

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 it's 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 client - 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, we have professor John Campbell. John is not only a law professor, but he also has a company called Empirical Jury that does online jury research. How are you doing today, John?

John Campbell:

I'm great. Thanks for having me.

Michael Cowen:

So tell me a little bit about yourself. What's your background?

John Campbell:

Well, my background, we'll try not to go too far back is I started as a public school teacher, I decided I should go back to school and became a lawyer. When I did, I started working at a plaintiff's side law firm in St. Louis called the Simon Law Firm, where the promise they made me was we'll let you start trying cases right away, but they may or may not be any good. And they kept their promise. I tried some good ones and I tried some tough ones, and I learned a lot about being a lawyer in a hurry. After working there and running a class action department, and working on some injury cases too, I joined the University of Denver Law School, became a professor. And then in my time there came upon empirical studies of juries, started studying tort reform and things like that in an academic setting and publishing things that I thought would be useful to actual practitioners.

John Campbell:

Founded the Denver Empirical Justice Institute, which still exists and I'm still the director of. It's an organization that studies civil justice issues and how jurors behave. And as you can imagine, some of the people I knew from my life as plaintiff's injury lawyer and class action attorney started saying, "If you can study what jurors do with big numbers and empirical measures, can you do it on individual cases?" And so what we do quite a bit of now is, we study individual specific cases to try to figure out what's driving decision making, which jurors are behaving better and worse for the parties, things like that.

Michael Cowen:

So what is it about the empirical side of this that caught your interest?

John Campbell:

I really caught the bug. I started talking to people who were studying things had nothing to do with jury trials, but they were talking about how they were using online samples, how they were getting data fast and how they were using statistical methods to really get at what was making things happen and whether certain things inserted or taken out of a scenario made a difference. You can imagine, we're familiar with this, for example, in medicine, that we might have a double blind and half the people get a medicine and half get a placebo and we measure if there's a difference. Trying to control for everything else, Google does this. They launch more than one ad and then they measure the click rate. But as you know in law and including in my background as a plaintiff's side attorney, we didn't tend to do that. We tended to bring 10 or 15 people in and talk with them, and we learned things from how they viewed it.

John Campbell:

But we all knew we probably can't trust the numbers. We can't really be sure that the three women that we had that day represent women generally or whatever. There were a lot of limitations. So it started catching my interest, this idea of what, if we could apply sort of scientific methods and big data methods, to figuring out why jurors do the things they do, or how the rules of evidence work and whether they work the way we think, or whether that jury instruction actually matters.

John Campbell:

And as I started exploring that, I caught the bug. We started studying things like anchoring and closing argument, whether per diem arguments are in fact a way that drives up damages, whether jurors can think through those and handle them appropriately, which the answer is they can, and other things like that. And that led to then also saying, well, what if I studied an individual case? What could I learn about it if I could get two, three, 400 people to look at it, instead of say 10 or 15?

Michael Cowen:

So what are some differences then, I guess, pluses and minuses between what you do in a traditional focus group?

John Campbell:

Well, so maybe it's helpful to just talk about what we do and that'll help bring it into focus. In a traditional focus group, you would put together a plaintiff case and a defense case, for example, and you'd present them and you'd present them, maybe in person to 10 or 12 people. Now, when we work with the attorneys, we put together a plaintiff's case and a defense case, we can show that to people in any form we want. All video, all text, text, images, and video. However, we want to go about making sure that people understand it. But now instead of showing it to people in person, we recruit people through a variety of tools that have formed online. And basically these work like a gig economy. If you think of Uber, you can work on demand. Well, there's a whole economy of workers out there who can log on, look for an hour or two hours or eight hours of work online.

John Campbell:

Amazon started this as they started so many things. They started something that they called HITs, human intelligence tasks. And what they did was they used people to solve problems they couldn't write algorithms for. So if they wanted to sort pictures and they couldn't write an algorithm for sorting pictures of bats and birds, then they recruited hundreds of people to do it and wrote an algorithm that said, once a bunch of people agree, this is a bat or a bird, use that information. So it was really like a human machine. Well, they opened that up and now there's a number of sites like that, where we could

go and we can post something that says, "Be a mock juror and get paid to do the work." And we can in a day recruit 200, 300, 400, 500 workers who come in, work through the case, provide feedback, provide decisions and leave.

John Campbell:

And so they're working online at their own pace in their own time. We're paying them for completing the work. The difference is, is that means that we can get hundreds or even thousands of people in a short period of time. And of course, we get them at a better cost because we don't drive them to the office. We don't give them donuts. We don't pay them for the commute, there's no dead time and we get more from them, because if they're sitting in your office, if you ever done a traditional focus group, one challenge is the person who doesn't talk. And sometimes they leave and they've said three sentences, and that's all you could get out of them and you pay them for their time and they leave. Here, people are responding individually. And so we're making questions required and they have to respond to move forward. And if they're not responding, we're throwing them out of the study because we're looking for people that want to actually engage. And so that's how it works, and how we get a lot of people to try to dive into the case.

Michael Cowen:

I guess, how representative are your samples as compared to the people that show up for jury duty?

John Campbell:

We get a very good spread of jurors. So we get jurors from ... we start at 18. We won't take anybody under 18, and we've had jurors as old as 80, and we tend to have jurors that average about 40 years old with a spread from 18 to 70.

Michael Cowen:

Wow. Okay. My concern is you'd have a bunch of underemployed people in their 20s.

John Campbell:

No, they've actually done some interesting studies on this. And what they found is, is that the number one reported reason for doing online work generally, especially tasks like this one is that people think it's fun, or you can imagine some people do Sudoku. Well, if you can log on and you can read the first chapter of a book, which might be a task you'd find, and you can give feedback on the first chapter of a book. And instead of doing it for fun, they send you a check, there's people who do that. So now we get conservatives, liberals, moderates, we get old and young, we get up to about \$150,000 in income. We don't get the super rich, but we don't just get people who are unemployed. When we ask for example, employment, most of our workers are employed full time or part time or part time.

Michael Cowen:

Well, that's good. Because one problem I've seen with ... I've done a lot of focus group work where other people have done, let's say they use Craigslist or an employment agency to do the recruiting. Craigslist tend to have a lot of a panel, that kind of people looking for jobs on Craigslist did not seem to be particularly representative. And then the employment agencies, you get a bunch of bitter unemployed people or you tend to, and they tend to skew differently I've found, because of what they're going through at the time.

John Campbell:

We've seen that too in in-person studies in the past when I used to be an attorney hiring people to that. The other thing is, I don't know if you heard this, but you'd see the same person. If you did enough focus groups, the same guy would come in. And so online, it's nice because we have trailing exclusions. So for example, we can track workers by ID. So we can say, all right, well, don't want anybody who's done a study of ours ever or for six months or nine months, we can have lifetime limits. So we work very hard to make sure we never have a professional juror, and we got a nice spread of jurors. Of course, there's real power in that because you can imagine if you get 30 blue-collar workers out of a sample of 600, it's like having a whole focus group just of them.

John Campbell:

So now can with statistics, you can say, "Well, did they do something different than white-collar folks?" You can look and say ... or you can look at each decade of life because you've got 30 or 40 or 50 people from each 10 year period. And you can say, "Do people from 60 and above, for example, behave differently than people below that?" And if they do, there's accepted statistical methods to notice that and say to you, if I were working for you, I'd say, "Hey, above 60 years old, these people are 15% more valuable on damages and it's statistically significant. We got enough of them. We know this isn't a random effect. This is real. There's something that this case does for people that are older, that doesn't do for younger," or whatever the way we split them is. So we've developed a bunch of software that looks for that, that looks for any demographic characteristic or answer to a voir dire question that stands out as acting different than an average juror, which of course is helpful in jury selection.

Michael Cowen:

Are you able to model the particular jury pool or the demographics of the particular venue where a case is going to be?

John Campbell:

Absolutely. Modeling demographics, there's a few ways to go at it. I'll try not to be too technical or boring, but the shortest way, one way you can do it is you can now always pick. It's very easy to sample at the state level. And depending on the size of the county, you can often sample at the county level. Now, of course, if you're talking about, we just did a case not long ago, that was in the creationism, where the creationism museum is in Kentucky. It's not a big county. We couldn't get 400 people from a county like that. So the next option, if you can't sample the area is sample an area like it. Look at its big characteristics and then find an area that similar.

John Campbell:

So you can imagine a rural county in the Southeast. Might look like several of the States in the Southeast if you just pick a few of them and then you'll match the demographics pretty closely. And then the last option, which actually is what we do a lot is take a broader sample, take a sample that is more than simply your venue. But if your venue is a venue that skews a conservative, for example, then ask, all right, what's the overall win rate? For example, percentage of jurors who vote for liability is 70%. All right, do conservatives act differently? And if so, how much? And then we'd say to you, look, we calculated a 70% win rate, but among conservatives, it's only 65%. So then when you're looking at the panel, you have information available. The only downside to sampling too small, you get down to the county level is, you want to get enough people from the sort of outlying groups that you can actually tell what they do.

John Campbell:

So if I want to tell you how a Trump supporter is behaving, for example, but you tell me, "I'm in a pretty progressive venue. There won't be many, but there'll be a few." I need to get 30 or 40 Trump supporters to tell you how they might behave. If I only sample that county, I might not. So often I'm telling people let's sample, let's cast the net a little wider, and then we can throw away what we don't want in the data, but let's get enough of everybody that we can actually understand how they behave.

Michael Cowen:

Yeah, that's what I was wondering, how big of a sample size do you need of a particular group to give any kind of predictive information.

John Campbell:

There's two things that determine whether you can trust the information. One is how big is the effect. The bigger the effect, the less people you need. If we see a difference of, 80% vote for liability versus 10%, you don't need too many people to know that's real. The closer the numbers get, the more people you need to be sure you're not seeing something random. But typically if we have 30 or 40 people in a subset, we're going to be able to see real effects. And so what that means is, is for a very basic study, we're probably recruiting 250 to 275 people, because of course, they'll fill a number of different demographics. One person will be female and over 50 and a blue-collar worker, for example.

John Campbell:

If we're trying to understand more about the case, for example, we get a lot of attorneys who ask us, "Hey, if I asked for a million dollars, \$5 million or \$10 million in noneconomic damages, what does that do to the case?" Well, we can check because we can present the identical case to 600 jurors, change only that without them knowing it. They don't know that they saw a different request for damages and we can say, did it affect damages? Did it affect liability? Did it affect fault? If it did, we can see if that was statistically significant. So I might say to someone, "Look, don't ask for that big number, because when you do the win rate falls by 10%. Jurors are pushing back, they don't like it." I might say, "When you ask for that bigger number, you actually do better. Whatever you do, don't under ask." So the more things we study, the more people we need. 30 per sort of subgroup, 300 for a basic study and we've run studies up to a thousand jurors.

Michael Cowen:

Oh wow. Are there some things just overall trends from looking at jurors? Because there's a lot of urban legends as a African American union worker will always bind for the plaintiff. An Anglo Trump supporter will never bind for a plaintiff, which I don't think are true, but are there any things you found in the data pre-COVID, because we'll talk about COVID later, that surprised you given what the urban legends were as to who was going to be good and who wasn't on the case.

John Campbell:

Yeah. One you just mentioned, which is the idea that for example, race is a consistent predictor. I would say just off the top of my head, I bet 80% of the reports send out to attorney say there is no race effect, right? It is somewhat uncommon to see race as any sort of predictor for example.

Michael Cowen:

Good.

John Campbell:

In fact, gender is more often a predictor, which is interesting, but you're more likely to see, for example, women give larger damage awards. That we see happen in a majority of cases than men, even though they might be the same on liability. Maybe they both vote for liability at exactly the same percentage of the time. Women may get more damages.

John Campbell:

Now, the reason I'm hesitant to even say these things is that the thing we've learned most is that it's unpredictable and that the case matters. I'll just give you a very quick example. We worked on two cases that were both excessive force cases. One was a 19-year-old or 18-year-old, black female, and one was a 55-year-old white male. The demographics of how jurors responded to that case were almost inverted. And the facts weren't that different. So what changed? The plaintiff. So what I say to people is, look, if you tell me you've got an injury case in which you can tell me the exact same facts I'm going to ask you, is this a 65-year-old wealthy doctor? Is this a 20-year-old unemployed, Hispanic worker? All those things are going to change how jurors perceive your case.

John Campbell:

So I think if I've been surprised by anything it's that now these days, I don't believe in almost any of those wives tales. And I would say, I need to know a lot more about the case and I probably need to study it. I frustrate people sometimes because they'll ask me, "Well, what do you think on this case?" And I say, "I don't know. I don't guess anymore." That's what data's done for me is allowed me to try to be a little more certain about what's going to happen.

Michael Cowen:

So people that are wanting to violate Batson and make challenges based on race, not only is it unconstitutional and wrong, it's also ineffective.

John Campbell:

You shouldn't do it. You shouldn't do it because it's wrong and you shouldn't do it because I don't think it matters. I think there are much more honest and decent ways to think about jurors. For example, we ran a massive academic study at the University of Denver with some great researchers, Lee Ross from Stanford, Valerie Hines from Cornell and, Jessica Salerno from Arizona State. And what we were studying was, do the answers jurors give to have some basic bias questions, predict how they will behave in cases and can they be rehabilitated or rehabilitation for lack of a more refined word bullshit.

John Campbell:

And what we found was is for example, about over 30% of jurors believed the burden of proof is too low for plaintiffs. And you know what, when they believe that even if the judge says, "Can you set that aside and follow the instruction?" And even though the instruction very clearly delineates preponderance of the evidence, they're still bad for the plaintiff. So we saw with a sample of 2000 jurors that, that bias, that question predicts a bad juror for the plaintiff, that no amount of judicial rehabilitation can cure it. And that if you leave them, you infect the jury within my view, an unconstitutional juror, a juror who cannot listen to the evidence. So I would say there are questions like that that are far more predictive

than the things we might fall back on race or age or gender. I don't think that's how we seek fair jurors or the best juror for our client.

Michael Cowen:

I totally agree with you. I do not apply stereotypes to pick jurors and I've found that listening both to the answers to nonverbal cues, I am really interested in supplementing my arsenal with better questions that are more predictive scientifically and statistically, rather than going purely on gut feeling. Although I think there's a role for gut feeling in trial lawyering too, because there are nonverbal cues you pick up when you talk to individual person that gives you an idea of how they feel about something.

John Campbell:

I completely agree. Our view of what we do at least on the data side is we're trying to give good lawyers more information, and then they're being good lawyers in deploying it. So yeah, the scariest juror in the world is the jurors giving you all the right answers, but you're pretty sure they hate you. And we've all had that. We've all had somebody that they're saying the right things, but they scare me. I think we probably can't ignore that instinct, but what we like to think is we think of it this way. At least if we're doing that, we're doing it in the face of full knowledge. So if all their predictors are good, maybe our instinct about them is wrong. At least we know to think that and ask ourselves that question before we exclude.

Michael Cowen:

And our instincts are often, are sometimes wrong. It's hard to know. It drives me nuts where during the trial people are trying to predict what other people are thinking or doing, because I don't have any ... like, I try to focus on what I'm doing. And so I'll have co-counsel during the trial like, well, I think this person is saying this and this person is thinking that, and they're almost always wrong when we brief jurors after the trial. A lot of times someone crossed their arms because they were called are not because they didn't like what's being said or, you know.

John Campbell:

Right.

Michael Cowen:

So this empirical stuff is really cool. Do you think there's still a role for traditional focus groups?

John Campbell:

Absolutely. We actually work in these days, in the COVID days even more, we work a lot with jury consultants and a lot of times we find ourselves either officially working with them. So for example, a friend of mine, Sean Claggett, we've found ourselves working on a number of things together. Sean does a more traditional role of in-person focus groups or now virtual focus groups through Zoom, but we find ourselves working together pretty often because, we can compliment one another. The other thing that happens sometimes is even though I'm not directly working with him, I was just talking to somebody the other day and they said, "Well, I think I'm going to have my jury scientists help me put together the presentation we use with you."

John Campbell:

And then sometimes we have jury consultants who come directly to us and say, "Look, we've learned some things. And now we want to see if they hold up when we put them in front of hundreds of people and we want to refine how much this effect is. We think this type of person is not liking our case, or we think this frame works. We'd really like to measure if it works and if so, how much?" And so I think there's a complimentary role. That's really how we find ourselves working the most often.

Michael Cowen:

Awesome.

Commercial:

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Michael Cowen:

How does the cost compare, and you don't have to give exact numbers, but between doing the empirical jury research and doing the traditional focus groups?

John Campbell:

Well, as you know, it's a hard question how our cost compares because jury consultants vary. So you can think of jury consultants that openly advertise that to do four focus groups on the weekend, they're going to charge you \$50,000. To come out and stay at their house for a week and talk through your case, you're going to spend \$50,000 and some extras. And you can think of others who, who charge 10 or \$15,000 to do a good job. So there's that range. We at a per juror costs are the cheapest way to study a case without a doubt. And by the way, I should mention it, we don't just gather data. Our jurors give us open ended comments and feedback. We give our clients thousands of comments from the jurors over a series of questions. So you're also hearing the voice of the jurors.

John Campbell:

So at a per juror cost, we've looked at it. There are some in-person studies that cost between \$500 and \$5000 per juror. If you think of it as buying information, a unit of information. Ours tends to be 30 or \$50. So at that level, I don't think in-person stuff would ever be the same. Our actual studies tend to run from somewhere around \$10,000 to somewhere around \$25,000, depending on the case we're studying, if you were talking about what do you actually spend on a given case. And then we have some cases which I'm happy to say, we love them, we get in the boat and row. I'm a lawyer, my wife's a lawyer and we just say, "Look, we'll spend the money. If we all lose, we'll lose together. But let's find a relationship that works for all of us."

Michael Cowen:

Awesome. That's actually, with most consultants now, of course, focus groups, once you get it, you can do some of it yourself and save money. Although you still have to have a place, you have to recruit people and pay them. You have to either hire a service or do the marketing to recruit people. But I would say that in the quotes I've gotten from you in the past, it's definitely ... it's tended to be less than most jury consultants would have charged me to do a group with, 10 to 30 folks group members.

John Campbell:

Yeah. That probably means we're not good business people, but we stumbled into this. When I started studying these because I was studying it in the academic setting and my good friend, John Simon, who's an inner circle member, great lawyer taught me to be a lawyer. And my wife, who's a great lawyer, both had cases set for the same day for trial in the same venue. And we studied those two cases using this model just to see if it would work. It worked in both, it was very helpful in wanting to settle the case. The mediator was stunned by the data and the other, it affected what John Simon asked for in closing and I think it made a good case better. We were studying cases for people because we got invited out to talk to a variety of groups, AIEG and the inner circle.

John Campbell:

We were studying cases, we didn't have a business. I was a lawyer practicing law teaching at a law school and starting to study cases. So although we love to make money doing it, I think I can tell you, this has become the thing that I love most in life. Attorney comes to me with an amazing, great case, but a hard case, hard issues, tough liability, challenging background facts. And our goal is, let's figure this thing out. Let's understand what's really making it tick. Let's figure out what interventions make a difference. Man, that's fun.

Michael Cowen:

Well, I know my partner and I were talking yesterday on a case and plaintiffs had been trying this particular product case one way and not particularly successfully. And we think we've come up with a different angle, but we want to know if it's going to work or not. And we thought rather than bringing in 10 people, before we get to the point where we're going to be designating experts and trying to figure out, do we spend any more time and effort on this theory? Do we do any more discovery in this theory? Let's test it. Let's see if our gut is right that we found a winner or if we're just believing our own BS.

John Campbell:

Yeah. We could do that, that'd be fun. And the way we often do that, so we can actually measure it against the old way is you present half the jurors the case in the traditional frame and the other half, this new frame. And what's neat is if you get enough of them, looks, it's real simple. If we look at it and you're winning 75% of jurors with your new approach and 60% with the old approach, we don't have to think much more about what we should do, do we?

Michael Cowen:

Exactly.

John Campbell:

The data leads us to the right spot. So I love that.

Michael Cowen:

Maybe even triple split it, maybe one way only, the old way only, and presenting them two options and then saying, there's my theory. If you give the jury two options, you suddenly have to prove both instead of either or, but am I right or not?

John Campbell:

Yeah. That'd be fun to find out.

Michael Cowen:

So can you give some examples of stuff you've learned from cases that would be interesting that obviously there's a lot of stuff you probably can't talk about because you have ongoing cases and confidentiality, but some interesting things you found.

John Campbell:

Sure. Let me just talk about a couple. One is that, there's some guys out there now who are saying, if you ask for more, you get more, which frankly, the first time that was said was in the 1950s in the Chicago Jury Project, a huge academic study. We have found that to be true. The anchoring principle, the idea that larger numbers pull jurors towards those numbers, even if they ... because they're negotiating off of them, we found to be true. But what we've found that is really fascinating is what's referred to in the academic literature as the fusion effect. That is that the amount you asked for directly affects liability.

John Campbell:

So we have seen, for example, that even though we presented an hour long presentation of evidence, and the only thing we changed is the five seconds in which you say the amount you're asking for as a plaintiff's attorney, for example, we've seen that sway the liability findings by 10%. 10%, you're losing or gaining one out of every 10 jurors, which can really make a huge difference in the ultimate result of the case. And the only thing you change is how much you asked for. So how does that work? Well, here's the thing. Most times we're seeing liability climb, as you ask for more until the point that we would call the cliff. So there's always a cliff. You can get so high that jurists think you're crazy and they'll start to resist. But my experience is, most plaintiff's attorneys are a little low.

John Campbell:

And here's the other thing. We had an attorney related to that. We had an attorney who was in his capped state. Noneconomic damages are capped at, I don't know, \$300,000 or something. And they said, "Well, for noneconomic damages, I'm just going to ask for the 300,000, because if I ask for anymore, I'm risking upsetting jurors and I won't get it anyway." And I said, "Please let me test that, please." So we did one where we asked for 300,000, we did another, we asked for something like 10 million because the case justified it, it was a serious injury case. You know what happened? Liability went up when you ask for 10 million, because jurors were viewing that small conservative ask as a lack of confidence in the case.

John Campbell:

So there can be very serious consequences to what you request in damages. And I would say on the plaintiff's side, I'm a plaintiff's lawyer. So I'm sorry for the defense attorneys listening, although this will be useful to them in a different way. I would say plaintiff's lawyers, I tell lawyers a lot on the phone or in calls, you're your own damage cap. If the jurors get more than you asked for you really messed up,

because that means you were way low. And the whole smell test that many of us were taught. Be very careful not to ask for any more than exactly what jurors could stomach and if they're ever upset, I'm not so sure that's true. I'm not so sure that's the best way to try a case. So that's one, I'll just mention one more if it's not too boring.

Michael Cowen:

Yeah, go. This is great.

John Campbell:

I'll mention one more really sort of fun finding. Let me just give you a very specific example. We find that testing whether witnesses are effective or not, is very useful because it checks our own prejudices and biases and as lawyers, we're not that great at this, at judging. So let me just give you one example. We were working on a case where the witness was a man who was suing for legal malpractice. The male attorney who was a partner in the firm that we met with said, "This is the best witness I've ever had. He was a quarterback in college. He's a big tall guy. He's good looking, he's articulate, he'll carry our case." The female partner sitting there with him said, "Are you kidding right now? He's a jerk." And just like night and day, their opinion of this witness, I said, "Well, we'll show some video of him and see what happens."

John Campbell:

We showed video of this witness, and 55% of all jurors said they didn't believe him and thought he wasn't credible. And when they did, the win rate among those jurors was something like 20%. Well, that was one of those things where a simple five minute video clip and getting through three or 400 jurors to tell us what they saw, might've avoided a colossal mistake. Because what I've seen is, is that we are very bad, including myself at guessing what jurors will think of witnesses. And so that's another one that to me is always worth doing is trying to figure out and check our own blind spots. There's been a lot of fun things like that. It's amazing what happens when you let enough people look at a case. They'll almost always find something you missed, and you're awfully glad they told you before trial.

Michael Cowen:

Yeah, that is so cool. One of the scary thing as I'm doing this podcast is I learned about all this really, really cool stuff I want to do and then it's just finding enough time in the day and enough money in the bank to do it all.

John Campbell:

I understand.

Michael Cowen:

So we are living in some interesting times right now, between, there's COVID, there's now all the, a massive new civil rights movement and then possibly developing of almost by sense, a little bit of a backlash because of ... between some writing and then some, I would say poor messaging on people chanting, defund the police and that being interpreted as getting rid of police departments altogether. And so I am wondering, have you done any research to see, are juror attitudes changing or is there a jury poll changing at all during this time?

John Campbell:

Yeah. We've actually been digging into this quite a bit and forgive me if I look like I'm navigating. I made some bullet points because I'll just share a couple of things here.

Michael Cowen:

Okay.

John Campbell:

We've surveyed about 1500 jurors, and we've asked very specific questions about COVID-19, about trial options, because of course, we're all wondering about in-person trials versus Zoom trials versus some form of virtual trial. And there's a lot of organizations looking that and court's studying it. So just a couple of initial notes. Three out of four jurors report being nervous or somewhat nervous to respond to jury duty. 30% know someone who has COVID-19 or had it, 17% know someone who was seriously ill or died.

Michael Cowen:

Wow.

John Campbell:

Now, how about this. I'll give you just a couple of data points and you'll see where I'm headed right away. We asked people, if a court said it would exclude people over 65, a which I've seen people talking about, or it would exclude people who have underlying health conditions like heart problems, lungs or diabetes. Do you have that, and would you ask to be excluded? We found that at least 20% of all jurors would ask to be excluded and I think a court would almost certainly have to exclude in good conscience. We found that 46% of jurors, almost half said they would actively seek to avoid jury duty. 30% would specifically ask to be excluded because they're uncomfortable in closed spaces. Another 9% said they would ask to be excluded, because they'd refuse to wear a mask.

Michael Cowen:

Interesting.

John Campbell:

So if you put those numbers together, you got one in five that are probably going to get excluded for health reasons or age. You got 30% that are saying, "I will actively ask to leave because I don't want to be in a closed space." You got another 10% basically who say, "I'm going to ask to leave because I refuse to wear a mask because it violates my constitutional rights." Just that tells us that to see the jury, we probably need to expect to lose 50%. We need a melt of 50% of jurors before we ask a single voir dire question that isn't about COVID. To me, that raises some real implications.

Michael Cowen:

I've got a follow-up. Do you have any information yet as to, okay, so we're going to have a less representative jury pool then. Either the judge is going to force people that don't want to be there that are mad about it and feel scared, or we've got a less representative jury focus. We've got a large percentage off. Are you finding about whether any of those people would tend to skew one way or another?

John Campbell:

Yes. So as far as skew goes, there's a couple of data points. So one is that jurors who say, we ask jurors, "Are you nervous?" And as I mentioned, most of them are the ones who say, "I'm not nervous at all about jury duty," in a COVID-19 era, skew heavily defense. So the people who are most likely to show up who say, "I have no qualms about showing up and I won't ask to get out, because I'm not nervous." They skew defense in the studies we looked at, I think it was about 15% on liability, which isn't nothing, right? You take a 50/50 case and you make it a 65% win rate for the defendant, 35 for the plaintiff. That's a big move.

John Campbell:

The other we saw was that the jurors who say that they know someone who's been seriously harmed by COVID go the other way. That there's about 17% of jurors who say, "I know someone who was seriously harmed or at least seriously ill or died of COVID." Those jurors go the plaintiff's way about 11% more often. So you've got these push pull tides. The question none of us quite know is who will actually show up and who will the court exclude? But I think if I had to handicap it right now, I would tell you that in average cases, I think it's skewing defense and the jury already skewed in my view, slightly defense based on some studies we've done about burden to proof, noneconomic damages, attitudes. I think it's going to skew a little more.

John Campbell:

And I think the next risk is if the court doesn't then allow real voir dire on top of that because they've already used so much time on COVID and they're worried about busting the panel, I can imagine judges saying, God, we just lost half our jurors. We got to see the jury. We're not going to lose too many more for exclusion. Then I really think you have concerns because academic research I've done says that in the absence of meaningful voir dire and meaningful exclusion, there's enough prevalence of juror bias that you're going to struggle to see jurors who are listening to the evidence.

Michael Cowen:

And how about the people that absolutely think it's a violation of their constitutional rights to wear a mask. They're not going to wear a mask. I guess they just don't believe that there is a health risk. How do those jurors skew?

John Campbell:

Well, this gets very strange. Overall across cases, the early data is that skew defense, but with a caveat, I'll give you an interesting caveat. We took two medical malpractice cases that we had run in the past. These are medical malpractice cases that we'd studied that were fully detailed, full cases, ready for trial that we'd studied for private attorney. So we had exact win rates and exact damages. And what we did was we ran them in May. We just ran them again. We didn't change them at all. So the only reason they would change is if something in the air changed. And that was a little before most of the protests. So most of what was in the air was COVID-19 effect.

John Campbell:

And we wanted to see in medical malpractice cases, what happened. And what was interesting was is that if you just looked at the win rate, the cases didn't seem to change much. So we didn't see a skew for the defense or the plaintiff, even though many people had predicted a skew for the defense, because people love doctors and were clapping. But then we try to figure out why. Why is it we're

seeing high numbers of people say they respect doctors, something like 60% saying they think doctors are heroes. But we're not seeing a decline in medical malpractice liability. And we figured it out.

John Campbell:

One of the things, and this is a long way to get to your question about what about some of these people who have very strong views on, for example, civil liberties. We found that Trump supporters, in one of our medical malpractice cases, people who openly said they would vote for Trump again and supported him now were better for the plaintiff than for the defense. In fact, they were driving the win rate up enough, that even though the other jurors were falling off, they were keeping the overall win rate about like it was before.

John Campbell:

Now, I can tell you, you asked me about predictors, we have never run a medical malpractice case in which Trump supporters were good for the plane. Never. So to see that happen, we were trying to figure out why. And I can tell you, if you ever saw that picture in the news, Trump supporters protesting the right to be out and not wear masks and not just Trump supporters, but many of them openly Trump's supporters, many of them libertarian and very conservative. And they were driving down streets, saying we have a right to be out. We shouldn't be confined. Who stepped in front of the car? Well, the protesters who stepped in front of the car, and sometimes they weren't just protesters were often dressed in scrubs. They were dressed as doctors. And when you think about that image, something has happened where Trump supporters have, some of them, have a sort of resistance to doctors and a resistance to this idea that doctors are so helpful. And incredibly that's making them more amenable to medical malpractice cases.

John Campbell:

So we're seeing some really unusual upside down effects in med mal. If you put med mal aside, then I would tell you, I think it's skewing slightly defense in who will show up for jury duty, but if you actually look at how they vote, we're not seeing pronounced effects.

Michael Cowen:

Okay. Do you think that these attitudes are going to continue to change and evolve as the months go by?

John Campbell:

Absolutely. I think, look, what we know today is so heavily dependent on what happens in the next month or two. I was looking at the news before we started talking and you have states that are now reporting surges in coronavirus. And you have states, one state Arizona that has asked for its hospitals to start treating this as an emergency again, because they're seeing numbers that worry them about filling up their ICUs. That sort of thing, or a resurgence in the fall could fundamentally alter at least the cases most deeply affected. And it could certainly alter the comfort of jurors showing up for jury duty.

John Campbell:

I'll just mention one other thing about that, about jury duty. We studied, we asked 1200 jurors to tell us which kind of case they'd like to attend. And we gave them options. We gave them an option that is pie in the sky, but I think it's completely doable, which would be, what if you could watch the game case from home on your own time? Or what if you could watch the case from home on livestream? Or we

gave them some other options. What if you could go to court, watch it live streamed, but not in a crowded room. And then another option was what, if you can just go to court and basically do a normal trial the way they're normally done. You'll just be distanced a little and wear a mask.

John Campbell:

What we found was, four out of 10 jurors said, "What I'd really like to do is watch the case from home I'm on my own time." Well, that's very interesting because if a court were to try that, if they were to record the trial, edit out the objections, edit out the dead time, edit out the time the judge had a bench conference, edit out the time the judge had to talk to somebody about a different case, edit out the time the lawyer couldn't find the exhibit, you would get condensed trial of all the evidence and all the witnesses and jurors would stop worrying about whether they're going to be exposed to the coronavirus. We would seat a more representative jury. And with today's technology, there are ways to show them that trial, make sure they're paying attention, check in on their attention and then have them deliberate if you'd like. And so we found that four out of 10 jurors thought that was the best choice.

John Campbell:

So if we're talking about how attitudes are going to change, I think part of what we have to talk about is what are we asking jurors do? Because they're going to act differently if we sit them in a courtroom in masks, than if we try to do something that respects their concerns. And so you could probably tell from my answer, I have some strong feelings about the best way to proceed if we want to see truly representative jurors and representative juries.

Michael Cowen:

Yeah. I think we're probably going to have a tough time convincing the court, and I just heard this for the first time from you today. So I'm still processing this idea of giving them a package of videos to look at and when everyone is watched it, then they get together and deliberate. There's a lot of logistical challenges to, has everyone watched it all and then, are they going to finish near enough in time where it's going to be fresh in everybody's mind to get together. Because it's one thing to make a decision on your own, it's another one to then go and deliberate on it and have everyone ready. The other option, I guess, would be just, the traditional trial, but watch it live via Zoom. How do they feel about that?

John Campbell:

Slightly more jurors prefer that option, either at home or in a courtroom. Because of course, you could also put them in a bigger space in the court, maybe the convening room instead of the jury room and they could watch. About 40% of jurors like one of those two options as well. Now, I will tell you just so we can push the frontier on jury trials, let me just play devil's advocate on the editing. All you need to show jurors a trial and be sure that they finish at the same time is, and I say this because this is a lot of what we do. You video record it, which these days it's not an expensive process. You record it, you cut it out. You need somebody to edit. And then you tell the jurors, they must watch so many hours per day. You tell the lawyers for each of these segments, we want you to agree on five questions that are very simple, but if you watch the videos, you'd know the answers, right?

John Campbell:

You recruit a big sample of jurors, you make them answer the questions. If people start failing, you remove them and you end up with A, the people that watched. You have them, watch it on a schedule

and when they'll finish and then you have a deliberation day. And you could do it. And the funny thing is, is we would use less juror time in total because they wouldn't be sitting in the benches waiting on us. We know how that goes. Sometimes we only present two hours of evidence in a day because so many things come up and something we didn't expect and a witness cancels, and the judge has a problem.

John Campbell:

So I think, although it sounds farfetched, I think it could be done, and I think we would avoid what I'm very worried about, which is that we start having juries that have significant hunks of the population who aren't there at all. Which I think then we get, we really risk undermining what we think juries do well, which is give us fair decisions that are representative of their community.

Michael Cowen:

One concern I've heard from plaintiff lawyers and it's one, frankly that I have a gut concern myself, but I'm really interested to see what you think because you've seen so much online results is that without having our body language and eye contact and connection, without actually seeing the plaintiff live, that a jury can't give a big damage verdict.

John Campbell:

Yeah. I don't think that's right. I understand the feeling. I do. I don't think that's true. I will tell you that, for example, we have had a number of cases that we've studied, where we predicted a number, and the case went to trial and our number was within 10% of the verdict. And that includes numbers like a \$37 million verdict in an auto case that had to do with product liability or a where we predicted a nine figure verdict, in a trucking case and it was.

John Campbell:

So we see jurors, look, if you show jurors the real evidence, you show them things that show the severity of the burns. You communicate to them, let them watch day in the life videos. And I just did one recently where the guy is showing how he gets out of bed, has to lift his leg with a hook because the leg doesn't work. What it looks like, how to get into the bathroom to even try to start to get ready to take a shower. Our experiences, jurors take that seriously. If you've ever watched a movie and cried, I'm not saying I have, but if you ever have, maybe I have a few times, if you ever watched a movie and cry, you know that good video can move you much in the same way that human interaction can.

Michael Cowen:

We just might have to think more in terms of how to present something on video as compared to how to present something in theater.

John Campbell:

I think that's right. You'd have to think, all right, they're going to see it differently. We might think about some different things, but I don't think we would necessarily be changing the fundamentals of what we do. And I'll tell you, in terms of mistrials and everything else, there's nothing worse than getting a week and a half in a trial, something getting admitted and then figuring out it shouldn't have been and worrying the cases blown or witness blurting something out. But you know what? The judge rules on that, it gets thrown out and the jury never sees it in an edited video. So there's also some advantages in terms of guaranteeing that things that shouldn't mislead jurors don't.

Michael Cowen:

Right. Interesting. Because we got to get a judge to go with this too, but it's a really interesting concept of a different way to do it. And judges are out there looking for ideas. They're really struggling of how we're going to have civil jury trials.

John Campbell:

That's the thing we can't afford not to try cases for a year. There's real concern that it's going to be hard to seat panels. And my concern is the judges can say, all right, all these people are dropping like flies. All right, let's just seat who's left and let's not do much to exclude them. And as you know, none of us and our clients, most importantly, nobody's clients should spend years waiting for their day in court and then lose the trial because three jurors were seated who could have never voted for that client, no matter what evidence they heard. Then what were the three years for? And so to me, that's the greatest fear. When you see juries that are not able to listen to evidence, you rob the client of their constitutional right to a jury trial, and that means really all that you did as an attorney, all they did as a client, all the other side did, none of it mattered because people voted on a bias.

John Campbell:

And I'm really worried about that. I'm worried about us getting judges. We already have federal judges. Some of them are great, but we have federal judges to say no voir dire or 10 minutes of voir dire. If we seat juries in this era with that approach, I don't know how we can have any confidence that we're getting fair results.

Michael Cowen:

I think sometime, I think this summer, we're still very unlikely to have jury trials. I have one case set North Carolina, the first week of August. They haven't said we're not going to go yet. So I'm raring to go in front of case. But at some point sometime this year, I predict that some courts somewhere in this country are going to start, and it wouldn't surprise me if lawyers may have an option. Like saying, this is what we're going to do. There're going to be modified procedures. Do you want to have your trial or do you want to go wait until next year? What are some things you recommend doing when we're facing that decision to make the most informed decision we can for our clients?

John Campbell:

Well selfishly, I would say if you know the procedures let's study them because let's not guess. We can get some answers about who it's likely to exclude and whether that matters to your case. So it'd be as simple as saying, these are the people that look like they won't sit under what that court say and it's going to do, what do they do on your case? Are we significantly prejudicing your case?

John Campbell:

The other thing is, yeah, I would ... Yes. So that's one. The other thing is I'm thinking it through about what are the best, what do you do? If you have a court that is going to change procedures radically for how jurors interact with evidence, I would be thinking a lot about whether that skews how certain groups will perceive the evidence. So one thing, for example, that we haven't studied yet, but I'm very interested in is, if they were watching it by Zoom, do we start to see a different effect for age groups? Because we're going to have people that, that feels like life to, they'd have friends they've never met. Younger people maybe who say, "Oh, I've got a great friend across the country. I've never seen him in

real life, but we talk online." And we're going to have people on that jury panel who have never been on Zoom until that day.

John Campbell:

And I'd want to know a lot about how that interacts and a lot about whether that's good or bad for your case. The problem is it's very case specific. There are cases where I think could be highly advantageous, and there are cases where that would terrify me.

Michael Cowen:

Yeah. Well, I guess we got to keep studying and try and make an informed decision or someone is just going to roll the dice and hope for the best, which is probably on a significant case, not the best approach to take.

John Campbell:

I think that's right. I think you're right, that there's going to be a number of trials. I was just talking to an attorney in California and they have a rule there. As I understand it, that there's a certain number of years I think it's five by which a case should be tried barring extraordinary circumstances. And they're coming up on deadlines. So this attorney had just gotten an order that said, "Hell or high water. You're trying the case in August because otherwise we'll blow the deadline, and I can't start doing that." And so I think for a variety of reasons, federal judges who they keep their statistics on how they move cases, states like that, that have rules about moving civil trials, much like a speedy trial in a criminal case, I agree with you. I think we're-

Michael Cowen:

Or judges that think that this is all a hoax.

John Campbell:

Judges that think it's a hoax. By the way, we were talking about getting a judge to be in on this video editing. I think we could find some judges who do that. My experience is some judges who really don't like jury trials much, but they like bench trials, because they don't have to go through all the complicated jury stuff right away. And they don't always have to have, approach the bench, turn on the white noise, have the jury leave the room, whatever. You could probably convince some judges that recording the trial will save them time, because their staff can deal with the logistics. And the attorneys can write the comprehension questions to make sure jurist paid attention. I don't know. I'd be interested to see if we see some folks drifting towards some form of virtual trial or at least live streamed in home trial, where you could still monitor that the jurors in front of the screen, you can have regular attention checks, but you don't drag them into court. Because then we wouldn't be talking about losing half of our jurors to COVID effects.

Michael Cowen:

Yeah. And the fact is, in the courtroom, you do not have 12 people all paying close attention at the same time the whole day anyway.

John Campbell:

What are you talking about? I've never had anything but a, just wrapped attention. No, no. I agree. An interesting aside of that is that, there's some good research out of the Arizona jury project where they got to actually take transcripts of 50 juries that deliberated cases, that even though jurors don't pay attention, the good news is we don't get too many decisions from juries on bad facts. Because what happens is, somebody in the jury room says, "No, he said the light was red," and six other jurors say, "No, he didn't. He said it was green. I've got it right here in my notes." And what they found was that most inaccurate things from not paying attention get corrected in deliberation. And so I think that's a good thing for all of us that believe jury trials are the best, not perfect, but best system have for deciding cases.

Michael Cowen:

Yeah. And well, you typically don't have all 12 paying attention every second somebody is.

John Campbell:

Yeah. Do you know that what they found in that, the number one predictor of who your foreperson would be?

Michael Cowen:

Uh-uh (negative).

John Campbell:

The number one predictor of who your foreperson would be. Unfortunately, you only know this after trial starts, is the person who takes the most notes. So statistically nothing predicted it better, race, gender, age, education, than just how many pages of notes did the person take, because the person who's been dug in and serious is demonstrating a studiousness and concern and the other jurors see it, and they're also more likely to volunteer.

Michael Cowen:

Interesting. One thing that's kind of, I've wondered about is how do you know these people they're getting paid to do an online jury project, how do you know they're actually paying attention, that they take it seriously?

John Campbell:

Yeah. Well, there's a couple ways. On the back end, we've seen that the results we get match real life courtroom results. And so that's maybe the best way to know something is working. Is when you see, if you say it's going to be a \$35 million verdict and it's 35 and a half, that feels good. Now, how do you get people then that are going to give that kind of information, real jury decisions? So we've developed a lot of ways, and I think these are must haves if you do this yourself. Frankly, you ought to do them anytime you're gathering information from people.

John Campbell:

So we have people, for example, when they're entering their demographics. When they're all done entering their demographics and they think they're finished, they come to a new page that says, you must repeat some answers. And if those aren't identical, the people are thrown out because you ought to know whether you own a gun or not. You ought to know how many kids you have. You ought to know

if you live in an urban, suburban, or rural area. And if they don't match perfectly, we throw them out. When they're answering questions, we'll say, tell us if you agree, disagree, whatever, with a variety of questions. And one of them will just say, pick the third answer to show us your reading. And if they don't, they're thrown out.

John Campbell:

And then after, and this is interesting because it's both for online studies, but it would be for any form of sort of virtual trial, maybe even Zoom trials. We ask jurors after they view the evidence five or six, very basic questions, sometimes even physical questions like, when you were watching the video of the plaintiff, what was shown? And the questions are him getting out of bed, him entering the bathtub, him getting into the van. If they don't answer those questions correctly, we throw them out. So what we do then is we're both telling jurors we're watching, they know we're paying attention. And two, we're routing out anybody who's rushing through just to get paid. Tends to exclude five to 10% of jurors. And then when you get left is you get the people who really paid attention and then you know you're dealing with real data.

Michael Cowen:

Awesome. I noticed I did online defensive driving once and they had the same thing. What color was the car? You can see if you're really watching the video.

John Campbell:

Right. Did you really see it?

Michael Cowen:

Yep. And I have to confess once I had to go rewatch a module.

John Campbell:

Yeah. I can imagine. Those aren't the most exciting videos.

Michael Cowen:

Yeah. One other concern I've had is, since we're the plaintiffs and we're the ones that file the lawsuit, the jurors that are scared for their health to be there, but maybe get forced to be there by the judge. The judge just says, "Fear is not enough to exclude you." Are they going to blame us and hold it against us as plaintiffs for dragging them into the courthouse against their will?

John Campbell:

We were wondering about that too, because there was some early research from, I think it was AAJ and this was right in the teeth of it. As I recall, it might've even been in March, that they were looking at who do you blame? And it looked like jurors who had to come to trial would blame the plaintiff. So we asked almost the exact same question of these 1200 jurors. And what we found was is that, first of all, it was a relatively small number who blamed anyone. The most common answer was, I wouldn't blame anyone. I understand this has to happen. The next most common answer and not great for judges, I guess, was I blame the court. They sent me the notice.

John Campbell:

A very smaller percentage, something like 20% of all jurors would blame the plaintiff or the defense, and they blame it to them in about equal numbers. So what I would say is, although we see some selection effects and some effects on who will show up for jury duty based on their own views, beliefs, and fears, what we don't see is some overwhelming blame of plaintiff's attorneys. And so, although I have some reservations about how we go about trying cases in the fall to make sure we have fair jurors, what I don't believe is that for example, plaintiff's attorneys should believe that they should discount their cases at settlement or that they should be afraid to try these cases. Because I think with some clever thinking, some careful work, some good jury selection, I don't expect this to skew defense. When I do expect it to skew perhaps to the defense is if you don't allow voir dire, probably more rigorous voir dire than even was allowed before, or you don't carefully think through, which jurors you're excluding based on code.

Michael Cowen:

Great. I'm excited about getting back in there and getting back to try and cases, but I certainly want to make sure I'm armed with as much information as possible so that it's not a suicide mission.

John Campbell:

Yeah, absolutely. Well, we're going to keep studying this because we view it as something that's evolving. And so what we want to see is not only what we see right now, but what the trend lines look like over the next three or six months. We ought to be able to start to tell, is this getting better or worse? Are jurors starting to settle down? Is it going to be easier or harder to see the jury? Because I think even stuff like that informs when we talk to the judge about calling the veneer panel, maybe we would have asked him to call 60, and now we're going to ask that judge to call 120, but that's the sort of thing we have to do to make sure we don't bust a panel and waste our time, or we're seated jury we're not really happy with because we think we got to make it work.

Michael Cowen:

And then if we're trying to see them six feet apart, then that's a whole nother statistical case.

John Campbell:

Yeah. Spread them out over four courtrooms, and you just drift. You're a floating lawyer. You float from court to court and ask questions.

Michael Cowen:

We may do that or I'm borrowing a high school gym or some other auditorium for a jury selection so that you can have appropriate spacing. I know that-

John Campbell:

I heard that too.

Michael Cowen:

And it's not just juries. We put on at our firm or I put on the trucking bootcamp once a year, and we were going to have our first one in May. And obviously we did not have it in May for COVID concerns. And so we tentatively move it to August. In Texas, we can have things. Now, do we cancel it? Do we go virtual? Our tentative plan is to get a room for 250 people and only seat 50 so that we can space them

out. And then people who want to come can come, people who don't want to go can either get it on video or just, there's no requirement that anyone listen to Michael Cowen about cracking cases. But we've sensed enough of people who want to go that we want to do something, but we want to try to do it safely. So I think, the courts are struggling with the same thing.

John Campbell:

It is an interesting dance, isn't it? We want to be safe and we want to keep distance. I think most of us understand that, but we need contact and I've found myself, I get these invitations to register for virtual conferences and I'm not motivated in the same way, because part of what I love about conferences is the people I bump into in the hallway. You lose something when you say, "Well, you can log in and watch the class."

Michael Cowen:

Yeah. The only two conferences I've registered for virtually. One I haven't even attended. They told me I can do live video was just to support my state trial bar association to make sure that we didn't lose money and that the vendors didn't all abandon us because they spent money and they didn't have enough people that signed up to feel like they marketed to them. And then the AAJ annual conference, because I'm a member of two groups, the litigation groups where I'm on the board of one and I need to give a report at a meeting. So I need to be registered for it.

Michael Cowen:

But frankly, at this point, when you get on the speakers, you get exposed to so much. And then I'm so specialized in what I do that I've heard the majority of speeches at a program before, I've heard the content before. So I'm really there to network with the people and we're losing all that virtually. I know we're just reopening. We're doing the soft reopening of our office this week. We usually have 30 people in there up at 10, make sure everyone's in an office with a door. People with cubicles are having to take turns using offices and then making sure we sterilize between people. But I will tell you that going back and seeing colleagues in the office, having lunch with people yesterday was just glorious. We have the need for contact that-

John Campbell:

Absolutely. We've had a very similar experience ourselves and with our kids to see, it's not the same to say, well, you can have a video chat. It's just not.

Michael Cowen:

It's just not. And I think as time goes by, you're going to have more and more people ... and I make you see it, willing to take a risk. And I've read on online forums a lot of anger, from let's say people on the right. Like I can't go to work or I can't take my kids somewhere, but it's okay for 60,000 people to march cheek to cheek in a protest.

John Campbell:

You were reading my mind. It's been a really complicated issue, hasn't it? Because you understand, at least I do. I see a pressing need for reform. But when you see people crowded shoulder to shoulder, you think, look, the virus doesn't care why you're there. And so I think most people think we'll probably see some troubling numbers in a couple of weeks. And we're starting to see some now. We're starting to see some numbers that don't look so good both from reopening. In my view, for example, my mom still lives

in Dallas. I was born and raised in Texas. And she told me they were reopening. I said, "Right now?" She said, "Yeah." And I was just talking to her on the phone the other day. I said, "Mom, they had the highest single day number of cases that they've ever had in Texas, like two days ago. So please don't ..." she's 77. So I was saying, "Please, don't just run out of the house without a mask and start chatting," because she's in that category of people that for her, the virus certainly isn't the flu.

Michael Cowen:

Exactly. It's the complex thing. I'm glad I'm not the one having to make ... the struggle we had just with the decisions for our office, because we care about our people was tough enough. I don't end the people having to make these tough decisions, balancing public health and economics, which is real. It's at this point when there's not an end date in sight, when it was, let's all stay home for a month, that was easy to do. When it's okay, well, we may or may not get a virus the next one to two year ... I'm sorry. We may or may not get a vaccine in the next one to two years, it becomes a different equation. And so it's really a lot tougher because I can't do this forever.

John Campbell:

No, I agree.

Michael Cowen:

I go between being an absolute terror and then wanting to go find people that have it and hugging them. And so I just get it and get it over with and whatever, get it done.

John Campbell:

Yeah, survive it and get some immunity.

Michael Cowen:

I'm not going to do that, but it is an interesting time to be alive. I'll just put it that way.

John Campbell:

Yes, yes. It absolutely is.

Michael Cowen:

It could be worse. People have gone through much worse in human history though.

John Campbell:

No doubt.

Michael Cowen:

So to wrap things up, you're doing some really cool stuff. I'm sure some of our listeners would like to talk to you, maybe hire you, maybe just pick your brain. What's the best way to find you?

John Campbell:

I'll give you two easy choices. One is to go to the website and you can learn a little more about us. We have that which we didn't talk about today, and it's probably not really germane to this, but we have a

jury app that helps you in jury selection, keep track of the information and pick jurors. And then we have the bulk of our work, which is studying cases. That's www.empiricaljury.com, www.empiricaljury.com. And then that's important because that's also how you can reach me. I'm john@empiricaljury.com. And so if they do John, traditional J-O-H-N, spelling @empiricaljury.com, they'll get me. And I love chatting about cases. I love talking about this stuff. And one of the luxuries of stumbling into this has been that we've studied cases in, I think the last time I looked 30 States. We've been involved in \$550 million in verdicts in the last couple of years, and I've gotten to work with phenomenal lawyers. I've learned so much. I'm sure like your podcast, you learn so much talking to good lawyers. And the only trick is to try to implement it all when you're working on your case.

Michael Cowen:

Yeah. And I encourage people, the more of this research we do, the more of a data set you'll get overall that allows you to look at overall trends between cases too. And I just think more and more, this is going to really revolutionize things. And frankly, the more of a body we as a plaintiff's bar can and built up through you or anyone else who's doing this kind of work, have no doubt that the defense has been doing this kind of work for quite a while. And we might not know it, but there's no way that let's say Allstate, who's going to try thousands of jury trials a year doesn't do something to figure out what works.

John Campbell:

Yeah. There's no doubt. I will tell you, tell me if this is interesting to you and if not, I can cut it. But I was helping pick a jury in an MDL in Arizona. The defense had about five jury people there, and a couple of them from what I could tell were data folks. And when we went through, the judge was going to give some real voir dire. It was very clear to me that they were asking questions only to pretend to be asking questions so the jury didn't think they were weird. They weren't digging in. And it became clear to me that they had picked the jury before they showed up between the questionnaire and their analytics and their background research on jurors, which is happening aggressively.

John Campbell:

They knew who they were going to see. They really did and they had a couple, they were going to work to get off for cause and they asked them a few questions and they had some folks that are going to use peremptories on and they knew the jury they wanted. I think that's where we're at. I can tell you also that a firm in Denver, on its website advertises, they have three PhD social scientists that use data analytics to help their clients win. And right now my view is they're using that largely to market so that they can get business from other defense firms, but they are using it when they're figuring out how to work cases and the smart ones are using it and we're seeing this with plaintiff's attorneys.

John Campbell:

I'm running a study right now with a plaintiff's attorney to figure out if they should take the case. We're running another study with attorneys to figure out how they should shape discovery and what their experts should be talking about. We run a lot of studies to value cases for mediation, so we can give the meat or real data instead of gut instinct. And then we run studies to figure out what to talk about at trial and who to seed as jurors. And you can bet that in big defense cases, they're doing all those things all the time, and if we're not doing them at some point, I think we're going to find ourselves asymmetrically behind.

Michael Cowen:

Yeah. And that's actually the case that I'm going to talk about hiring you today when we're done with this is we have expert reports due in three months, our expert has three different theories that he's come up with. And we want this test to see whether any of them are better or worse than the other because we've got to do some expensive testing and stuff to validate the theories. And so where are we going to go with this? And frankly, is this something we should be going all out on or not?

John Campbell:

Yeah. Oh, that sounds fun. Good. I'm excited about that conversation.

Michael Cowen:

Okay. Well thank you so much for joining us everyone. I do really encourage you to go onto empiricaljury.com. There's some really cool stuff on there, and this is just a new thing. And thank you so much for sharing, especially on the jury attitudes with COVID and everything else. It's something we all need to know, and I'm really grateful for you for coming on board and sharing that with us.

John Campbell:

Thanks. I'm honored to be on the show. I love listening, so it's fun to be on.

Outro:

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