \$1.2 million construction project, and it dragged on for a long time, and she really ... she had some probably pretty low self worth. A lot of the love story we had is just it's someone like the first man in her life that actually made her feel like she was someone special, she was better than she thought she was.

Michael Cowen: She felt that when she lost the most important thing she had that people didn't care, and that maybe she wants maybe secret deep down worthy of people caring. To have a jury give a verdict, and put I think it was \$2.5 million for it, and I'm like ... very emotional for her. Hoping it's going to be very healing for her, I think it was very cathartic to give her a closure that she needed, gave her a

sense of the community saying that, "You matter, that he mattered.", and whether we actually end up getting her the three point something million plus interest, or whether he gets taken away as some bad thing, just that healing was worth all the work. Sorry, I crack up.

Malorie Peacock: Yeah, for her ... and it was very real when the jury started reading their verdict, and they started putting money in the blanks, she just started sort of sobbing uncontrollably, but it was sort of a ... it wasn't a sadness, and it wasn't even a happiness, it was a, "Finally someone heard me, finally, someone's listened to me, and they've believed me, and they're showing me that they believe me." It was very, very powerful, and-

Michael Cowen: So, I've had both the experiences. I've had a death case we've lost, and that is a very powerful hurt that I want to avoid inflicting on a client. In fact, there's cases that we're all not taking where we could settle for something okay, but it's a death, and we don't feel like something okay is enough to really make a difference in the person's life, and if it gets pushed to trial more likely than not that's going to happen, and I'm not in an economic position where I need to take those cases. Someone else will take it, and that's fine, but I don't want to put someone through that. But also I think there's some of the cases I'm more likely to go to trial on now, because I think that that jury verdict brought more closure than a settlement would've brought.

Malorie Peacock: I think so, too. I think I've seen this in every single death case that I've ever handled, the case itself is the last stage of closure-

Michael Cowen: Yes.

Malorie Peacock: ... for people who've lost someone, and because the cases go on for so long, just because of the nature of the justice system, it's slow, it's hard for people to leave it, because it's sort of the last step of trying to move forward with your life. I mean, you never move on, but it's just moving forward, and you can be stuck in that place, and you have permission to be stuck, because you have this case going on, but then no one gives you permission anymore after that. So, even in settlements, you have a very reasonable settlement for a death case, it's still very hard for people, because it's sort of the last stage of letting go.

Michael Cowen: Yeah, absolutely.

Malorie Peacock: And in this case, for her, my hope is that this can be the last stage of her letting go, and trying to move forward. Not move on, but move forward in her life.

Michael Cowen: Yeah, and I had a big talk with her about that afterwards.

Malorie Peacock: Yeah, yeah.

Michael Cowen: People do care about you, you're a wonderful person that has worth, and don't waste the rest of your life, you need to be there for you, you need to be there for your daughter it's time to take this as something acknowledgment that you are loved, you are worthy. Get off your ass and do something. I didn't say those words, but-

Malorie Peacock: Right. Sure, right

Michael Cowen: ... because she was so down she basically gave up on life and jus hardly didn't even leave the house, and I'm hoping that this ... and I really do think it's going to happen, I really think that this verdict is going to inspire her, because she had a lot of self-realizations, like, "While I was doubting myself I wasn't there for my daughter.", and I think the whole process was very psychological healthy for her, and I do truly believe that irrespective of the money, I think just this process and her community believing in her, and it validating her is going to help her in life.

Malorie Peacock: Yeah, I think so, too.

Michael Cowen: Well, I hope this is helpful, I know it's really fact specific to our case, but it's always interesting to ... I always like hearing about trials, so I hope this was useful to y'all. If you have any other follow-up questions feel free to send them to us, or put them on our Trial Lawyer Nation's Insider Circle Facebook group/ We will be doing another Facebook Live here in a few weeks, the date will be announced, I don't remember what it is, but Delisi our marketing director will I'm sure announce it as part of the other stuff you hear on this episode. So, if you have any other questions ask, and I'll be glad to answer them.

Malorie Peacock: By the way, Michael, before you do our closeout, I just want to say that some of the people who tuned into the Facebook Live got a really interesting treat, because if you don't know, it happened to be while we were picking a jury. So, we because of the change in the schedule and all that, we didn't want to move the Facebook Live, and so Michael finished picking a jury, and then the judge was nice enough to let us borrow the jury room, and Michael was able to do a real quick Facebook Live-

Michael Cowen: I think-

Malorie Peacock: ... I was arguing cause strikes still, and he had to sneak out to do that. So, that was interesting during this trial, but it was really nice for the judge to accommodate that.

Michael Cowen: Well, I had a good judge, and I had a good partner who I absolutely could trust to do it without me there, too, so that ... trials are a lot easier when you have a good partner to try the case with, and so looking forward to our next one.

Malorie Peacock: Yeah.

Michael Cowen: Well, thank you guys for joining us. I look forward to having you next time on Trial Lawyer Nation.

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