

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 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 Attorney Dorothy Clay Sims and Dr. Oregon Hunter. How are y'all doing today?

Dorothy Clay Sims:

Good.

Dr. Oregon Hunter:

Really good.

Michael Cowen:

Tell me a little bit about yourselves. We have a doctor and a lawyer both. It's the first time we've had a medical doctor on.

Dorothy Clay Sims:

Dr. Hunter here is a board certified in physical medicine and rehabilitation, and he had a practice where he treated traumatic brain injuries, psychiatric conditions, and spinal conditions for how many years? 40?

Dr. Oregon Hunter:

From '84 on till 2015.

Dorothy Clay Sims:

He ran a brain injury clinic. We're married, and, when we first started dating, he actually was the defense expert on one of my clients, and that was the ugliest deposition in the history of that county. It was awful. We just went at it.

Dorothy Clay Sims:

His practice is unusual, because what he does is he watches video tapes of defense medical exams that are done throughout the nation and then he generates a chart of everything the defense expert lied about. I just was looking at one of the projects he did today, and he takes a quote out of the report,

"There's no damage to the shoulder. It was of normal appearance," and then he puts in the chart, "They never looked at the shoulder. The patient was never gowned and never took their shirt off."

Michael Cowen:

Oh, wow.

Dorothy Clay Sims:

I use him for those charts. Other lawyers use him directly through my firm, and they use that for cross examination.

Dorothy Clay Sims:

He decided to research what percentage of the time the doctors lie or misrepresent what really goes on. He went back over 20 cases that he had to see what percentage of the time they misrepresented what they did in the first place or the test results and what percentage of the time that they misrepresent knowing they were being recorded.

Dr. Oregon Hunter:

Sad to say, it was 100% of the cases.

Michael Cowen:

That's insane. In a little bit, I really want to get into that study, because it was just mind blowing. Dorothy was nice enough to circulate it around when it got published, and it was just mind blowing for me to read it. I guess I still, after 20-something years, have some rose-colored glasses from time to time. I just don't want to believe how bad it is in the real world, but it's bad out there.

Dorothy Clay Sims:

It's worse than we realize, unbelievable.

Michael Cowen:

And, Dorothy, you've helped me on some cases uncover some stuff on defendant's experts. I appreciate the help you've given us. But I'm just curious. You've actually written the book Exposing Deceptive Defense Doctors, which is, if you have a doctor on their side, is the bible that you need to get to figure out how they cheat and how they lie. What got you interested in this to begin with?

Dorothy Clay Sims:

I used to have a very large work-comp practice in north-central Florida. I had a large firm, a large number of employees. I noticed a pattern. About 60 of our clients were found to be malingerers by this one doctor, and he was Harvard educated, very smooth. He was giving the same test, and it was the MMPI, the Minnesota Multi-Phasic Personality Inventory. So Dr. Hunter, my husband, was going to the Mayo Clinic and he was going to be administering some board certification tests, and I knew Dr. Butcher, who created the test, was in Minneapolis, so I reached out to him and said, "Hey, will you come hang out with me at the airport? I just want to go over this test with you." God bless him. He did. He didn't charge me. He spent half the day. He interpreted my own MMPI. When he explained the test to me, I realized "Oh my god, they've been lying all along." This witness clearly misrepresented what took place.

In fact, Dr. Butcher signed an affidavit on that case saying, if that doctor had been a student, he would have flunked him.

Michael Cowen:

Oh, wow.

Dorothy Clay Sims:

So I realized "Oh my god, it's worse than we thought." So I decided to take other tests and reach out to the creators of these other tests to see how they were being manipulated.

Dorothy Clay Sims:

Then one day I came home and I told my husband, "I want to just cross-examine doctors. I'm probably not going to make any money in it," and he said, "Do it."

Dorothy Clay Sims:

I started showing up at depositions where no one knew me, including the plaintiff's lawyer. The court reporter knew enough to call me and say, "Dr. So-and-so's being deposed." I'd show up. I'd say, "I'm going to take the depo," and they're like, "Who the hell are you?" But, ultimately, I ended up doing that.

Dorothy Clay Sims:

It got bigger and bigger. And then David Ball started calling me at home at night and yelling at me ... David Ball, the jury consultant ... saying, "You've got to write a book, dammit. You've got to do it." I kept saying, "I hate writing." Finally, I said, "If you quit yelling at me, if I write it, will that work?" And he said, "Yeah, I'll stop." So I started writing the book, and it basically was years and years worth of various types of misrepresentations that we people did.

Dorothy Clay Sims:

In the process, I began to research the backgrounds of the doctors, and my office manager at the time was a young man named Andrew Zimmerman. Andrew's very smart. He said, "I'll work for you for one year." And then, at the end of the year, he said, "Look, I want to go out and compete with you. I want to research these expert witnesses and get their backgrounds, because I think that they're lying about even their degrees." I said, "Do it. Great," because I didn't like that part of it. So he created a company. He's got a bazillion employees now. It's called ZS Information Group, and they do deep dives on defense experts. In fact, I use them now. Recently, we got a report from them where they said the defense expert didn't have the degree he said he did. Ultimately, he admitted in the deposition that he bought it online and the university never heard of him.

Michael Cowen:

Oh, wow.

Dorothy Clay Sims:

That happens 40% of the time.

Michael Cowen:

40% of the time?

Dorothy Clay Sims:

40% of the time.

Dr. Oregon Hunter:

Misrepresentations of buying online?

Dorothy Clay Sims:

I don't know, but misrepresentations. It's more prevalent if somebody has a non-MD, because the states vet MDs better. But PhDs, Master's levels, it's shocking. One guy said he had a PhD in psychology. It was PE. Oops.

Michael Cowen:

Well, you know ...

Dorothy Clay Sims:

Right. One of the things we also do, which I encourage lawyers to do, is you write for the state file on every witness. We had one witness that was used by the defense a lot, and we got a state file and there was little handwritten note. You have to read every page. It said the witness, that the doctor was filed for stealing from the poor patients' medical fund to pay for ... Can you guess?

Michael Cowen:

Drugs or women?

Dorothy Clay Sims:

Women, prostitutes. I asked him about it. He got up, walked out, and never came back. Oops.

Michael Cowen:

Wow.

Dorothy Clay Sims:

Another guy was arrested for urinating on his wife, not once but twice.

Michael Cowen:

How do you find this stuff?

Dorothy Clay Sims:

What we started doing is actually writing for criminal records from the police department on the witnesses, and we're finding "Oh my god." Another witness in Florida, when we did that, we found out that he assaulted a videographer. He jumped across a table and tried to assault a plaintiff's doctor who had a cardiac condition. Very strange stuff out there. It's pretty shocking. We now go on mugshots.com, and that's how we determined the one witness was arrested for trying to smuggle cocaine on an

airplane right after 9/11 when security was its greatest. He said, "Oh shit, I'll throw it away." Oh, that fixes everything. Fine, no problem.

Michael Cowen:

It's just crazy how many just sociopaths get into the testifying industry. They just have no problem lying.

Michael Cowen:

I remember I had much smaller stuff. I had a case where there was a radiologist. He always said that everything's degenerative. No one's hurt. I knew he got run off from a radiology group just because he was an ass. They didn't really like him there. And I knew he was making all of his living from testifying, but he didn't want to admit that. So he goes, "What are you doing for a living?" "I'm teaching at the medical school," because we had just opened a medical school in the Rio Grande Valley of Texas. You do some open records request and you find out, one, he's not even paid to teach at a medical school; two, he's not teaching the radiology residents; three, he's not teaching medical doctors or any kind of residents. He's doing a one-hour, volunteer radiology lecture for physician assistant students that are in their program. That's not teaching medical school. That's trying to make yourself look like you're something you're not.

Michael Cowen:

Someone said they were the team physician for the Atlanta Falcons, and they did an internship in college with the Atlanta Falcons.

Dorothy Clay Sims:

That's what this company, ZS Information Group ... What they do is they get into the weeds about all that. Because, for example, some people will claim that they have a medal of honor. It's now a crime to falsely make that claim. The witnesses bail pretty quickly. They verify licensures. We've had a number of cases where doctors examine somebody in a different state and they don't get a temporary license. The minute you bring that up they walk out and they don't come back.

Michael Cowen:

Wow. Unfortunately, there's been some witnesses on the plaintiff side that have done that too. I think we have to also do our own diligence on our side-

Dorothy Clay Sims:

You do. You have to make sure, yeah-

Michael Cowen:

It's not totally a lie. There's one automotive safety expert who at one time on her website said he went to the Air Force Academy. He went there for a week and dropped out. It's technically true.

Dorothy Clay Sims:

It's misleading. I went to Harvard. I just walked through Harvard Yard.

Michael Cowen:

Other than hiring ZS Information Group, you have a doctor on the other side to get a report and you've got a bad feeling about it or it's someone you see that says the same thing over and over again. What are some things you can do to try to find out is this person on the up and up, is this a legitimate opinion?

Dorothy Clay Sims:

First of all, if it's from the defense, I presume it's not. What Dr. Hunter taught me, it's actually from Sir Arthur Conan Doyle and the Sherlock Holmes series: presume everything they say is a lie, including their name, which actually has served me well, including the name. I go through the report. First what I'll do is I'll have a nurse go through the report. We combine all the medical records. We OCR them and we bate stamp them. I then save the report in Word. She does it in Blue and inserts every medical record that the doctor misrepresented or left out, and then she footnotes it. So I know when he says, "The MRI of the spine is normal," no, the radiologist said there was a tear and a herniation. She inserts all that in there for me.

Dorothy Clay Sims:

And then I'll have Dr. Hunter look at the video tape. He prepares the chart of all the things they misrepresented. I then go into the body of the report and insert everything they misrepresented, at which point, if I'm not going to cross-examine the doctor, because usually I can do these and lead counsel can cross-examine them. They don't need me to. If I have documents on the doctor, which I have stuff on probably over 1,000 doctors nationwide, 30,000 pages for some of the doctors, I'll just share that, and then I have exhibits that I OCR, combine, and bate stamp. Then, in the body of the report, I'll say, "Isn't it true the creator of this test says this doesn't mean malingering," and then I'll say, "See page 37."

Dorothy Clay Sims:

I have it all in one document because I think it's hard to go back and forth from the report. This way my questions are inserted in red right after the doctor makes the statement. That way, if the lawyer looks at the report, he'll know where in the body of the report to start questioning the doctor.

Michael Cowen:

I found, on the background, you've been really nice about sharing things, but I think it's sometimes more economical to pay you to get the review you've already done of the 30,000 pages than to try and spend my time to read the 30,000 pages myself, even if you're nice enough to just share them.

Dorothy Clay Sims:

My goal is to give it away, because I think when we share this ... And people now start just sending me depositions of people I've never heard of. I just start a bank. Then someone else asks about it and I Dropbox it to them.

Michael Cowen:

If someone wants to get a hold of you to try to ask about whether you have something on a particular expert, what's the best way to contact you?

Dorothy Clay Sims:

Just email me. It's my initials, D like dog, C like Clay, S like Sam at my name, dorothyclaysims.com

Michael Cowen:

You mentioned you all review the videotapes when the defense does a medical examine. In Florida, you have a right to videotape exams.

Dorothy Clay Sims:

That is correct.

Michael Cowen:

For those of us that are in states that don't have that as a right ... In fact, in Texas I found an unpublished case that actually said, without some kind of evidence reshoving, it was an abuse of discretion to order an exam videotaped.

Dorothy Clay Sims:

Here's what I do in Texas. I would file a motion to prohibit the defense from secretly recording my client, at which point they file a response pleading they have a right to record a witness, they have a right to videotape a witness, etc., at which point we then use their argument when we file the motion to videotape the defense expert. I'm working actually on a law review article on this topic with a doctor and some other attorneys. The reality is that you now know in Texas, because of Dr. Hunter's work, that all of the people, even knowing they were videotaped, still lie.

Dorothy Clay Sims:

SEAK, S-E-A-K, is an organization that trains expert witnesses. They've documented that defense experts get paid more than plaintiffs. Therefore, they have more motivation to misrepresent things.

Dorothy Clay Sims:

Now, in this current environment, Americans are videotaped without their knowledge or consent some 50 times a day. To say that a defense expert gets more protection than someone walking across the street is ridiculous, especially if you don't have the giant camera, the tripod. You just send somebody in with an iPhone and a charger cord and say, "Just use your iPhone." It's not disruptive. The only downside is if the doctor's planning on lying.

Dorothy Clay Sims:

Frankly, in Texas, you can secretly record people without telling them. I think that that has some negative ethical consequences, and I don't recommend it at all.

Michael Cowen:

We have mixed ethics opinions on it. It's legal to secretly record, and then there are contradictory ethical committee opinions about whether a lawyer can do it, especially in this context.

Dorothy Clay Sims:

Right. It turns the jury off, often it turns the judge off. It's snarky. But I think if you make the argument "Look, if you're going to secretly record my client who's a witness, at least I can record your witness out in the open and giving you notice." This is especially helpful in the neuropsych field, because it's incredible what we're discovering based on the recordings: substituting answers, changing answers, not

giving the test they claim they gave at all. One guy answered for the patient. The patient goes home after the evaluation. He then fills out and answers questions as though he's the patient and concludes that he's malingering based on his answers. He did that twice.

Michael Cowen:

The test did detect deception.

Dorothy Clay Sims:

It did. It was just not the plaintiff's deception. Exactly.

Michael Cowen:

Dr. Hunter, if you don't mind, can you tell us about the study you've done and you published?

Dr. Oregon Hunter:

If you look at the reports of the defense physicians and you take the report at the face value, the doctor may say, "The patient walked with a normal gate. I checked the strength and it was normal in the arms and the legs. Sensation was normal. The reflexes are normal. It all comes out. The range of motion of the neck was normal. There was no spasms," and you go, "Wow. It looks all negative." I always think, "Well, maybe they actually did a good exam and it really is correct what they're reporting in their document."

Dr. Oregon Hunter:

But then I look at the video and I go, "Oh my god, how could this be?" How can they claim, for instance, that there's no atrophy and they never had the patient take off their long-sleeve shirt and long pants so you could never actually see the limb? You couldn't see the thigh, calf, forearm, or arm. There's no way you could actually detect atrophy.

Dr. Oregon Hunter:

Then they would ask the patient to move their neck, and they would say, "Bend it forward." They would be maybe sitting across the room and they would know, just by looking at a person 20 feet away, that they moved it exactly 45 degrees. There's just no way they could make these claims and support them, because the video never showed them measuring and never showed them inspecting and never showed them checking the strength in the entire limb that they claimed they examined and never showed them taking off the patient's shirt so that they could actually check sensation to various modalities, like touch, painful stimulus, vibration, proprioception, two-point discrimination, etc., because the limb was never exposed for them to examine it. When they claim, "The sensation was normal on all the dermatomes," it's just not supported by the video.

Dr. Oregon Hunter:

So I go, "How could this be?" I thought, "Is it every single one of them?" I went back and I've done, I don't know, a couple hundred cases now that I've reviewed. I went back and I looked at 20 consecutive cases from over approximately a three-month period of time. This is from probably 2018 I looked at the cases. I picked up on several criteria of the categories that I was examining. Did they ask the patient to put on a medical examination gown so they could actually look at the spine, look at the tissue? Did they measure strength in all the muscle groups that they're claiming are normal? Did they actually perform a sensation examination based on standard technique using a painful stimulus, light touch, and all the

dermatomes or peripheral nerves? I went through these different criteria, and then I looked to see whether they met them.

Dr. Oregon Hunter:

In no criteria did they meet them. The most blatant, horrible example is they would say, "The peripheral pulses were normal." How do you check a peripheral pulse? At the wrist, you have to be able to put your finger over the radial artery.

Dorothy Clay Sims:

Just show him.

Dr. Oregon Hunter:

For instance, here. Then, in the front, you need to be able to have the foot exposed so that you can palpate on top of the foot or the side of the-

Michael Cowen:

This is radio, Dorothy, or a podcast.

Dr. Oregon Hunter:

Okay. Just for your information.

Michael Cowen:

Dorothy, showed us her arm and foot and Dr. Hunter was demonstrating on our Zoom call.

Dr. Oregon Hunter:

So you need to be able to expose the tissues so that you can actually palpate. If the doctor never had them take their shoe and sock off, there's really now way that you could do that. It's just shockingly bad conclusions.

Dr. Oregon Hunter:

And then many of the doctors use templates. I guess they must be in a hurry, because they don't read the report. The templates, they don't make any sense, because perhaps the patient was there for a neck evaluation and they examined something to do with the abdomen. What does that have to do with the neck? What is an orthopedist poking around the abdomen for?

Dorothy Clay Sims:

Here's a great example of that. We got a report that said the pulses in the lower extremities were normal at the ankles. There was one slight problem. The client was an amputee. He didn't have a leg.

Dr. Oregon Hunter:

If you actually read your report, you'd pick that up. Most of the time, they're dictated or they check them off and they're already on a template, and they never go back and actually look at it, because the templates are just a template. They don't correct it. Then they sign it and say this report is accurate and

correct. They can't support that. So it turns out that everything that they do has a question as to whether it's valid, because everything that you look at is not. Then everything looks bad.

Dr. Oregon Hunter:

It's just awful, because, in medicine, we were trained to be ethical, thorough. In a forensic evaluation, you ought to be able to step up your game, because somebody's life and recovery depends on you doing an accurate, ethical job, that you actually did what you said you did. These doctors, when they were in their training in medical school, in their internship and residency, I know they learned how to do it correctly, because they would not have been able to pass. Maybe they've forgotten how to do these evaluations or maybe they just don't care anymore or maybe they're so jaded that they just willfully misrepresent. For whatever reason, they're no longer meeting the standards that we would expect them to meet as a physician, as a licensed physician.

Dr. Oregon Hunter:

For me, it's really sad, and it makes me angry. I just can't understand how they're able to maintain this and sleep at night. It's awful.

Dorothy Clay Sims:

You mentioned how do they sleep at night, and that's a very good point, because, Michael, it dovetails into what you said earlier. If somebody's a sociopath, if they're a sociopath, then you can't really trust what they're saying. They don't have any compunction. They have no problem exaggerating or actually lying, and they're very good at it. They're very smooth. The best way to catch a sociopath is on the facts, because they never really pay attention to the facts. If you set them up in the deposition, "Doctor, why does it matter that the Rhomberg was normal?" "It's a very big deal. It rules out injury," then in trial you point out "You never did it," but you've got to do this a certain way, because lawyers that jump into this and say, "Wow, this is great. Doctor, you lied. You didn't do this test," they'll make something up and say, "This is a different way to do it." You have to establish in the deposition "You stand there with your feet together, your hands down." That's the Rhomberg, right?

Dr. Oregon Hunter:

Rhomberg, yeah.

Dorothy Clay Sims:

You establish in the deposition that's how it's supposed to be done, then in trial you show that they didn't do it, because it's really tough if they're a sociopath, and I think a lot of them are.

Michael Cowen:

Yeah, and that's the problem with a sociopath is they don't sweat. They don't get upset. They don't react. They just don't have normal reactions because they just don't care.

Dorothy Clay Sims:

Exactly. They're not worried about ... Yeah, exactly.

Michael Cowen:

That's why they make such great witnesses, because they look good and they look credible even though they're just lying out their teeth.

Dorothy Clay Sims:

Exactly.

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. 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@triallawyeration.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.

Dr. Oregon Hunter:

I want to make a comment about the video. We can look at reports. We can look at transcripts of evaluations. But the key is you really need to be able to look at the video.

Dr. Oregon Hunter:

To me, an example would be if there was a car that was damaged and you wanted an engineer to go out and look at the car and evaluate what was left of the vehicle that had been through a crash and was damaged, and then they wouldn't allow any kind of recording of video of what the examiner actually looked at, so then the examiner would go to trial and say, "This is what I saw," and there'd be no way to know whether that was actually correct or not.

Dr. Oregon Hunter:

To me, that's the same way a physical examination is. If a doctor's going to do a physical examination, in my case it's orthopedic and neurologic examinations that we focus on, if there's no way to know whether the doctor actually examined the patient and did the tests, and there are standards for how these tests are done, if we can't show that we did them the way that we all have agreed to in medicine, that this is the standard technique for evaluating sensation, for instance, that they can't support their findings. The key really is the video. I know that that is going to turn eventually, because if the courts and the legislature understands that there is fraud occurring to this magnitude, there's no way that the videos are going to be able to be kept out of evidence. It'll turn. The tide will turn, and it will allow to have ... Transparency is really what we're looking for here. It'll eventually come, but I guess it's going to be difficult, because, in some states, as we discussed earlier, it's just really difficult to get that information out there, because it's not allowed. It will be eventually.

Michael Cowen:

I think your paper, it was a really, really important first step, your article, is educating their judges, because the defense always argues, "The treating doctors didn't videotape their examines. We just want an even playing field," assuming that doctors that actually have a physician-patient relationship that

could be skewed or a grievance to a medical board if they screw up would have the same motive to misrepresent things.

Dorothy Clay Sims:

One response for that is, if you advise defense, "I'm going to send my client to Dr. Smith for a plaintiff's eval," and you tell your client, "You'll probably be videotaped going there and coming home," but then you can say, "Look, I advised defense counsel when my client was going to see this particular doctor. He never asked to videotape it. I would have left him do it. It's his fault that there's not an even playing ground."

Michael Cowen:

Yep. That's a good idea.

Dr. Oregon Hunter:

The plaintiff's doctors ought to be able to be doing a superlative job as well. If they can't support their opinions, then their testimony should be stricken.

Dorothy Clay Sims:

I worry about some of them too. I'm not so convinced.

Michael Cowen:

That's the problem. We don't always have control over who our clients see. I practice in communities that are very, very poor. The majority of patients are on Medicaid or something similar, Formula. The reimbursement rates are very low. Doctors tend to have fairly short visits and fairly short exams. When I read your paper, a lot of what I just call the slop, the "They didn't have to put a gown on," they rushed through a exam, I don't like that, but it wasn't as shocking to me.

Michael Cowen:

But what was absolutely jaw dropping for me was when there were abnormal findings, findings that would support the plaintiff's injury that were either misrepresented or omitted. Can you tell me a little bit more about that?

Dr. Oregon Hunter:

If they didn't look for atrophy and they didn't measure for atrophy, then they wouldn't find atrophy. That'd be one way.

Dr. Oregon Hunter:

Another way would be if they claimed the cranial nerves were normal ... This is unfortunately a frequent sentence I read under neurological examination: "Cranial nerves 2 through 12 were normal, or 1 through 12, or were grossly normal or WNL." If you ever see that word, WNL, really you have to interpret it as we never looked. Or, if they say grossly, any time the word grossly's used as a term for description, it means that they didn't check. We're having this discussion today, and I'm assuming your hearing is grossly normal. That doesn't really mean anything. You don't need to send somebody to a neurologist to check that. A neurologist ought to be checking carefully, ear by ear, using a masking technique so that one ear is covered, the same thing with vision. Each cranial nerve has a series of tests that should be performed.

If they're not, you cannot claim that it's normal. You can claim that it's grossly normal, but that means absolutely nothing.

Michael Cowen:

Are you available to give affidavits or testimony in support of the need for videotaping exams and what your research has shown?

Dr. Oregon Hunter:

On individual cases?

Michael Cowen:

Yeah, on individual cases.

Dr. Oregon Hunter:

I work for a law firm now. I'm an employee of a law firm. I'm not sure I would have the independent credibility when I work for a plaintiff law firm. That being said, I could talk about the concept of it. Individual cases is a problem I think.

Michael Cowen:

We've got the article. I just didn't know if that was something you could-

Dorothy Clay Sims:

I'd like you to consider an affidavit. He doesn't practice medicine, but an affidavit like that would not be the practice of medicine. It would just be your observation as you reviewed videos. You're not practicing medicine. You're not diagnosing someone. You're not evaluating someone. But you're reviewing the videos and you're looking at the tapes and the report and documenting the misrepresentations.

Michael Cowen:

Yeah. I'm not talking about a tape in an individual case. What I'm talking about is -

Dorothy Clay Sims:

He's talking about for a motion to compel videotaping.

Dr. Oregon Hunter:

That's not a problem, because I believe that. It's not an individual case. So yes.

Michael Cowen:

What are some other things, Dorothy, that you all have seen that we need to look out for where they're trying to pull the wool over our eyes?

Dorothy Clay Sims:

This just happened recently. I now tell plaintiff lawyers, when you have a scan ... This was a brain scan. You have your own expert give you the slice, which takes two seconds. They can pull the slice out that

clearly shows the damage. Put an arrow to where it is and identify the series and slice and what structure you're looking at.

Dorothy Clay Sims:

The reason for this is we got a report. This actually happened twice. Recently we get a report from the defense expert where he has embedded in the body of the report images from the brain scan and he says there's no atrophy in between these two scans. Atrophy's how you can prove TBI, brain injury. I looked at the scans. I didn't trust this doctor at all. He's somebody I have unbelievable amount of stuff on. So I presumed that it was a lie just because it was him. I go into the scan. I pull up the same series and slice, not even close. He identified something as slice 13 when slice 13 did not look anything like that. And he pulled some of the other slices that don't show the damage and he avoided the slices that did.

Dorothy Clay Sims:

So if they claim something's normal, the first thing we do is we say, "Do you deny that there's clearer slices in this scan that do show the damage?" Because they don't really spend a lot of time looking at the scan, they're too worried to disagree. They've so far always said, "Yes, there are better images. I just didn't pull them. I pulled the one that doesn't show the damage."

Dorothy Clay Sims:

The other thing that radiologists do, you can white out a tumor. You can white out all kinds of things. The defense radiologist will say, "There's a herniated disc, but it's not traumatic." According to the literature, you can't determine whether a disc is traumatic or not, because you can have preexisting arthritis, but that doesn't mean you also have a herniated disc. The defense will always say, "They had preexisting arthritis. Therefore, the disc is old," but they're two different things. It's a false choice, which is another. I always look for false choice. "It's not this. It's that." It can be both. "Your client is malingering and it preexisted," or, "Your client can have a brain injury because she had psychiatric problems when she was 12." You can have both.

Michael Cowen:

It's amazing. There was one radiologist. He kept saying there couldn't be ... What he did is he redefined the word trauma. He defined the word trauma as a cut or bleeding.

Dorothy Clay Sims:

A lot of doctors will try to say that there's swelling. There's got to be edema.

Michael Cowen:

Right, even if the MRI was taken six months afterwards.

Michael Cowen:

On one I'm like, "Is there anything, Doctor, any article, any book, anything in the world that says what you say and that will agree with you?" Finally, after like the fifth depo, he said, "Scott Atlas, MRI of the Brain and Spine." Before the depo was over, I went on amazon.com and ordered the book. It's a wonderful book. There's a paragraph in there, and I pretty much ended this guy's career with that paragraph, because it says, "There's been great interest from lawyers and insurance companies about

whether you can tell by the lack of these findings that there's" ... This was preexisting. "There is not legal or factual basis to date when a herniation happened from looking at an MRI."

Dorothy Clay Sims:

Can you send me the page from that book and the cover?

Michael Cowen:

Yes, I will.

Dorothy Clay Sims:

Okay. That'd be super helpful, because I have two articles that say that.

Dorothy Clay Sims:

But one other thing I tell lawyers to do when they're cross-examining a doctor if he brings up a book as a reference, just go to Google Scholar and pull the book up and do a word search. A lot of times you can find key pages for free and immediately, in the middle of the deposition, say, "Doctor, you said such-and-such book. Could you turn to page 328 and read the second paragraph?" They think you have every book in your office that they reference, and you're not. You're just going to Google Scholar and pulling up the digital pages from the book and doing a word search.

Michael Cowen:

It is amazing. I don't know, again, if it's the arrogance or the sociopathy, but they'll reference all this literature, and I guess they just assume we're not going to read it.

Dorothy Clay Sims:

They do. That is something ... I try to pull all key articles referenced in a report, because usually when there's a ton of articles it's a template. They cut and paste it. Nobody's going to sit down and pull the articles for each case, which means that, A, they're saying it in all cases and, B, I'm confident they never read the article. So when I'm cross-examining them ... And Dr. Hunter participates with me in depositions. He's announced on the record. We never do it secretly. When the doctor references an article, he'll go out and buy it immediately, OCR it, and highlight in the article where it says the opposite of what the doctor just said.

Dorothy Clay Sims:

A tip for the lawyer is first you establish ... And this is a briar-patch technique. "Doctor, how is this article even scientific at all?" He thinks you don't want it to be scientific, so he then says, "It's very scientific. It's great. I relied on it." You do that with all the articles. Then I go in and I'll read from the article. "Doctor, wouldn't you agree such-and-such?" "No." "What about this? What about this?" Then, when I'm done, I then bring the articles to him and attach them and say, "I was reading from the article you referenced," because you're right. They don't read the articles.

Dorothy Clay Sims:

We should be doing a better job as lawyers. I didn't used to do that. I didn't used to pull them.

Michael Cowen:

It's a lot of work, and I think they take advantage of the fact that a lot of us have busy practices. We have a brain injury case, and my partner, Malorie Peacock, I think you've met her, she pulled the articles, and she found over 30 of the articles the doctor references actually said the opposite of what she referenced them for and actually supported our position and not hers.

Dorothy Clay Sims:

Yeah. That's perfect, because you can count on them just being lazy.

Commercial:

Thank you to everyone who attended Cowen's Big Rig Boot Camp in August. We had an excellent virtual turnout this year and are already thinking of how we can continue to raise that bar for next year. If you'd like to attend virtually in 2021, be sure to mark May 20th, 2021 on your calendar now and save the date. To stay updated with details as they become available, visit bigrigbootcamp.com and sign up for our mailing list. And now back to the show.

Michael Cowen:

Dorothy, what are some other things you found that really have been helpful when you're deposing these deceptive defense witnesses?

Dorothy Clay Sims:

One thing is I like to have the plaintiff present, because, especially if the doctor's saying the patient is a liar, I'll put the patient right next to the doctor. I'll get there early. I can always figure out where the doctor needs to sit, because it's an ego thing. It's at the head of the table. I put the patient next to the doctor, and then the doctor will come in and say, "He can't be there." Well, yes, he can. "Doctor, I'd like you to look at Mr. Jones and tell him to his face that he's a liar, because that's what your testifying to." When you do this by video, they get very agitated.

Dorothy Clay Sims:

I had one woman who was a wreck from a brain injury. She's just like this. Her hair wasn't comb. She looked a mess. And he wrote in his report that she looked very happy and was clearly not depressed. I said, "Doctor, we're on video. You see my client. Is it your testimony here today that she's not depressed and she looks fine?" He turned his back and folded his arms and says, "I'm not answering that question."

Michael Cowen:

That's awesome.

Dorothy Clay Sims:

Yeah. The other thing, too, is having a doctor present. I like to have a doctor present during certain depositions, medical depositions, because what it does ... Again, I always try to give advance notice of this. It tells the witness, "Hey, if you're going to make crap up, we're going to catch you." They get very much more constrained. Dr. Hunter has a theory. It's called the halo effect. They don't want to appear dishonest to another member of their profession.

Dorothy Clay Sims:

In fact, we did that with somebody that actually used to be his partner, his medical partner, in Texas. We went to Texas, cross-examined her, and we knew her. It was her medical partner. It went very well, because he was right there.

Dorothy Clay Sims:

Texas, something about Texas, man. Y'all have some strange witnesses. It's the only state in the union where I had a 2020 van with a crew and a cameraman waiting for me to complete a cross-examination so they could jump out and intercept the doctor, because what he was saying was so insane.

Michael Cowen:

That's awesome. It is insane what people say. My partner, Sonia Rodriguez, had one where a woman was raped, and his basic opinion was well, he's treated a lot of rape victims that had had much worse things happen. Eventually, he-

Dorothy Clay Sims:

She's not dead.

Michael Cowen:

Yeah. She wasn't stabbed. She wasn't lit on fire. She wasn't beaten. She eventually got him to say, "Your opinion is basically this rape wasn't that bad," and then tried to get him to get criteria for what rapes aren't bad. When is it okay to be raped?

Dorothy Clay Sims:

Yeah. What makes it bad? Exactly.

Michael Cowen:

The case resolved very quickly after that deposition.

Michael Cowen:

Anything else that y'all want to talk about while I've got you here? We're pretty much up on time, but if there's something else that we want to bring up ...

Dorothy Clay Sims:

I think just presume everything's not true and verify everything. If a doctor says they're board certified, is it a legitimate organization? There's one organization that board certified a cat. Just because someone claims training ... If somebody claims they got something from Harvard, verify it. I've found about 80% of the time when they use the word Harvard in their CV it's not true. They'll claim a fellowship. I taught at Harvard. I legitimately did. But it was through the medical school and Harvard has no record of me teaching. The same is true with a lot of these other people.

Dorothy Clay Sims:

One other last thing to say: if somebody works for a university, what you need to do is find out what the rules are for outside income, because a lot of these defense experts will write a report on university letterhead and you're not allowed to do that if you're keeping the money. It's a private, double-dipping

side gig. But they do it. They don't follow rules, and jurors don't like that. You ask them, "Here's the law. At your university, you're supposed to get permission ahead of time for conflict of interest, and you didn't do that. You didn't comply. You didn't follow the rules."

Michael Cowen:

It's interesting how jurors ... Sometimes it's the little things that make doctors lose credibility.

Michael Cowen:

There's one doctor that testifies all the time, and he'll always testify that he doesn't remember how much money he makes. He has no idea. He can't remember the name of his CPA. He's given 100 depositions we have now where he says he can't remember the name of his CPA. No juror believes that a medical doctor doesn't know who his CPA is.

Dorothy Clay Sims:

Of course not. If you say, "Do you deny making a million dollars a year?" "I don't know." "Two million, five million?" You get up to 20 million. Then you say, "Don't you think, Doctor, most people remember making 20 million dollars last year? If you can't remember that, how can you remember anything about this exam?"

Michael Cowen:

Exactly. It just goes to show he's just playing a game because he doesn't want anyone to subpoena the CPA, which we'd probably never really get to do anyway, but I'd much rather have the answer "I don't remember my CPA's name" than to actually get the documents to tell you the truth.

Dorothy Clay Sims:

Exactly. I actually had one witness say his CPA was his cat.

Michael Cowen:

Wow. That's awesome.

Dorothy Clay Sims:

This is a guy that had a medical degree and was a doctor. He was legitimately a doctor at Johns Hopkins. Turns out he never went to medical school.

Michael Cowen:

That happened with lawyers too. Decades ago when I first went to work in New York City in my former life as a big firm lawyer, we actually had to go show them our license. It turned out that someone had graduated from a prestigious law school, they got a job at a big law firm, they made partner, they were working on all these multiple-million dollar corporate deals, and they had never passed the Bar. Nobody ever knew it.

Dorothy Clay Sims:

Wow.

Michael Cowen:

It was a huge scandal. Law firms were having to give back hundreds of thousands of dollars in fees that were charged by someone who was never even a lawyer at New York Wall Street firm rates, which is insane.

Michael Cowen:

It happens with doctors. It happens with lawyers. We have to check and verify, because they are out there lying to us.

Dorothy Clay Sims:

Right.

Michael Cowen:

Thank you so much. For you all that want to follow up more, Dorothy does and Dr. Hunter have some great services. Our firm uses them to get background information and help us go through the literature and find out this stuff. In the show notes, they have links to the website and also where you can read Dr. Hunter's article and where you can buy Dorothy's great book, *Deposing Deceptive Defense Doctors*. Thank you all very much.

Outro:

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you'd like to receive updates, inside information, and more from Trial Lawyer Nation, sign up for our mailing list at triallawyernation.com. You can also visit our episodes page on the website for show notes and direct links to any resources in this or any past episode. To help more attorneys find our podcast, please like, share, and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive, plaintiff-lawyer-only content and live, monthly discussions with me, send a request to join the Trial Lawyer Nation Insider's Circle Facebook group. Thanks again for tuning in. I look forward to having you with us next time on Trial Lawyer Nation.

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. 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. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail.

Disclaimer:

This podcast has been hosted by Michael Cowen and is not intended to nor does it create the attorney-client privilege between our host, guest or contributors, and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thoughts and opinions expressed herein are only those from which they came.

This transcript was exported on Sep 17, 2020 - view latest version [here](#).