

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 say that in the face of anger, justice evaporates- If you can't focus group it, you would have to be very, very critical of your process- The facts aren't good and you can't create a miracle- We can agree to disagree and be zealous advocates for our clients- Quit worrying about looking perfect. You're not going to. That'll come in time. But you can still be an effective litigator- Welcome to the award winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm. And now here's your host noteworthy author, sought after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation. We actually have our first returning guests. We have Sari de la Motte. Sari, how are you doing today?

Sari de la Motte:

Good. I'm your first returning guest. That's kind of special. I love it.

Michael Cowen:

You are. We're going into our third season and we finally have got enough where we feel like you're the first of several people that we've talked to. This is also our 50th episode.

Sari de la Motte:

Very cool. Congratulations.

Michael Cowen:

And we just passed our 100,000 download. So it's an exciting time.

Sari de la Motte:

Awesome.

Michael Cowen:

And we've got a lot of great comments on yours. But the other thing is I have the privileged of working with you all day yesterday. And I thought, "Man, you have so much to share. It's helping me and I think it could also help our listeners." So thank you for coming on.

Sari de la Motte:

Absolutely. Love to be here.

Michael Cowen:

So since we last spoke, you have published a book.

Sari de la Motte:

I have, yes. I think we talked about it, that it was coming out at that time and it is here. It came out in November.

Michael Cowen:

And what's the name of the book?

Sari de la Motte:

From Hostage to Hero: Captivate the Jury by Setting Them Free.

Michael Cowen:

And what do you mean by, From Hostage to Hero?

Sari de la Motte:

So we talked about this a little bit last time is when I first got into this world, I really recognized that there was a lot of things that trial lawyers needed to learn. And there was all this stuff about juror decision making, and how to present well, and how to do direct or exam, or what are your opening all this stuff. And it was all really great stuff, but there was something that no one was really addressing or talking about.

Sari de la Motte:

And that's the fact that jurors don't want to be there. And so, when I started to really get into that and get into the meat of that, then I realized that affected everything. That affected the decisions that they're making, and that affected the way they were showing up. And then that of course affected the way that the lawyers were showing up. And that was the crux of everything.

Sari de la Motte:

And if we could first look at why don't they want to be there and understand them and where they're coming from, and I'm not talking about their worldview and how they feel about the case, that comes later. I mean the very essential nature that they do not want to be there. And how do we deal with that first and foremost? We could then help lead them from their hostageness, meaning their inability to say no to this process, to them choosing themselves to want to become heroes.

Sari de la Motte:

And the reason that I picked hero, besides that it makes a really great title, is that heroes take selfless action that doesn't benefit them personally. And isn't that what we asked jurors to do? So it really just made sense in my mind. And as I kind of delve further into the concept, it starts to make more and more sense. And I did a lot of research on it and now the book's out and I'm finding that a lot of other people think it makes sense too, which I'm thrilled about.

Michael Cowen:

Yeah. And it's interesting because when I first started working with you and I heard your hostage to hero thing, the first thing I thought of was Carl Bettinger's book, Twelve Heroes, One Voice, which is got a similar goal of moving people to doing heroic things. But you have a very different take on it and I think you delve a lot more and get detailed. Carl's got a great book, but it's a thin book. But you actually told me, you actually purposely did not read Carl's book first.

Sari de la Motte:

I didn't. I had read a bunch over the years and people kept saying, "Have you read Carl's book?" And as I started writing the book, I thought, "I should read that." And I thought, you know what? I don't want anybody's voice in my head, especially on a similar topic. And so now that the book's published, I sat down and I started reading it and I'm like, "Oh my God, this is such a great book." I just highly recommend Carl's book and what he's doing.

Sari de la Motte:

And I'm going to actually reach out to him soon and let him know how much I adored his book. I think the big differences between our books is that he does such a great job with the hero story and how to bring that out. My book really focuses on the hostageness part of the jurors and releasing them from that so they can become the heroes that you need. And of course, my way of doing that is through nonverbal intelligence. But yeah, highly recommend Carl's book. I'm so glad I'm reading it now.

Michael Cowen:

Yeah. His book was a real game changer for me. And for me, just the whole idea of it just kind of changed my mindset from me presenting facts and me being the hero of the story almost because I'm going to go and save the day and be the big dog in the courtroom to changing my mindset it's all about the jury. It's about trying to motivate them to do something heroic.

Michael Cowen:

But then working with you, it's really helping me, okay. Well, how do I actually make this work practically? Carl's book is great, but it's just a book. Whereas with you, you're teaching me how to talk to people, how gestures, movement, facial expressions, what does this stuff.

Sari de la Motte:

I think that's a big point because so many people, the number one thing they say after working with me is useful and practical. And I think that's a lot of what's missing. There's a lot of theory out there in the trial lawyer world. There's a lot of great ideas out there, but what I'm hearing continually from my clients and my audience members is how do we do this? This is all great stuff, but how do we do this?

Sari de la Motte:

So obviously writing about nonverbal communication isn't the easiest thing. I feel like I did a fairly good job, but my whole point always, and that's because I'm a teacher first and was teaching for years before I got into this world is, how do I make this usable for people? Because my big point in trying to help you and you being trial lawyers is not to just give you these great ideas you can chew on so you think I'm brilliant, but you can actually go out and do this stuff because that's where the rubber meets the road.

Sari de la Motte:

And that's where success lies is actually in the courtroom, boots on the ground. And I'm so glad to hear that you're finding it practical and useful. That's really what I'm striving to do.

Michael Cowen:

Well, I want to talk a little bit about you have a fairly, I don't want to say unique because there's some other people that have something similar and they call it what, like an inclusive or dire where your

purpose, rather than trying to get rid of people, is trying to form a group and find your tribe. But you do have your own way of doing it. And it's really your voir dire seems to be, I'm trying to find your good jurors, find your team rather than just probably exclude all the bad jurors.

Michael Cowen:

And there's a lot of debate in this. And my personal experience is like for years, I probably doing exclusionary voir dire. And I think because of the, which is where you're trying to strike people for cause because you want them to be good jurors for you. But because of the hostage mentality, I think what I really did is I got rid of all the people who didn't want to be there, who were smart enough to figure out, okay, if I answered this question this way, I won't be here, whether it really would have been for me or against me in the trial.

Sari de la Motte:

Exactly. Yeah. Because the number one decision that a hostage wants to figure out the answer to is how the hell do I get out of here? So when you come in with the mindset of who here's out to kill me and how do I kill them first, that is like a poison and a disease that you kind of sneeze all over, starting to be gross, the jury. And they get infected by that. And they're like, "Well, he's looking for who wants to get out of here? I'm going to go along with that. And I want to get out of here too."

Sari de la Motte:

Now, when people say that I have an inclusionary voir dire versus an exclusionary, I really don't agree with that wording in that, my voir dire is set up to get you the best panel possible. And that includes getting rid of jurors. However, the bent or the doorway that I want you to walk through is to come into the court with the mindset of, there are people here that want to help me, who are they?

Sari de la Motte:

And as you go looking for those people, the people who are not for you naturally show up as well based in my method. And you, of course you get rid of them. But it's all about setting the tone, which is I've got a job to do here. And I need people to help me do that job. And so I'm looking for those people. In the book, I talk about how it's kind of like deciding you need a paralegal and you put out the job ad. And then as the resumes come in, you furiously go through them looking for all the people who would not be a good fit.

Sari de la Motte:

How much sense does that make? Of course, if I come along the resume and I see someone who doesn't fit, I'm going to toss it. But what my point is looking through the resumes is, who's a good fit? As I come along to the bad ones, I get rid of them. But my whole goal, my whole mindset, my whole process is, I'm looking for someone who can help me grow my practice and help me work in my business.

Sari de la Motte:

And that's what I believe you have to do as trial attorneys. I don't think you guys understand the power that you have. You have the power to affect how this situation plays out. Just by how you show up non-verbally and in your mindset, you set the tone at trial. And when you come in scared and freaked out and who's going to kill me, you set that tone and then everything goes to hell.

Michael Cowen:

You know, I think the mindset thing is so important that I kind of want to jump into that before we start talking about voir dire or voir dire and opening statement and the other stuff you work on. And you and I are working together. We were doing a coaching thing, and it's not just on the non-verbal and openings and stuff, but you're actually making me do work on the self instead of just pro skills. Why is that?

Sari de la Motte:

Well, I'm not making you, Michael.

Michael Cowen:

Okay. You're coaching me.

Sari de la Motte:

Yes, no, you have hired me as your personal coach. I rarely take one-on-one clients, but you talked me into it and I have a few of you. And yes, I think this is something that really came up big in my work. I've been now in this world for about 15 years. And what I realized very early, it was all about skills. And people came to me to "increase their nonverbal intelligence." I was known as the nonverbal intelligence expert.

Sari de la Motte:

And over the years, I've become the group dynamics expert, the jury expert, what have you. And I was very successful with that. And people were very happy with my work. However, what I kept seeing over and over again was that the skills were not enough, meaning all of the trial attorneys I've worked with have thought patterns that are holding them back. And what's funny about this is that all of the things you got, you guys all think you're unique snowflakes and you all are of course in your own way.

Sari de la Motte:

But you all think the same things. It's amazing to me how all of you think you're an imposter or that someone's going to figure out you don't know what the hell you're doing, or that you're not enough or that when you win a trial, you just got lucky or so on and so forth. And so I really saw this as a huge part of the next place my work was going to go, which is why I went back and got my coaches training. Because that's a totally different skill.

Sari de la Motte:

And now when you come to work with me, if you're coming to work I got a guy come in and he's going to be with me for a week, not next week, but the following week, he's going to get trial consulting, but boy, is he couldn't get a lot of coaching too, because I really believe how your thinking affects how you actually which affects your results. There's a model by the coach, Brooke Castillo. Actually I put this in the book and it's called the CTFR Model.

Sari de la Motte:

And so what that is, is the C stands for circumstance. That is, let's just put a circumstance in there. Like you lost a trial. Then the T is what you choose to think about it. So if you think, well, I suck as a trial attorney, that's going to produce the F line, which is the feeling which is scared, despair, depression,

whatever that may be, which will then create an action, which is not going to trial, not advancing, which gets you your result which is the R line.

Sari de la Motte:

Which is the I don't go to trial anymore so all my cases, because I'm too scared. Because I lost that one trial. And the whole point of the model is that you can choose to put something different in your T line. So if you lose at trial, you can choose to think, "Man, I learned so much, I'm going to do things differently." And that produces a different feeling, which is, "Man, I'm excited for my next trial," which produces different actions, which is, "I'm going to take some shit to trial," which gets you a different result. Meaning you're going to become a better trial attorney.

Sari de la Motte:

So for me, it's not enough to just teach you how to gesture, how to modulate your voice and do all those things. It's to kind of tinker in your head and go, what's going on up there so that we can get you not only thinking correctly, but as you said, Michael, balancing out your whole life. Because I see so many of you selling your soul for this work that you've chosen.

Sari de la Motte:

And I firmly believe that you can be a happy, well-balanced individual and a trial attorney, although that may be the unique snowflake, but I don't believe it and I'm on a mission to change that.

Michael Cowen:

Well, I hope you can change it with me because I'm working on it.

Sari de la Motte:

Well, you are working on it. I love it.

Michael Cowen:

And so, what are the things, the negative thoughts that would go into that CTFAR Model that would interfere with us in voir dire?

Sari de la Motte:

Yeah. Great question. So I think one of the things is that we say one thing, but we're thinking a different thing. So many trial attorneys will come out and stand in front of the voir dire panel or in front of the jury panel and they'll say, "I want you to trust me. I hope that you open up and you talk to me. You're the most talkative people in the room," and then we're holding the thought pattern. There's someone who is going to kill me. There's someone who's going to get out. I'm going to kill you first.

Sari de la Motte:

And so the point is, is that you cannot do both, meaning your real thoughts will get leaked out non-verbally and the jurors will see it for what it is. Just working with you yesterday, Michael, we talked about incongruent. So when you're smiling and you're talking about a death, you send an incongruent message to the jury. And the same thing as here, you can say, "I want you to trust me, I'm here to lead you out of this mess."

Sari de la Motte:

But if you're thinking, "I'm scared of you guys, and I only want you to talk because once you talk, I'm going to kill you if you say the wrong thing," the jurors are getting that. Whether you're saying that out loud or not. And so that I would say is the number one negative thought pattern that we walk into jury selection, looking at the jurors as if they are the enemy. And then we treat them as if they are the enemy and guess what? The jurors will happily meet you there. And they will act as the enemy.

Sari de la Motte:

And I think we have so much power to turn that around by just changing the way we think. Like I said earlier, showing up and saying, "There are people here who want to help, where are they? Where's my people. Where are you?" And designing of a voir dire on that.

Michael Cowen:

That has been such a big revelation in my life is that I actually have the power to change the way I think about something, although it's not easy.

Commercial :

This is Michael Cowen. I'd like to invite you to attend our first Facebook live session this month on Tuesday, January 28th at noon central time, I'm hosting a Facebook live session exclusively for our Trial Lawyer Nation Insider Circle members. This will provide you with a chance to ask me questions live. And I'm also going to be able to answer some questions that you've sent in that I'm not able to answer on this show. The fact is this show is listened to by many lawyers, some of whom are defense lawyers, and you guys are welcome to listen, but there's some topics that I just don't want to talk about in front of you. So if you're a member of Trial Lawyer Nation's Insider Circle, it means you've been screened. We know you're a plaintiff's lawyer, and we can feel a lot more comfortable having an open and frank discussion on certain sensitive topics. If you're not a member of Trial Lawyer Nation Insider Circle, and you're eligible, I encourage you to search for the group on Facebook, requests to join the group, and then answer the three simple screening questions we have. This allows us to keep the group to just plaintiff lawyers and maintain a safe space to openly discuss the topics in our minds. And to you defense lawyers, we do check your profile. We do take your website. So you're welcome to listen to the podcast, but don't cheat and try to join the insider circle. Again, that Facebook live session will be on Tuesday, January 28th at noon central time. And our Trial Lawyer Nation's Insider Circle, private group on Facebook. I hope you'll join us. And now back to the show.

Michael Cowen:

How do we change the way we think about something?

Sari de la Motte:

It's really down to consistency. So if we think about neuro pathways, for example, coaching, and I just launched in the end of December, for example, a badass coaching program for women trial attorneys. And it sold out in two weeks. I'm so excited to have these nine women join me next week for a six month coaching program. And they all had to go through interviews before they got accepted into the program. Because it's going to be a real rigorous program.

Sari de la Motte:

And I was just gobsmacked that none of these nine very professional advanced in their career women have never had coaching, ever. And I just thought, "Oh my word, this is the problem here." Because here's what coaching does. Coaching takes your neuro pathways that are well-worn into your brain and helps you create new neuro pathways. So if you remember when you were a kid and there was that baseball field that you always knew the back way to.

Sari de la Motte:

And there was this well-worn trail by all the kids that they knew how to go there the back way. That's kind of like the neuro pathways in your brain now. And so when you have the old ways of thinking, because that path is so worn down, it's just easy that if the brain fires so quickly, what coaching does is says, "We need to create a new path." And it's kind of like being waist high weeds. And for the first couple months of being with your coach, you're kind of stomping those weeds down.

Sari de la Motte:

And every time you go back over them, they get a little bit press down, a little bit press down, a little bit press down until you start creating a new worn path. And so coaching is really helping you create a new way of thinking. Even if you don't have a coach, you can do this on your own. Every time you start to think something you don't want to think, you can catch it and decide. I think this is what most people don't get. I can choose to think something different here.

Sari de la Motte:

I was listening to Brooke Castillo. She's a wonderful coach. And she was saying the way you think about yourself determines your entire life. And here's the other great thing is that you can think anything you want to think, meaning you can think I am the best trial attorney in the world. And there is nothing anyone can do about it. There is nothing anyone can come and go, "You can't think that, you're not the best trial attorney in the world."

Sari de la Motte:

They can tell you, you're not the best trial attorney in the world, but they can't stop you from thinking it. And I believe firmly that if every attorney listening to this podcast right now started thinking those things, even if they didn't believe at first, we would create more Nick Rowley's, Gerry Spence's, whoever your hero is in the next six months and destroy the defense bar.

Sari de la Motte:

But the problem is, you guys think it's all about skills. So you're flying from CLE to CLE and buying all the books and yes, buy my book, of course. But my point is, you're just frantic for the next new thing when if you only realized your greatness, that's it. Then you add skills on top of that, we got it made in the shade, but you guys got it backwards. You got it backwards. So you have the power to change your thoughts.

Sari de la Motte:

And really it's all about you'll hire coach, if you need one, but it's all about catching that thought and saying, "I'm choosing to think something else." So yes, it takes practice and it takes consistency.

Michael Cowen:

Yeah. And it takes the mindfulness of recognizing, wait, I'm having this thought. That's an incorrect thought. I need to remind myself. And for me, it's just telling ... I just have to decide, I have a trial coming up in a week and a half. And I just have to remind myself that jurors are good people. They want to do the right thing. And how can my client do the right thing?

Sari de la Motte:

I had an attorney come out and work with me and we did the model right before we started. And I said, "What is in your T line now?" And he said that the jurors are going to kill my case. And I said, "Let's pick something else." And he said, "What do you mean?" And I said, "You can pick whatever you want. This is fantasy land. What do you prefer to believe and think?" And he said, "The jurors love me." And I said, "Great. That's what we're going to take this whole weekend."

Sari de la Motte:

And he took that all the way in his trial. He would text me every day up until trial, "Jurors love me. Sari, the jurors love me. The jurors love me." That became his mantra. He walked into trial on a really hard case and \$10 million verdict later, jurors loved him because he decided in that room that you've been in many times, Michael, the jurors love me. And he created that reality.

Sari de la Motte:

And people might be listening to this and go, "Well, this is bullshit." It's not, here's why. And I'm not a woo-woo person at all. Whatever you think about, you create, because it comes out in your nonverbal communication and that communicates to the people around you. And then they respond based on what they're seeing. So this is actual scientifically based communication science here.

Sari de la Motte:

What you think, everything you do and all your behaviors come first from how you think, because your thinking creates your emotions and your emotions create your behavior. So if you want to fix your behavior and more importantly, your results, it all starts with your thinking. You get to decide what to think. And it's funny. Because you had said to me once Michael, in a coaching session, "You told me to journal. Sari, what does that mean?"

Sari de la Motte:

What it actually just literally means is write down your thoughts. It's a great way to see the bullshit thoughts in your head. Because I think half the time we don't even recognize that they're there. So every morning I do a little thing called morning pages, where for three pages, long hand, I just empty my brain on the page and it could just be the most bullshit, stupid stuff. And it's a way for me to go, "Oh, that was weird that all that was in there and I just clear it out and then I move along my day." So, that could also be really helpful. First way of changing your thoughts is recognizing what they are, the bullshit things you're thinking.

Michael Cowen:

Another thing I noticed you doing with us yesterday, you kept asking us what the case was worth because we have a number we're asking for. But somehow repeating it makes us believe it more.

Sari de la Motte:

Yeah, that's right. It's funny how you came in and then you left with 10 million more ask. That happens a lot in my office. But I think about the \$100 million dram shop case that I worked this last summer where three cyclists who were killed in one was seriously injured and the ask was 100 million. I was out there for a week and I said, "We are going to say the word 100 million all day long every day until it just becomes so easy to roll off the tip of our tongue."

Sari de la Motte:

And so we'd walk in and I'd be like, "You look like 100 million bucks today. Oh my God. It's like 100 million degrees outside." We just kept saying 100 million so that that word was in our mouth and in our tissue so that by the time we got in front of the jury the three times we did that week, it was just normal. Because again, the jury takes their cues from you.

Sari de la Motte:

If you come out there and you asked for 100 million, and you're just like \$100 million, they're going to be like, "Oh, this is not worth 100 million." But if you come out and you're like, "This case is worth \$100 million," in that case, we're in very conservative Texas that we set 100 million in voir dire, half the jurors almost fell out of their chair. And by the time we were done with voir dire in opening, nearly every juror, I'm not making this up, these three attorneys will back me up.

Sari de la Motte:

Nearly every juror in all three mock jurors from Craigslist in Midland, Texas, said, "Can we give more?" They didn't think it was enough. So it's huge. You have to own your number and then the jurors will own it too.

Michael Cowen:

Absolutely. So kind of skipping ahead a little bit. So we've done our work. We've got our minds and our emotions right to walk into the courtroom and it's time to pick a jury. What are some things that you've found are helpful in moving the jurors from Austin towards the hero role during voir dire?

Sari de la Motte:

Well, I suggest that the listeners go back to the first podcast I recorded with you. Because in that podcast, I walked them through the From Hostage to Hero method, the four steps throughout trial. So I don't want to reword that. But here's what I will say, is the big thing about voir dire for me, and this happens before you walk into court, is that you create a voir dire that's issue oriented. And so people always say, "What do you mean issue oriented?"

Sari de la Motte:

Well, most of the voir dire that I've seen are relationship oriented voir dire. What are your hobbies? What are you reading? It's kind of like you're watching a first date instead of actual jury selection. And I think if you understand that jurors are hostages and they don't want to be there, that they want to know why are they there and what do they have to do? And so when you can answer that question and you answer it quickly at the beginning, you increase what I call permission.

Sari de la Motte:

And that is how receptive they are to you. So they've been waiting sometimes for hours. In fact, I just posted to the From Hostage to Hero Facebook group a couple of weeks ago, an actual juror on Instagram says, "I've been sitting here for eight hours," eight hours. They still hadn't been called. I can't even imagine. Can you imagine sitting there for eight hours and being pulled into the jury room finally, and the first person coming up and doing some kind of comedy routine and asking what your hobbies are? I would explode if I was a juror.

Sari de la Motte:

And so my big issue or my big point with attorneys is get to the point and get there quickly. We're here to talk about workplace safety. For example, in your case, Michael, or we're here to talk about hospital safety and boom, you will actually see the jurors visibly relax because finally someone is telling them what they're here to do.

Commercial :

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss, and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case. And if we can't, then we won't ask for any of the fees. You can reach to 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. And now, back to the show.

Sari de la Motte:

So that would be my first thing about voir dire, is that you look at it from the jurors point of view. They are not there to be friends with you. They have not come to have a relationship with you. They're there to understand what their job is and how to do that job. And when you do that, you really create permission. Think about when maybe I'm not a games person. Every time I go to a party, which is not very often, people are like, "Let's play a game," and I'm like, "Oh God, help me."

Sari de la Motte:

And so they finally talked me into it. What's the first thing I ask? What's the first thing I asked? What are the rules? How does this work? And that's the same thing for jurors. They want to know how does this work? They're in this space of, I don't get this, I'm going to get it wrong? How long do I have to stay? So on and so forth. And so that's really, I think, the mindset you come in, my people are here and my people need to know what this is about in order to self-select to be on this team.

Sari de la Motte:

And so, you'll get there more quickly when you're talking about the issues in your case. Now, I don't mean the evidence. I don't mean the facts. I mean the principles in your case, responsibility, accountability, gambling with people's lives, profits before people. You're talking about these big time things that all jurors can rally around. And that would be my second thing is that, you have to go into voir dire and this is where I see most attorneys do not do this, and see it as a group process versus an individual process.

Sari de la Motte:

You all have been trained in individual communication, which is not what you need to know. You need to know group communication to be an excellent trial attorney.

Michael Cowen:

So give some examples of what the differences between individual communication and group communication.

Sari de la Motte:

All right. So a big example is, and y'all know this because you've been trained in this. And again, I'm not knocking down any training. I think there are good things here. I just think we got to put these skills in a context. So most trial attorneys have been told that they need to connect with individual jurors. They need to make lots of eye contact. They need to make them feel heard. They need to communicate. They care. They need to create rapport, all of those things.

Sari de la Motte:

And the problem with that is that that is just fricking weird in a group of 12 or 40 or 80 people. How odd is it, let's think about this, Michael, to sit there and super connect with this one person while 79 other people look on? It just doesn't make any sense, not to mention that you're boring the rest of the other people. They're not there to watch you create connection with individuals.

Sari de la Motte:

What they're there to do and what they're going to have to do, this is what we have to remind ourselves, is do a group process. So your first role, your first point of contact when you walk in, another mindset piece is, I'm here to create a group because we tend to think a bunch of people in a room as a group. Nope, that's a bunch of individuals and you keep them as individuals when you do the things you've been trained to do, which is create connections with each and every one of them.

Sari de la Motte:

They remain uninformed because of your training. Just think about that for a minute. You go in there and not to mention, it's absolutely crazy making. Most of my classes were like, "I don't even know how to do that. How do connect with 80 people one-on-one or even 12?" I said, you can't and my attorneys visibly relax. They go, "Really? I don't have to do that?" I go, "No, your whole point is to go in there with a group focus, get them talking and interacting with each other around the concepts and around the things.

Sari de la Motte:

You'll find a couple of things. One, it's way easier. It's way easier. And two, you're training them for the job they have to do, which is, work as a group behind closed doors. You do not want to send 12 or six or eight individuals into the verdict room, because then it's much harder to get a verdict out of individuals. You want to send a group behind closed doors and have that group, that one thing gets you your verdict. And you'll find once you learn how to do this, that everything because much easier.

Michael Cowen:

One thing I've learned from you and it's something I wish I knew earlier, because I think I've caused harm in some of my trials by doing this the traditional way is that a lot of us trial lawyers, we start off once we get the jury warmed up with our worst, biggest problems in the case. Like my client wasn't wearing a seatbelt, my client was undocumented. I don't have a lot of visible property damage that we really believe my client got hurt, something like that.

Michael Cowen:

And then you start off with a lot of negativity. And it just seems to, even though we're supposed to be looking for the bad jurors when we do that, finding the ones that might save us, it does seem to bleed over into this kind of negative aura on the case. And you have a different approach to that.

Sari de la Motte:

Yeah, I do. And I think if we just look at some social science here in terms of primacy recency, whatever you put first or last, you make important. So when you come out with your biggest, baddest fact, you go, this is really important. That's what you're communicating non-verbally and that's not what we want to do because it's not important. The defense is going to make it important. Why would we join with defense and go, "This is also important."

Sari de la Motte:

And I just want to say it first, hell no, that's not what you want to do. Again, when I go back to the idea that you guys have more power than you know if you would just be able to learn how to use it, this is a great example in that what you do and the timing that you do it. And you know Michael that I talk a lot about timing in voir dire, what questions should be asked first and when and that whole thing.

Sari de la Motte:

The reason for that is because you have the power to shape the conversation and make it go the way you want to go. Group dynamics are so powerful. This is back to why we don't want to do individual voir dire. And I know sometimes that's not within our control. Sometimes the judge doesn't allow panel voir dire, and that's outside of the scope of this conversation. But if you have the ability to do panel and you're with the whole group, group voir dire is so important because you get the group putting pressure on each other to rally around ideas.

Sari de la Motte:

And you can get them to do that if you pick the right ideas, this goes back to the idea of principles versus making it about your client, about the evidence, or about the facts. So principle in your case, and other cases that I've worked in is workplace safety, it's important that employees keep their employer or employers keep their employees safe. And you'd be very far pressed to find a juror that doesn't believe that.

Sari de la Motte:

And so Cialdini talks about how whatever, when that somebody makes a public commitment, I'm talking about Cialdini with the book Influence, when everybody makes a public commitment, they are unlikely to reverse themselves. And so a lot of times, attorneys will say, "Well, I am here for money and I don't care that they know that. And I want to say at the beginning, and I want to get the truth." It's saying to them, you're in no position to get the truth.

Sari de la Motte:

At the beginning of voir dire, jurors are hostages. The only thing that they are looking to do is how do I get out of this? So you come out and say, "I'm here looking for money and who has a problem with that?" Every hand's going to go up because they all want the fuck out. That is not the truth. That's not really the true jurors. You have to understand the jurors are in fight or flight.

Sari de la Motte:

They don't know how this works. They don't know why they're there. They don't understand that they have an opportunity to become heroes, and we need to show them that opportunity so that they can consciously, when they are not in fight or flight, choose that. But we keep them in fight or flight when we just come out with our big problem in our case. We've got to slowly lead them to what this case is about.

Sari de la Motte:

And that you jurors have an opportunity to create the type of world that we all want to live in. So hear me out. Because that's what the kinds of big things we're talking about in this case. So you start with big principles, workplace safety, safety in our hospitals, personal responsibility, whatever it might be. And then you throw your big issues. The things that the defense is going to lobby most of the time.

Sari de la Motte:

Sometimes we deal with them head on, definitely, but a lot of times I'm liking more often. And we talked about this yesterday, Michael, using them as a devil's advocate question. So for example, in a case where a person has died or been injured, we talk about the value of life and how valuable it is. And you really get the jurors rallying around that idea. And then you throw in a devil's advocate question like, yeah, but what if they were here illegally, is their life still valuable?

Sari de la Motte:

And it's amazing how the outliers will show themselves, but your group will get even stronger, but you can't use a devil's advocate question. It's funny. Twelve Heroes, One Voice, he works a lot with the devil's advocate question. I love that in there. But it's amazing how the group once formed around an idea, again, here's our group formation, you can't shake them. And the devil's advocate question actually strengthens their resolve around an idea.

Sari de la Motte:

Which is doing the opposite of throwing your bad fact out there before they're formed, when they're still in fight or flight, and going, I'm trying to get at the truth. You're not going to get the truth. That's the whole point. You're just not going to get it then. You may get it later once the group is formed, but you won't get it at the beginning.

Michael Cowen:

Anything else on voir dire you want to touch on?

Sari de la Motte:

Well, you and I talked a little bit about how connected it is to opening. And I think a lot of attorneys don't understand that.

Michael Cowen:

I didn't before I heard it from you.

Sari de la Motte:

You did or you didn't?

Michael Cowen:

I did not. I never heard it from anyone else before I heard it from you.

Sari de la Motte:

Yeah. I really feel like voir dire and opening are two sides of a conversation. So lots of times when I'm working with someone on opening and I think even you said this yesterday, even though you knew this, but lots of times they'll say, "Well, I don't know if I can get away with that, or I don't know if I can do that." And my answer to that is always, yeah, you can't get away with it unless you've primed the jury for it in voir dire.

Sari de la Motte:

And that's when the light bulb starts to go on, like it did with you yesterday. You're like, "Oh, of course." So a lot of the things we're going to be wanting to do in opening, we can't get away with, unless we've already discussed it in voir dire. So this isn't a great example because it's not about getting away with something, but here's a great example about connection. So in the dram shop case, our whole theme in that case was bars can prevent drunk driving. And the good ones do, that was our whole theme in that case.

Sari de la Motte:

And so in voir dire, we asked the jurors how as a society, because we're really making this feel like everyone is coming together to prevent drunk driving and bars also play a part in that. So we said, how as a society do we prevent drunk driving? Like as parents, what do we do? And one of the women said, "Well, as a mom, I've told my kids, you call me. If you're out and you're drinking, if you're not supposed to, you're not going to get in trouble, do not drive. I will come and pick you up."

Sari de la Motte:

And a lot of parents were like, "Yeah, I've taught my kid that too." When we went to opening on the attorney said, "Bars can prevent drunk driving, the good ones do." He started his teaching session with, "As a society, we've recognized that drunk driving is a problem. And so we have come together to fix that. And we have programs in our schools that teach our students not to drink and drive. As parents," he looked directly at the mom.

Sari de la Motte:

"We tell our kids, you call me." And he used her language. Talk about connection. That's where connection happens. He's saying I heard you. And you are a big piece of this case. This affects you and everybody you care about. And that was one of the juries that we're like, "Can we get more money?" And that's what I'm talking about. The connection is knowing what you're going to say in opening, you need to go back to voir dire and say, what kinds of things, what conversation can I start over here?

Sari de la Motte:

So that when I'm finally in opening, this is old hat. We've already talked about this. And now I'm just kind of putting it together in a presentation form. It's like, I've got to discuss it with you. Now, let me kind of put it together. It's our opening now, it's something we've created together. And I think the attorneys that don't get that are really missing a huge opportunity for both connection and to make your opening easier to do.

Michael Cowen:

Another thing I want to talk to you about. Because it's something that, again, I've been learning from you that I've not really either other people weren't teaching it or maybe I didn't listen well enough and didn't learn it from other people. And it's the concept of managing energy. Let's just stick with openings. Like when I started as a lawyer, I was very animated, but I talked very fast and I was very high energy the whole opening.

Michael Cowen:

Then when I realized I had people tell me that people didn't get what I was saying, because I was talking too fast. Then I started working on slowing down, but by my slowing down, I ended up being a fairly low energy, passionless, opening statements. And now that I'm working with you, we're working on the concept of managing energy. Can you talk a little bit about that?

Sari de la Motte:

Yeah. So we talked about this yesterday, about how I think I just read a Paul Louviere quote. Maybe it was in Twelve Heroes, One Voice where Paul says, "It is under my estimation that the jury is most of the time bored." I was like, yes, yes Paul. They are. And so part of that is because our openings are too long. The opening you walked away with yesterday, Michael was what we said, 18 minutes, which is, and it was beautiful.

Sari de la Motte:

We did everything we needed to do in 18 minutes. Not that I'm suggesting podcast listeners at every opening be that short, but the point is, is that jurors get bored. So what we want to do, and this is in any type of presentation and for anyone who really wants to see a masterclass and how to manage the energy of a presentation, go watch the comedy Netflix special called Nanette.

Sari de la Motte:

And she actually even talks about it at the end. It is a masterclass on how to manage the energy of a presentation. But that's exactly what it is. It sounds exactly like it is. There are times that you want to bring the energy up and you're going to speak a little more quickly and your voice is going to be a little more animated. And even right now, I'm on a podcast, I'm using my gestures.

Sari de la Motte:

And then there's a time you're going to want to bring things down and you really want it to sink in. And so the general rule of thumb is that when you're storytelling, when you're trying to move the plot along, when you are excited about something you're teaching about, energy's up. When you're talking about a desk or rules or something you really want the jury to get, the palms go down, the voice goes down, the pausing gets longer.

Sari de la Motte:

So I'm thinking of Eric Penn's case in the Warner trucking. And there's a concept that I talk about my work and it doesn't work for every opening, but in many openings, it does. We found one in yours yesterday, we call it ringing the bell. So there's a phrase that we want to keep repeating through opening over and over and over again. And in Eric's case, it was trucking case on ice. He would tell the story, tell the story, tell a story, bring the energy up.

Sari de la Motte:

And then he would bring it down and ring the bell and say, "And yet the driver continued to drive 65 miles per hour." Then you bring the energy up, energy up, tell more of the story and then ring the bell. And yet the driver continued to drive 65 miles per hour. And as you saw, Michael, yesterday, it's really impactful because it keeps the jury on the edge of their seat.

Sari de la Motte:

The energy goes up and then we bring it down and it goes up and it's so much more engaging than watching something in that kind of monotone or even totally higher, totally low. It's got variety. And that's a huge part of keeping the jury engaged and with you. And it also shows the jury what they should be feeling and when. So often, lots of times you go, and then she died.

Sari de la Motte:

Now the reason we're here, I'm like, "Whoa, somebody died, stop. Why are you smiling? Why did you go so fast?" You've got to teach the jury what they should be feeling emotionally. I always say, "You have to go first." If you want the jury to feel sad, you have to feel sad. You don't have to be crying, but you have to feel, it's got to be there. It's got to be a part of your emotional makeup in that moment.

Sari de la Motte:

And if you want the jury feel angry, you have to be angry. Doesn't mean you communicate that anger, but it's got to be there. You go first, you show the jury the way. And a lot of that is done through the management of energy.

Michael Cowen:

Yeah. And I think to do that, for our listeners, the necessity of rehearsal and repetition, because you're trying to remember what the content is and you're trying to think of how to word something, then you can't be thinking about managing energy. Because then you're not there, you have to have ... Yeah. Because when I did my first thing, I was not ...

Michael Cowen:

When I did our first run yesterday, and I was thinking about content, I'm unknowingly smiling when I'm talking about somebody getting killed. Because I'm thinking about something else, not thinking about the person getting killed when I'm saying it, which is awfully inconvenient. I'm saying that I still, after 27 years would accidentally do something like that.

Michael Cowen:

But if I didn't go and spend all day yesterday rehearsing and then say, "No, let's work on this before. How do we change this? How do we change this?" And then when I'm going to try to do is one or more

times a day from now until I get the real opening the trial, I'm going to have to rehearse it again to keep it fresh, but also be in the practice of managing energy. Because it's not necessarily natural.

Sari de la Motte:

Right. And I want to change your wording from rehearsal to practice.

Michael Cowen:

Okay. Thank you.

Sari de la Motte:

So yeah. And here's why, because I think when people hear rehearse, they think, I'm going to stand up and I'm going to rehearse this line by line. And as you know, we never once yesterday either wrote out the whole opening word by word, nor when you performed it, did you ever say it the same way any of those times. And so, that's the difference between rehearsal and practice.

Sari de la Motte:

The goal here is not to get it down perfectly word for word. The goal is to know it very well in your bones, in the structure so that regardless of what comes out, because it come out a little different every time, that you don't have to be thinking about that and that you can play with your gestures and your range and your managing of energy.

Sari de la Motte:

So the best openings are ones that are not word for word, but where the attorney knows, like how we did it yesterday, Michael, where we worked on each section separately so that you can kind of compartmentalize in your mind the energy you want for each section and what that section entails and that you just play with it live. It doesn't matter that it doesn't come out the exact same way every single time. The practice is for the ease in delivering information, not rehearsing it word for word. So I just want to throw that in there.

Michael Cowen:

Thank you. So what are some other things and I know you've got a great book, you've got a podcast, you've got a Facebook live group, and then people that want more, you offer coaching classes, all kinds of stuff. But what are some other things just in this podcast you want to talk about on opening that we can do to improve our results?

Sari de la Motte:

I think the number one thing that any attorney can do, whether it's opening or voir dire or any other part of trial, but those are the easiest ones. Opening being the easiest is to videotape yourself and everyone goes, "Oh, I don't want to see myself on video." So my answer to that always is, well, then you don't want to improve. Just like we were talking about the mindset work and the only way you can change your thoughts is by first knowing what they are, the same thing is true here.

Sari de la Motte:

You know Michael, because I forced you to watch a video as part of our coaching contract, and all of my studio people who come out, they just drag themselves in Sunday morning and they're just like hating

their like, "Oh go God. Now I got to watch what I did yesterday with the two mock juries." But everybody leaves those sessions going, "Wow, that was so helpful."

Sari de la Motte:

Like the smiling, when you talked about death, you would never know that unless I was there pointing it out to you or a video camera was pointing out to you. So if you want to get really good at this work, the first thing is to own that you're amazing. The second thing is to know what you're doing non-verbally intimately. So you know all your weird quirks, you know that you pull at your jacket, or you know that you always drop your gestures or whatever, because that's the first step to changing it.

Sari de la Motte:

We can't change what we're not aware of. And so if every attorney would videotape themselves, even in their living room, in fact, a lot of my coaching clients do that and they just send me the video to look at, even without an audience present, we can find things that they can improve on and they start to get to know their patterns and the weird nonverbal shit that they're doing. And then they start to improve.

Sari de la Motte:

Those are my best students, my best clients, the ones that make the biggest strides is that they're not unwilling, double negative, to look at what they're doing so that they can improve it. I think if you start there, boy, the rest of it is going to come real easy. Because then you have all the things that in my book and whatnot, to help you start to change it, but you can't change what you don't recognize.

Michael Cowen:

And it really does make such a huge difference. I had a lawyer that we've been co-counseling cases for 20 years together. And he's seen me speak tons of times. And actually this last year, he came up to me after a bootcamp that I was putting on and said, "There is something that's changed in you. You are more energetic and more dynamic. I've never seen you speak like that before in the 20 years that I've seen you speak."

Michael Cowen:

Which made me feel really good, but it does make a difference. And I liken it to exercise, watching the video, like you don't feel like doing it. It's hard to get out of bed. It's hard to put the clothes on and get yourself out the door. You put it off and you make all kinds of excuses, but once you get out and do it, you feel so much better and you improve, but you also feel better about it. I think watching the video's the same type of things.

Sari de la Motte:

Yeah. After you do it, after a while, you start to get rid of all the, "Oh, I look fat or what's wrong with my hair?" You really start now going as a detective. Okay. If I stopped doing that one thing, have I done this thing? Oh, I have improved there. And it becomes this really great self-improvement technique. And after a while, it just the rest of is old hat. You just start getting to know yourself really, and what you're doing non-verbally.

Sari de la Motte:

I've taped everything I did for the first five years of my career and watched it back. People always come, "Oh, you're such a great speaker. How'd you get there?" I said, "I watched everything I did. And just self-selected to be excellent at speaking." And I'm still doing that when I can to watch to continue to improve. But that's the biggest thing if you want to increase how you show up in front of an audience is to actually know what you do and not be guessing at it, which is why we include so much video in the work when you come out to work with me or in our small groups.

Michael Cowen:

Absolutely. Sari, thank you so much for talking to us. I know that I am getting a ton out of working with you. Some of my listeners might want to learn more about you or maybe even work with you. So how do you get into the Sari world?

Sari de la Motte:

So, unfortunately, I'm not taking any more one-on-one clients right now, but there were a couple of ways that you can get involved in. I'm going to call it the From Hostage to Hero universe. So go to fromhostagetohero.com and there you can learn how to join our Facebook group. It's a closed group. So, that's the place where we discuss the podcast. We discuss concepts of the book. You can ask questions and there's no jurors or anyone else in there looking at your answers.

Sari de la Motte:

And that's where I'm really available to you for free, for anyone who wants my time and wants to just chat about things. So, that's a great way. Listen to the podcast From Hostage to Hero, leave us a review. The more reviews we get as in this podcast, the more we can reach people, get the book from trial guys. Also leave us a review there. And we have our studio classes. February's already sold out for voir dire.

Sari de la Motte:

There's the four day class that takes six attorneys. April has four seats left and that's also voir dire. And then we have an opening statement studio in July, and then a couple of more in the fall. That's a great way to start your work with me, is come out, work in a small group. And then in this fall, we're going to be launching a membership and we're only going to open it for five days and then it's going to close.

Sari de la Motte:

So if you're interested in getting in on a membership with me, which is videos and trial workshops and all kinds of things that are online, you don't have to even come and fly out to work with me. That's going to be the best way and that you want to get on our list or mailing list fromhostagetohero.com. If you have some trial consulting you want to do with me, go to saridlm.com. And that'll walk you through the options for trial consulting.

Michael Cowen:

And I do really recommend at least starting with the small group workshops, because with only six people, you actually get hands on in coaching, but then at least people I've talked to, they've done peer group workshops, it seems like the group was also collaborative and good people. And it really seems so. Brought people a lot of good.

Sari de la Motte:

We spent a lot of time creating a group dynamic. And especially in the voir dire classes, you get two mock juries. So you will learn how to form the group, read the group, do all the group stuff I talked about today. And by the way, the studio classes are available on saridlm.com, not on fromhostagetohero.com. If you're interested in a studio class, go there. And yeah, that's a great experience. People will come back two, three, four, I think even one person come back five times. They're real popular.

Michael Cowen:

Sari, thank you so much. I look forward. I'll see you again in a couple of weeks and I look forward to it and thank you so much for coming on the podcast.

Sari de la Motte:

Thanks for having me again.

Outro:

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you're listening to this episode on a mobile device, please click on ratings review and leave us a five star rating and write a review. And if you're listening to this episode from our website, please leave a five star rating on the episode page. We'd love to reach more listeners and doing this will help more attorneys find this podcast. You can also visit our website at www.triallawyernation.com to opt into our mailing list so you can stay updated on our new episodes. I promise we won't spam you. And thanks for your feedback, we've improved our podcast website. There's now a resources tab that you can click that shows you all the books we've mentioned on our podcast. If you have a Facebook account, please send us a request to join a private group called Trial Lawyer Nation Insider Circle. This exclusive group will allow you to hear about our guests before an episode airs, interact with the show, and get a sneak peek at some of the behind the scenes moments. I love to hear from all of you and our table talk episodes are based solely on questions from our fans. So please continue to send us emails at podcast@triallawyernation.com. Thanks for tuning in. And 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 experienced finding potential defendants that other firms miss, and we've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case. And if we can't, then we won't ask for any of the fees. You can reach to 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 hosts, guests, 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 here in are only those from which they came.

This transcript was exported on Oct 28, 2020 - view latest version [here](#).