

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 Dali Lama has a saying that, in the face of anger, justice evaporates- If you can't focus group it, you have to be very, very critical of your process- If the facts aren't good, you can't create a miracle- We can agree to disagree and be zealous advocates for our clients- Quit worrying about looking perfect, you're not going to, that'll come in time, but you can still be an effective litigator- Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win 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 Mike O'Neill out of Philadelphia. Mike has got a really unique background. He was one of the top catastrophic injury defense lawyers nationwide and did a lot of work for UPS whenever they had a horrible crash anywhere around the country, and now he is a plaintiff's lawyer. I got to meet Mike recently, last year, learned a lot just from our conversations we've had so far, and I thought, "Man, he'd be really useful to come in and talk about some of what he's learned." How are you doing today, Mike?

Michael O'Neill:

I'm doing well, Michael. Thank you for having me.

Michael Cowen:

Well, tell us a little bit about you. Our listeners are just meeting you, so what do we need to know about Mike O'Neill?

Michael O'Neill:

Sure. Yeah. No, I'm a lawyer in Philadelphia. I've practiced in Philadelphia for the entirety of my career, so since I graduated from law school in 1998, went to Villanova. My practice, though, almost immediately became a national practice. From, certainly, at least the early 2000s, about 2002 or so, my practice, while my office was in Philadelphia, my practice was across the country and really focused on defending motor vehicle companies, motor carriers, in catastrophic injury cases.

Michael Cowen:

How'd you end up getting to do that?

Michael O'Neill:

It's kind of a long story. You and I share a similar background in that both of us were big firm lawyers initially. I was at DLA Piper initially and one of our clients was UPS. We did a lot of UPS transactional work, postal rate work, of all things, my firm did. And then, in the early 2000s, about 2002, UPS was looking for what they wanted to call core attorneys that could do national work on their behalf on their higher level work. We got in there as a litigator, I started doing that, and we just grew it from there.

Michael Cowen:

And so how many years did you do the national work on catastrophic events?

Michael O'Neill:

Yeah. I was UPS's national catastrophic injury counsel for over 15 years. There was a small group of us that did the catastrophic injury work for UPS, and it was really our firm at the time, and then King Spalding in the southeastern United States did it as well, and that was the primary focus of my practice. We were outside counsel, we were engaged by the company, we weren't in-house, but we really focused, and I focused, certainly, my practice on defending the company in some of their worst cases across the country.

Michael Cowen:

And so why does a big company like a UPS, and there's other companies that do that, get certain lawyers to handle their work on the biggest stuff nationwide rather than going to find people in each locality?

Michael O'Neill:

I think it's consistency in the defense of the company. The company is, obviously, is this huge, monolithic company that really has a lot going on and it's not the type of thing where ... you can't just and somebody a case for UPS and say, "Here, go defend them." You really need to know the company and you need to know how the company's operated, how they train their employees, specifically who trains the employees. You really need to learn the company. And anybody can do it, but it would take a long time to really, really learn that system. And then you just like to think that they thought we did pretty well for them and got good results and just kept giving us more and more work.

Michael Cowen:

Let's say there was a catastrophic crash out in the middle of nowhere-

Michael O'Neill:

They're never anywhere where you'd want to be, it doesn't seem.

Michael Cowen:

... at 3:00 in the morning on a Saturday. Does a company like UPS, or any big motor carrier, do they wait until there's a lawsuit filed to start doing stuff?

Michael O'Neill:

No. My phone would ring, if not that night, even in the middle of the night depending on if it's a bad enough accident. I would certainly learn by the next morning. When I was a younger attorney doing this, I'm sitting here talking to you, remembering, in my mind's eye, getting a call on a Saturday afternoon when I was playing with my young children in the yard and I had to go to Ardmore, Oklahoma, immediately, and that's not irregular. That's how they do it. And we have boots on the ground, we like to call it, we would have boots on the ground almost immediately. We'd have a local lawyer immediately there, we'd have a local reconstructionist there if possible, and then we'd get there as soon as possible, and we would bring in, again, depending on the case, bring in a national reconstructionist immediately sometimes.

Michael O'Neill:

The fact is is that marshaling the evidence while it's still fresh is really the most important thing to do in any catastrophic case. I had a case in West Virginia one time, it was an ice storm, it was terrible weather, and it was in Harpers Ferry, West Virginia, a really pretty area. But we got there and, long story short, when the police initially, they were still using older devices to map the scenes, when the police initially did it, they misidentified the area of impact and they actually put us in oncoming lane of traffic, where, obviously, that would be bad for the UPS vehicle at the time. But we were out there so early, we found gouge marks that were fresh. We were able to bring the police back to the scene that day, had them identify it, and they said, "You know what? You guys are right," and they redid all their work. That's something that wouldn't have happened if we weren't there immediately. You'd fast-forward five months and you'd have a police report saying that we were the bullet vehicle in the other vehicle's lane of travel and we'd be liable for the accident.

Michael Cowen:

Also, you all would get people to talk to the police officers before the reports were written.

Michael O'Neill:

I was standing there as the police were writing our reports, literally.

Michael Cowen:

And the plaintiff lawyer might not even know that.

Michael O'Neill:

They wouldn't know that. They wouldn't know that. A matter of fact, I don't know if we can share this here or not, but, literally, that case, the police officer, I stood over him and I said, "Listen, I'm just letting you know, if you write a second report on this," and they were using the ... oh, what was that old system before they started doing the laser? In any event, I said, "If you write a separate report and you have both reports, you're going to get beat up. You know you're right now," and he's like, "Yeah. You know what? I'm just going to write over the first report." Plaintiff's counsel would've never had any idea that that conversation took place. Think of the digging, as a plaintiff's lawyer, think of the digging you should need to do just to learn that that conversation took place, you'd never learn it, and that report never existed.

Michael Cowen:

I guess that's the reason to not always accept the police report as gospel.

Michael O'Neill:

No. In that case, we were right, but how many other instances are there out there where it's not as clear cut as that and you do have somebody talking to the law enforcement immediately and first responders immediately, and, really, you're shaping the narrative out of the gate, and that's what we did. Part of it was, sure, being a lawyer, but also part of it was being a psychologist with first responders and attempting to shape the narrative such that they were putting the accident in the best light possible for my clients, from jump.

Michael Cowen:

Right. If a plaintiff lawyer's lucky enough to get hired soon after a crash, how does the plaintiff lawyer combat that?

Michael O'Neill:

Listen, they've got to get out, they've got to talk to the same people. You've got to talk to the police. Police will talk to you. People think that they won't, but they will, they'll talk to you, and the earlier, the better, frankly, because, as time goes, they lock down and then they won't talk to you and they'll have to go through subpoenas or whatever jurisdiction you're in, however you're going to talk to them. Talk to everybody you can. Go pull witnesses. Go to houses. We would go door to door houses around accident scenes if it was a package car, for instance, in a residential neighborhood. You go door to door to see if anybody saw anything. You'd be amazed at what you could find.

Michael O'Neill:

And these are things that we just would typically do as a matter of course, which we would not see done on the other side. We're identifying witnesses. We're identifying markers in the roadway. Have an engineering firm come with you. And don't just send in your engineering firm to scenes, accident scenes. I see that done a lot for some reason. I don't know if people think they're saving money, and they may be, but they're certainly not getting a grasp of the complete picture of the accident when they do that. Go out there with them. Walk the scene with your experts. Have your experts show you things.

Michael O'Neill:

In that case I was telling you about in West Virginia, I was actually the one walking in the middle of the road that saw the gouge mark and just happened to ask my engineer, "Hey, what's this? This looks fresh," and it changed the entire complexion of that case. I can't stress the importance of getting out there and touching things, smelling things, actually being at the scene.

Michael Cowen:

I recently had something similar. There was a pedestrian hit by an 18-wheeler driver late at night and the big question is was he in the lane of traffic or was he off the lane of traffic and did the 18-wheeler driver go off the road? And the police report took the 18-wheeler driver's word for it. It was not an experienced reconstructionist, although they did paint the scene. But I went out there myself and I just saw there was not a mark of evidence on the roadway in the lane of travel, and we were able to get out there with our reconstructionist. But had I not seen it with my own eyes, I don't think I would have been able to ... and then seeing where the kid had ended up afterwards, seeing everything else, it was so clear to me what happened when I was there.

Michael Cowen:

It would not have been as clear to me with photos and talking to somebody, and we were able to, very quickly ... we didn't even get to do a deposition in that case. They didn't have enough insurance and there's no broker or anything involved and we just sent them a draft recon report and explained to them why we were right and they were wrong. I think they obviously had someone out there too and they know that we were right and they were wrong and they just paid their policy and that's it.

Michael O'Neill:

Pedestrian strike cases are some of the most important to be out there immediately because there typically aren't gouge marks in the roadway and sometimes there's not even significant damage to the power unit or to the vehicle that hit them. It's super important to be out there and see biological evidence-

Michael Cowen:

We were out there-

Michael O'Neill:

... which is a nice way to say-

Michael Cowen:

Blood.

Michael O'Neill:

... blood and tissue and things like that. Yeah.

Michael Cowen:

Yeah. And, fortunately, the father of the decedent, his pastor was good friends with our referring lawyer and so we got out there within 48 hours and it really made a difference. And, another one, it's a tire case and everybody said that the tire tread was missing. The police didn't keep the tire tread, it was a rollover fatality, and people had gone out to the scene and no one could see it, and then we were just looking for the scene. There wasn't a police report yet. We were at the wrong scene at first.

Michael Cowen:

We saw some tire marks going off the road around the area where the tow truck driver was and we ran into a border patrol person, it was on the Mexican-American border, and we asked him. He goes, "No, no, that was further down the road. I didn't work it, but I remember it, but I can give you the number of someone who did work it." And so he gives us the cellphone number of another border patrol guy and he met us at the scene, just because we called him and asked him too, and then he goes, "Oh, yeah, I know where the tire tread was. I went and put it over there so no one would mess with it."

Michael O'Neill:

In the field or something, right?

Michael Cowen:

It was, yeah, way off the road by a fence and we went over there and we got it and then, forensically, it matched up, it was the right kind of tread and everything, and it made a huge difference because the defense, in those cases, always, "Well, your tread's all down and you wore the tire out." We found the tread. It still had good tread on it. It was a defect.

Michael O'Neill:

And going back to your point about getting out there early, typically you can't be there ... if I was flying to the Midwest or even the West Coast, I'm not going to be there before the scene is cleaned up more

often than not, but even just walking the scene, you'd be amazed to find the things that the tow companies, when they clean up scenes like that, miss and you're finding fenders that may or may not have evidence on them and things of that nature that the tow company doesn't care. They're not looking to reconstruct the accident. They want to get the roadway cleared and cars going again. But there's always debris and things like that around that they didn't collect that may or may not be important. It goes right back to what we were talking about. Get out there. Walk the scene on your own and do it yourself. It's vital.

Michael Cowen:

Before I go on to more of the experience stuff, at some point, you made a decision that you wanted to be a plaintiff's lawyer instead of being a catastrophic defense lawyer.

Michael O'Neill:

I did. Well, I've been a catastrophic injury lawyer, I would say, defense or otherwise, my entire career.

Michael Cowen:

Lucky you.

Michael O'Neill:

Yeah. Yeah, I know. You know what? It's fun work. It's interesting work. I like to say, if you gave me the \$100,000 Car A/Car B case, I couldn't efficiently litigate that because I just don't know how. But at the same time, you give me the 10 million dollar commercial motor vehicle versus car or other commercial ... I'm completely comfortable with litigating those cases, and they're just different animals. You know this. You've done both and I'm sure you know that these are not the same animals at all. People who do Car A/Car B cases and do them well, I know a lot of them, I couldn't do what they do, but I can do what I can do.

Michael O'Neill:

I've been a catastrophic injury lawyer my entire career. I've always been curious, I guess, about the other side, and anybody who's worked with me in the past isn't surprised to know that I've done what I've done. I would be the person that, when we would have focus groups, I would always play the part of the plaintiff's lawyer, every single time, and I enjoyed it. I enjoy trying to play with my presentations and trying to get as big a verdict as possible. And then, on the other hand too, when I would be defending cases, I just saw a lot of lack of representation, quality representation, of a lot of people. I got-

Michael Cowen:

Even on the big cases?

Michael O'Neill:

Even on the big cases. You'd be amazed. The problem is is that you get lawyers who, we were talking about before, might be great personal injury lawyers, but just aren't comfortable or just don't know how to litigate a commercial motor vehicle case.

Michael Cowen:

Or don't have the time to litigate because of the way they have their practice set up.

Michael O'Neill:

And I fear that sometimes they think, "Well, you know what? I'm going to retire on this. I'm not going to refer it. I'm going to handle it myself," and then by the time we get to trial, they might know they're in over their head, but it's too late to undo what's been done already. And I would get defense verdicts on a case ... I got a defense verdict in Luzerne County, Pennsylvania, on an intersectional collision case where the car that we T-boned had the right of way, the woman had back surgery, and it was bad lawyering and, at the end of the day, I walked away from that being like, "Geez, that's a easy seven figure case that should have been won and we zeroed them." I felt bad for the plaintiff, quite frankly. And that's one example of several where you're like, "Geez, some of the lawyers on their side need to be better."

Michael O'Neill:

Then, on the other side of it, I've been up against some outstanding lawyers across the country, Joe Fried being one of them, where you see how they work and it's like, "Okay, this is the type of lawyer that I consider myself and I think this is the type of lawyer that people need and really, really deserve if they're going to prosecute these cases." It was the timing worked out right, the opportunity was there, and it was the time in my career, I joke with my wife, I'm at halftime, so I needed to do it now or I would never do it, so I decided to make the jump and, honestly, I couldn't be happier.

Michael O'Neill:

Part of it, too, is, as a defense lawyer, it's all about risk management. It's all about ... losing a case is oftentimes winning a case. I could get hit for two million dollars and walk away and be high-fiving my client, and that's an experience that's tough to swallow if you're a competitive person where it's like, okay, you really have to relearn what a win is. But in doing plaintiff's work, I've seen, at least in the year I've been doing it, that I've been able to be way more creative. I've been able to really, I hate the term thinking outside the box, but think outside the box on how I approach cases, really utilize some of the lessons that have been taught in all these books a lot of really, really good lawyers have put out there.

Michael O'Neill:

I pooh-poohed a lot this when I was a defense lawyer. I used to call the reptilian theory ... I said that's a crutch for the mediocre trial lawyer is what I used to call it. And then, boy, you start really looking into the effectiveness of some of these techniques from a David Ball, etc., and it's like, well, objectively, this stuff's working, and you look around now with the nuclear verdicts, as the insurance defense industry likes to call them, you look around and-

Michael Cowen:

I like to call them fair verdicts, but yeah.

Michael O'Neill:

Well, sure. But there's a reason for the uptick in these verdicts and it's almost a common approach to litigating these cases, which really is almost indefensible. You can't defend the way really good plaintiff's lawyers are prosecuting these cases. It's almost impossible.

Michael Cowen:

What is it you can't defend?

Michael O'Neill:

Well, with these cases that you see where ... UPS is the exception to the rule with respect to their safety program. UPS actually has a safety program and they put millions of dollars, if not tens of millions of dollars, a year into it. That, as you well know, is the exception to the rule. If everybody did what UPS does ... not to say UPS doesn't make mistakes and they don't have drivers that make mistakes, they do and with 120,000 power units on the road at any given time, you're going to have somebody that makes a mistake just by virtue of statistics, right, but it's typically not a lack of UPS trying to train that driver to not do what he does.

Michael O'Neill:

In these other cases you see with these other companies, these fly-by-night companies, or even some of the bigger companies that just don't really care to train, they don't want to put their money there because what is that? That's money that could be going in their own pockets. Instead of putting the money into training, they just rely on this idea that, "Well, we get a CDL-trained driver. That's all we need to do. He's trained to drive a tractor trailer and I'm going to put him on the road. We're good to go." In those cases, as you've seen, you're attacking really the company as opposed to the driver. You're almost making the driver sympathetic to a jury and, when you do that, it's a very, very, very difficult bell to un-ring when it becomes about the company as opposed to the person sitting in the driver's seat.

Michael O'Neill:

As a defense lawyer, I would tell courts that, "This is all about the five seconds. This isn't about the three months prior. This is about the five seconds in this accident." If you can make it about the three months prior or the three years prior and really delve into what hasn't been done here to protect the motoring public, you're going to be in good shape as a plaintiff's lawyer, and I think it's very, very difficult to defend. You can yell all you want that, "Well, I admitted course and scope so they can't get into it," but when we have punitives on the table, it's going to come in and there's lots of states, obviously, that allow it in in any event.

Michael Cowen:

Yep. Texas may or may not be one of those. We're-

Michael O'Neill:

Where are you guys now? I can't remember.

Michael Cowen:

Well, there's some old case law that says that you admit to course and scope, then all the rest is out unless you have gross negligence. There is a more recent case saying that, when we switch to the comparative fault statute that says that the negligence of each defendant shall be considered, which means you would have to look at both the employer and the employee separately, especially if you're putting in the plaintiff's comparative fault. You need to look at what everybody did. And then there are some federal cases going both ways, where some are adopting the old, some new. Our Supreme Court, it got up to them, and they punted. They said, "Well, there's a big question of law as to whether this line of case law is right or that line of case law is right, but we don't have to decide it because," it was a negligent training case, "there was no evidence that training would have made a difference, so since there was no evidence of causation, we'll just reverse and render rather than think about it."

Michael O'Neill:

This area of the law, frankly, we started filing motions for summary judgment on direct negligence claims on behalf of defendants, UPS, probably more than 10 years ago and, frankly, at the time, we were on the leading edge of it, it was a novel area of defense, and it blossomed and has taken over. I'm still waiting for it. We could do a whole podcast on just that issue and how to really overcome that because the public policy, I don't think, supports what courts are doing when they don't allow you to prosecute because, when we talk about the five seconds, it's what got us to those five seconds-

Michael Cowen:

I'm 100% with you, but-

Michael O'Neill:

... and I've never seen it articulated really, really well by the plaintiffs bar is to argue why that that training is so important to describe to let the jury know what happened in those events, that this driver didn't know how to respond or he put himself in a position to have an accident because of the training in those three years or whatever prior. I don't know if you can have-

Michael Cowen:

And I think it's especially important in cases where they're trying to submit the responsibility of someone else. It's amazing, in one of my cases, they just moved for protective order on a number of depositions we have saying, "Well, this is just a simple run the stop sign case. We don't need to go into all the training and everything else," but they also wanted us and the employer of the driver of our vehicle as a responsible third party for not having a training program, and the same here. It's just amazing.

Michael O'Neill:

Boy, that's talking out of both sides of your mouth.

Michael Cowen:

Yeah. And they said, "Well, it's apples and oranges. It's apples and oranges," and we're going to go finish the hearing later this month, so I'm looking forward to that.

Michael O'Neill:

That's interesting.

Michael Cowen:

And they're, of course, ignoring our pleadings and we've pled for punitive damages, but you have to plead for it. There's some great public policy arguments to be made. A lot of judges don't care, but they do care about what their case law is. And so many people come to me after summary judgment has been filed, the pleadings deadline has passed, the depositions have been done, and then they say, "Well, how do I overcome this?" It's like, "Well, here are some ideas, but what you really need to do is, when you were drafting your complaint," or we call them petitions in Texas, "you need to be thinking about how you're going to overcome this. When you're planning out your discovery, you need to be thinking about how you're going to overcome this. You have to do the research in advance. It's not something you can wait til the defense has it all set up and then ..."

Michael O'Neill:

A friend of mine was on a defense-oriented trucking podcast, which I won't name, but in any event, which I like to give, obviously, as much information as I can.

Michael Cowen:

Oh, you can name them if you want. I-

Michael O'Neill:

It was that FreightWaves, one of those FreightWaves podcasts.

Michael Cowen:

FreightWaves, okay, yeah. I think the more we learn, the better. I read defense stuff all the time.

Michael O'Neill:

Oh, yeah. No, you should and we can talk about the differences between the defense bar in this area and the plaintiffs bar because they are stark. But one of the most interesting things that was said in the podcast, which I think speaks very, very well of the people like you and Michael Leizerman and Joe Fried and Ed Ciarimboli and others is there's a concerted effort now by the insurance industry and other motor carriers to get cases either resolved as early as possible or just to prevent the introduction of what they're referring to as the second lawyer. They're starting to see lawyers getting involved in these cases, with these cases being referred to them or co-counseling, that are concentrating their practices on trucking litigation and they're doing everything they can to resolve these cases before that lawyer gets involved, and you know who we're talking about.

Michael O'Neill:

And there's, frankly, a nice handful of them, but they're not everywhere, and they've made enough of a mark that it's affected how insurance companies are settling pre-suit a lot of cases and just trying to get out from under cases before they get that quote-unquote second lawyer involved. I just thought that was really interesting that people are hesitant to refer cases out, and I'm telling you right now, from a former defense lawyer, you're not doing yourself any favors.

Michael Cowen:

Well, it's funny. We have a case right now that the insurance adjuster is just having fits because we've made it very clear that we not only will not accept the last demand that was made before we got involved with the case, but we won't accept a multiple of them.

Michael O'Neill:

Sure, sure, or that offer that was made is no longer ... yeah.

Michael Cowen:

They had demanded X on the case, and they just don't understand, no, we would never take that amount, and then, "Well, that's what they ..." Well, you snooze, you lose, buddy. You tried to take advantage of someone that didn't know what they were doing. The fact that you got them into a bad

negotiation posture, that's no longer on the table. Now there's a new sheriff in town and you're going to have to pay fair value or we're going to try the case.

Michael O'Neill:

I can't tell you the number of cases I tried where the FMCSRs were affirmatively addressed in pleadings and at trial through expert testimony or otherwise. I will tell you that the vast majority of lawyers don't even address it.

Michael Cowen:

Wow.

Michael O'Neill:

They just don't. They're an afterthought or, again, they're looking at this like, "Well, you rear-ended my guy," or "You were parked," or "I was parked." How many people have told you, "Oh, I've got this really awful case. My client ran into the back of a truck parked on the side of the road. It's a terrible case. I'm going to reject it?" Well, stop, stop for a second. You know that's not a phenomena, right? That's something that happens with regularity and it happens with regularity for a reason and the motor carriers are taught and are instructed not to park their vehicles there for that reason.

Michael Cowen:

Yeah, we've made a lot of money on some of those cases, but we've also rejected some of those ... there are certain ... your client's drunk. They had the triangles. Oh, yeah, I don't care if they had the triangles or not, your client's drunk, but that's a ... or you're in North Carolina where you have a pure contrib as a bar.

Michael O'Neill:

Or Virginia or North Carolina or where else? There's a couple others, two others. No. But, yeah, it's really digging into these cases. These cases aren't ... they're not as simple as just, "Well, I think you ran the stop sign or not."

Michael Cowen:

It's funny. Sometimes the better the liability is for the collision itself, what I call the direct or immediate cause of the crash, the more challenging it is to do that root cause analysis and bring it up to the company. I was so excited, last week, I got to, for the first time in my career, I got to depose a truck driver post-guilty plea who tested positive for meth. There's no more Fifth Amendment and we got to talk about smoking the meth pipe at the truck stop bathroom stall-

Michael O'Neill:

Really?

Michael Cowen:

... an hour before the crash and how long ... of course, he still lied about the stuff. He said most of it wasn't his. They found it all in his bag. Uh...

Michael O'Neill:

A meth addict was lying to you?

Michael Cowen:

Yeah, "The flask of urine wasn't mine." We have great liability. They had dash cam. We see him just crashing into the back of a car for no reason. He lies about it. The dash cam tells the truth. He's high. The cops notice he's high. They arrest him. But then we go back, well, how do you make this about the company? He passes preemployment. He was only there for six months. He didn't get called up for one of the randoms, random drug testings that's required. What do we do to try to make this case about the company? How could the company have caught it? What rules did they break? And we're still in the middle of it. They didn't ask about former employers, they didn't do inquiries to former employers, but now we have to connect the dots. Would that have made a difference? Was there something with one of those former employers? If there was, it would be a great case.

Michael O'Neill:

It almost, just the fact that a company is putting someone who's smoking meth in the cab of a 80,000-pound tractor trailer is-

Michael Cowen:

Is good-

Michael O'Neill:

... is good, but you want-

Michael Cowen:

... but if you could make it like they broke the rules and that's how meth addict slipped through, that's even better.

Michael O'Neill:

Oh, exponentially more.

Michael Cowen:

And so I still have a great case even if I don't, but if I really want to hit the home run, I can't just say, "Okay." And, in fact, the associate that was originally working the case up for me, just I couldn't get her to really push the case because she's like, "Well, it's a slam dunk," and I've had to jump in there and just really do a lot more digging and spinning more documents and more investigation because it needs to be a bigger case than this one crash.

Michael O'Neill:

Sure. No. I was talking a little bit about that wrongful death case I have in Philadelphia County right now where, on its face, it's a hit-and-run fatality. The guy was prosecuted. He's currently incarcerated for homicide, for vehicular homicide. He's spending, what, two to four years or three to six years in a penitentiary in Philadelphia. You think that case, too, well, okay, great, and it was presented to me as, "Oh, it's great. Get this thing in suit immediately and let's be done with it." And the insurance industry lawyers who were on it, really nice guys, but they're not trucking lawyers. They represent these companies for all sorts of personal injuries, slip and fall, stuff and whatever else. I started digging and it

turns into a lot more than just a Car A/Pedestrian B wrongful death case with already nice aggravating factors about the fact that he drove away and actually drove back to the scene after the police had responded, with another van, another vehicle.

Michael O'Neill:

All of a sudden, we realize, well, this is governed or should have been governed by the FMCSR, and the company is unaware of that fact, and this driver should have had a CDL and the company was unaware of that fact. And you start digging in cases like that where you think, "Well, this is just a slam dunk." I could've just taken that case, not done any digging, and settled it for a nice number. Now, all of a sudden, we're talking about really aggravating factors.

Michael Cowen:

And just a lot of our listeners do trucking work, not all of them do, so FMCSR is Federal Motor Carrier Safety Regulations, CDL is Commercial Driver's License.

Michael O'Neill:

Correct.

Michael Cowen:

And so I think, you and I talked about it, and so if you have, even if it's a 15-passenger van, which is not necessarily a commercial motor vehicle, if you're hauling eight or more people for money, it becomes one and you got to follow the rules, and so now we have a company that's regulated, it's hauling people for profit-

Michael O'Neill:

It should be.

Michael Cowen:

Well, they are regulated. They just- They're ignoring the regulations. And so now that's a much bigger thing because they have all these other vans on the road.

Michael O'Neill:

Right, exactly, they have all these other vans on the road and they were willfully putting drivers out there without Commercial Driver's License. They were willfully ignorant of the regulations that they were subjected to, and now, all of a sudden, that little, not little, but a really good case, really good, as you put it, direct accident facts, becomes this monster of a case with all these other aggravating facts that, in Philadelphia County, I'm hopeful and confident that there's going to be a nice result for my client.

Michael Cowen:

I hope so. I know, in my meth case, what I've told the lawyers working with me is like, "Why are you doing all this work?" I said, "Well, because it doesn't take much money to teach a meth head a lesson. It needs to be about the company and what it takes to teach the company."

Michael O'Neill:

That's a great way to look at it. Yeah.

Commercial:

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

Michael Cowen:

I want to follow up on a couple things. One, you talked about there's some differences between the plaintiffs bar and the defense bar as far as how we interact with each other.

Michael O'Neill:

Let me back up. I met Joe Fried, I think, in 2005 or 2006, so really when Joe was starting his focus, and his laser focus, on the trucking industry. I was one of the first cases. I defended one of the first cases that Joe had in Pennsylvania. It actually happened to be on the Pennsylvania Turnpike, a UPS case, which Joe did a great job. It didn't go to trial. But I met Joe then. In, I guess, it was probably this past August of 2019, when I had just started doing plaintiff's work for maybe I don't know how many months before that, six months or so, I reached out to Joe to reintroduce myself, and he was immediately like, "Oh, my gosh. You've got to join my group. You've got to join our group the ATAA, and come on down to Nashville. We're having a conference in Nashville," so I thought, "Okay. I guess I'll go get some CLEs and I'll watch the boondoggle."

Michael O'Neill:

And I went down there, and I've never seen a seminar where people were actually packing the place, not getting up and leaving, not going to play golf middle of the seminar, not going to take clients to the bar in the middle of the seminar. They were engaged. They were learning. They were sharing. It was a warm, welcoming environment. It really was, I mean that when I say it, and I was struck. I was like, "This is crazy." Because you think back, I've been to how many type of conferences, or the Megaconferences, the trucking Megaconferences in New Orleans, or the DRI trucking conferences and I've sat on panels in those and I've spoken at those and we've held our sub-meetings, the defense bar wants to give the air of sharing information and being helpful to one another, but in reality, they're all competing for the same clients, and there's a finite number of clients out there. They all want all the clients, they want all that work, and I can't blame them.

Michael O'Neill:

When you get a client, you spend these seminars babysitting and hoping that other people aren't wooing them or taking them to dinner. You're not concerned about what's going on. You're just concerned about either getting clients or talking to your client and making sure your client's taken care of. And, don't get me wrong, they're really nice guys, really nice people at these conferences, defense conferences, but it's just not that sharing way.

Michael Cowen:

The abundance mentality we've developed in trucking, and it wasn't always there, and Joe is a lot of the reason we have it, and when he became chair of the trucking litigation group, I noticed a change in the environment. Not that it was horrible before, but I noticed that he really pushed and created a better atmosphere of sharing. I think part of it's because he came from the product liability world, where we have that ethos, before he came to trucking, and then the ATAA is definitely ...

Michael Cowen:

But I'll give you an example. Joe is at the top of the game, I think. He's one of the top two or three, if not the top, trucking lawyer in the country. If he was like a defense lawyer, he'd be wanting to guard that. And you come over, you've got someone that's very experienced in catastrophic injury, and one thing he could say, "This Michael O'Neill guy could be a threat to my practice, let's bury him." No, not only does he invite you, he calls me and says, "This is a guy you need to have on your podcast because-

Michael O'Neill:

Oh, is that right? I didn't even know that.

Michael Cowen:

Yeah, and then he texted me your name and number later when I had forgotten it, and he says, "He has a lot to add. One, he's a good guy. We need to get him involved and make sure he can stay on our side and gets good work. But, two, that he's got something to share. You need to do that," even though this is promoting you and-

Michael O'Neill:

Joe gets it though because ... and you get it. You understand that the tide raises all ships, right, and it's really true that, when you're doing good work and you're promoting others to do good work, you're not going to get every case, right? It's impossible.

Michael Cowen:

I don't want every case anymore. I've realized there is a finite number of hours I want to work per week and, to do this right, I need to spend a lot of hours per case. Yeah, I want good cases, but I only want so many, and there's plenty. Unfortunately, there are so many horrible things happening on the roadways, there's plenty of work for all of us.

Michael O'Neill:

There's plenty of work for everybody, and the idea that we're sharing this information terrifies the defense bar, and I really mean that. The idea of Listservs, they don't exist on the defense side. They don't have a defense Listserv where they're sharing information.

Michael Cowen:

Oh, really?

Michael O'Neill:

Yeah. No, not that I'm aware. There might be some insurance defense sharing, but as a broad, daily use ... the Listserv is something that is used daily by us. I see things on there every day where I learn something new every single day. I really do. Or I see areas where, "Hey, I'm going to reach out to this person because I've had the same issue 15 times before and it's a new issue to him and maybe I'll help him and that'll be the end of it or maybe I'll call him and I'll help him and he'll call me back a couple days later and say, 'You know what? Maybe we could do something together here because you've got more experience than I do with this.'"

Michael Cowen:

Yeah, and the great thing with the plaintiffs bar, though, is that there's not that, "I will help you if you bring me on the case." It's, "I will help you and then, if it makes economic sense," a lot of people bring you on anyway, but you don't condition.

Michael O'Neill:

100%. No, and that's, I think, the most stark difference in just the way that information is so freely shared on this side of the aisle versus it's kind of hoarded over there because everybody wants to be able to sell themselves to their client, so it's-

Michael Cowen:

Once you crossed over, you're doing a different kind of work, to do it right, what size of a docket you think one lawyer can carry?

Michael O'Neill:

It all depends, honestly, on the type of cases you're doing. Because-

Michael Cowen:

Okay, if you're doing the big stuff.

Michael O'Neill:

If you're doing the big stuff, if you want to do the big stuff and you want to do it well and you want to push cases, listen, the defense industry, the corporate clients and the insurance industry, responds to effort from the other side. They have taken advantage of lazy lawyers forever. Uh-

Michael Cowen:

Or overworked lawyers.

Michael O'Neill:

Well, that's actually probably better put in many respects, is not so much lazy, is overworked where they have a big case, but they just don't push it. They push in the same manner they're pushing their, like I said before, their \$100,000 Car A/Car B case, they're pushing that five million dollar potentially commercial motor vehicle case the same way. If you push cases and you make them know that you know what you're talking about and your written discovery is pointed and direct and substantive and your depositions are on point and you're taking the order of the depositions properly, you're deposing the safety director and then, oftentimes, they'll say, "When do you want to depose my driver?"

Michael O'Neill:

And now, as a plaintiff's lawyer, I'm like, "I'll get to him. He's the last one I need to talk to. I've going to get everything else before I talk to him, and I'm going to put him in a position where he's going to say what I want him to say because I already have the case locked in." A lot of guys say, "Oh, let me just take the deposition of the driver first," probably more people than not would do that. If you go about-

Michael Cowen:

I think there are cases where you should. Well, we can talk about that later.

Michael O'Neill:

There are sometimes, yeah. No, I don't disagree with that. I'm just talking in generalities. But, and this is a long way to answer your question being that, if I have my druthers, I would have 10 big cases at any one time and I would push them and just strangle the life out of the defendants in those cases and then move on to another one. I know that's not necessarily-

Michael Cowen:

I think that's about right because my partner Sonia has 13 or 14 and I'm trying to get her to accept an associate because she is just working her butt off on that and it's the smallest docket she's ever had. And then Malorie has an associate and has just around 20 and, again, they're doing very well, but they are working a lot of hours, even with 10 cases per lawyer on that docket, with me helping out too, so it's really two and a half people on that docket and it's still like there's things we could do if we had more time.

Michael O'Neill:

If they're substantive, valuable mid-seven figure and up cases, 10 of them is plenty.

Michael Cowen:

Yeah, and it's plenty of money.

Michael O'Neill:

Not only that, when you have that, and I don't want to say few because, as you just said, it's still a lot, but when you have that number, you can do things with those cases that you just can't do when you've got 50 or 100 cases on your docket. You can focus group them accurately and you can do it early and often if necessary if the case asks for it. You can depose people who you may not have deposed because, "Well, I don't have time to take that guy's deposition in another case," where you do now. And, boy, you'd be amazed, as I'm sure you know, you'd be amazed, some of those depositions, when you think, "Ah, do I take it or not?"

Michael O'Neill:

I just deposed the inspector for the Port Authority of New York New Jersey and, literally, going into it, I was jammed up the day before, I didn't prepare as much as I wanted to, and I was halfhearted going into it, but it was scheduled and he's pretty high up, obviously, and I'm like, "All right," ended up being one of the best depositions of the cases. I got so much information out of him that I absolutely was unaware of. That's a deposition that a lot of people might have just said, "You know what? Just cancel it. I don't need him. I've got everything I need already." Well, I did have everything I need, now I've got more.

Michael O'Neill:

Yeah, I think that that number is an ideal number. Is it realistic? For some people, it is, and you've put yourself in a position where it is, and I think Joe Fried actually operates with a similar mindset. I'd love to get there because I actually like pushing cases like that.

Michael Cowen:

Yeah. I think the only ways to get there is, one, you could be like Michael Leizerman and just have the discipline to only take those cases and to say no or, two, to develop a firm around you where you have other people to take the other size cases and go on and then you just have to have ... either join someone else's firm and be the specialist or develop a firm that has enough systems and guidance and coaching where the other cases will still get worked up right without you having to personally ... which is what I'm attempting to do with my firm.

Michael O'Neill:

It's what I'm attempting to do as well. Yeah.

Michael Cowen:

You go out, you decide you want to become a plaintiff lawyer, how do you get work? You've got experience, but you've not done plaintiff's cases before. How do you get people to bring you in on these cases or how do you get clients?

Michael O'Neill:

Well, yeah, I was in the fortunate position where I got some work from another lawyer just who had needed help immediately, and that was great and it was a great opportunity to get my feet wet on the plaintiffs bar, remember where to sit in the courtroom and things like that. But, now, it's been a matter of things like this and the ATAA meetings, and it is just part of putting my experience out there and getting some traction, where you get a little bit of trust when you get people like Joe Fried mentioning your name and introducing you to people, saying, "Hey, this guy, he knows what he's talking about in these areas." And I've probably litigated more delivery truck cases than, geez, I don't know, than anybody that I'm aware of, just by nature of the work that I did for so long, and that area has been developing for me a little bit, where people are bringing me in on cases that involve delivery trucks, delivery vehicles. It's just a matter of getting some traction, which I'm starting to see now.

Michael Cowen:

So it's just been networking basically?

Michael O'Neill:

Yeah.

Michael Cowen:

Are you doing mostly attorney referral then, not trying to go direct to the public?

Michael O'Neill:

Yeah. Well, I'll tell you, I have not tried to go direct to the public, absent talking to some Teamster, business managers, and things like that.

Michael Cowen:

The problem with direct to the public is that, even if you had a great marketing plan, for every call you would get which would be a case you want to work on, you're going to get 100, 200, and 300 calls for other kinds of cases. And it's hard to make a marketing budget that will, especially somewhere like Philadelphia, which is crazy as far as competitive for lawyers, that could bring in those cases and afford to only take the ones you want. If you have to bring in 2,000 cases to get 20, it doesn't work unless you could take some of those other cases or get someone else to work those other cases, so that ... that's why we've gone to almost pure attorney referral.

Michael O'Neill:

Well, and it's the type of work, especially with the attorneys who I'm, I don't want to say marketing to, but that I'm introducing myself to, that I'm becoming, frankly, friends with a lot of them, they're handling and they're getting cases of the type that I know how to handle and I know how to litigate. It's worked out in that way, that it's not as though I'm getting a bunch of people asking me to get involved in med-mal cases or stuff like that.

Michael Cowen:

And the other thing is that, if you feel comfortable talking about this, if not, just say no and we'll edit it out, going from being paid to work on cases to having to not only wait, but then fund cases, how do you make that adjustment?

Michael O'Neill:

That is an adjustment and that's a ... my wife keeps calling it a two-year plan, so we'll see at the end of two years. But, no, it's a completely different animal with respect to how you're compensated on this side of the ledger, which I knew getting into it. A lot of this was a leap of faith and having confidence in my skills and maybe a lot of is naivete that I thought I could just jump in and do it, but either way, I knew getting into it that I was going to have to bite the bullet for at least a couple years compensation-wise. And I can't complain, I had a really nice situation where I was and it would have remained a nice situation, but you were never going to get those awards that you get on an eight figure or bigger verdict.

Michael O'Neill:

And the money, don't get me wrong, the money is part of it. You start giving big checks to mediocre lawyers, you start to wonder, "Why am I not on the other end of this conversation?" But a lot of it, too, has to do with looking at it and just saying, "Listen, I think I could make that a bigger case." I've just been curious and I've really, really wanted to just take big cases and make them bigger.

Michael Cowen:

And I hate to break it to you, but to get the real big, it's more than a two-year plan because what it happens is that ... I think, right now, you're teaming up with other people so you're maybe not funding 100% of all the expenses and everything, at some point, you have to say, "Well, I want to be able to fund more of this and get a bigger piece of it," or, for me, it was what I could afford to fund, and so then you have to defer gratification-

Michael O'Neill:

No, that's absolutely true.

Michael Cowen:

... and put that money towards funding new cases or putting it in a very liquid investment so you can use it as collateral for a line of credit so that you can fund the cases or something, but to really make it big on the plaintiff side and to have it sustainable, it takes years of, okay, I got my big hit, but I'm not going to be able to spend it all.

Michael O'Neill:

Exactly. No, no, no, you couldn't be more correct, and I'm in the process of ... and I think you know Ed Ciarimboli and Ed's very active in the trucking industry. Ed and I, through Joe, as matchmaker, as Joe likes to call himself, Joe Fried likes to call himself, put Ed and I together, and it turns out Ed and I are both from northeastern Pennsylvania and we really hit it off and we really have a shared vision of how we would like to organize a practice and really focus on the same things you're focusing on and do it a little bit different than other people are doing it, certainly in Pennsylvania. Yeah, Ed ... Greg Fellerman, so it's Fellerman & Ciarimboli, so I will be joining them effective March 1st and opening a Philadelphia office for them and-

Michael Cowen:

Well, that will be, when we go live, it will be after March 1st, so actually ... now, what's the firm going to be called?

Michael O'Neill:

It's Fellerman & Ciarimboli, so I will be the Philadelphia office out of the gate. Yeah. We're really excited and we've got some really, I think, interesting marketing ideas in where to target some work, playing on my experience, especially with package car cases. Listen, there's lots of guys out there who, yourself included, who have developed these wonderful trucking practices. I really think I can add value in any package car case, especially from a liability aspect and prosecuting the liability cases because I've seen them all. I've literally practiced across the country in defending these cases and I really know where to attack.

Michael Cowen:

Yeah. Like I said, a lot of our listeners are going to know instinctively what you're doing, but not everyone of the 3,000 people that are going to listen to this are people that are handling these kinds of cases every day. My understanding, the package car cases, so if you're 26,001 pounds or more, then you're a commercial motor vehicle under the federal rules.

Michael O'Neill:

Correct.

Michael Cowen:

Sometimes, but not always, 10,001 pounds or more, it can be considered a commercial motor vehicle, but there are a lot of vehicles owned by companies that are on the road a lot that are not quote-unquote commercial motor vehicles, the regulations do not apply to them. What are some of the

challenges then in you get a case with an unregulated vehicle, like a package delivery van, for me, it's a oil field company's pickup truck, how do you then set rules when we don't have the crutch of the federal government doing it for us?

Michael O'Neill:

Well, yeah. You have to develop the standard of care in that industry and it's a matter of seeing what training they're providing their drivers, if any, and really treating it as though the federal rules apply without ever being able to cite the federal rules, for lack of a better way to put it. Large companies ... and delivery companies is the easy ones to talk about because everybody sees them every day at their house more and more. I was telling somebody the other day, I woke up on a Tuesday. I realized that I went through the last of our ... I like to get these big, chunky soaps from L'Occitane, so I realized, oh, we were out. I went to work and it was 11:00 and I remembered. I went on Amazon, I ordered them, I got home at 7:00 that night, and my five bars of soap were at my house. It was six hours later.

Michael Cowen:

And those are going to be some complex cases because not only do you not have the federal rules to fall back on, but Amazon claims that all those drivers are independent contractors.

Michael O'Neill:

They're all independent contractor cases, yep, with Amazon. And it's not only Amazon, DHL has similar where they ... you'll see a DHL driver show up at your house with a DHL uniform on in a DHL van, he'll tell you, or DHL would tell you, "Well, he doesn't work for DHL."

Michael Cowen:

FedEx does the same thing.

Michael O'Neill:

Oh, and they always have, yeah.

Michael Cowen:

But if you really look at the law and you know this is going to be an issue before you start your case, so you look up, okay, in my jurisdiction, what do I have to prove to prove employee rather than independent contractor because you can't just contract away your way out of liability to third parties, and then what's my plan for proving ... you'll usually prove that they're an agent or employee. If not, they're still negligent selection. They're still their vehicles and they choose who drives them and then they do some kind of training, then they have negligent ... they've undertaken the duty to do it right and there's a million ways to do that and still make it about the company, but you have to think about it before you start a lawsuit. You can't wait til you get that summary judgment saying, "They're an independent contractor. You can only sue them."

Michael O'Neill:

You've summarized it better than I could. I just like to say there's a million ways to skin this cat, but you have to know how to skin the cat. You have to know the different ways and you need to be able to go after ... if it's going to be just agency issues, you're going to have to go through the agency's issues. If it's going to be negligent selection, you have to know that area of the law and you have to be able to

prosecute those issues and plead them properly. And it's folks who, "Oh, my gosh, an Amazon truck just hit my client, killed a client. This is a huge case. I'm going to retire on this case." Well, it's not that easy. You really need to know what you're doing. You need to dive into that. You need to really know that area of the law and that's just to get the proper parties on the hook.

Michael O'Neill:

Then you've got to know how to actually prosecute your liability case there, which those cases are different than a Car A/Car B case and those cases are different from a tractor trailer case. They're their own cases. They're in different environments. They're typically in a more urban or suburban environment. They're typically at lower speeds so you have different injuries. You've got a lot of TBI cases we're seeing more and more of in package delivery cases or these van cases like we're talking about. But they're just a different animal that you need to know how to attack.

Michael O'Neill:

Listen, if you really want to be successful in any area of the law you're going to practice, I'm not saying that every personal injury lawyer needs to specialize, like Joe Fried does or you do, but it doesn't hurt to try to perfect your practice and perfect what you're doing. And if you're doing even amounts of medical, product liability, slip and fall, you name it, and trucking work or/and package delivery cases, you're never going to do any one of those as well as you could if you focused more on one than the others. If you've got a big case, you think you've got a big case, and I know you said this before, find someone who's a specialist in that area and at least reach out to them and pull their ear on it and try to learn as much about that area as you can.

Michael Cowen:

Yeah. We find often people end up making more money after they work with us than they would have had they been on their own because the end ... and, frankly, some people, well, they work with us on a few and then they can do most of them on their own and then either they don't come back or they come back on the biggest or the big ones and we don't mind. We share what we do. Yeah, there's more work out there than I care to do.

Michael O'Neill:

Absolutely, yeah. No, I love getting engaged and I've seen, because of the nature of the ATAA and the AAJ trucking group, where it's a national group and they all share information, I've seen people across the country and I've had the real benefit of I've litigated in over 30 states. I've tried cases in 13 different states. I know the difference between voir dire and voir dire. You'd be amazed in the number of people who look at you when you say voir dire in the Northeast. You don't know what you're talking about-

Michael Cowen:

Voir dire.

Michael O'Neill:

Yeah, you don't know what you're talking about.

Michael Cowen:

I would have to take elocution lessons to try a case and you're like, "Voir dire, voir dire" I'd have trouble saying it.

Michael O'Neill:

Yeah. But I've been lucky enough to practice across the country. And it's funny because, when I started in plaintiff's work, I'm in Philadelphia County, which is a fantastic county for plaintiff's lawyers, as you well know, and I thought, "Well, here we go. I'm going to be in my bed every night," and here I am, and what I've seen is, because of the nature of my background and those people that are asking, "Hey, maybe you might be able to get involved and help me out a little bit," none of it's in Philadelphia. Well, I shouldn't say that. Some of it is, but the majority of it's been outside and I love it. I enjoy helping people in different areas and different parts of the country and different courts.

Michael Cowen:

It's like you're in my office in San Antonio here because someone's bringing you in on some Texas cases. I want to just go back to the non-CDL cases a little bit. I think one advantage you have having represented UPS is that, well, they're not perfect, UPS does it pretty well when it comes to safety training and safety policies, so I guess that gives you some background of what the industry standard should be. But when you have the case against one of these other companies that doesn't do it as well, how do you prove the industry standard? What do you look to?

Michael O'Neill:

With areas of defending and prosecuting now, package delivery cases for instance, I really look to see how they're training their drivers. At UPS, you'll see ... anybody who's had a UPS package car case, as they call their delivery vehicles, or a feeder truck case is what they call their tractor trailers, anybody plaintiff's lawyer who's had one of each of those sees that, wow, they're training and their recordkeeping for both of those groups are very, very similar. And, in those cases, it's, well, really, UPS, while they haven't and they're not subject to the FMCSR with respect to their package delivery drivers, they really treat them almost, in their training and development, as though they are.

Michael Cowen:

That's unusual.

Michael O'Neill:

It is unusual, but, really, if you were to have a case against another, whether it be a DHL for instance, you can easily point to the industry, they know what UPS does. They know how UPS trains their drives. And DHL, for instance, they have both a package delivery arm as well as, I believe, they have a much smaller tractor trailer division, but they still have one. Amazon has a delivery service as well as you see the Amazon tractor trailers on the road. These companies know, so they know the FMCSRs. They know the standards that are required under those and they know the applicability to their non-CDL drivers. It's just as easy to train them under the same regulations, even though they're not required to.

Michael Cowen:

But you can find companies that do and I think, also, there's an ANSI standard, American National Standard Institute, for fleet vehicle. The National Safety Council has things out there. I think, actually,

the Centers for Disease Control, when it comes to distracted driving, actually has put out recommended practices.

Michael O'Neill:

Oh, is that right? I haven't seen that.

Michael Cowen:

I'll give you a copy before you leave. Distracted driving is enough of a health hazard that even the CDC has been involved in trying to encourage employers to train these drivers. Even though you'd think, "Well, that's an obvious hazard," people know it's bad to text and drive, but people think, "Well, I can just go look at a text real quick and it's not unsafe when I do it," and they don't realize that the average time off the road is five seconds before your attention's fully ... your eyes might come back before your attention's fully back on the driving task and they don't realize that, on a highway, you're going 88 feet per second at 60 miles an hour or you're going 440 feet, a football field and a half, during those five seconds when you look at one text.

Michael O'Neill:

How many times since you've been doing this and knowing those statistics like I do, and I've flown helicopters in the National Guard-

Michael Cowen:

Oh, wow.

Michael O'Neill:

... well, my prior life, but I'm constantly doing a time-speed-distance analysis in my head, and the same thing, I've got a 16-year-old I'm teaching to drive, she's got her driver's permit now, she doesn't have her license yet, and it's the same thing I'm teaching her, "Listen, when you glance down to change the radio station on the highway and it takes you two seconds, how far do you think you've moved?"

Michael Cowen:

And what could the other people have done during that time?

Michael O'Neill:

Exactly. The car that's in front you to the left is now immediately in front of you slowing down by the time you look up. These are all lessons that I've taken to heart in my driver training.

Michael Cowen:

Well, Mike, I could talk to you all day, but we've got a limit now on the podcast. To end, if anyone wants to get ahold of you, whether it's to bring you on a case or just ask you a question, because I know you'll answer questions without remuneration, how do they find you?

Michael O'Neill:

Sure. Well, I'm going to give my cellphone. I've heard other people do it and-

Michael Cowen:

You're crazy.

Michael O'Neill:

... well, you might think so, but because I travel enough and this is the phone that I'm always on. It's 215-776-5070. I can also be reached when this comes out at the email [mjo@fclawpc.com](mailto:mjo@fclawpc.com), and, again, that'll be at Fellerman & Ciarimboli, which I'm very excited to be starting at and growing their trucking and transportation practice, hopefully, to new heights.

Michael Cowen:

Great. And we're going to have all that information in the show notes, so if you didn't catch that, if you're driving right now, don't write it down-

Michael O'Neill:

Yeah, don't look away from the road

Michael Cowen:

... it will be there. Thank you so much.

Michael O'Neill:

No, no, it was a pleasure, Michael. Thank you so much.

Outro:

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Commercial:

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can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301 or send an email to [podcast@triallawyernation.com](mailto:podcast@triallawyernation.com). She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail.

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