

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 - If 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 major verdicts, get more cases, and manage your law firm. Now, here's your host, noteworthy author, sought-after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation we have Nick Rowley. Most of you know who Nick is. If you don't, he is one of the most accomplished trial lawyers of our generation, over a billion dollars in verdicts and settlements, multiple eight, and even a nine-figure jury verdict. He's agreed to come and talk to us and I really appreciate it. How are you doing today, Nick?

Nick Rowley:

I'm doing good. Thanks for having me.

Michael Cowen:

Okay, well let's jump right into it. You weren't born a multi-million dollar jury verdict lawyer. Tell me a little bit about your story and what you think led you down the path to getting where you are today.

Nick Rowley:

Well, I was pretty much a juvenile delinquent from as early as I can remember. I didn't really fit in anywhere. I didn't like school. I grew up in a pretty rough household, born, raised in Iowa for my first seven years of life. Then we ended up on a border town in Arizona and I was the only white English-speaking kid in my class, I was one of a handful in the school. I got bullied and picked on a lot because of the color of my skin and not being able to speak the language. I found that the way I could fit in is by cracking jokes, and being a troublemaker, and also being someone who would stand up and pop a bully in the nose without thinking twice about it, and so I got in a lot of fights and got in a lot of trouble.

Nick Rowley:

Got expelled from every school from fourth grade all the way through 11th grade. I graduated from high school from an alternative school. I ended up back in Iowa because my parents split up when I was in the fifth grade. My mom went back to Iowa and my dad stayed. I knew that I needed to do something to get into college because there was no way I was going to be able to get into college with my grades and my history, my school records, so I joined the military. Went into the military and I wanted, I guess, to kill bad guys, instead I ended up becoming a medic so I got to save and help people. That gave me purpose in life, helping others. When I was a kid, I always loved helping other people. I'd give anybody that needed it the shirt off my back, I've been that way since I was little. I suppose that's because I grew up not having a lot, grew up not having electricity or hot water, a lot of the time rarely had a phone, at least until high school, homeless at times as a kid.

Nick Rowley:

I joined the military and got the GI Bill, got my bachelor's degree done while I was in the service. Then I started law school while I was attached to an active reserve unit, went to law school, and then transitioned into helping people as a lawyer. Specifically since I had a medical background, the medical malpractice cases, medical negligence cases, that's what came naturally to me. Along with those comes your personal injury, your catastrophic injury, wrongful death cases. It was a fit.

Nick Rowley:

I got to see the injustice that occurs in our world and the only thing that exists for many people is the civil justice system. That's the only thing that is there for so many. Because you don't see truck drivers getting criminally prosecuted for falling asleep at the wheel and plowing over and killing a family or permanently injuring somebody, or paralyzing them, or inflicting a permanent brain injury on them. You don't see doctors going to jail when they don't pay attention to their patients and they ignore the signs of a baby in distress that's still in her mama's womb with the fetal monitoring strips screaming out saying, "I cannot breathe. I'm not getting oxygen. I'm dying. I'm suffocating." The doctor doesn't go to jail, yet the parents and that family and that little girl has to live with cerebral palsy and spastic quadriplegia for life. There's one thing that can help these people that can give them some sort of healing, some sort of justice, that's the civil justice system.

Nick Rowley:

I got to help and save some people early on in my career and I became addicted to it. Slowly but surely I started trying cases. My motto was, "I'll try any case, anywhere, against anyone." Give me your toughest cases, I wasn't afraid to lose because I'd grown up being beat up and picking myself back up again and going on to the next fight. I took that motto and that was what I applied to the practice of law. People started giving me their cases and, well done, I started winning them.

Michael Cowen:

Did you lose any, well, before you hit your first big one?

Nick Rowley:

Oh yeah. I've lost 13 trials in my career. I learned more from my losses than I do my wins and I'm sure I'm going to lose some as I move forward because I don't just do the nice, clean, easy cases that any lawyer can walk into a courtroom and get a big giant verdict on. Some people ask me, they say, "Well, what does it take to get a 20, \$30 million verdict, Nick Rowley? How do I know?" I say, "Well, you'll know you can accomplish that when you find a \$100 million case." A lot of times the big verdicts we see out there, they were big verdicts because they should have been big verdicts. You just have to have the guts to go out and try them.

Michael Cowen:

You really do. It's amazing how the fear of losing really paralyzes people from developing. I lost my first three jury trials and then when I got a nice one on the fourth, that's all anyone talked about was that the... they forget your losses. But it's getting past that self doubt and lack of self worth that... you get over it when you lose a case and everyone else forgets about it. Sometimes the lawyer that's beaten me on a case will bring it back up 15 years later and I will have already forgotten about it, but it doesn't really bother me. It bothers me if I don't feel like I did everything I could have done. It hurts right after you lose, but you get past that, you go to the next one and you move on.

Nick Rowley:

Have you ever won a case and you think you understand, you think you know why you won it, but that really wasn't the reason why you won it?

Michael Cowen:

Absolutely.

Nick Rowley:

Tell you one thing though, we sure know why it is that we lose a case and we learn from that. We don't learn from our wins. It feels really good, it feels a whole lot better than losing. But if you're going to be a real trial lawyer then you've got to try tough cases, and if you're trying tough cases, you're not going to win them all.

Michael Cowen:

Yeah. That's awesome to hear. I noticed, there just seems to be a common thread among the top trial lawyers that very few of them seem to have been born with a silver spoon in their mouth. It seems to be a lot of people that had to work up the hard way, people that if they saw them in high school no one would have predicted this would be the person that would be the world famous, successful anything. Why do you think that is?

Nick Rowley:

Life experience. People that have had that silver spoon in their mouth and never had to work hard, they've never had to feel what it's really like to fail. Never been afraid or known what it is to go without. To be a real trial lawyer, it's life or death. You have to be hungry and it's not hungry for money, that's not what it is. There's something within you, something within us that drives us, that the case is really... there's nothing more important in the world. Going to a sports event, or hanging out with friends, or partying, or going to happy hour. You don't see the real trial lawyers out there doing that, you see them working, doing whatever it takes. They don't cut corners. Because they know that if they don't do it, no one's going to do it for them. People that grow up spoiled or having their parents pay for everything, grow up with a silver spoon in their mouth, they don't know what it's like.

Michael Cowen:

I think it also gets harder, at least in my experience, it's hard to really know someone well enough to present their case without spending time with them at their home, with their family, with their friends. I think, those of us who didn't come from as privileged of a background, it's just easier to feel comfortable and fit in in the homes that most of our clients live in.

Nick Rowley:

Very true. I had a lawyer call me recently from out of state. He's on my list serve, and anyone who wants to be on the Trial by Human list serve, it's [trialbyhuman.com](http://trialbyhuman.com). It's a pretty good list serve.

Michael Cowen:

It is.

Nick Rowley:

One rule, just be nice to each other. Well, another rule, you're an insurance defense lawyer, you're not on our list serve. If you are, we'll report you to your state bar because you have to sign something saying you're not, and if you're a criminal prosecutor, you're not on our list serve.

Nick Rowley:

I get this call from this lawyer out of state and he starts talking to me about his client. He doesn't really like his client, he doesn't like the guy that he represents. I said, "How much time have you spent with him?" He goes, "Well..." I said, "No, how much time have you spent with him?" "Well, none." I said, "Do you think he likes you? What reason does he have to like you other than the fact that's he signed a retainer with you and you're somebody that wants him? Because let's be brutally honest, you want him to do a good job for you so that you can make money, because all he really is to you is a number. All he is, he's a number. A number that's going to cost you money at the end of the day or make you money. That's it. He's not a human being. What's his life story? Where was he born? What are the things that are most important to him? Lets find some some of this time right now that we have and do a Zoom conference with him and say, 'I don't want to talk to you about your case. I just want to get to know you. I'm sorry that I haven't done that. Sorry that I don't know you. I should know you and I've failed.'" You can't expect a jury to care about the people we represent unless we're willing to do it first.

Michael Cowen:

Absolutely. I think one thing Malorie and I discovered our last trial is, we got brought into a case that was going on for almost 10 years and for lots of different reasons had never gone to trial. No one, before we got involved had really listened to the widow. Malorie, you could probably put in better words than I can, but I think just the fact that she had people care enough to spend time with her and learn and honor her story, even though we hadn't won the trial, I think, would have been... actually, we saw changes in her through the trials, she was starting to come out of her shell. Just having other human beings care about her I think it's not something that she had necessarily had. Especially someone like a big lawyer actually spending the time with her not to talk about money, not talk about her case, but talk about her and why this person was important to her and how her life was before and how it's been affected. I don't know. What do you think Malorie, I think that...

Malorie Peacock:

Yeah, I mean I think that spending time with a client and getting to know what motivates them. Before we spent a lot of time with her, I had trouble relating to her. But then we spent a weekend with her and her family and her friends and it just really, really changed my perspective of her and of the case. It was a lot more personal for me, which I think has made her advocates for the trial.

Nick Rowley:

It makes a world of difference.

Michael Cowen:

Yeah.

Nick Rowley:

Good job.

Michael Cowen:

I'd like to ask you, you hear the stories about the big verdicts, you hear the stories about the chicken suit, but do you have a particular case that you're most proud of and why?

Nick Rowley:

It's hard. There are many that I'm proud of. Rather than talking about big eight-figure verdicts, nine-figure verdicts, there's a case that it was against Costco. It was a case going to trial in Santa Monica and another lawyer was set to try it. He had reported on Friday, judge answered, ready. They did the motions in limine, jury was ordered for Monday morning and I got a call on Sunday night and this lawyer had some major personal issues come up and some health issues and was unable to competently try the case and hadn't slept for the entire weekend. He was in really bad shape. He called and said, "What do I do?" On Sunday evening, I said, "I'll meet you at the courthouse tomorrow so you can introduce me to the client and I'll get the case continued for you. Then you need to do what's necessary to take care of yourself."

Nick Rowley:

We went in, and this was a zero offer case. The lawyer representing Costco does all the Costco cases and he says he's never lost any in however many years. We go into the courtroom, I tell the lawyer, I pull him aside... well, I see the lawyer that called on me and he's in very, very bad shape. He introduced me to the client and, I mean, he's literally shaking. He's got some major issues going on. I was scared for him. I said, "You gotta leave." I had him leave, talked to the defense lawyer and I said, "Listen, lawyer is going to try this case. I'm not going to name who it is. He's in a really bad shape, we need to continue this case." Costco's lawyer looked at me and said, "I'm not continuing it. I'm ready."

Nick Rowley:

"The right thing to do is to continue the trial. This man has some major health issues going on and some psychiatric issues, some other stuff." The defense lawyer was just ecstatic that now, not only was he going to win this case before, because he's so confident and full of himself and never loses, but now he really had a feather in his cap. He said, "If you ask nicely, I'll call Costco up, I'll call my client up, and see if they'll do a waiver of costs." I said, "All right, you want yourself a jury trial? You got one. You got me."

Nick Rowley:

The jury consultant that was on the case was Steve Halteman, who I wrote Trial by Human with. He had been working on the case. I said, "Steve, you got to tell me what this case is about." He gave me the rundown. I went to the defense lawyer I said, "We can do what's called an expedited jury trial, I mean, you're going to win anyways. You agree to less than a 12-person jury and we get the case presented, we each put on three hours of evidence." He goes, "Sounds good to me."

Nick Rowley:

So he said, you know, "How about that dismissal, that waiver of costs?" I said, "No, no, no, we're going to have our jury trial." The judge comes out says, "All right, you guys ready?" I said, "We are." He goes, "Who are you?" I said, "I'm Nick Rowley." He said, "Well, nice to meet you Mr. Rowley. Where's so-and-so?" I said, "He's not able to be here your honor. He had some problems and the defense counsel was unwilling to continue the case." The judge looks over at the defense lawyer and said, "Okay, are you sure you're ready?" I said, "I'm ready." He calls in the jury. This all happened within 30 minutes of me showing up in court. This judge had been a federal judge, now he's in state court and he moves quick.

Nick Rowley:

I did a mini opening statement and I told the jurors, I said, "Listen, one of three things is going to happen here, but first you need to know that what happened to this woman, she had both of her quadriceps torn off of her knee. She had fallen, suffered a really, really bad injury, it put her in a care home for three months. What happened to her and the value of her damages, and what she'll suffer from for the rest of her life is worth millions of dollars. But one of three things is going to happen here.

Nick Rowley:

Number one, you're going to listen to the evidence, you're going to match it up with the law, and you're going to decide that she was negligent. This woman here that I represent, she was negligent. Should have been paying better attention, should have been more careful. She wasn't, she was negligent, and she injured herself, and she's at fault. That means the defense, Costco Corporation, they win. They win this case, she goes home with nothing. Millions of dollars in damages, sure, but Costco is not responsible because she was negligent. It's her fault.

Nick Rowley:

Second thing that might happen is you decide that this is a case of shared responsibility where she was negligent, she should have been more careful, but also the corporation, Costco, was negligent too, and Costco bears some responsibility. She's going to pay for the consequences of what happened to her body for the rest of her life but Costco ought to pay something too. Shared responsibility because Costco was not providing the safe environment, the safe walkway that they should have.

Nick Rowley:

The third thing that might happen is that you've come back and you decide that Costco is completely at fault for negligently causing what happened to this woman, causing her injuries." I went on and on and on. "Look forward to presenting some evidence to you. But most importantly, right now I need to know, is she going to get a fair jury? I mean, this is a very large black woman. I don't see anybody who's black in this courtroom. I want to talk to you all about that and I'm going to ask you to be brutally honest."

Nick Rowley:

Then the defense lawyer gives their spiel, "Costco did nothing wrong. She's at fault. This is a frivolous lawsuit." We do jury selection and I'd talked to all the jurors about race, "Is anyone offended here? Can you imagine what it would be like to be a large black woman here in Santa Monica with an all-white jury? Mr. Johnson, can you imagine that?" He goes, "No, I really can't but it must be scary." I just got everybody talking about it. "Does it offend you to know that I'm actually talking to people here about race being an issue? Does that make you feel like I'm calling you out as being prejudiced?" "No, not at all." "You understand I'm doing my job, I have to do that?" Sometimes, it might be one out of 100, but someone will raise their hand and say, "I have some prejudice and racism in me and I may not be the right juror for the case." "I mean, think about it for a moment. Would she be in a better position if she was a thinner, whiter human? Maybe a school teacher. Here's the person that got hurt at Costco. I mean just change that in your mind for a moment. Do you understand what I'm saying?" And all the jurors, they got it. They totally understood it.

Nick Rowley:

We put on the evidence, the defense they're ready to go after the opening statement. The defense lawyer said, "Well, I need to get him off by a certain time. How long is your witness going to take?" I

said, "Why don't you just put him on first?" He went on first and I cross-examined him and the one expert we had, a premises liability expert, watched him testify, cross-examined him, then put my guy on the stand. Put my client on the stand, put her friend on the stand, and we rested. Total testimony in the case was maybe an hour and 30 minutes max. Did closing argument and the jury came back with... and I waived all the medicals, stipulated because the defense was that she had severe degenerative disease in her knees. I stipulated to that.

Nick Rowley:

We went to the jury with the stipulation that she had torn quadriceps. That's it, no medical evidence. But I had her explain what that was and how her body feels different and the jury came back in less than an hour with a \$1.5 million verdict, all non-economic damages. Costco came in and asked for a new trial and all kinds of bullshit and the judge denied it and that really changed this lady's life. She's been a friend ever since. That's the case I'm really proud of.

Michael Cowen:

Now, one thing I heard about you in trial, tell me if I'm wrong, but you actually exercise, maybe even sleep and eat right during trials?

Nick Rowley:

Absolutely. When I'm in trial, I'm healthy, I'm exercising, I'm meditating, I'm sleeping well. I do not stay up late, but I get up very, very early. I eat very healthy when I'm in trial. I don't drink any alcohol at all, and I go through months throughout the year where I don't drink. I'm not a person who will say, "I won't have a glass of wine," but during trial I won't. I go through months where I absolutely detox. If I'm in trial 10 times a year, I'm looking really damn good. When I'm not in trial, I don't take care of myself as well.

Michael Cowen:

What kind of preparation do you have to do to not have to stay up late at night while you're trying the case to get ready for the next witness or look at what motions got filed, et cetera?

Nick Rowley:

Reading a whole bunch of depositions and going through a whole bunch of all the written stuff is going to take you away from the human story of the case. That's something that should be alive within you. Should be in your heart, soul, your DNA, in your mind, you should be dreaming about that case. You're preparing while you're sleeping. I keep a note pad next to my bed when I sleep and I get up if I have ideas and I write and I go back to bed, because I'll dream about cross examining the witness I'm going to take on the next day. I get up in the morning, I write down my thoughts, I exercise, and then I do that stuff. When trial's done for the day, you got to take a break and clear your mind and create a list, write out, "What are the things I have to do?"

Nick Rowley:

Also you should always try the case with the team. If the person that you're working with is doing the witnesses the next day or the witnesses the next morning, then and maybe you're the one that takes the laboring oar to deal with the bullshit motions the defense is filing, or doing the research and the motions that you have to file. I do that. If I'm in trial with one of my friends, I take laboring oar. I say, "All right, I'll deal with this motion in limine issue, or this motion to exclude, or motion to... Whatever it is, I'll write

that." But I don't stay up past 8:30 working. You do that, you're going to fry your brain. It's not the way to win.

Commercial:

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case and if we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling (210) 941-1301 or send an email to [podcast@triallawyernation.com](mailto:podcast@triallawyernation.com). She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail. And now back to the show.

Nick Rowley:

When you go in the morning to try a case, you want to keep that energy going all day long and if you're burning the midnight oil, you're going to start falling flat. You're not going to be as sharp as you otherwise might be. We know trials are fluid, they're fluid. What you think is going to happen isn't always going to happen. You have to be able to react in the moment to dodge something and come back at them with something else. You have to have the energy to be in the moment. It's real-time. You spend a whole bunch of time reading a whole bunch of depositions, preparing your pages and your line numbers and all that crap, staying up late. You're not going to have the energy to take that cross examination, or if you start doing poorly, to be able to step back, regroup, take a breath, and then come right back at them.

Nick Rowley:

You won't be in tune with the jury, and the jury won't want to be in tune with you because you're exhausted. Maybe you're crabby, maybe you're losing your temper, you're out of touch with what's really going on in that courtroom. You're going to be the leader and you have to be healthy. Your mind has to be clear. Don't eat right, eat crappy food, drink during trial, don't get your sleep, you're not going to be able to do any of those things. What you ought to be doing then is just making sure you have \$100 million cases so you can get \$20 million verdicts.

Michael Cowen:

I think you're most famous for the term brutal honesty. How did you come up with that?

Nick Rowley:

I was in the Johnson barn at Gerry Spence's ranch, I was teaching. We had formed a little group and I think the session was done for the day, but we formed our own little group and we were working on jury selection. I've always been one of those guys like, "Okay, class is over," not in elementary or high school, but after that. When it comes to law school or trying a case, I wouldn't always learn when I'm in the classroom environment. Class is over now let's get a few people together and try to figure this all out. I knew that jury selection was the key and it's the part of the trial that I had struggled most with. I had tried a number of cases before I had gone to the college.

Nick Rowley:

There was a person playing a juror, he's being a real hard ass, and he said, in response to what I was asking him, he was talking about money damages or something. I don't even know how I was framing it. But I do remember he said, "What, you want me to be honest with you?" I said, "I do." "Well, how honest do you want me to be?" I said, "I want you to be brutally honest." That mock juror, because it was another lawyer playing the juror, actually shifted his body and said, "Okay, I'm going to let you have it." He didn't say that, but he just shifted his body and then just started tearing into me. "You're one of those greedy lawyers and you're just here for the money, and you're this, and you're this, and you're this, and you're that. I don't believe in your case."

Nick Rowley:

I said, "Wow, I really appreciate you sharing that with me. I wonder who else here feels the same way. Thanks for being brutally honest." Then the other people that were in the group started popping up and everybody got to talking. It was at that moment that it clicked and I went back and I wrote, "Brutally Honest." It wasn't brutal honesty, it was Brutally Honest. Then I did a number of focus groups, a number of trials, testing it, testing it. I came to the conclusion that brutal honesty isn't something that I get from a jury by telling them what brutal honesty is. It's by getting them to define it and the phrase theirs. That's why you say, "Brutal honesty. What does brutal honesty mean to you?" And then you shut your mouth and you listen. "Will someone please talk to me?"

Nick Rowley:

Brutal honesty, it's telling somebody what you think without worrying about hurting their feelings or not. Thank you. Not sugarcoating, telling the truth no matter how much it hurts, and people give their definition. You thank them, you ask them if they will please be brutally honest during this process. "No matter what we're talking about, don't hold anything back. Don't be afraid of hurting my feelings. That's what we need here." Jurors literally, just like that mock juror in the Johnson barn, will shift and say, "Okay, that's what you want. That's what you're going to get." Ever since, it's made a big difference with picking juries. It becomes a theme of the entire trial.

Michael Cowen:

What do you do with it when you ask someone to be brutally honest and they go tell you how they don't like trial lawyers or they don't like the idea of money for pain or...

Nick Rowley:

You talk to them about it. You say, "If you're a juror and you're being brutally honest. What are you going to say to me?"

Michael Cowen:

I don't know. I'd be like, "Oh, I don't like it. I don't know what I'd do. I have a lot of trouble going back there and doing something I don't believe in."

Nick Rowley:

I wouldn't want you to do that. I really appreciate you sharing how you feel. I'm sure there are other people that feel the same way. Back when I started doing this, it's the way that I felt, so you're not alone. If this were a case about medical bills or a lost paycheck, or damage to somebody's house, and you had someone who came in here and tell you what the appraisal is, would that be, I guess-

Michael Cowen:

Yeah that would be-

Nick Rowley:

Okay with you? Yeah?

Michael Cowen:

Yeah.

Nick Rowley:

Why?

Michael Cowen:

Because you can put a number on that.

Nick Rowley:

Have you ever thought of the value of things that you can't put a number on like life, liberty, and the pursuit of happiness?

Michael Cowen:

Well, there is no value on those things. I mean, you can't put a number value on those things.

Nick Rowley:

What we have with the civil justice system is, we don't have an eye for an eye, or a neck for a neck, or a leg for a leg, or a life for a life. That was done away with back when our constitution was written and the Bill of Rights was put together. Instead, in place of it, if life, liberty, and the pursuit of happiness is taken away from a person as priceless as it might be, our forefathers decided that a jury, members of the community, would make a decision about what that is worth and assign a dollar value to it, and that'll be the only form of justice there is. Does that make sense?

Michael Cowen:

I guess, yeah.

Nick Rowley:

Without folks being willing to be a part of that, I mean, I don't see us going back to an eye for an eye or a life for a life. But I need to make sure that people who end up on this jury will have an open mind and say it is something, that if the evidence and the law justifies it, that, "You can count on me to do what's right and not to make this a jury verdict that's going to be a low jury verdict, a low number, because I have bias, prejudice or opinions that are adverse to money for pain and suffering or loss of a life." You're with me?

Michael Cowen:

Yeah.

Nick Rowley:

Where does that leave us?

Michael Cowen:

I could try, I could try to keep an open mind.

Nick Rowley:

Well, I could try to be faithful. But if that's what I told my wife she'd say, "Sorry, you need to give us some assurance." You need to commit, not try, but commit to being able to do that job if the evidence and the law justifies it.

Michael Cowen:

But I follow the law.

Nick Rowley:

Well, all follow the law, but you get to do whatever you want back there in that jury room. I'm trying to get a forecast is, brutal honesty. Are you going to be someone back in that jury room whose going to say, "I don't like money for pain and suffering. It's either no number or a low number." That would make you a better juror for the defense. They got 12 jurors like you, they'd be in really good shape.

Michael Cowen:

You're probably right.

Nick Rowley:

That would give them an unfair advantage over the man that I'm representing who deserves just as fair of a trial as they do. Would you agree?

Michael Cowen:

Yes.

Nick Rowley:

Would you be offended if I asked the judge to not have you as a juror on the case?

Michael Cowen:

I'd be delighted.

Nick Rowley:

"Who else feels the same way?" That's probably maybe how I might handle it.

Michael Cowen:

Yeah. One of the issues we have is, we just have some judges that misinterpret one case that we have that almost never strike jurors for cause anymore. In Texas, they're just like, unless they say, "Judge, I am going to disobey your instructions and disobey the law..." not all judges believe that, but there are some that just... there's one case that, basically, affirmed a juror not being stricken, and so the judge has

the discretion to not just look at the words they say that's the facial expressions, the body language, and get the gist of it. But they misread it to say that, unless the juror will commit that they'll disobey. Then also, are you going to follow my instructions or are you going to disobey me? That's been one of the issues we've been having and we're dire and we try to do more inclusive-

Nick Rowley:

You give and you get me a Texas jury and I'm pretty confident we can get it done.

Michael Cowen:

There's other ways to do things other than knocking people off for cause too.

Nick Rowley:

Yeah. I've found that the judges who were the most difficult with cause challenges are granting pretty much every cause challenge I make. But I'm not going in with the goal of getting a whole bunch of cause challenges granted. I truly walk into a courtroom and I hope that every one of those jurors has what it takes to sit on the case. As they shuffle in, I don't start looking and stereotyping people and saying, "Man, look at that guy. He looks like a real asshole. Look at that lady she looks mean and old. Look at that one, she's young, she doesn't know anything. Millennials are horrible jurors." I don't do any of that because I've been proven wrong every time I think that way.

Michael Cowen:

Switching subjects a little bit, I was surprised. All your fame as a trial lawyer, but then when I read "Running with the Bulls," it's a book about settling cases. What inspired you to write a book about settling cases after you'd written one about trying them?

Nick Rowley:

Well, to be brutally honest, I do settle cases. The secret to settling cases is having the balls to go to trial. Making sure that you try your case and you get paid for something people have a difficult time with. Just because you get a jury verdict doesn't mean you're going to get paid. Sometimes you get a jury verdict, and that's the first time you get an offer on the case. Then they think, oh boy, you got to verdict this and they're going to offer you that. It's insane. I was really frustrated with that over the years, so I started thinking of ways to preemptively strike to make sure that when I get that jury verdict that I'm able to collect it immediately or I get that defendant as my own client to prosecute a bad faith claim, negligence claim against the insurance company, and sometimes that shit weasel insurance defense lawyer. Because some of them are shit weasels. I mean, there are a few nice ones out there I've met, but a few.

Nick Rowley:

I started crafting a way to do things differently and make sure that I set them up, that I expose the bullshit. I'd seen defendants sitting there in trial angry at me, I'm like, "Why are you angry?" "Well, you're making me go to trial." I'm like, "Hold on, we tried to settle this case, man. What do you mean?" I learned early on, the more cases you try, the more you learn. I learned early on that the settlement communications aren't going to the actual insured defendant, and they end up having to sit there during that trial as the pawn, when we all know it's the insurance company that's pulling the strings. They're the puppet masters. I thought, what can be done differently? I started writing letters and they started working. I started crafting letters, making them better and better. Sometimes I'd settle cases for a lot of money, as much money as a jury would have given my client, and then I started getting paid after the

verdicts because the insurance company and insurance defense lawyers were afraid of the consequences of not cutting the checks.

Nick Rowley:

Got really proficient at it. Figured I should share, I should teach other people how to do this. One of the big motivating factors was hearing about cases that get settled, tragic cases, for way less than what they're truly worth, which is injustice to everybody. Not just that person who's had their case settled out cheap, those who's had their life destroyed, who's been seriously injured and they're getting next to nothing. That lowers the bar for everybody. I believe in raising the bar for everybody, make the tide as high as you can, let's float all the boats. Let's get everyone up there. Everybody deserves justice, and I can't do it all. But if I write a book that shares the methods that I have, then great, other people can benefit from it, and that makes the world a better place.

Michael Cowen:

Some of the things I like in your book is just the change in the mindset and just refusing to play by the defense's rules and not letting them create the paradigm for how we negotiate, how we value cases, how we time things. Then you have a chapter that really resonated with me, the power of no. It's something we struggle with because you get to know these lawyers over time. We do mostly trucking, and so we see the same lawyers over and over again and we'll make a policy limits demand with the time limits.

Michael Cowen:

Of course, as it's coming up, they want to talk to you. They'll talk to you off the record and they, "Can you make me look good? Can you help me save some money? We want to talk, can we get an extension? We need more time." The right answer, almost invariably, is when you say, "No." They make you feel real bad, but they also pay you the policy limits before your demand expires. Why do we feel bad? I mean, they attack us and our clients constantly, they call us liars, they call us greedy, they make false aspersions against us and our clients both in trial and in the whole process. But yet when we call them on our stuff, I don't know, I almost feel like I'm feeling guilty-

Nick Rowley:

They're so offended.

Michael Cowen:

But I have to get past my own guilt about calling them out on their stuff. I don't want to look like I'm not a nice person or that I'm being mean. I don't know. What is it? Why is it hard to... I do it, and it works, but why do we have that resistance?

Nick Rowley:

I think if you see me in the courtroom, and most of the trial lawyers I know that are very successful are very kind. They're gentle people. Gentle women, gentle men, kind, accommodating. "You need anything from me, I'm going to give it to you." By taking the Running with the Bulls techniques and methods, it's really the opposite. You need to frame in your mind the reality that it's not the defense lawyer making the decisions at all. Think of this? How many times have you had a defense lawyer who's acting like she or he is your good old buddy and your good old pal saying, "Man, I really wish I could settle this case for

you. I hear you. I love your client. I like you, but it's not up to me. I've tried for you, but man, they just won't put any more money on this." How many times have you heard that?

Michael Cowen:

A lot.

Nick Rowley:

Countless. Now, let me ask you this, how many times do you think they were bullshitting you?

Michael Cowen:

I know when I worked at a big firm in New York, one of the partners told me that negotiation's all about whoever lies the best.

Nick Rowley:

Yeah, they're bullshitting you 99% of the time. Just cut them out of the middle. These letters are to the insurance company. They're not even to the defendant. Really, we're insisting that the actual insured policy holder defendant gets copied on all these and that they get to read them and they get independent counsel. When you get a call from independent counsel, which we've all had, they're appreciative, aren't they?

Michael Cowen:

I had a deposition where the truck driver was on meth at the time of the crash. The independent counsel, after the deposition, he came to watch them. He came to me, he says, "Now, you copy me on that demand and you don't take a penny less in that policy." I mean, he was outraged he even had to do depositions in that case.

Nick Rowley:

You just got to re-frame your thinking. These defense lawyers, they're bullshitting you, even the ones that are your friends. If you think that because you're a member of ABOTA or something that these guys are your pals because you go to Hawaii with them once a year, they're not your pals. They are the enemy, because they're working for the enemy, Darth fucking Vader, working for the Sith Lord. They want you to play by their rules and they want to wine and dine with you and be your pal so that they can take advantage of you and fuck over the person who you've taken an oath, who you've sworn to represent. You can be kind to them in trial, you can accommodate them during litigation, but when it comes to money, settling the case, don't hold anything back, let them have it, expose what's really, really going on.

Michael Cowen:

Now, another thing that really rang true with me, and saying no to the defense has been hard, not on dollar amounts for me, but as far as just breaking the rules. I've had to learn to force myself to not play the game, and not worry about whether they like me or not. The other thing I've had trouble saying no to in my career that's caused me much more damage is having trouble saying no to cases. That's something Malorie can tell you. I've been working really hard on that the last three years of having enough self respect and self love to be pickier on the cases I take. You have a great rule, you have certain rules in your settlements and one is, don't take cases you aren't willing to take to trial.

Nick Rowley:

It's correct.

Michael Cowen:

You've taken tough cases. What is your criteria for a case that you'll take?

Nick Rowley:

I get asked that question a lot. There is no criteria. Do I feel something inside really. Is there something that burns inside of me when I hear the story of the case? Is there something that I think I can do for this person? Can I imagine myself standing in front of a jury, however big, however small the case might be? I don't like taking a bunch of smaller cases. I mean, if I could just right now pick and choose and say, "Am I ever going to work on a case again, that I'm not going to make a million dollars on, except for the pro bono work that I do?" And I do pro bono criminal jury trials, I've done those my entire career. I'll do other pro bono cases. But other than that, I could, Yeah, absolutely. Yeah, I don't want to work on a case unless it's worth a million dollars to me, to take weeks or a month away from my life just because I'm, I guess, at that level now."

Nick Rowley:

But then what about that family whose child got negligently killed in one of these states where there's a 250 cap? Who's going to represent them if I'm not willing to, because I care more about money than I do justice and truth and exposing what happened, and making sure that this child didn't die in vain, that there's actually something that's done about it? If I'm not willing to take those cases, who else is? Because if I'm setting an example for people in this country, I need to lead by example. I want people to take those cases. I want people to take the cases where the insurance company is offering \$7,000 or \$3,000 on a case where they should be paying 50, or not paying a woman who slipped and fell at Costco, suffered a pretty bad injury, and they're not offering her a single penny, flaunting that, you know, that Costco has never lost a case. Who's going to take those cases? If we don't, no one will. Because people look up to us as the lawyers that have been trying cases for a number of years.

Michael Cowen:

Now, you've done on those, I know at least on a California cap, I've read and I don't know all the details I wanted to ask you. You're leading an effort to try to change that unjust cap that we actually copied in Texas, not indexed for inflation. What was it, 250 for non-economic damages.

Nick Rowley:

That's right.

Michael Cowen:

What are you doing to try to change it?

Nick Rowley:

Getting it on the ballot, educating the voters. It'll be on the 2022 ballot. Because of the coronavirus, it won't be on the 2020 ballot. I got all the signatures, I spent \$5 million of my own money to get that done and pulled together close to a million signatures, which we only need 600 and some odd thousand. I got

a great team and we're going to get it done, and we're going to come to Texas, and we're going to do it in Montana, we're going to do it in Colorado, because these caps are wrong.

Michael Cowen:

What can we do to help?

Nick Rowley:

Spread the word and get on Fairness Act, F-A-I-R-N-E-S-Sact.com, fairnessact.com and donate money because this is going to cost \$50 million. That's what we got to raise-

Michael Cowen:

That's awesome that you're stepping up and doing that, I'm proud of you.

Nick Rowley:

We can change it in every state. If we as trial lawyers who have sworn to uphold the constitution stand up for civil rights, or we're to really just put a portion of our year's income into something like this, we could change it throughout the whole country. Problem is, as trial lawyers we're shortsighted, selfish, greedy. We'll put a little into something, but not enough to where it really hurts us. Not going to do anything that's going to prevent us from buying that fancy car or maybe that next airplane. "What do I do? Do I go buy that next airplane or do I put a million dollars into something that really matters and might change the world?" A lot of people will choose that airplane or that new house, or that vacation property, or whatever else.

Nick Rowley:

Those people who think that, "Well, trial lawyers, they're all about money. They're making money that they really shouldn't get." How about those fucking insurance companies? All we're doing is taking a little bit of their scalp, that's what we do. We're getting a portion of what we win for the people we represent because our clients can't afford to pay us by the hour like the insurance companies do paying billions and billions and billions of dollars to their lawyers every year. Our clients can't afford that. Our clients can't afford to pay the cost of a lawsuit, so they need somebody who's willing to put some skin into the game. That's what we do as trial lawyers.

Michael Cowen:

It's so needed, because the insurance companies, especially on the smaller cases, will spend more than the policy limit on these auto policies because they want to scare that lawyer, and the other lawyers watching out of doing the next case.

Nick Rowley:

They want to beat him down and demoralize him, shame him.

Michael Cowen:

I think the last five or six years have really been a turnaround. I think 10 years ago, a lot of trial lawyers were demoralized. I think that there's a lot more energy on our side. There's a lot more good things happening on our side. But there's a lot more energy on our side, I've seen, than there was a decade ago. There was a lot more doom and gloom. I remember when I first came up from down on the

Mexican border where I'm from, I'm from San Antonio where I practice now. When I first started handling case up here, I had mediators tell me, "Well, that's just not how these cases get here. You're asking for something unrealistic." I said, "Well, that's what we're going to take. We're not going to settle a case cheap just because other people do." Now it's a totally different mindset.

Nick Rowley:

We're in a time that I call a revolutionary time. All the propaganda that the insurance industry put out in the seventies and the eighties and even in the nineties, people have started to wake up. They don't buy the bullshit the way that they used to. People are starting to realize, as our civil rights are being taken away, that trial lawyers serve a very, very important role. There are more people getting confident, trying more cases, preserving the jury trial method, it's starting to become contagious. That's what you've seen, and that's what I've seen. I think we're both proud to be a part of it.

Michael Cowen:

Absolutely. Going back to the brutal honesty, what is the area in the practice of law where you struggle the most?

Nick Rowley:

Wrongful death.

Michael Cowen:

Why is that?

Nick Rowley:

It hurts. It really tears me up inside when I try a wrongful death case.

Michael Cowen:

Yeah. Even when you win, right?

Nick Rowley:

Yeah. I've pretty much won all of them.

Michael Cowen:

I have won and lost wrongful death cases. They're both very painful and very different ways. But even though I-

Nick Rowley:

I lost a med mal wrongful death case, and that really sucked. But just dealing with talking about a person who's gone and putting a value on the life, it's really tough. It tears me up. They're the hardest cases for me to remember and talk about because I relive it.

Michael Cowen:

Malorie and I were talking about that on our drive back, it was about a four and half hour drive from where we... we got a verdict, what, on a late Friday afternoon, early Friday evening. It took two or three

days to get any joy out of the win. It's not that it was a bad... we like it was a good verdict. Our client, she was crying, but not because she was upset with it, just because she finally felt validated after all those years. But it's just the reality of it is so immense that it's just hard to... it felt righteous, but it wasn't a good feeling.

Nick Rowley:

Yeah, I know what you're saying.

Michael Cowen:

What's the area where you're working on yourself trying to improve?

Nick Rowley:

Trying less cases, spending more time with my family, saying no. I tried two cases last year that I got when I got called in. I got called on Saturday night, I was at my home in California. I have a home in California, I have a home in Montana, a home in Iowa. Montana is where we're at mostly now. But I was in California. I get a call asking me to come in on a case, it starts Monday morning in Iowa and off I went. I'm glad I went, it's a very important case, a pretty shitty insurance company. We won and we got our clients paid. It was a good eight figure result, worthy of it. But being able to say, "I'm not going to leave my family for a week. I'm going to stay at home and play with my kids, and fill out some coloring books, and go on walks and hikes. Getting away from that need to always be in trial. Having the rush of the battle going through me. That's been my life for 18 years nonstop pretty much. Really, just saying no, slowing down a little, trying maybe three to five cases a year instead of an average of 10.

Michael Cowen:

Now, if at one time I would ask the question is, what would you tell the lawyer that wants to be the next Nick Rowley? But I think it would be a mistake for someone to try to be the next Nick Rowley, they need to try the next them that gets similar results as Nick Rowley. But for lawyers that want to go on the path of trying to become a better trial lawyer, what are some of the things you would recommend that they do?

Nick Rowley:

I want the lawyer who has the drive to do whatever it takes to be somebody that puts Nick Rowley in his shadow. I want a lawyer to break the mold, to be somebody whose briefcase I want to carry. That lawyer needs to study everything that there is to study out there, everything written by Rick Friedman. Anything that Keith Mitnik has to say, listen to it again and again, and again. Read what he has to write. Meet lawyers like Roxanne Conlin or Paul Luvera and absorb all you can. Go to Gerry Spence's Trial Lawyers College, he's still alive. When he goes, get every video and audio tape, everything you can and listen to every word that man has to say over and over and over again. David Ball, read his stuff. Whether you do civil cases or criminal cases, watch his videos. I've learned so much from that man.

Nick Rowley:

The list goes on and on, Randi McGinn. You've got so many people out there that if given what they have in their arsenal, they've put it to print, they've put it into audio books or videos, learn all you can and never stop. Then have the guts to try case, after case, after case. Learn from your losses, don't give up, always pick yourself back up and keep moving forward. Don't just try the easy ones. Never stop. Experience is invaluable. There are lawyers out there that have tried 50 cases that are really good. I

think when I got to the 50 case mark that's when I finally started to figure out a little bit of what I was doing. Now after 150 plus jury trials, I'm still figuring out what I'm doing and I'm still trying to absorb everything that I can.

Nick Rowley:

Moe Levine, listen to his old tapes. That's what I do. I study my craft and I write things out. I live and breathe the cases that I handle. I care about the people I represent, it's life or death. You just got to somehow pull yourself up and dig yourself out of the ashes when you crash and burn, because that will happen if you want to be a good trial lawyer. Go and watch guys like Gary Dordick and Carney Shegerian in trial. I mean, there are so many up and coming people. There are old time trial lawyers that, I wouldn't call them old, but well, Browne Greene is old, he's in his eighties. Learn from him, learn from Brian Panish, Bruce Broillet. Man watch his trials on CBN, see how kind that man is. I could go on and on and on. CBN is a really, really good source nowadays to watch trials. But if you can get on a plane and go out and actually be there and watch a jury trial, and be there for every moment of it, take notes and really soak it all in, then you'll learn a lot. I still like to go and watch trials. I want to go see um... Lanier try a case, that's on my bucket list. That's somebody I really think very highly of.

Michael Cowen:

That's the other amazing thing is about the people at the top of this game is that they're all constantly learning and you don't hear a lot of trash talk about the other. There's a lot of respect and saying, "Go learn from this person, go learn from that person. Whereas, let's say on the defense end, I think you hear a lot of trash talk about other prominent defense lawyers because they don't want to give each other's business. Whereas even within the same town, when two people are competing for the same referrals, I just see a lot more respect on our side of the docket.

Nick Rowley:

I think that's something that's new too, because I don't remember it being that way when I first started practicing. I remember it was a little more cutthroat. I think we've come together more. There are some really good organizations out there that have helped bring us together.

Michael Cowen:

You're also spending your time and energy teaching other lawyers. What are some of the ways if someone wants to learn more from you that they can do it?

Nick Rowley:

Trialbyhuman.com. We do seminars every year. Right now, our seminars are not going forward. I don't think we're going to do any in person this year, make sure everybody's safe. We'll do one that'll be in Montana, probably in August. Come to the seminars, and you can also... there's a list serve and then there's another portion of the list serve where you get access to a whole bunch of more stuff that's, there's a paid component to it where you get access to a lot of other things.

Michael Cowen:

I signed up for it recently when I was preparing. There's some really cool stuff on there.

Nick Rowley:

We can actually pay to run this thing, because it costs money. I don't make any money on Trial by Human. The books I write, the proceeds go to charities or back to the organization helping us teach. I don't make a single dollar off of it.

Michael Cowen:

Something that I noticed on your website that resonated with me. We talk about trial stuff, we also talk about some business aspects. On your law firm website, it talks about, when someone brings you in on a case, one of the complaints we used to hear from referring lawyers and we stopped being guilty of it, that they complain about a lot, is that they hand someone off a case and they don't hear anything back until either they get a check or they get a phone call saying something went wrong. You guys seem to do it differently.

Nick Rowley:

Well, most of the cases, if you call me up and you want me to be involved with the case, I don't say, "All right, great, send it my way and we'll give you a referral fee." Let's work together. I can learn as much from you as you can learn from me. Let's work together. Don't just hand me the case. Let's divvy things up and we can accomplish so much more as a team than we can as individuals. The lawyers that bring us in on cases, even if they're very, very inexperienced, or it's a case that's in an arena that's out of their league that they don't know anything about. Say, "Well, stay involved, read everything, learn how to do it. Because the next time you get one of these cases, I may not be able to help. But if you learn how to do it, you'll be able to do it on your own. If we go to trial, man come on, we'll have you take some witnesses. Let's do it together."

Michael Cowen:

That's something else that's awesome. That's something else that changed over time. Because when I was a younger lawyer, I had senior lawyers telling me things like, "Don't let the referring lawyer find out how to do it, then they won't need you next time." There's much more of, I think, an abundance mentality nowadays, that there's plenty out there for all of us. Malorie, is there anything you want to ask?

Malorie Peacock:

No, I mean, I found the conversation very interesting. I always love to learn from other people.

Michael Cowen:

Malorie is my trial partner, we try cases together.

Nick Rowley:

I always do my best to have a trial partner with me, most often times it's my wife, Courtney. If you guys haven't read Trial by Woman, or been on [trialbywoman.com](http://trialbywoman.com), you should. Malorie, there's a monthly call. Actually, men can be part of it too, but you ought to be part of it.

Malorie Peacock:

I'll check it out.

Michael Cowen:

Is there anything else you want to talk about?

Nick Rowley:

That's all. I really appreciate you guys inviting me to your podcast. It's been a pleasure meeting you.

Michael Cowen:

Thanks so much. I can't wait to meet you. Hopefully I get to meet you in person one day. It's been really nice talking to you.

Nick Rowley:

It would be my honor and privilege.

Michael Cowen:

Thanks, Nick.

Outro:

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